

UNITED STATES OF AMERICA 111 FERC ¶62,313
FEDERAL ENERGY REGULATORY COMMISSION

Central Vermont Public Service Corporation

Project No. 2205-006

ORDER ON OFFER OF SETTLEMENT AND ISSUING NEW LICENSE

(June 20, 2005)

INTRODUCTION

1. Central Vermont Public Service Corporation (Central Vermont) filed an application for a new license pursuant to sections 4(e) and 15 of the Federal Power Act (FPA)¹ to continue operation and maintenance of the 21.05-megawatt (MW) Lamoille Hydroelectric Project No. 2205.² The project is located on the Lamoille River³ in Chittenden, Franklin, and Lamoille Counties, Vermont. The project does not occupy any federal lands. As discussed below, I am issuing a new license for the project. Issuing a new license is in the public interest because it would allow the project to continue generating electric energy to serve growing regional demand while protecting and enhancing environmental, recreational, and cultural resources.

BACKGROUND

2. The existing license for the project was issued on May 7, 1968, and reissued (on rehearing) December 22, 1969.⁴ The license expired on December 31, 1987, and since

¹16 U.S.C. §§797(e) and 808.

²The authorized installed capacity was 16.88 MW when the project was originally licensed and subsequently increased to 21.05 MW, by Orders Amending License in 73 FERC ¶ 62,022 (1995) and 109 FERC ¶ 62,146 (2004).

³On November 30, 1955, the Commission made a determination that the Lamoille River is a navigable water of the United States from its mouth up to at least river mile 46. The Lamoille Project No. 2205 is located within this reach of the river. (14 FPC 1129, 1131). Therefore, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), requires the project to be licensed.

⁴39 FPC 678 (1968), Order Issuing License (Major); 42 FPC 1238 (1969), Opinion and Order Issuing License (Major). The licensee appealed the backdating used by the Commission in its May 7, 1968 order to set the effective date as January 1, 1938, and the

then, Central Vermont has operated the project under annual licenses pending the disposition of the application for a new license.

3. Public notice of the license application was issued on June 16, 1988, and September 13, 1988, setting a deadline for filing comments and motions to intervene of November 14, 1988. Timely motions to intervene were filed by the Vermont Agency of Natural Resources (Vermont ANR) and American Rivers, Inc. (American Rivers).⁵ Comments were also filed by the U.S. Army Corps of Engineers; Vermont ANR; U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior (Interior); and the Franklin-Grand Isle Regional Planning and Development Commission. Central Vermont filed response letters to Vermont ANR's and Interior's comments.

4. In October 1991, the Commission issued an Environmental Assessment (EA) that analyzed the environmental and economic effects of the proposed action, the proposed action with additional staff-recommended measures, and a no-action alternative. In the 1991 EA, Commission staff recommended Central Vermont's licensing proposal with modifications.

5. Following a 12-year period in which Central Vermont sought water quality certification for the project under section 401 of the Clean Water Act and ultimately engaged in settlement negotiations (see below), on July 3, 2003, pursuant to the Commission's regulations at 18 C.F.R. § 385.602 (2003), Central Vermont filed an Offer of Settlement and an Explanatory Statement, on behalf of itself, Vermont ANR, the Vermont Department of Public Service (Vermont Public Service), the Vermont Natural Resources Council (Council), Trout Unlimited, and the Town of Milton, Vermont (Milton).⁶ The Offer of Settlement includes a Comprehensive Settlement Agreement (Settlement Agreement) executed as of January 7, 2003, which includes conditions to protect, mitigate, and enhance fish and wildlife, recreation, and cultural resources.⁷

expiration date as December 31, 1987. The December 22, 1969 order addressed that rehearing and issued the license again.

⁵The motions to intervene were timely, unopposed, and therefore automatically granted pursuant to 18 C.F.R. § 385.214(c)(1) (1988).

⁶While not a signatory to the Settlement, Interior expressed support of the Settlement Agreement in a letter to Central Vermont dated January 30, 2003. Attachment 2 to the Offer of Settlement.

⁷The Comprehensive Settlement Agreement is Attachment 1 of Part I of the Offer

6. The Commission issued a notice on August 13, 2003, soliciting comments on the Offer of Settlement. On September 4, 2003, Interior filed revised recommendations and prescriptions pursuant to sections 10(j) and 18 of the FPA, respectively, consistent with the provisions of the Offer of Settlement. No other comments were filed.

7. On October 22, 2004, the Commission staff issued for public comment a supplemental EA that included an analysis of Central Vermont's relicensing proposal as modified by the Offer of Settlement. Interior, Vermont ANR, the Council, and Central Vermont filed comments on the supplemental EA. All motions to intervene, protests, and comments have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

8. The Lamoille Project consists of four developments originally constructed by Public Electric Light Company and conveyed to Central Vermont on July 9, 1953. The Fairfax Falls and Milton developments began operation in 1919 and 1929, respectively. The Clarks Falls Development began operation in 1937, while the Peterson Development was placed in operation during 1949. The following is a general description of each development, proceeding from upstream to downstream on the Lamoille River.

9. The Fairfax Falls Development, the furthest upstream development, includes: (1) a 280-foot-long concrete gravity dam and spillway; (2) a 152-acre reservoir with a normal full pool elevation of 425.4 feet mean sea level (msl); (3) two 227-foot-long penstocks leading to; (4) a powerhouse containing two generating units with a total installed capacity of 4,200 kilowatts (kW); and (5) appurtenant facilities. Central Vermont currently operates the Fairfax Falls Development in a run-of-river mode year-round.

10. The Clarks Falls Development, located 12 miles downstream from the Fairfax Falls Development, consists of: (1) a 387-foot-long concrete gravity dam and spillway; (2) a 740-acre reservoir (Arrowhead Mountain reservoir) with a normal full pool elevation of 290 feet msl; (3) a 360-foot-long penstock leading to; (4) a powerhouse containing a single generating unit with an installed capacity of 3,000 kW; and (5) appurtenant facilities. Central Vermont operates the Clarks Falls Development in a weekly peaking mode,⁸ with a maximum drawdown of 1 foot from April 1 through June

of Settlement.

⁸The Clark Falls Development operates according to demand on weekdays

15 and uses storage in the reservoir to supplement natural inflows.

11. The Milton Development, located one-half of a mile downstream from the Clarks Falls Development, consists of: (1) a 136-foot-long concrete gravity dam and spillway; (2) an 11-acre reservoir with a normal full pool elevation of 246.2 feet msl; (3) two 70-foot-long penstocks leading to; (4) a powerhouse containing two generating units with a total installed capacity of 7,500 kW; and (5) appurtenant facilities. The Milton Development operates in tandem with releases from Clarks Falls and has limited storage resulting in impoundment fluctuations of up to 2.5 feet during the week.

12. The Peterson Development, which is located 3 miles downstream from the Milton Development, and 6 miles upstream from the mouth of the Lamoille River at Lake Champlain, consists of: (1) a 347-foot-long concrete gravity dam and spillway; (2) a 136-acre reservoir with a normal full pool elevation of 152 feet msl; (3) a powerhouse containing a single generating unit with an installed capacity of 6,350 kW; and (4) appurtenant facilities. The Peterson Development, like the upstream Milton Development, normally operates in coordination with releases from the Clarks Falls Development (through Milton) but has some additional storage capability. Historically, the Peterson reservoir has fluctuated up to 6 feet during the week.

13. The project boundary encloses the project features described in the above paragraphs. A more detailed project description is contained in ordering paragraph (B)(1).

14. Under the Settlement Agreement, Central Vermont would operate each of the developments in a run-of-river mode from April 1 through June 23. For the remainder of the year, it would operate Fairfax Falls in a run-of-river mode, while weekly peaking operations would continue at the Clarks Falls and Peterson developments and the Milton Development would generally pass inflows from Clarks Falls.

OFFER OF SETTLEMENT

15. The Explanatory Statement (cover letter) to the Offer of Settlement sets out the background, purpose, use, implementation, general provisions, and terms for its execution. A large part of the Settlement Agreement attached to the Offer of Settlement addresses the future decommissioning and removal of the Peterson Development. The

resulting in average impoundment fluctuations of 2 to 5 feet and occasionally as high as 10 feet. The reservoir is refilled on weekends.

parties to the Settlement Agreement state that several provisions of the Settlement Agreement are not intended to be included in the current relicensing including the decommissioning and removal of the Peterson Development, the establishment and funding of the Lamoille River Restoration Fund and payments to Milton to compensate for lost tax revenues from the Peterson decommissioning. As for the relicensing provisions, the Settlement Agreement addresses the signatories' various concerns related to project operations, fish and wildlife, recreation, land use, and historic properties along with related subjects. This license requires the measures that the parties to the Settlement Agreement intended to be included in the relicensing. The specific provisions of the Settlement Agreement are discussed below.

16. Sections 1 and 2 provide definitions and set forth the general agreements of the parties.

17. Section 3 addresses project operations and includes provisions for: operating restrictions and requirements; dissolved oxygen (DO) maintenance downstream of the Peterson Development; downstream fish passage at the Clarks Falls, Milton, and Peterson developments; Arrowhead Mountain reservoir (or AMR) flood operations, and development of a flow management plan. Section 3 also includes provisions for upstream fish passage at Peterson dam if Central Vermont is in default of its obligations under the Settlement Agreement or its obligation to remove Peterson dam under section 8 of the Settlement Agreement has terminated.

18. Section 4 provides for payments to Milton to compensate for lost tax revenues resulting from the future decommissioning of the Peterson Development. Section 5 establishes a Lamoille River Restoration Fund to enhance various aquatic resources in the Lamoille River and Lake Champlain Basin. Section 6 includes provisions for Central Vermont to recover its decommissioning costs from its ratepayers by obtaining an accounting order from the Vermont Public Service Board. Section 7 establishes a decommissioning fund. Section 8 provides for the decommissioning and removal of the Peterson Development.

19. The remainder of the Settlement Agreement provides for termination of the agreement (section 9); miscellaneous agreements among the parties (section 10); a cultural resources management plan and recreation plan, public access, and disposition of project lands after the removal of the Peterson dam (section 11); and effective and termination dates (section 12).

WATER QUALITY CERTIFICATION

20. Under Section 401(a)(1) of the Clean Water Act (CWA)⁹ 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 a water quality certification (WQC) 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 1 year. Section 401(d) of the CWA provides that the certification shall become a condition on any federal license that authorizes construction or operation of the project.¹⁰

21. Since filing its license application, Central Vermont has filed, withdrawn and reapplied for certification a number of times, most recently by letter dated March 1, 2004. Vermont ANR received Central Vermont's March 1, 2004 request on March 4, 2004,¹¹ and did not act on the application within 1 year. Therefore, certification is deemed waived.

SECTION 18 FISHWAY PRESCRIPTIONS

22. Section 18 of the FPA, 16 U.S.C. §811, provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

23. By letter filed September 4, 2003, Interior requested that the Commission reserve Interior's authority to prescribe fish passage facilities for the project.¹² Consistent with Commission policy, Article 413 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Lamoille Project.

THREATENED AND ENDANGERED SPECIES

24. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)¹³ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of

⁹33 U.S.C. § 1341(a)(1).

¹⁰33 U.S.C. § 1341(d).

¹¹See Vermont ANR's letter to Central Vermont, filed March 31, 2005, at 1, stating that March 4, 2005, was the "1-year anniversary of the reapplication."

¹²Interior filed a similar reservation on October 4, 1989.

¹³16 U.S.C. § 1536(a).

federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

25. By letter filed March 15, 2004, Interior indicated that no federally listed or proposed threatened or endangered species or critical habitat is known to occur in the project area. Commission staff found in the supplemental EA that continued project operation would not affect any federally listed threatened or endangered species and, therefore, preparation of a biological assessment or further consultation with the U.S. Fish and Wildlife Service under section 7 of the ESA is not required.

HISTORIC PROPERTIES

26. The Lamoille Project developments may be eligible for listing on the National Register of Historic Places. Central Vermont replaced windows on the north side of Fairfax Falls and Milton powerhouses with vandal resistant green panels.¹⁴ The State Historic Preservation Officer recommends that the window inserts be replaced with windows that match the originals in appearance. In the 1991 EA, Commission staff recommended that Central Vermont file, for Commission approval, a plan for replacing the window inserts and any other windows that need replacing with windows that match the appearance of the originals and are resistant to breaking.

27. Section 11.1 of the Settlement Agreement requires Central Vermont to develop a programmatic agreement (PA) and a Cultural Resources Management Plan (CRMP) for the project. On December 21, 1994, the Commission executed a PA with the Vermont State Historic Preservation Officer and the Advisory Council on Historic Preservation, pursuant to section 106 and the Advisory Council on Historic Preservation's regulations implementing section 106 (36 C.F.R. Part 800). Although it predates the Settlement Agreement, the 1994 PA requires the licensee to develop a Historic Properties Management Plan (HPMP), which satisfies the requirement of section 11.1 of the Settlement Agreement. Article 414 requires that Central Vermont implement the provisions of the 1994 PA, including developing an HPMP that contains a plan for replacing windows at Fairfax Falls and Milton powerhouses and any other windows that need replacing with windows that match the appearance of the originals and are resistant to breaking.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

¹⁴1991 EA at p. 43.

28. Section 10(j)(1) of the FPA¹⁵ requires the Commission, when issuing a license, to include conditions based on the recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹⁶ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

29. In a letter filed September 4, 2003, Interior provided four revised recommendations that are within the scope of section 10(j) of the FPA and are consistent with the Settlement Agreement.¹⁷ This license includes conditions consistent with all four recommendations. These include recommendations to: operate the project according to the protocols for drawdown limits, bypassed reach and tailrace flows specified in the Settlement Agreement (Articles 401 through 406); construct, operate, and maintain downstream fish passage facilities at the Fairfax Falls, Clarks Falls, Milton, and Peterson developments (Articles 411); release fish passage flows of 25 cubic feet per second (cfs) at Clarks Falls and Milton and up to 119 cfs at Peterson (Article 401); and monitor the effectiveness of downstream fish passage facilities (Article 412).

OTHER ISSUES

Water Quality Monitoring

30. DO levels can exceed state standards in project waters typically in the deeper

¹⁵16 U.S.C. § 803(j)(1).

¹⁶16 U.S.C. §§ 661, *et seq.*

¹⁷In a letter to Vermont ANR dated August 3, 2004, staff sought clarification on whether Vermont ANR intended to revise its previously-filed section 10j recommendations to be consistent with the relevant provisions of the Settlement Agreement, noting that Vermont ANR had not responded to the public notice of the Settlement Agreement nor had revised its original fish and wildlife recommendations for the proceeding filed in August 1988. In an email from Jeffrey Cueto, Vermont ANR, to John Smith, FERC, copy filed September 9, 2004, Vermont ANR stated that it intended to formally revise its recommendations under section 10(j) following approval of the Settlement Agreement by the Vermont Public Service Board. In this order, I consider the original fish and wildlife recommendations made by Vermont ANR to be superceded by the relevant provisions of the Settlement Agreement to which Vermont ANR is signatory.

portions of Arrowhead Mountain reservoir and downstream of some of the project impoundments during warm summer months.¹⁸ Under section 3 and Attachment A of the Settlement Agreement, Central Vermont would develop a proposal for project operation at the Clarks Falls, Milton, and Peterson developments for the period June through September that may entail mechanical draft tube oxygen entrainment (a passive or motor-driven means of injecting air or oxygen into the water) to ensure that state standards for DO are met in the Peterson tailrace. Central Vermont would also conduct periodic DO monitoring downstream of the Peterson Development. Consistent with the Settlement Agreement, this license includes a requirement for a DO enhancement plan (Article 408) and a DO monitoring plan (Article 407).

Flow Management

31. During the spring (April 1 through June 23), the Clarks Falls Development's Arrowhead Mountain reservoir would be maintained between elevation 289.0 and 290.0 feet msl in accordance with the Settlement Agreement. The Settlement Agreement includes a condition for a flow management plan that would reflect how the Lamoille Project would be operated in the spring to match, to the extent feasible, the inflow to Arrowhead Mountain reservoir. The Settlement Agreement also provides for circumstances when the reservoir can be drawn down below elevation 289.0 feet msl for emergency situations such as flooding. The Settlement Agreement includes a provision for Central Vermont to develop a protocol to handle such situations. License Article 409 requires the flow management plan and Article 410 requires a flood operations plan.

Recreational Resources

32. Section 11.1 of the Settlement Agreement provides that a recreation plan be developed and implemented to provide for, among other things, public access, an undisturbed, naturally vegetated riparian zone along the river, and protection of the scenic, forest and natural resources of project lands. In addition to these general considerations, in its license application, Central Vermont proposed a number of access improvements such as a canoe portage trail, improvements to parking areas and boat launch upgrades. In addition, the 1991 EA recommended that a day use area be developed for the Fairfax Falls Development and a scenic overlook be provided at Milton Falls. Article 415 requires that the licensee develop a recreation plan that is consistent with the Settlement Agreement and, at a minimum, addresses the current need for these earlier proposals and recommendations.

¹⁸Supplemental EA at section V.A.2.a.

Installation of an Inflatable Flashboard System at Milton

33. On May 12, 2005, Central Vermont filed a notice of its intent to replace the existing wooden flashboards at the Milton Development with an inflatable flashboard system (rubber dam). The rubber dam would be used to manage the release of minimum flows included in the Settlement Agreement. The rubber dam would include a minimum flow gate to provide minimum flows during the winter period December 1 through March 31; at other times, the minimum flow would be passed over the rubber dam. Vermont ANR in its comments on the proposed rubber dam filed May 23, 2005, questioned whether the design included a mechanism to maintain bypass flows during inspection and maintenance drawdowns and the extent to which the dam affects flooding of structures upstream in Milton. Vermont ANR suggested that alternate designs that increase spillway capacity may be appropriate pending the outcome of the flooding analysis. Article 401 requires that the 110-cfs release at the Milton Development be provided as full crest spill and includes a provision for consultation with Vermont ANR for temporary modifications to the minimum flow releases such as for emergencies, winter icing conditions, and during inspection and maintenance drawdowns. Regarding Vermont ANR's concerns over flooding, that issue will be addressed under Part 12 of the Commission's regulations by the New York Regional Engineer, Division of Dam Safety and Inspections. Although ordering paragraph B of this license includes Central Vermont's proposed rubber dam and minimum flow gate, start of construction may not commence until the Regional Engineer has issued authorization in writing. Article 301 requires preconstruction filings with the Regional Engineer.

COMMENTS ON THE SUPPLEMENTAL EA

Relicensing Alternative

34. Interior raised several concerns with staff's treatment of three provisions of the Settlement Agreement that the settlement parties consider outside the scope of relicensing--payments to Milton, the Lamoille River Restoration Fund, and the decommissioning and removal of Peterson dam. Interior contends that Commission staff should not have included an analysis of these three provisions in the supplemental EA because the parties to the Settlement Agreement considered these three provisions to be outside the scope of relicensing.

35. Further, with respect to the removal of Peterson dam, Interior disagrees with staff's preliminary conclusions provided in the supplemental EA and recommends that staff either omit the dam removal alternative or conduct a rigorous assessment of dam

removal. Interior believes that the removal of Peterson dam would provide substantially greater benefits for spawning walleye, lake sturgeon, and landlocked Atlantic salmon than reported in the supplemental EA and provide additional habitat for native mussel species. Vermont ANR and the Council also disagree with staff's conclusions regarding the effects of dam removal on riverine habitat within the inundated Peterson reach, water temperatures downstream of the Peterson impoundment, the relocation of the Milton wastewater treatment plant outfall, project area wetlands, sediment in Peterson impoundment, and the cost of decommissioning.¹⁹

36. Interior correctly notes that the staff-recommended alternative did not include these three provisions. Staff's analysis of the dam removal alternative was a preliminary analysis based upon information in the record. The alternative was included in the supplemental EA because dam removal had not been evaluated in the 1991 EA and it was unclear whether the removal of Peterson dam would be included as a condition of any 401 water quality certification. As stated in the supplemental EA, should Central Vermont pursue the decommissioning and removal of Peterson dam in accordance with the Settlement Agreement, it would need to file with the Commission for approval an application to amend or partially surrender its license. At that time, additional analyses would be needed to evaluate such a proposal.

Upstream Fish Passage

37. Interior and Vermont ANR note that the estimated \$725,000 capital and \$1,000 annual operation and maintenance (O&M) costs for a future upstream fish passage facility at Peterson dam have risen substantially over the past decade. Interior estimates the updated capital and annual O&M cost would be about \$1.63 million and \$40,000 annually, respectively. Interior notes that the costs associated with upstream fish passage that are included in the proposed action should also be included in the staff-recommended modifications to licensing alternative. Interior contends that under the proposed action alternative, the costs associated with upstream fishways were included, and those costs should also be included in the staff-recommended alternative because an upstream

¹⁹Interior and Vermont ANR base much of their conclusions on the report entitled "Ecological Assessment of the Peterson Dam Reach of the Lamoille River," prepared by Vermont Department of Fish and Wildlife (Vermont Fish and Wildlife)(2004) and the testimony of Rod Wentworth of Vermont Fish and Wildlife submitted to the Public Service Board on September 23, 2004. The Council, as support for its conclusions, filed the testimony of Kim Kendall, staff scientist for the Council, submitted to the Public Service Board on September 23, 2004.

fishway would be required at Peterson dam if the dam is not decommissioned. Interior has reserved its authority to prescribe fishways for the Lamoille Project. However, because no actual fishway prescription or details about the scope of upstream fish passage were filed, there is no need to update project economics for a future fish passage facility at this time.

38. Vermont ANR challenges the supplemental EA's statement that the Settlement Agreement appears to be consistent with the conclusions of the 1991 EA in deferring a decision on upstream fish passage at the Peterson development until such time that it is found to be needed. It argues that uncertainties in 1991 about the progress of the Lake Champlain Salmonid Restoration and Enhancement Program no longer exist and that therefore upstream fish passage would provide an immediate benefit. However, the 1991 EA did not make definitive findings on the immediate need for upstream fish passage, but rather found that the appropriate time for fish passage should be cooperatively developed among Central Vermont, Vermont ANR, and Interior. Moreover, since, as noted, the Settlement Agreement does not call for the immediate installation of upstream fish passage (and indeed requiring such fish passage now would conflict with the Settlement Agreement), and since no actual fish passage proposal has been filed, no such definitive findings are required at this time.

Costs Associated with Decommissioning and Dam Removal

39. Interior notes that if the Vermont Public Service Board grants Central Vermont the cost-recovery provision of the Settlement Agreement, Central Vermont would not bear the costs of decommissioning, rather the cost would be passed on to the ratepayers. Given that the dam decommissioning would only occur under a guarantee of cost recovery, Interior questions whether it is appropriate to include those costs in the alternative assessing the Settlement Agreement with provisions to decommission Peterson dam. However, since this license does not require decommissioning and dam removal and the costs Interior challenges are not in any way determinative of the outcome here, no further cost assessment is needed.

40. Interior notes that the Peterson dam would not be removed until approximately 20 years from the license issuance date, and the plant would continue to generate revenue until the time to remove the dam. Interior is unclear whether the 20 years of generation are incorporated into the economic analysis. As explained in the developmental analysis section of the supplemental EA, the Commission employs an analysis that uses current costs to compare the cost of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. Therefore, our economic analysis should be considered a first-year analysis with the

exception that major capital investments would not be totally expended in the first year. If we include 20 years of generation at Peterson, the project would have positive net benefits until Peterson is decommissioned, at which time the project would cost more to operate than the cost of purchasing alternative power.

41. Vermont ANR is unclear how Commission staff estimated the \$20,196,000 (2003\$) average cost of decommissioning and dam removal capital costs because the Peterson dam removal cost evaluation – filed as part 5 of 7 to the Offer of Settlement Agreement-- estimated an average cost of about \$14,310,000. Staff estimated the average decommissioning and dam removal cost based on the summary and conclusions in section 6.0 of the Offer of Settlement's dam removal evaluation, which included the value of purchasing replacement power and removing the transmission line. This accounts for the cost differences Vermont ANR notes.

42. Vermont ANR notes that the Offer of Settlement's dam removal evaluation estimated over \$11 million for sediment removal and for riverbank stabilization as part of the total cost to decommission and remove Peterson dam, and states that the final scope of this work is unknown at this time, and it is possible that minimal expenditure would be necessary. Since the scope of work is unknown at this time, and since the challenged cost findings here neither control such findings that will be made if and when decommissioning actually occurs nor are determinative of the outcome here, no revision to project economics is needed.

43. Vermont ANR notes that there are two proposed payments to Milton; one initial payment of \$750,000 and a second payment of \$750,000 in 20 years. Vermont ANR questions why the future payment has the same annual cost as the initial payment. In the economic analysis, Commission staff assumed the two proposed payments to Milton would be funded during the first year after relicensing. As explained above, the Commission does not forecast potential future inflation, escalation, or deflation beyond the license issuance date.

Project Generation

44. Central Vermont provided updated energy calculations in a letter filed November 22, 2004, for the no action, proposed action, and proposed action with decommissioning Peterson dam, and suggested several corrections in the text and the tables for the various alternatives. Since the amount of energy generation is linked to the value of project power, project economics for the no-action, proposed action, and the staff-recommended alternative were revised for this order.

Downstream Fish Passage Facilities

45. The Settlement Agreement would limit expenditures by the licensee to \$60,000 above the initial construction cost of downstream fish passage facilities for any modifications to those facilities that are needed based on the results of effectiveness testing.²⁰ The Commission has stated that it is important for all entities involved in settlements to know that it considers the licensee's obligation to be to complete the measures required by license articles, in the absence of authorization from the Commission to the contrary, and that dollar figures agreed to by the parties are not absolute limitations.²¹ Therefore, I am including Article 417 to reserve the Commission's authority to require the licensee to fulfill the requirements of this license notwithstanding the limitations on expenditures included in this license.

ADMINISTRATIVE CONDITIONS

Annual Charges

Section 10(e)(1) of the FPA, 16 U.S.C. § 803(e)(1), directs the Commission to collect annual charges from licensees for administration of the FPA. Article 201 provides for the collection of these charges.

Construction Activities

46. This license requires Central Vermont to install downstream fish passage facilities at Peterson, Milton, Clarks Falls, and Fairfax Falls developments. Also, Central Vermont proposes to replace its existing wooden flashboards at the Milton Development with an inflatable flashboard system with a minimum flow gate to provide minimum flows specified under the Settlement Agreement. Articles 301, 302, and 303 require contract plans and specifications, cofferdam construction drawings, and as-built drawings, respectively.

²⁰The Settlement Agreement would permit Central Vermont to implement the least-cost alternative subject to approval of Vermont ANR, should the results of the effectiveness studies indicate the need for structural or operational changes at any of the facilities.

²¹See *Virginia Electric Power Co.*, 110 FERC ¶ 61, 241 at P 10 and p. 61,935 (2005).

Exhibit G and F Drawings

47. The Exhibit G drawings that were filed with the license application do not meet the current Commission requirements for project boundary maps because a project boundary map must: (1) enclose all the principal project works necessary for operation and maintenance of the project within the project boundary line, and not include facilities for increasing capacity no longer proposed; (2) provide the project boundary data in a geo-referenced electronic format; (3) have three control points with latitude and longitude or state plane coordinates; and (4) be stamped by a Registered Land Surveyor.

48. Additionally, in its license application, Central Vermont proposed to expand the Fairfax Falls Development by redeveloping an abandoned structure located on the north bank of the Lamoille River and installing a 3,500-kW turbine generating unit in an existing underground powerhouse shown on Exhibit F (sheet 6 of 6). Commission staff determined in the supplemental EA that due to the seasonal minimum flow releases in the bypassed reach, the proposed expansion would not warrant the additional cost to rehabilitate the abandoned structure and install the proposed generating unit.²² Also, the Settlement Agreement did not include any provisions for the proposed expansion. For these reasons, I do not consider the expansion of the Fairfax Falls Development to be a reasonable alternative and do not include it in this license.²³

49. On August 27, September 23, and November 2, 1998, Central Vermont filed a request to demolish a storage building at the Fairfax Falls Development and a pump house and surge tank at the Milton Development, and filed memorandum of agreements (MOAs) to mitigate adverse effects on these historic properties. In an order approving the MOAs issued on January 4, 1999,²⁴ the Commission determined that the provisions of the MOAs were appropriate mitigation for the demolition of the structures. The surge tank is the only unused structure shown on the Exhibit F drawing. Since the surge tank is no longer needed for project operation, it is no longer considered a project facility. Therefore, Exhibit F (sheet 2 of 6) showing the Milton Development general plan and sections, with the surge tank, is not approved in ordering paragraph (B)(1).

²²See also the 1991 EA at p. 60 in which Commission staff determined that the proposed expansion would be uneconomical and recommended that the proposed capacity increase not be licensed.

²³The proposed expansion is not in this license, therefore, Exhibit F (sheet 6 of 6) is not approved in ordering paragraph (B)(1).

²⁴86 FERC ¶ 62,005 (1999), Order Approving Memorandums of Agreement.

50. In light of the above, Article 304 requires the licensee to file revised Exhibit F and G drawings pursuant to the requirements of 18 C.F.R. sections 4.39 and 4.41 that do not include the Milton Development surge tank and the previously proposed Fairfax Falls expansion. Further, the Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.

Amortization Reserve

51. Pursuant to section 10(d) of the FPA, 16 U.S.C. § 803(d), the Commission requires that for new major licenses, licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 requires the establishment of the account.

Headwater Benefits

52. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 204 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

Use and Occupancy of Project Lands and Waters

53. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 416 (which is the Commission's standard land-use article) 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.

COMPREHENSIVE PLANS

54. Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.²⁵ Under section 10(a)(2)(A), federal and state agencies filed 11

²⁵Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2004).

comprehensive plans that address various resources in Vermont. Of these, the staff identified and reviewed seven comprehensive plans that are relevant to this project.²⁶ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

55. In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,²⁷ I have evaluated Central Vermont's record as a licensee with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public.

A. Conservation Efforts

56. Section 10(a)(2)(C) of the FPA requires the Commission to consider the extent of electricity consumption efficiency improvement programs in the case of license applicants primarily engaged in the generation or sale of electric power, like Central Vermont. Central Vermont is actively involved in promoting cost-effective conservation and load management programs for residential, commercial, and industrial customers and has undertaken several programs to improve efficiency and promote energy conservation on its web site at <http://www.cvps.com>. These programs show that Central Vermont is making an effort to conserve electricity and has made a satisfactory good faith effort to

²⁶(1) A strategic plan for development of salmonid fisheries in Lake Champlain, 1981, Lake Champlain Fish and Wildlife Policy Committee and Technical Committee, Albany, New York and Waterbury, Vermont, 19 pp; (2) Hydropower in Vermont: an assessment of environmental problems and opportunities, 1988, Vermont Agency of Natural Resources, Waterbury, Vermont; (3) Vermont Rivers Study, 1986, Vermont Agency of Environmental Conservation, Waterbury, Vermont, 236 pp; (4) The waterfalls, cascades, and gorges of Vermont, 1986, Vermont Agency of Natural Resources, Waterbury, Vermont, 320 pp; (5) Wetlands component of the 1988 Vermont recreation plan, 1988, Wetlands Steering Committee, Vermont Agency of Natural Resources, Waterbury, Vermont, 43 pp; (6) North American waterfowl management plan, 1986, Department of the Interior (Fish and Wildlife Service), Environment Canada (Canadian Wildlife Service), 19 pp; (7) The nationwide rivers inventory, 1982, National Park Service, Department of the Interior, Washington, D.C., 432 pp.

²⁷16 U.S.C. §§ 803(a)(2)(C) and 808(a).

comply with section 10(a)(2)(C) of the FPA.

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

57. Based on a review of Central Vermont's compliance with the terms and conditions of the existing license, I find that Central Vermont's overall record of making timely filings and compliance with its license is satisfactory. Therefore, I believe Central Vermont can satisfy the conditions of a new license.

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

58. Commission staff reviewed Central Vermont's management, operation, and maintenance of the Lamoille Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. I conclude that the dams and other project works are safe, and that there is no reason to believe that Central Vermont cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

59. Commission staff reviewed Central Vermont's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Central Vermont has been operating the project in an efficient manner within the constraints of the existing license. I conclude that Central Vermont is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

60. To assess the need for power, Commission staff looked at the need in the operating region in which the project is located. The Lamoille Project is located in the New England Power Pool area of the Northeast Power Coordinating Council region of the North American Electric Reliability Council (NERC). NERC annually forecasts electrical supply and demand in the nation and the region for a 10-year period. NERC's recent forecast projected summer peak demand to increase at an average rate of 1.5 percent annually from 2003 through 2012. I conclude that the projects' power, low cost, displacement of non-renewable fossil-fueled generation, and contribution to the region's diversified generation mix, will help meet the need for power in the region.

F. Transmission Services

61. The Lamoille Project does not have a primary transmission line that carries electric power generated from the project to the regional grid. Instead, the project's power flows from the project development substations directly into Central Vermont's 34.5-kilovolt (kV) electrical distribution system. No changes are recommended or proposed that would affect the capability of the project to connect to the regional grid to continue to serve delivery to the region.

G. Cost-Effectiveness of Plans

62. Central Vermont plans to make a number of facility and operational modifications to enhance natural resources and recreational opportunities affected by the project. Based on Central Vermont's record as an existing licensee, I conclude that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

63. Central Vermont uses the project to help meet local power needs, and it pays taxes that help cover the cost of public services provided by local government. The project provides employment opportunities and attracts those interested in various forms of available recreation. I conclude that the various environmental and recreational enhancement measures approved in this license would benefit the public.

PROJECT ECONOMICS

64. 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.*,²⁸ the Commission employs an analysis that 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.

65. As proposed by Central Vermont, including the terms of the Settlement Agreement

²⁸72 FERC ¶ 61,027 (1995).

without provisions to decommission Peterson Development, make payments to Milton, or establish the Lamoille River Restoration Fund, the annual cost of the project would be \$2,236,770 (24.59 mills/kWh). The annual power value for the estimated annual generation of 90,950 MWh²⁹ would be \$4,408,480 (48.47 mills/kWh).³⁰ To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the project's power. Therefore, in the first year of operation, the project would cost \$2,171,710 (23.88 mills/kWh) less than the likely alternative cost of power.

66. If licensed as proposed by Central Vermont and with the additional staff-recommended measure, the annual cost of the project would be \$2,265,240 or 24.91 mills/kWh. The annual power value and the annual generation would be the same as Central Vermont's proposal. Therefore, in the first year of operation, the project would cost \$2,143,240 or 23.56 mills/kWh less than the likely alternative cost of power.

67. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include 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

68. Sections 4(e) and 10(a)(1) of the FPA,³¹ respectively, 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

²⁹Based on comments by Central Vermont on the supplemental EA, estimated annual generation was reduced by 80 MWh because of updated historical project generation. Also, the annual cost of the project was revised due to additional cost to install an inflatable flashboard system and minimum flow gate at Milton dam.

³⁰The value of power was estimated from the Independent System Operator New England energy web site at <http://www.iso-ne.com>.

³¹16 U.S.C. §§ 797(e) and 803(a)(1).

of environmental quality. Any license issued shall be such as in the Commission's judgment would 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.

69. The 1991 EA and the supplemental EA for the Lamoille Project contain background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of the license.

70. Based on our independent review and evaluation of the project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the supplemental EA, I have selected the Lamoille Project, with the Settlement Agreement provisions (without the provisions associated with the decommissioning of the Peterson Development) with the staff-recommended measures, and find that it is best adapted to a comprehensive plan for improving or developing the Lamoille River.

71. I selected this alternative because: (1) issuance of a new license would serve to maintain a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreational resources and historic properties; and (3) the 21.05 MW of electric energy generated from renewable resources will continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

72. Section 15(e) of the FPA,³² provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. 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. Although this license authorizes new environmental mitigation and enhancement measures that could warrant a license term of 30 or 40 years, section 2.1 of

³²16 U.S.C. § 808(e).

the Settlement Agreement states that the settlement parties support a 30-year license term. Given that the term of license was agreed to in the negotiations that led to the Settlement Agreement, a 30-year license term is appropriate.

The Director orders:

(A) This license is issued to Central Vermont Public Service Corporation (licensee), for a period of 30 years, effective the first day of the month in which this order is issued, to operate and maintain the Lamoille Project. This 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) Project works consisting of the following developments:

The Fairfax Falls Development consisting of: (1) a 45-foot-high, 280-foot-long concrete gravity dam and spillway topped with 105 feet of 2-foot-high flashboards, 145 feet of 3-foot-high flashboards, and 30 feet of 2.5-foot-high flashboards; (2) a 152-acre reservoir with a normal full pool elevation of 425.4 feet msl; (3) an intake structure with trashracks and headgates; (4) two 7-foot-diameter, 227-foot-long penstocks; (5) a powerhouse containing two generating units with a total installed capacity of 4,200 kW; (6) a tailrace; and (7) appurtenant facilities.

The Clarks Falls Development consisting of: (1) a 40-foot-high, 387-foot-long, concrete gravity dam and spillway topped with 170 feet of 20.5-foot-high stanchion flashboards, three 24-foot-wide, 23.5-foot-high Taintor gates, and 100 feet of 2-foot-high flashboards; (2) a 440-foot-long earthen dike; (3) a 740-acre reservoir (Arrowhead Mountain reservoir) with a normal full pool elevation of 290 feet msl; (4) an intake structure with trashracks; (5) a 12-foot-diameter, 360-foot-long penstock; (6) a 28-foot-long, 22-foot-wide forebay; (7) a powerhouse containing a single generating unit with an installed capacity of 3,000 kW; (8) an excavated tailrace; and (9) appurtenant facilities.

The Milton Development consisting of: (1) a 25-foot-high, 136-foot-long concrete gravity dam and spillway topped with: (a) 2.83-foot-high wooden flashboards to be replaced by a 2.83-foot-high inflatable rubber flashboard system; and (b) an 11-foot-wide, 5.2-foot-high minimum flow gate extending across the length of the spillway; (2) an 11-acre reservoir with a normal full pool elevation of 246.2 feet msl; (3) an intake structure with headgates; (4) a 200-foot-long canal forebay channel and a penstock headwall with

trashracks; (5) an 11-foot-diameter, 380-foot-long penstock; (6) two 7.75-foot-diameter, 70-foot-long penstocks; (7) a powerhouse containing two generating units with a total installed capacity of 7,500 kW; (8) an excavated tailrace; and (9) appurtenant facilities.

The Peterson Development consisting of: (1) a 51-foot-high, 347-foot-long concrete gravity dam and spillway topped with 247 feet of 5-foot-high flashboards and a 6-foot-high, 100-foot-long bascule gate; (2) a 136-acre reservoir with a normal full pool elevation of 152 feet msl; (3) an intake channel and intake structure with headgates and trashracks; (4) a powerhouse containing a single generating unit with an installed capacity of 6,350 kW; and (5) appurtenant facilities.

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

Exhibit A: Pages A-1 through A-16, except sections A.1.2, A.3.2, A.4.2, and A.5.2, filed on May 27, 1987.

Exhibit F: The following sections of Exhibit F filed on May 27, 1987:

<u>Exhibit F Drawings</u>	<u>FERC No. 2205-</u>	<u>Description</u>
Sheet 1	1001	Peterson Plant General Plan and Sections
Sheet 3	1002	Clarks Falls Plant General Plan and Dam Sections- Alignment
Sheet 4	1003	Clarks Falls Plant Powerhouse and Penstock Sections-Alignment
Sheet 5	1004	Fairfax Falls Existing Plant General Plan and Sections

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

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(C) The Exhibits A and F described above are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-3 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters," and the following additional articles:

Article 201. Administrative Annual Charges. The licensee shall pay the United States the following annual charges, effective the first day of the month in which the license is issued, and as determined in accordance with provisions of the Commission's regulations in effect from time to time, for the purpose of:

(1) 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 21,050 kilowatts.

Article 202. Exhibit Drawings. Within 45 days of the date of issuance of this license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

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 Drawing Number (e.g., P-1234-### through P-1234-###) 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 (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

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 C.F.R. §388.113(c). Exhibit G drawings must be identified as (NIP) material under 18 C.F.R. §388.112. 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-1234-####, G-1, Project Boundary,

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. Amortization Reserve. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside, in a project amortization reserve account at the end of each fiscal year, one-half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.

To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock 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 204. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits

were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee 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 new license.

Article 301. Contract Plans and Specifications. At least 60 days prior to the start of any construction, the licensee shall submit one copy of its plans and specifications to the Commission's New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections). The licensee may not begin construction until the Regional Engineer has approved in writing the plans and specifications and determined that all preconstruction requirements have been satisfied. The submittal to the Regional Engineer 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.

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

Article 303. As-Built Drawings. Within 90 days of completion of construction of the facilities authorized by this license, the licensee shall file, for Commission approval, the 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 D2SI - New York Regional Office; the Director, D2SI; and the Director, DHAC.

Article 304. Exhibit F and G Drawings. Within 45 days of license issuance, the licensee shall file for Commission approval, revised Exhibit G drawings: (1) enclosing all the principal project works necessary for operation and maintenance of the project within the project boundary line except facilities for increasing capacity no longer proposed; (2) showing the project boundary data in a geo-referenced electronic format; (3) with three control points showing latitude and longitude or state plane coordinates; and (4) stamped by a Registered Land Surveyor, and revised Exhibit F (sheet 2 of 6)

without the Milton Development surge tank pursuant to the requirements of 18 C.F.R. sections 4.39 and 4.41.

Article 401. Bypassed Reach Minimum Flows. For the protection and enhancement of aquatic resources in the bypassed reaches of the Fairfax, Clarks Falls, Milton, and Peterson developments, the licensee shall maintain a minimum flow, or inflow to the respective development's reservoirs, whichever is less, as follows:

Development	Time period	Flow
Fairfax Falls	April 1 to December 15 (daytime) ¹	162 cubic feet per second (cfs), or inflow, if less
	(night)	120 cfs, or inflow, if less
	December 16 to March 31	120 cfs, or inflow, if less
Clarks Falls	Year-round	75 cfs, or inflow, if less ²
Milton Falls	Year-round (to be spilled over the full crest)	110 cfs, or inflow to Arrowhead Mountain reservoir, if less (2.1 cfs to be maintained over the river-left waterfall)
	April 1 to June 15	Additional 25 cfs for downstream fish passage
Peterson	April 1 to June 15	Up to 119 cfs for downstream fish passage

¹ Daytime begins one half of an hour before sunrise and extends to one half of an hour after sunset.

² Includes 25-cfs fish passage flow.

These flows may be temporarily modified if required by operating emergencies beyond the control of the licensee, during winter icing conditions, and for short periods upon agreement among the licensee, the U.S. Fish and Wildlife Service and Vermont Agency of Natural Resources. If any flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 402. Peterson Powerhouse Flows. The licensee shall release from the Peterson Development powerhouse into the Lamoille River the following minimum

flows, or inflow to Arrowhead Mountain reservoir, whichever is less, for the protection and enhancement of aquatic resources in the Lamoille River downstream of the Peterson Development powerhouse:

Time period	Flow
June 24 to September 14	350 cubic feet per second (cfs)
September 15 to November 15 (daytime) ¹ (night)	700 cfs 350 cfs
November 16 to March 31	350 cfs

¹ Daytime begins one half of an hour before sunrise and extends to one half of an hour after sunset.

These flows may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon agreement among the licensee, the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources. If any flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Run-of-River Operations. The licensee shall operate the project in a run-of-river mode for the protection of aquatic resources in the project's impoundments and Lamoille River downstream of each project development for the time period specified below.

Development	Time period
Fairfax Falls	Year-round
Clarks Falls	April 1 to June 23
Milton	April 1 to June 23
Peterson	April 1 to June 23

The licensee shall at all times act to minimize the fluctuation of each reservoir surface elevation by maintaining a discharge from each development so that, at any point in time, flows, as measured immediately downstream from each development's tailrace, approximate the sum of inflows to each development's reservoir.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, the U.S. Fish and Wildlife Service and the Vermont

Agency of Natural Resources. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 404. *Clarks Falls Operating Levels.* The licensee shall operate Clarks Falls reservoir (Arrowhead Mountain reservoir) between elevations 289.0 and 290.0 feet mean sea level (msl) from April 1 to June 23 and between elevations 287.5 and 290.0 from June 24 to March 31.

The Clarks Falls reservoir operating levels may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 405. *Peterson Operating Levels.* The licensee shall operate the Peterson reservoir between elevations 146.0 and 151.0 feet mean sea level (msl) from June 24 to March 31. During run-of-river operations from April 1 to June 23 as specified in Article 403, the reservoir should be maintained at elevation 151.0 feet msl, which equates to the top of the bascule gate at its fully raised position.

The Peterson reservoir operating levels may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 406. *Ramping Rate Plan for Milton.* Within 6 months of license issuance, the licensee shall file with the Commission for approval a plan to develop a ramping protocol for the spring period in the North Channel of the Milton bypassed reach to minimize the stranding of juvenile fish.

The plan shall include at a minimum provisions for:

a) studying the effects on fish stranding when flows transition from uncontrolled spillage to a minimum flow release of 110 cubic feet per second for two, April 1 to June 23, seasons;

b) consulting with the U.S. Fish and Wildlife Service (Fish and Wildlife) and the Vermont Agency of Natural Resources (Vermont ANR) concerning the results of the 2-year study; and

c) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with Fish and Wildlife and Vermont ANR. The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments 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 site-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. Water Quality Monitoring. Within 6 months of license issuance, the licensee shall file with the Commission for approval a plan to monitor dissolved oxygen (DO) and temperature in the Peterson tailrace.

The purpose of the monitoring plan is to ensure that DO in the lower Lamoille River remains above the minimum standard of 5 milligrams per liter and 60 percent saturation.

The monitoring plan shall include a schedule for:

(a) implementation of the plan;

(b) consultation with the U.S. Fish and Wildlife Service (Fish and Wildlife) and the Vermont Agency of Natural Resources (Vermont ANR) concerning the results of the monitoring; and

(c) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with Fish and Wildlife and Vermont ANR. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments 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. The plan shall not be implemented 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.

If the results of the monitoring indicate that changes in project structures or operations, including alternative flow releases, are necessary to protect water quality, the Commission may direct the licensee to modify project structures or operations.

Article 408. Dissolved Oxygen Enhancement Plan. Within 6 months of license issuance, the licensee shall file with the Commission, for approval, a plan for project operations at the Clarks Falls, Milton, and Peterson developments during the period June through September and/or mechanical draft tube oxygen entrainment to achieve a dissolved oxygen (DO) concentration of 6 milligrams per liter and 70 percent saturation in the Peterson tailrace.

The plan shall include, at a minimum:

- (a) a description of the proposed operational or structural measures needed at each development (Clarks Falls, Milton, and Peterson) for DO enhancement downstream of the Peterson tailrace;
- (b) the costs (including those due to lost generation) for any measures identified in (a); and
- (c) a schedule for implementation of the plan;

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service and Vermont Agency of Natural Resources. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments 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. The plan shall not be implemented 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 409. Flow Management Plan. Within 6 months of license issuance, the licensee shall file, for Commission approval, a flow management plan. The plan shall reflect how the project will be operated in the April 1-through-June 23 period to match to the extent feasible the inflow hydrograph to Arrowhead Mountain reservoir.

The plan shall, at a minimum, specify the expected extent of variation from inflow conditions. For flood operations that result in a water level below elevation 289.0 feet mean sea level after the threat has passed, the refill rate shall consider the need to submerge the wetlands; as such, the refill shall start as early as practicable when, in most cases, the inflows are still relatively high and the impact on downstream flows is likely to be less significant.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service and the Vermont Agency of Natural Resources. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments 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. The plan shall not be implemented 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 410. Flood Operations Plan. Within 6 months of license issuance, the licensee shall file for Commission approval a plan for release and refill of Arrowhead Mountain reservoir when it is necessary to suspend the water level operation management requirements specified in Article 404, and draw down the reservoir in the event that, in the licensee's reasonable opinion, such action may alleviate flood damage or threats to public safety.

The plan shall include, at a minimum, provisions to: (1) prohibit drawdowns below elevation 289.0 feet mean sea level (msl) during the period April 1 to June 23 unless it is necessary to open the Taintor gates in excess of 40 feet (about 19,600 cfs), in which case the reservoir can be drawn down as low as elevation 287.5 feet msl; (2) return reservoir operations as quickly as practicable after the threat subsides; (3) notify the Town of Milton emergency personnel prior to any extraordinary emergency drawdown (drawdowns below elevation 287.5 feet msl); (4) consult with the Vermont Agency of Natural Resources (Vermont ANR), whenever practicable, prior to drawing the reservoir below elevation 287.5 feet msl; (5) control the impact on downstream aquatic resources and limit the duration of dewatering of Arrowhead Mountain reservoir wetlands; (6) report to Vermont ANR within 30 days of any extraordinary emergency drawdown the stage, inflow, and outflow hydrographs, the character of the flood threat, and an assessment of the flood and public safety benefits; and (7) develop revisions to the flood control plan in consultation with the Town of Milton and Vermont ANR. Any revisions resulting from item (7) would be subject to approval by the Commission.

The licensee shall prepare the plan after consultation with the Town of Milton and the Vermont ANR. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities 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. The plan shall not be implemented 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 411. Downstream Fish Passage Facilities. At least 90 days before the start of installation of the downstream fish passage facilities at the project, the licensee shall file for Commission approval detailed design drawings of downstream fish passage facilities in accordance with the conceptual design plans prepared by the U.S. Fish and Wildlife Service (Fish and Wildlife) and filed with the Commission on December 24, 1990.

This filing shall include, at a minimum, the following specifications: (1) trash rack overlays with 1-inch clear spacing extending 15 feet deep from the top of the existing trash racks (at the Peterson, Milton, and Fairfax Falls developments); (2) a 1-inch overlay with curtain wall (at the Clarks Falls Development); and (3) 24-inch bypass conduits to convey fish to the project's tailwater areas. The filing shall also include a schedule for installing the facilities.

The licensee shall prepare the aforementioned drawings and schedule after consultation with Fish and Wildlife and the Vermont Agency of Natural Resources. The licensee shall include with the drawings and schedule documentation of consultation, copies of agency comments and recommendations on the drawings and schedule after they have been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the licensee's facilities. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings and schedule 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 facilities and schedule. Installation of the fish passage facilities shall not begin until the licensee is notified by the Commission that the filing is approved. Upon Commission approval, the licensee shall install the facilities pursuant to the approved schedule, including any changes required by the Commission.

Article 412. Effectiveness Monitoring. At least 90 days before the start of installation of the downstream fish passage facilities at the project, the licensee shall file

for Commission approval a plan for post-construction studies to monitor the effectiveness of the project facilities specified in Article 411 to allow for downstream fish passage.

The monitoring plan shall include a schedule for: (a) implementing the plan; (b) consulting with the U.S. Fish and Wildlife Service (Fish and Wildlife) and the Vermont Agency of Natural Resources (Vermont ANR) concerning the results of the monitoring; and (c) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with Fish and Wildlife and Vermont ANR. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments 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. The plan shall not be implemented 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.

If the results of the monitoring indicate that changes in project structures or operations at one or more of the facilities are necessary to protect fish resources, the licensee shall implement, after Commission approval, the least-cost alternative that Vermont ANR determines will meet the project objectives. For any required modifications beyond the initial construction, the licensee shall be liable for a total cost of no greater than \$60,000.

Article 413. *Reservation of Authority-Fishways.* Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior under section 18 of the Federal Power Act.

Article 414. *Historic Properties.* The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the Vermont State Historic Preservation Officer, for Managing

Historic Properties that May be Affected by a License Issuing to Central Vermont Public Service Corporation for the Continued Operation of the Lamoille River Hydroelectric Power Project in Vermont,” executed on December 21, 1994, the date it was signed by the Executive Director of the Advisory Council on Historic Preservation, including but not limited to the Historic Properties Management Plan for the project required by the Programmatic Agreement. The HPMP shall contain a plan for replacing windows at the Fairfax Falls and Milton powerhouses and any other windows that need replacing with windows that match the appearance of the originals and are resistant to breaking. The Commission reserves the authority to require changes to the Historic Properties Management Plan at any time during the term of the license.

If the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved Historic Properties Management Plan, obtaining approvals from or making notifications to the Commission or State Historic Preservation Officer, or both, where the Historic Properties Management Plan calls upon the licensee to do so. If the Programmatic Agreement is terminated without a Historic Properties Management Plan having been approved by the Commission for the licensee’s implementation, the licensee will engage in no undertaking at the project that may affect Historic Properties without consulting with the Vermont State Historic Preservation Officer and notifying the Commission of its intent to engage in such undertaking. Under such circumstances the licensee will engage in no such undertaking unless and until it has been notified that the Commission has fulfilled its responsibilities under Section 106 of the National Historic Preservation Act with respect to such undertaking.

The Commission may require cultural resources surveys and changes to the site-specific plans based on the filings. The licensee shall not implement a cultural resources management plan, begin any land-clearing or land-disturbing activities in the vicinity of any discovered sites, or modify previously discovered sites until informed by the Commission that the requirements of this article have been fulfilled.

Article 415. Recreation Plan. Within 6 months of license issuance, the licensee shall file for Commission approval a revised Recreation Plan for the Lamoille Project consistent with the requirements of section 11 of the Comprehensive Settlement Agreement filed on July 3, 2003.

The revised plan shall also address the current need for the following recreation enhancements recommended by staff in the 1991 Environmental Assessment for Hydropower License, Lamoille Hydroelectric Project (1991 EA):

(a) Fairfax Falls - a canoe access area with put-in and take-out, a canoe portage trail, parking for five to six cars, trash cans, and signage and a day-use area.

(b) Clarks Falls - improve the undeveloped access at the south end of Arrowhead Mountain reservoir to provide carry-in access for canoes and car-top boats and regrade the existing boat launch and parking area at the north end of Arrowhead Mountain reservoir.

(c) Milton - upgrade the existing boat launch and parking area at the Peterson impoundment to accommodate 10-12 cars with trailers; install a security fence and gate to reduce vandalism at the powerhouse; construct a scenic overlook at Milton Falls with signage providing safety information and discussing the area's natural values and hydropower industry; and consult with the town of Milton regarding the need for landscaping, interpretive signs, and a pavilion at the picnic area and a plan to construct the facilities if needed.

(d) Peterson - widen and resurface the parking area and upgrade the walkway, construct a canoe access and portage route, and install a warning device upstream of the dam for boater safety.

The plan should also include at a minimum:

(1) as-built drawings and revised exhibit G drawings, as needed, for any of the facilities added to the project since issuance of the 1991 EA;

(2) location, design, and estimated cost of any planned facility;

(3) site maps at a scale that clearly delineates existing and future recreational resources;

(4) an implementation schedule prepared for all measures;

(5) a discussion on how the needs of the disabled were considered; and

(6) reasons for not providing any of the enhancements recommended in the 1991 EA.

The licensee shall prepare the recreation plan in consultation with the Vermont Agency of Natural Resources; National Park Service; the Franklin-Grand Isle Regional Planning and Development Commission; the towns of Milton, Georgia, and Fairfax, Vermont; and the Northern Vermont Canoe Cruisers (entities). The licensee shall include with the revised plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities, and specific descriptions of how the entities' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities 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 revised plan. No ground-disturbing or land-clearing activities shall begin until the licensee is notified the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 416. 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 types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and

facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee 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 1 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 was made during the prior calendar year, licensee shall so inform the Commission and the Regional Director 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 of a 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 5 acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the 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 or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance; flowage; recreation; public access; protection of environmental resources; and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.

(g) 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.

Article 417. Expenditures. Notwithstanding the limitation on expenditures included in this license, the Commission reserves the right to require the licensee to undertake such measures as may be appropriate and reasonable to implement approved plans and other requirements in this license.

(E) 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 related to the filing. Proof of service on these entities must accompany the filing with the Commission.

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(F) 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 of this order shall constitute acceptance of this order.

J. Mark Robinson
Director
Office of Energy Projects