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25 FERC §62,134

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pumpkin Hill Power Company)

Project No. 4202-001

ORDER ISSUING LICENSE (MINOR)

(Issued October 31, 1983)

Pumpkin Hill Power Company (PHPC) filed on November 24, 1982, an application for license under Part I of the Federal Power Act (Act) to construct, operate and maintain the Lowell Tannery Project No. 4202. 1/ The project would be located on the Passadumkeag River near the Town of Lowell, Penobscot County, Maine. The proposed project would affect the interests of interstate commerce.

Notice of the application has been published and comments have been received from interested Federal, State and local agencies. No protests or motions to intervene have been received, and none of the commenting agencies objected to issuance of the license.

The Lowell Tannery Project would utilize an existing breached, 230-foot-long, 21.5-foot-high, concrete gravity dam with 30 and 89-foot-long spillway sections that would be topped by 3.5-foot-high flashboards, a low-level outlet gate, a log sluice, a 68.5-acre reservoir, and an existing powerhouse foundation. PHPC proposes to rehabilitate the dam, install two new turbine-generators with a total rated capacity of 950 kW in a rehabilitated powerhouse and construct a new fishway adjacent to the powerhouse. The proposed project would generate up to 4,466,000 kWh annually. 2/

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902, (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

2/ The project would save the equivalent of 7,300 barrels of oil or 2,000 tons of coal annually.

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Safety and Adequacy

The Commission's New York Regional Office Staff inspected the project and found the existing dam breached and that all that remains of the powerhouse is the foundation. Both the dam and powerhouse are in a deteriorated condition and in need of extensive rehabilitation. The dam is assigned a low hazard potential. Under flood conditions, the dam becomes submerged. Failure of the rehabilitated dam under flood conditions would not significantly increase flows downstream. Failure of the dam under normal pond, ice or earthquake loading would release flows downstream that would be contained within the river banks. The project would be safe if construction is performed with sound engineering practices. It is concluded that the project is safe and adequate.

Economic Feasibility

PHPC proposes to sell all the power output to Bangor Hydro-Electric Company. Staff has analyzed the economic feasibility of the proposed project redevelopment. It is concluded that the proposed project is economically feasible to develop based upon revenues derived from the sale of power at the avoided cost rate in the State of Maine adjusted for escalation.

Minimum Flow

The U.S. Department of the Interior (Interior) and the Maine Department of Marine Resources (DMR) recommended that the PHPC release from the project an instantaneous minimum flow of 150 cfs, or inflow to the project area, whichever is less, in order to protect downstream aquatic resources. PHPC stated that because the project will be operated as a run-of-river facility, it will accept the recommendations of the above agencies.

Based upon available information, it is concluded that a minimum flow of 150 cfs would adequately protect the resident and anadromous fishery resources of the Passadumkeag River. Article 19 requires PHPC to release a minimum flow of 150 cfs from the project, or the inflow to the project reservoir, whichever is less.

Fish Passage Facilities

The National Marine Fisheries Service (NMFS), the DMR, and Interior stated that anadromous fish (Atlantic salmon) currently migrate through the proposed project area, and that plans have been developed to restore American shad and alewife runs through the project area. Consequently, these agencies have recommended that upstream and downstream fish passage facilities be provided at the time of project construction. PHPC has agreed to provide fish passage facilities at the project although PHPC has not proposed specific designs.

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It is concluded that fish passage facilities at the Lowell Tannery Dam are needed to protect the existing and future anadromous fishery resources of the Passadumkeag River. Article 20 requires PHPC to file functional design drawings and construct fish passage facilities.

Recreation Plan

Interior recommended that PHPC develop, in consultation with the Maine Bureau of Parks and Recreation, a detailed recreation plan, and that the plan should include a map showing the location of proposed facilities and a development schedule. PHPC has agreed to develop a canoe portage and access to the river for launching canoes and boats. Article 21 requires PHPC to consult with the Maine Bureau of Parks and Recreation, and develop and file a detailed recreation plan.

Potential National Wild and Scenic River Segment

Interior noted that the proposed project is located within a segment of the Passadumkeag River that is included in the Nationwide Rivers Inventory, and that the river has been identified as significant by the Maine Rivers Study. Canoe touring and significant amounts of wetlands that are unique to the region are among the most important resource values of the Passadumkeag River identified in these studies. Interior recommended that PHPC develop appropriate measures such as screening with native vegetation, and architectural design to minimize project impacts on the resources of the Passadumkeag River identified in the Nationwide Rivers Inventory and the Maine Rivers Study. PHPC has proposed to work closely with the appropriate agencies to develop and implement effective mitigative measures to ensure that the proposed project does not adversely impact those resource values of the Passadumkeag River. Article 22 requires PHPC to consult with the Maine Bureau of Parks and Recreation and the National Park Service to develop appropriate mitigative measures.

Erosion and Sedimentation

The U.S. Army Corps of Engineers (Corps) stated that an erosion control plan should be made part of the license application. The Corps indicated that the proposed use of cofferdams during project construction may increase turbidity and result in adverse impacts on downstream aquatic resources. PHPC agrees that an erosion control plan is essential to minimize adverse impacts on water quality and downstream aquatic resources.

It is concluded that construction activities could increase erosion and sedimentation unless appropriate measures are implemented. Article 23 requires PHPC to develop an erosion control plan.

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Environmental Impacts

There would be minor impacts on water and air quality resulting from the construction activities at the project site. ^{3/} Any adverse environmental effects resulting from the refurbishment of the existing project would be of short-term duration and minor in nature. No known Federally listed threatened or endangered species, or historic or archeological sites on the National Register of Historic Places or eligible for listing would be affected by the project. Article 29 requires cultural resources protection measures in the event of any future construction or development at the project, other than the original project development considered and authorized here. On the basis of the record, including agency comments and staff's independent analysis, it is concluded that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The proposed run-of-the-river project would make good use of the flow and fall of the Passadumkeag River which is part of the Penobscot River Basin. The planning status report for the Penobscot River Basin discusses the existing and potential water resource developments. The project is not in conflict with any planned or authorized development, and will be best adapted to the comprehensive development of the Penobscot River Basin upon compliance with the terms and conditions of this license.

License Term

The proposed scale of development is less than that which would warrant a full 50-year term since the majority of the project facilities currently exist. Therefore, pursuant to the Commission's policy for licensing project involving moderate redevelopment ^{4/} this license term will be for a period of 40 years.

It is ordered that:

(A) This license is issued to Pumpkin Hill Power Company (License) under Part I of the Federal Power Act (Act), for a period of 40 years, effective the first day of the month in which

^{3/} Water Quality Certification was granted by the Maine Board of Environmental Protection on July 27, 1983.

^{4/} See The Montana Power Company, 56 FPC 2008 (1976).

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this order is issued, for the construction, operation, and maintenance of the Lowell Tannery Project No. 4202 located on the Passadumkeag River near the Town of Lowell, Penobscot County, Maine. This license is subject to the terms and conditions of the Act, which are incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Lowell Tannery Project No. 4202 consists of:

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

<u>Exhibit</u>	<u>FERC No. 4202-</u>	<u>Showing</u>
G Sheet 1	3	Location Map
G Sheet 2	4	Location Map

(2) Project works consisting of: (1) a 230-foot-long, 21.5-foot-high concrete gravity dam, including 30 and 89-foot-long spillway sections topped by 3.5-foot-high flashboards; (2) a low level outlet gate and log sluice section; (3) a 68.5-acre reservoir with a usable storage capacity of 100 acre-feet at elevation 187.5 feet M.S.L. with a 3-foot drawdown; (4) a powerhouse located near the north dam abutment containing two turbine-generators with a total rated capacity of 950 kW; (5) a fishway located adjacent to the powerhouse; (6) a tailrace channel; (7) the 2.3-kV generator leads; (8) the 1,000-kVA, 2.3/12.5-transformer; (9) the 200-foot-long, 12.5-kV transmission line; and (10) appurtenant facilities.

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

<u>Exhibit</u>	<u>FERC No. 4202-</u>	<u>Showing</u>
F Sheet 1	1	Plan and Profile
F Sheet 2	2	Sections

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

(4) Exhibits F and G designated in Ordering Paragraph (B) above, are approved and made a part of the license.

(5) Exhibit A entitled "Description of Project and Proposed Mode of Operation" consisting of one page describing mechanical and transmission equipment filed June 21, 1982, is approved herein and made a part of the license.

(C) Pursuant to Section 10(i) of the Act, it is in the public interest to waive the following Sections of Part I of the Act, and they are excluded from the license:

Section 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(D) This license is also subject to Articles 1 through 18 set forth in Form L-15 (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting the Interest of Interstate or Foreign Commerce," attached to and made a part of this license. The license is also subject to the following additional articles:

Article 19. Licensee shall discharge from the Lowell Tannery Project, a continuous minimum flow of 150 cubic feet per second or the inflow to the reservoir, whichever is less, for the purpose of protecting and enhancing aquatic resources in the Passadumkeag River. These flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods for fishery management purposes upon mutual agreement between the Licensee and the Maine Department of Inland Fisheries and Wildlife.

Article 20. Licensee shall, within 6 months following issuance of this license, file for approval functional design drawings of upstream and downstream fish passage facilities for the Lowell Tannery Project, prepared in consultation with the

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U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Maine Department of Marine Resources. Agency comments on the proposed design, and a construction schedule shall be included in the filing.

Article 21. Licensee shall consult with the Maine Bureau of Parks and Recreation in developing a recreation plan for the project which is compatible with existing resource values identified in Article 22, which shall include, but not be limited to, provisions for the development of a canoe portage, and access for launching small boats and canoes. Within 6 months after the date of issuance of this license, the Licensee shall file the plan with the Commission. The recreation plan, shall include a description of the type, number, and location of the proposed facilities; a development schedule and a drawing, referenced sufficiently to the appropriate Exhibit G, to show the lands reserved for recreational development. The Commission reserves the right to require modifications to the plan.

Article 22. Licensee shall consult with the Maine Bureau of Parks and Recreation, and the Chief, Division of Natural Resource Planning, National Park Service, Philadelphia, Pennsylvania, to develop a plan to limit or mitigate adverse project impacts on the resource values of the Passadumkeag River identified in the Nationwide Rivers Inventory, and the Maine Rivers Study. The plan shall include but not be limited to consideration of suitable architectural and landscape designs, and recommendations for maintaining reservoir levels. Within 6 months from issuance of this license, the Licensee shall file the plan with the Commission along with agency comments on the adequacy of the plan. The Commission reserves the right to require modifications to the plan.

Article 23. Licensee shall, in consultation with the Maine Department of Environmental Protection, prepare a detailed plan to: (a) control erosion; (b) store and dispose of spoils; (c) store and redistribute topsoils; (d) revegetate all land disturbed by project construction; and (e) prevent oil, sediments, and other pollutants from entering the Passadumkeag River. This plan shall include an implementation schedule, a monitoring and maintenance program for project construction and operation, and evidence of agency consultation, and shall be filed with the Commission's Regional Engineer in New York, New York, and the Director, Office of Electric Power Regulation at least 60 days prior to any ground-disturbing activity. The Director, Office of Electric Power Regulation, reserves the right to require modification of the plan.

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Article 24. Licensee shall continue to consult and cooperate with appropriate Federal, state and other natural resource agencies for the protection and development of the environmental resources and values of the project area. The Commission reserves the right to require changes in the project works or operations that may be necessary to protect and enhance those resources and values.

Article 25. Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the final contract drawings and specifications for pertinent features of the project such as water retention structures, powerhouse and water conveyance structures, 60 days prior to start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to ensure a safe and adequate project.

Article 26. Licensee shall, within 90 days of completion of construction, file for approval of the Director, Office of Electric Power Regulation, revised Exhibits A, F, and G to describe and show the project as-built. Revised Exhibit F must reflect, among other things, the fish passage facility required by Article 20.

Article 27. Licensee shall commence the construction of the project within two years of the date of issuance of the license and shall thereafter in good faith and with due diligence prosecute and complete such construction of project works within four years of the date of issuance of the license.

Article 28. Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 29. Licensee shall, prior to the commencement of any future construction at the project, consult with the Maine State Historic Preservation Officer (SHPO) about the need for any cultural resource survey and salvage work. The Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with

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the SHPO to develop a mitigation plan for the protection of significant archeological or historic resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historic work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 30. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of

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riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The Licensee may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least

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75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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(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.

Article 31. The Licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1,260 horsepower.

(E) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.



Lawrence R. Anderson
Director, Office of Electric
Power Regulation

Project No. 4202-001

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

By _____
President

Attest:

Secretary

(Executed in quadruplicate)

Form L-15
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MINOR PROJECT AFFECTING THE INTERESTS OF
INTERSTATE OR FOREIGN COMMERCE

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

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

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

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made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2. hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other

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officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

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

Article 6. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams in which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative.

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The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 8. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

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Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 11. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain and operate, or cause to be constructed, maintained, and operated, by the Licensee or its agent, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 12. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall

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

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, stumps, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition,

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all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 16. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 17. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

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Article 18. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

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