

Brookfield

Renewable

June 9, 2021

VIA E-FILING

Kathy Davis Howatt
Hydropower Coordinator
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

**Pejepscot Hydroelectric Project (FERC No. 4784-095)
Section 401 Water Quality Certification Application**

Dear Ms. Howatt:

Topsham Hydro Partners Limited Partnership (Topsham Hydro) is submitting to the Maine Department of Environmental Protection (MDEP) an Application for Water Quality Certification (WQC) for the Pejepscot Hydroelectric Project (FERC No. 4784). The Project is in Maine (ME) on the Androscoggin River within in the village of Pejepscot, and the towns of Topsham, Lisbon, Durham and Brunswick. The Project straddles the border between Cumberland and Sagadahoc counties and extends into Androscoggin County. A receipt from the MDEP payment portal in the amount of \$8,772.16 has been included as part of this submittal for the processing of the WQC application.

On August 31, 2020, Topsham Hydro filed a Final License Application (FLA) with the FERC for the Project. On April 19, 2021, the Commission issued its Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions (REA Notice).

On June 1, 2020, the U.S. Environmental Protection Agency (EPA) released its Final Rule to streamline the Clean Water Act (CWA) Section 401 review. EPA's Final Rule was published in the Federal Register on July 13, 2020, and the effective date is September 11, 2020. The Final Rule requires an applicant to request a pre-filing meeting with the State agency at least 30 days prior to filing for certification (40 CFR § 121.4). Topsham Hydro submitted a request for a pre-filing meeting with MDEP on April 29, 2021.

On May 13, 2021, MDEP met with Topsham Hydro for the pre-filing meeting via teleconference to discuss the Project WQC application. MDEP and Topsham Hydro discussed the WQC application process, and verified the application content, electronic filing process, and application/permit fees. MDEP also noted that there was no need to refile another hard copy of the FLA with the WQC application.

Accordingly, Topsham Hydro hereby files the enclosed WQC application for the Project. This WQC application is for the FERC relicensing of the Project for continued operation under the terms of a new FERC license. As required, Topsham Hydro is also sending by certified mail a duplicate of the WQC application to the town clerks of Topsham, Lisbon, Durham, and Brunswick.

Attachments enclosed as part of the Application of WQC include the following.

- Attachment 1 - Notice of Intent/List of Abutters/Mailing Receipts.
- Attachment 2 - FERC License and Amendments.

Topsham Hydro respectfully requests that MDEP provide a draft of the WQC for review before issuing the final WQC. Finally, if the Department requires access and entry to the property and facilities under this certification, Topsham Hydro respectfully requests, that the department coordinate accompanied access with Topsham Hydro staff site prior to any inspections deemed necessary by MDEP to help ensure access as needed and the safety of on-site operating staff and MDEP staff.

If there are any questions or comments regarding this filing, please contact me at (207) 755-5613 or by email at Luke.Anderson@BrookfieldRenewable.com.

Sincerely,



Luke T. Anderson
Manager, Licensing
Brookfield Renewable

Enclosures: Water Quality Certification Application

Cc: Christopher Sferra, MDEP

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Land Resource Regulation
17 State House Station
Augusta, Maine 04333
Telephone: 207-287-7688

FOR DEP USE
ATS # _____
#L- _____
Fees Paid _____
Date Fees Received _____

**APPLICATION FOR
WATER QUALITY CERTIFICATION
(U.S. P.L. 92-500, SECTION 401)**

HYDROPOWER PROJECT LICENSING/RELICENSING ONLY

This form shall be used to request Water Quality Certification for the proposed FERC licensing or relicensing of an existing hydropower generating or storage project where no construction, reconstruction or structural alteration of project facilities which would affect water levels or flows is proposed.

All required fees must be paid before application processing will begin. Please contact the Department for current fee schedule information. Fees are payable to Treasurer, State of Maine.

APPLICANT INFORMATION

Name of Applicant: Topsham Hydro Partners Limited Partnership (Topsham Hydro)

Mailing Address: 150 Main Street

Lewiston, ME 04240

Name of Contact or Agent: Luke Anderson, Manager, Licensing, Brookfield Renewable

Telephone: (207) 755-5613

PROJECT INFORMATION

Name of Project: Pejepscot Hydroelectric Project FERC No. 4784

Address (use "911" address, if available): 110 Pejepscot Village Main Street, Topsham, Maine, 04086

Name of Waterbody Affected: Androscoggin River

Municipality or Township: Brunswick/Topsham/Lisbon&Durham County: Cumberland/Sagadahoc/Androscoggin

GPS Coordinates, if known: 43.95697590917258, -70.02497172852405

REQUIRED INFORMATION

1. Provide all the information requested by this application form.
2. If applicant is a registered corporation, provide either a *Certificate of Good Standing* (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
3. A signed Certification of Publication and a completed Notice of Intent to File an application for Water Quality Certification.

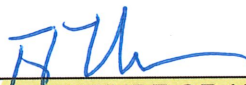
NOTE: All supporting documents summarized above must be attached to this form and sent to the DEP Office listed below:

Department of Environmental Protection
Bureau of Land Resource Regulation
17 State House Station
Augusta, ME 04333
Tel: (207) 287-7688

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

DATE: June 9, 2021

(IF SIGNATURE IS OTHER THAN APPLICANT,
ATTACH LETTER OF AGENT AUTHORIZATION
SIGNED BY APPLICANT)


SIGNATURE OF APPLICANT
Tom Uncher, Vice-President
PRINTED NAME & TITLE

WATER QUALITY CERTIFICATION APPLICATION

GENERAL INFORMATION

1. By submitting this application, an applicant requests Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act for the continued operation of an existing hydropower generating or storage project under the terms of an initial or a new license from the Federal Energy Regulatory Commission. Certification must be obtained for any activity requiring a federal license or permit which may result in a discharge into the navigable waters of the United States.
2. The purpose of this application form is to obtain from the applicant a thorough description of project facilities and operation and the impacts of the continued operation of the project on water quality.

The Department's Regulations provide that the applicant bears the burden of proof in the application process. This is the burden of presenting sufficient evidence for the Department to make the affirmative findings required by law regarding matters about which no questions are raised and the burden of presenting a preponderance of the evidence regarding matters about which questions are raised.

3. In order to grant certification, the Department must conclude that there is a reasonable assurance that the continued operation of a hydropower generating or storage project will not violate applicable Water Quality Standards. These standards have been established in the State's Water Classification Program (Title 38 MRSA Sections 464-469). These standards designate the uses and related characteristics of those uses for each class of water and establish water quality criteria necessary to protect those uses and related characteristics.
4. Any applicant for a FERC license must complete a three stage consultation process with appropriate state and federal agencies. The purpose of this process is to identify and analyze the potential environmental and socioeconomic impacts of a project.

The consultation process requires an applicant to have either requested or obtained water quality certification at the time of filing with FERC. The process also requires that an applicant serve a copy of its FERC application, including any revisions, supplements or amendments thereto, on each of the agencies consulted.

WATER QUALITY CERTIFICATION APPLICATION

FILING INSTRUCTIONS AND PROCEDURES

1. When filing, send an original paper copy plus one (1) electronic copy of a completed Application for Water Quality Certification to the Department, along with two (2) copies of the Application for Initial License or New License that has been or will be filed with FERC. The State filing can be made prior to or concurrent with the FERC filing.
2. The Department is required by law to assess fees for processing applications and for monitoring permit compliance. Application processing will not begin until all required fees have been paid. When filing, submit full fee payment as shown on the [DEP fee schedule](#). Please make checks payable to: Treasurer, State of Maine.
3. A number of consulting agencies will be involved in the State review process of hydropower projects. Distribution of copies of the FERC application to these agencies may be coordinated by DEP or may be handled directly by the applicant. When filing, please notify the DEP staff to discuss distribution procedures.
4. Most information requested by this application form can be provided by making reference to the appropriate exhibit of the FERC license application. Space is provided on the form for such references.
5. Within 15 working days of receiving an application and all required fees, the DEP shall determine whether the application as filed is acceptable for processing.
6. Additional information may be required during the review process on any aspect of the project relating to compliance with applicable statutory criteria.

WATER QUALITY CERTIFICATION APPLICATION

1. **NATURE OF ACTIVITY.** Check appropriate item:

Application for Initial License.

Application for New License (Relicense).

A COPY OF A COMPLETED FERC APPLICATION FOR LICENSE (THIRD STAGE CONSULTATION) MUST ACCOMPANY THIS FORM.

NOTE: A copy of any document revising, supplementing, amending, or correcting deficiencies in the application as originally filed with FERC must also be filed with D.E.P.

2. **EXISTING ENVIRONMENT.** Provide a description of the physical environment of the project site and its immediate vicinity. The project site includes all land and water areas affected by the project.

REFERENCE: FERC EXHIBIT(S) See Exhibits E & G of FERC FLA

3. **PROJECT DESCRIPTION.** Provide a detailed description of the existing project. A hydropower project includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads, and other appurtenant works and structures that are part of the development. This description must include:

A. The physical composition, dimensions, and general configuration of all project structures;

B. The normal maximum surface area and elevation, gross storage capacity, and usable storage capacity of any impoundments;

C. The number, type, and rated capacity of any turbines or generators; and

D. The number, length, and voltage of any primary transmission lines.

REFERENCE: FERC EXHIBIT(S) See Exhibit A of FERC FLA

4. **PROJECT OPERATION.** Provide a description of project operation, to include:

A. The mode of project operation during low, mean, and high water years, including extent and duration of flow release and impoundment fluctuations;

B. An estimate of the dependable capacity and average annual energy production, in kilowatt hours, of the project;

C. An estimate of minimum, mean, and maximum flows, in cubic feet per second, at the project site, including a flow duration curve;

D. An estimate of the maximum and minimum hydraulic capacities, in cubic feet per second, of any powerplant; and

E. A statement of the manner in which the power generated at the project is utilized.

REFERENCE: FERC EXHIBIT(S) See Exhibit B of FERC FLA

5. **PROJECT PLANS.** Provide general design drawings showing all major project structures in sufficient detail to provide a full understanding of the project, including:
- A. Plans (overhead view);
 - B. Elevations (front view); and
 - C. Sections (side view).

REFERENCE: FERC EXHIBIT(S) See Exhibit F of FERC FLA

6. **PROJECT MAPS.** Provide maps of the project showing:
- A. The location of the project, including principal project structures and features, with reference to local geographic features; and
 - B. A project boundary enclosing all principal project structures and features proposed to be licensed.

REFERENCE: FERC EXHIBIT(S) See Exhibit G of FERC FLA

7. **TITLE, RIGHT OR INTEREST.** The Department's Regulations require that any applicant must possess sufficient title, right or interest in all project lands and waters in order to have standing to seek a permit, license, or certification. Please complete the appropriate item(s) below establishing title, right or interest and attach a copy of the indicated document(s):

- Deed.
- Option to buy.
- Lease.
- Valid FERC License (including all amendments/modifications).
- Exercise of flowage rights through operation of the Mill Act (12 MRSA Section 651).
- Exercise of eminent domain under FERC License.

8. **WATER QUALITY.** Provide a description of the impact of the project on water quality, including:

- A. A description of the applicable water quality standards and stream segment classification for the project impoundment and downstream waters, including a description of designated uses;
- B. A description of existing water quality in the project impoundment and downstream waters affected by the project, including a description of existing in-stream water uses;
- C. A statement of the existing measures to be continued and new measures proposed for the purpose of protecting and improving water quality, including measures for the mitigation of project impacts on the designated uses of project waters; and
- D. A description of any anticipated continuing impact on water quality from the continued operation of the project, including impacts on the designated uses of project waters.

REFERENCE: FERC EXHIBIT(S) See Exhibit E, Section E.4.0

9. **PUBLIC NOTICE.** The Department requires that an applicant provide public notice describing the location and nature of the activity proposed for approval. The public notice requirements that apply to this application are described in the Certification of Publication below, which must be signed and dated by the applicant or authorized agent.

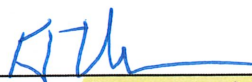
The following information must be submitted with this form:

- A copy of a completed Notice of Intent to File.
- A list of abutters to whom notice was provided. [For the purposes of public notice of this application, an "abutter" is any person who owns property that is both (1) adjoining and (2) within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way.]

CERTIFICATION OF PUBLICATION

By signing below, the applicant (or authorized agent) certifies that he or she has:

1. Published a Notice of Intent to File once in a newspaper circulated in the area where the project site is located, within 30 days prior to filing the application;
2. Sent a completed copy of the Notice of Intent to File by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other means, within 30 days prior to filing the application; and
3. Sent a copy of the Notice of Intent to File by certified mail or Certificate of Mailing and filed a duplicate of this application with the town clerk of the municipality(ies) where the project is located, within 30 days prior to filing the application.



Signature of Applicant

June 9, 2021

Date

Tom Uncher, Vice-President

Name and title of applicant

If signature is other than that of the applicant, attach letter of agent authorization signed by the applicant.

NOTICE OF INTENT TO FILE

MAINE WATER QUALITY CERTIFICATION APPLICATION

Please take notice that Topsham Hydro Partners Limited Partnership (Topsham Hydro)
(applicant)

of 150 Main Street, Lewiston, ME 04240 and (207) 755-5600
(address and telephone number)

is intending to file an application with the Maine Department of Environmental Protection for a Water Quality Certification pursuant to the provisions of the Federal Clean Water Act, Section 401. The application is for

the continued operation and maintenance of the Pejepscot Hydroelectric facility (FERC No. 4784)
(summary of the activity)

in the town/city of Topsham, Lisbon, Durham and Brunswick, ME
(municipality, tax map or numbers)

under the terms of an initial or new license from the Federal Energy Regulatory Commission.

The application will be filed on or about June 2, 2021 for public
(anticipated filing date)

inspection at the DEP's offices in Augusta during normal working hours. A copy of the application may also be seen at the municipal offices in

Topsham, Lisbon, Durham and Brunswick, Maine.
(town/city)

A request for a public hearing or a request that the Board of Environmental Protection assume jurisdiction over this application must be received by the Department, in writing, no later than 20 days after the application is found by the Department to be complete and is accepted for processing. Public comment on the application will be accepted throughout the processing of the application.

For Federally licensed, permitted, or funded activities in the Coastal Zone, review of this application shall also constitute the State's consistency review in accordance with the Maine Coastal Program pursuant to Section 307 of the federal Coastal Zone Management Act.

Written public comments may be sent to the Department of Environmental Protection, Bureau of Land and Water Quality, 17 State House Station, Augusta, Maine 04333.

State of Maine



Department of the Secretary of State

I, the Secretary of State of Maine, certify that according to the provisions of the Constitution and Laws of the State of Maine, the Department of the Secretary of State is the legal custodian of the Great Seal of the State of Maine which is hereunto affixed and of the reports of qualification of foreign limited partnerships in this State and annual reports filed by the same.

I further certify that TOPSHAM HYDRO PARTNERS LIMITED PARTNERSHIP, a MINNESOTA limited partnership, is a duly qualified foreign limited partnership under the laws of the State of Maine and that the application for authority to transact business in this State was filed on August 18, 1997.

I further certify that said foreign limited partnership has filed annual reports due to this Department, and that no action is now pending by or on behalf of the State of Maine to forfeit the authority to transact business in this State and that according to the records in the Department of the Secretary of State, said foreign limited partnership is a legally existing limited partnership in good standing under the laws of the State of Maine at the present time.

In testimony whereof, I have caused the Great Seal of the State of Maine to be hereunto affixed. Given under my hand at Augusta, Maine, this fifth day of May 2021.



Shenna Bellows

Shenna Bellows
Secretary of State

From: noreply@informe.org
Subject: DEP Payment Receipt
Date: Monday, May 24, 2021 9:30:23 AM

Payment Receipt Confirmation

Your payment was successfully processed.

Transaction Summary

Description	Amount
DEP Payment Portal	\$5,000.00
Service Fee	\$2.00
Maine.gov Total	\$5,002.00

Customer Information

Customer Name Kirk Smith
Company Name Gomez and Sullivan
Engineers
Local Reference ID 2413275533
Receipt Date 5/24/2021
Receipt Time 09:30:17 AM EDT

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number *****
Order ID 56842024
Billing Name Kirk B Smith

Billing Information

Billing Address 288 Genesee Street
Billing City, State Utica, NY
ZIP/Postal Code 13502
Country US
Phone Number 603-340-7667

This receipt has been emailed to the address below.

Email Address ksmith@gomezandsullivan.com

From: noreply@informe.org
Subject: DEP Payment Receipt
Date: Monday, May 24, 2021 9:41:54 AM

Payment Receipt Confirmation

Your payment was successfully processed.

Transaction Summary

Description	Amount
DEP Payment Portal	\$3,772.16
Service Fee	\$2.00
Maine.gov Total	\$3,774.16

Customer Information

Customer Name Kirk Smith
Company Name Gomez and Sullivan
Engineers
Local Reference ID 2413395137
Receipt Date 5/24/2021
Receipt Time 09:41:48 AM EDT

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number *****
Order ID 56842818
Billing Name Kirk B Smith

Billing Information

Billing Address 288 Genesee Street
Billing City, State Utica, NY
ZIP/Postal Code 13502
Country US
Phone Number 603-340-7667

This receipt has been emailed to the address below.

Email Address ksmith@gomezandsullivan.com

§ 121.5 Certification Request

The following is an addendum for the Maine Section 401 Water Quality Certification, as required per 40 CFR § 121.5(b).

(a) A certification request shall be submitted to the certifying authority and to the Federal agency concurrently.

This certification request is being submitted concurrent with the Water Quality Certification (WQC) application for the Maine Department of Environmental Science (MDEP), as well as the Federal Energy Regulatory Commission (FERC).

(b) A certification request for an individual license or permit shall:

(1) Identify the project proponent(s) and a point of contact;

Topsham Hydro Partners Limited Partnership (Topsham Hydro), is submitting the § 121.5 Certification request. Luke Anderson, of Brookfield Renewable, is the point of contact, as follows:

Luke Anderson
Manager, Licensing
Brookfield Renewable
150 Main Street
Lewiston, ME 04240
(207) 755-5613
Luke.Anderson@BrookfieldRenewable.com

(2) Identify the proposed project;

A Water Quality Certificate application for a New License for Major Water Power Project is being submitted for the Pejepscot Hydroelectric Project (Project), FERC No. 4784. The Project is an existing run of river hydroelectric facility with an active FERC license. It's located on the Androscoggin River in the Village of Pejepscot and the towns of Topsham, Lisbon, Durham and Brunswick in Maine (ME). The Project's current FERC license expires on August 31, 2022. The Project has an authorized installed generating capacity of 13.88 megawatts (MW).

(3) Identify the applicable federal license or permit;

Applicable federal licenses and permits include the ME WQC and the FERC license to be issued.

(4) Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;

Water from the Androscoggin River is passed through the turbines to generate hydropower. No pollutant discharge is proposed.

(5) Include a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;

Water from the Androscoggin River is passed through the turbines to generate hydropower. No pollutant discharge is proposed. See Exhibit B and Exhibit E, Section E 4.5 of the attached FERC license application for a description of how water levels and flow are managed at the Project.

(6) Include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;

As stated in No. 3, Applicable federal licenses and permits include the ME WQC and the FERC license to be issued. None of the aforementioned authorizations required have been approved or denied as of the date this WQC application is being submitted.

(7) Include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;

A pre-filing meeting request was submitted to MDEP on April 29, 2021 (see Attachment 1).

(8) Contain the following statement: 'The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief'; and

The signature on the bottom of this document affirms that the Project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief.

(9) Contain the following statement: 'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'

The signature on the bottom of this document affirms that the Project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.

Signature



Mr. Tom Uncher
Vice President
Topsham Hydro Partners Limited Partnership
339B Big Bay Rd
Queensbury, NY 12804

Brookfield

Renewable

April 29, 2021

VIA E-FILING

Kathy Davis Howatt
Hydropower Coordinator
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

**Pejepscot Hydroelectric Project (FERC No. 4784-095)
Section 401 Water Quality Certification**

Dear Ms. Howatt:

On August 31, 2020, Topsham Hydro Partners Limited Partnership (Topsham Hydro), filed its Final License Application (FLA) for the Pejepscot Hydroelectric Project (P-4784) with the Federal Energy Regulatory Commission (FERC). On April 19, 2021, FERC issued its Notice of Application Accepted for Filing and Ready for Environmental Analysis (REA Notice). Topsham Hydro is now preparing to file with the Maine Department of Environmental Protection (MDEP) an application for Water Quality Certification (WQC) under Section 401 of the Clean Water Act (CWA). Per FERC's regulations, a license applicant must file an application for WQC no later than 60 days following the date of issuance of the REA notice (18 CFR §5.23(b)(1)), which requires Topsham Hydro to file a WQC application for the Pejepscot Project by June 18, 2021.

On June 1, 2020 the U.S. Environmental Protection Agency (EPA) released its Final Rule to streamline CWA Section 401 review. The Final Rule became effective September 11, 2020. The Final Rule requires an applicant to request a pre-filing meeting with the State agency at least 30 days prior to filing for certification (40 CFR § 121.4). Accordingly, we are hereby requesting a pre-filing meeting for the Pejepscot Project.

I will follow up by phone or email to discuss a possible meeting date. In the meantime, if you have any questions, please contact me by phone at 207-755-5613 or by email at Luke.Anderson@BrookfieldRenewable.com. Thank you for your consideration of our meeting request.

Sincerely,



Luke T. Anderson
Manager, Licensing
Brookfield Renewable

Cc: Christopher Sferra, MDEP

Attachment 1 - Notice of Intent/List of Abutters/Mailing Receipts



The Times Record

Local. Legitimate. Journalism.

Midcoast Maine's Only Daily Newspaper

Public Notice
NOTICE OF INTENT TO FILE
MAINE WATER QUALITY CERTIFICATION APPLICATION

Please take notice that Topsham Hydro Partners Limited Partnership (Topsham Hydro) of 150 Main Street, Lewiston, ME at (207) 755-5600, are intending to file an application with the Maine Department of Environmental Protection (DEP) for a Water Quality Certification.

The Times Record is a daily newspaper of general circulation in Cumberland and Sagadahoc Counties, Maine. The attached tear sheet is a copy of an advertisement which was published once, in said newspaper in issue of May 18, 2021.

The Times Record is printed and published in the City of South Portland, in Cumberland County, Maine.

Luana Kittle

Subscribed and sworn to before me this 18th day of May, 2021.

Notary Public

JEFFREY F. HEWETT
NOTARY PUBLIC
State of Maine
My Commission Expires
January 23, 2022



207-729-3311 • 1-800-734-6397 • www.timesrecord.com



CLASSIFIED

Tuesday, May 18, 2021 The Times Record B3

Public Notices are a permanent and independent of government and court action. These include state and local government meetings, rule making, available contracts, real estate, and other notices. For more information, call (207) 755-5600.



\$49 for 49 days.
Up to 10 lines.

Public Notice

NOTICE OF INTENT TO FILE MAINE WATER QUALITY CERTIFICATION APPLICATION

Please take notice that Topsham Hydro Partners Limited Partnership (Topsham Hydro) of 150 Main Street, Lewiston, ME at (207) 755-5600, are intending to file an application with the Maine Department of Environmental Protection (DEP) for a Water Quality Certification pursuant to the provisions of the Federal Clean Water Act, Section 401. The application is for the continued operation and maintenance of the Pejepscot Hydroelectric facility (FERC No. 4784) in the towns of Topsham, Lisbon, Durham and Brunswick, under the terms of a new license from the Federal Energy Regulatory Commission.

The application will be filed on or about June 2, 2021 for public inspection at the DEP's offices in Augusta during normal working hours. A copy of the application may also be seen at the municipal offices in Topsham, Lisbon, Durham and Brunswick.

A request for a public hearing or a request that the Board of Environmental Protection assume jurisdiction over this application must be received by the Department, in writing, no later than 20 days after the application is found by the Department to be complete and is accepted for processing. Public comment on the application will be accepted throughout the processing of the application.

For Federally licensed, permitted, or funded activities in the Coastal Zone, review of this application shall also constitute the State's consistency review in accordance with the Maine Coastal Program pursuant to Section 307 of the federal Coastal Zone Management Act.

Written public comments may be sent to the Department of Environmental Protection, Bureau of Land and Water Quality, 17 State House Station, Augusta, Maine 04333.

Brookfield

Renewable

May 18, 2021

Pejepscot Hydroelectric Project (FERC No. 4784) Section 401 Water Quality Certification Application

Dear Neighbor:

Topsham Hydro Partners Limited Partnership (Topsham Hydro), licensee for the Pejepscot Hydroelectric Project (Project), previously applied to the Federal Energy Regulatory Commission (FERC) for a new license, pursuant to the Federal Power Act, to continue operation of the Project, a hydroelectric generating facility located on the Androscoggin River in village of Pejepscot, and the towns of Topsham, Lisbon, Durham and Brunswick. The license application was filed with FERC on August 31, 2020.

As part of the FERC licensing process, Topsham Hydro must also apply for a Water Quality Certification (WQC) from the Maine Department of Environmental Protection (MDEP) under the provisions of Section 401 of the Federal Clean Water Act. The Applicant is filing its application for WQC from the MDEP on or about June 2, 2021. The WQC application will be available for public inspection at the MDEP offices in Augusta ME, and at the village/town offices of Pejepscot, Topsham, Lisbon, Durham and Brunswick, ME.

The WQC application process requires the advanced publication of the attached notice to those landowners whose property abuts the Pejepscot Hydroelectric Project waters and lands, which is why you are receiving this letter.

If there are any questions or comments regarding this filing, please contact me by phone at (207) 755-5613 or by email at Luke.Anderson@BrookfieldRenewable.com.

Sincerely,



Luke T. Anderson
Manager, Licensing
Brookfield Renewable

Enclosures

Cc: Distribution List

NOTICE OF INTENT TO FILE

MAINE WATER QUALITY CERTIFICATION APPLICATION

Please take notice that Topsham Hydro Partners Limited Partnership (Topsham Hydro) of 150 Main Street, Lewiston, ME at (207) 755-5600, are intending to file an application with the Maine Department of Environmental Protection (DEP) for a Water Quality Certification pursuant to the provisions of the Federal Clean Water Act, Section 401. The application is for the continued operation and maintenance of the Pejepscot Hydroelectric facility (FERC No. 4784) in the towns of Topsham, Lisbon, Durham and Brunswick, under the terms of a new license from the Federal Energy Regulatory Commission.

The application will be filed on or about June 2, 2021 for public inspection at the DEP's offices in Augusta during normal working hours. A copy of the application may also be seen at the municipal offices in Topsham, Lisbon, Durham and Brunswick.

A request for a public hearing or a request that the Board of Environmental Protection assume jurisdiction over this application must be received by the Department, in writing, no later than 20 days after the application is found by the Department to be complete and is accepted for processing. Public comment on the application will be accepted throughout the processing of the application.

For Federally licensed, permitted, or funded activities in the Coastal Zone, review of this application shall also constitute the State's consistency review in accordance with the Maine Coastal Program pursuant to Section 307 of the federal Coastal Zone Management Act.

Written public comments may be sent to the Department of Environmental Protection, Bureau of Land and Water Quality, 17 State House Station, Augusta, Maine 04333.

<p>Annda S. Adinson 812 River Rd Brunswick, ME 04011</p>	<p>Robert & Hasenfus, Nancy A. Anderson, JT 863 River Rd Brunswick, ME 04011</p>	<p>Mary L. Anguiano PO Box 265 Lisbon Falls, ME 04252</p>
<p>Bethany & Richard Brassard 497 Route 135 Monmouth, ME 04259</p>	<p>Brown Bear II Hydro, Inc. 1448 North Main St Palmer, MA 01069</p>	<p>Alexander C. & Wendy Buxbaum 98 Pinkham Brook Rd Durham, ME 04222</p>
<p>Copp, LLC 190 Pinkham Brook Rd Durham, ME 04222</p>	<p>Darryl R. Couture 860 River Rd Brunswick, ME 04011</p>	<p>David Crafts 711 Lisbon Street Lisbon, ME 04252</p>
<p>John D. Crafts 2 Passing Lane Lisbon Falls, ME 04252</p>	<p>Crooker Realty/Equipment, LLC PO Box 5001 Topsham, ME 04086</p>	<p>Glenda Demers 21 Pinkham Brook Road Durham, ME 04222</p>
<p>Troy C. & Katinna Demers 53 Cottage Woods Road Durham, ME 04222</p>	<p>Ellen Sue & Winslow, Gregory R. Deutsch-Taylor 1 Eagle Point Durham, ME 04222</p>	<p>Marcel Doyon 73 King Rd Lisbon, ME 04250</p>
<p>Eastbrook Timber Co. Inc. PO Box 49 West Enfield, ME 04493</p>	<p>Deborah A. Gilikson 190 Brickyard Hill Road Durham, ME 04222</p>	<p>Perley E. & Nancy S. Gowell, Trustees 765 River Rd Brunswick, ME 04011</p>
<p>Clifford & Susan Hardison 83 Deervale Road Durham, ME 04222</p>	<p>Richard & Debra H. Hinds 185 Brickyard Hill Road Durham, ME 04222</p>	<p>Philip N. & Patricia A. Humphrey, JT 845 River Rd Brunswick, ME 04011</p>
<p>Industrial Sales & Salvage Inc 20 Cedar Ln New Limerick, ME 04761</p>	<p>Philip R. & Leslie L. Jacobs, JT 844 River Rd Brunswick, ME 04011</p>	<p>Lance W. & Helen Jochem 67 Deervale Road Durham, ME 04222</p>
<p>Williams R. & Victoria A. Koehler, JT 880 River Rd Brunswick, ME 04011</p>	<p>Donna J. Lacy 75 Pinkham Brook Rd Durham, ME 04222</p>	<p>Larouchelle Properties, LLC 40 Main Street Lisbon Falls, ME 04252</p>
<p>Daryn S. & Alexandra J. Levesque 17 Pinkham Brook Rd Durham, ME 04222</p>	<p>Michael M. & Bouthot & Renee M. Lewis 101 Deervale Rd Durham, ME 04222</p>	<p>James R. & Josie Loughrey 43 Cottagewoods Rd Durham, ME 04222</p>

Francis W. & Marcia L. McGee 40 Country Lane Marlborough, MA 01752	Harold C. Merrill Jr. 96 Pinkham Brook Rd Durham, ME 04222	Millers Pass LLC PO Box 73 Lisbon Falls, ME 04252
Timothy B. & Libby G. Nilsen 815 River Rd Brunswick, ME 04011	Pejepscot Industrial Park 80 Pejepscot Vil Main St Topsham, ME 04086	Megan A. & Nalbandian & Joshua P. Pelletier 9 Turkey Ridge Durham, ME 04222
David A. & Delores B. Pillsbury 73 Deervale Road Durham, ME 04222	Charles L. Sr. & Selma E. Powers T/C 45 Hacker Rd Brunswick, ME 04011	David L. Pulk 15 Hillside Dr Topsham, ME 04086
Ray Labbe & Sons Inc 4 Highland Rd Brunswick, ME 04011	Paul D. Reed 1075 Lewiston Rd Topsham, ME 04086	Roberts Properties, LLC PO Box 401 Sabattus, ME 04280
Glen A. Roehrig 1055 Lewiston Rd Topsham, ME 04086	Thomas C. & Todd T. Settlemire 722 Granite St Yarmouth, ME 04096	Shiloh Chapel Inc. 39 Beluh Lane Durham, ME 04222
Ellen M.D. Simon Trustee 748 River Rd Brunswick, ME 04011	Simpson Cemetery Assn 828 River Rd Brunswick, ME 04011	Jonathan M. Snell, Jr. 98 Patriot Dr. Durham, ME 04222
William J. & Kathleen E. St. Michel 29 Pinkham Brook Rd Durham, ME 04222	Kim Stone 836 River Road Brunswick, ME 04011	Robert S. & Cheryl F. Sweeney 1072 Lewsiton Rd Topsham, ME 04086
Susan G. Taylor 822 River Rd Brunswick, ME 04011	Jackson Tupper II 49 Pinkham Brook Rd Durham, ME 04222	Jason D. Turcotte 189 Brickyard Hill Rd Durham, ME 04222
Ronald & Lois Wills 120 Lisbon St Lisbon, ME 04250		

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Kim Stone
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 Brunswick, ME 04011

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 Lisbon, ME 04250

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Jason D. Turcotte
 189 Brickyard Hill Rd
 Durham, ME 04222

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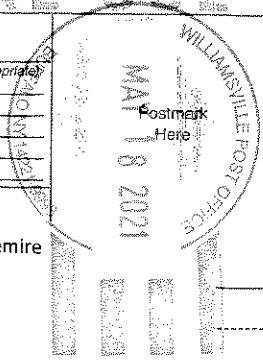
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 Thomas C. & Todd T. Settemire
 722 Granite St
 Yarmouth, ME 04096

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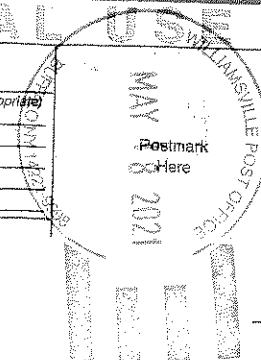
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 39 Beluh Lane
 Durham, ME 04222

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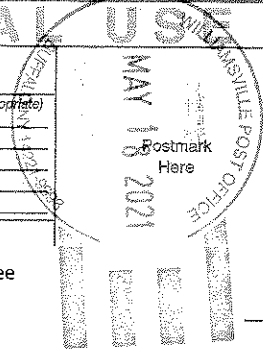
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 Ellen M.D. Simon Trustee
 748 River Rd
 Brunswick, ME 04011

Street and _____
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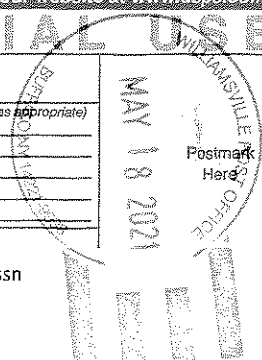
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 Simpson Cemetery Assn
 828 River Rd
 Brunswick, ME 04011

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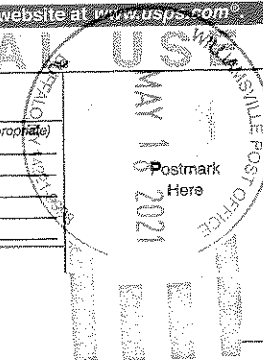
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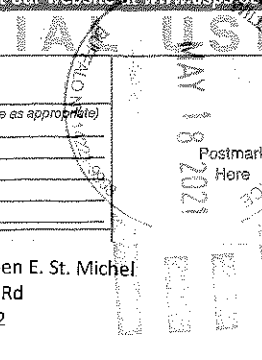
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 Harold C. Merrill Jr.
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 Durham, ME 04222

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 Millers Pass LLC
 PO Box 73
 Lisbon Falls, ME 04252

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 Megan A. & Nalbandian & Joshua P. Pelletier
 9 Turkey Ridge
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 Durham, ME 04222

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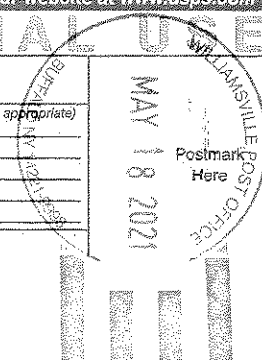
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Street and

City, State

Donna J. Lacy
75 Pinkham Brook Rd
Durham, ME 04222



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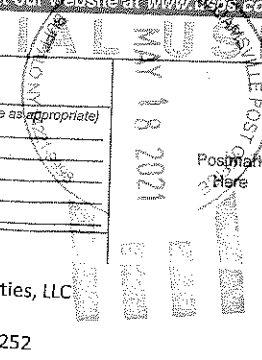
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Sent To

Street and

City, State

Larouchelle Properties, LLC
40 Main Street
Lisbon Falls, ME 04252



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Total Postage

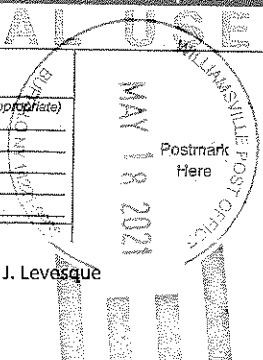
\$

Sent To

Street and

City, State

Daryn S. & Alexandra J. Levesque
17 Pinkham Brook Rd
Durham, ME 04222



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7020 0090 0000 9398 3022

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- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

\$

Total Postage

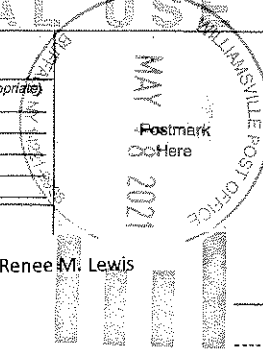
\$

Sent To

Street and

City, State

Michael M. & Bouthot & Renee M. Lewis
101 Deervale Rd
Durham, ME 04222



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- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

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Total Postage

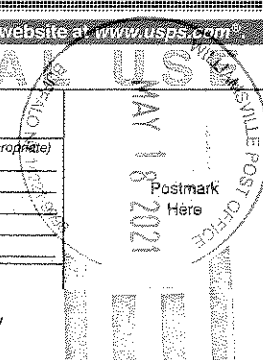
\$

Sent To

Street and

City, State

James R. & Josie Loughrey
43 Cottagewoods Rd
Durham, ME 04222



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- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

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Total Postage

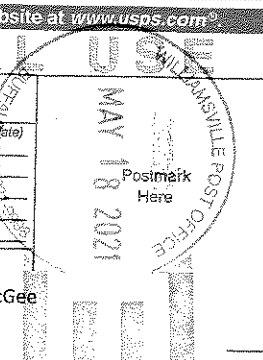
\$

Sent To

Street and

City, State

Francis W. & Marcia L. McGee
40 Country Lane
Marlborough, MA 01752



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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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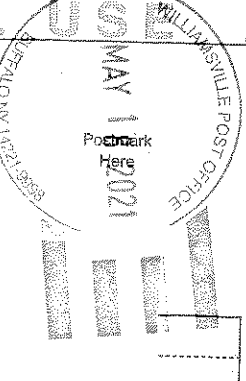
Total Postage \$ _____

Sent To
 \$ _____

Richard & Debra H. Hinds
 185 Brickyard Hill Road
 Durham, ME 04222

Street _____
 City, State _____

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4452 2942 9662 0000 0600 0202

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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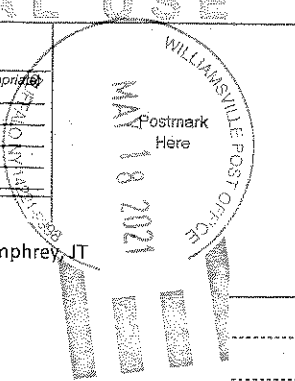
Total Postage \$ _____

Sent To
 \$ _____

Philip N. & Patricia A. Humphrey, JT
 845 River Rd
 Brunswick, ME 04011

Street _____
 City, State _____

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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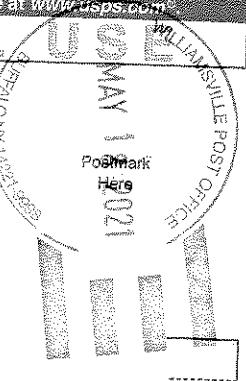
Total Postage \$ _____

Sent To
 \$ _____

Industrial Sales & Salvage Inc
 20 Cedar Ln
 New Limerick, ME 04761

Street _____
 City, State _____

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9962 2962 9662 0000 0600 0202

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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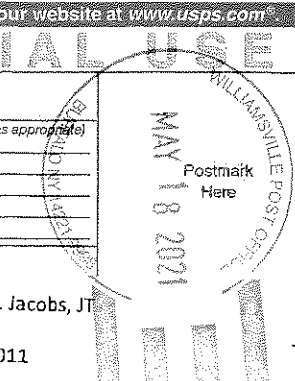
Total Postage \$ _____

Sent To
 \$ _____

Philip R. & Leslie L. Jacobs, JT
 844 River Rd
 Brunswick, ME 04011

Street _____
 City, State _____

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Return Receipt (hardcopy) \$ _____

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Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

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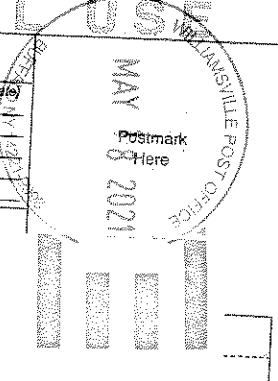
Total Postage \$ _____

Sent To
 \$ _____

Lance W. & Helen Jochem
 67 Deervale Road
 Durham, ME 04222

Street _____
 City, State _____

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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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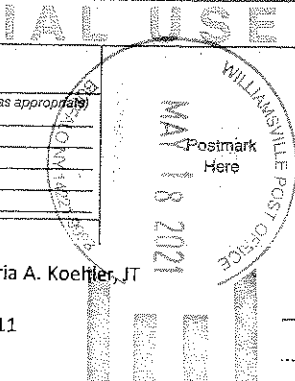
Total Postage \$ _____

Sent To
 \$ _____

Williams R. & Victoria A. Koehler, JT
 880 River Rd
 Brunswick, ME 04011

Street _____
 City, State _____

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Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

Sent To
Street and Apt. No.
City, State, ZIP+4®

Postmark Here
MAY 18 2021

Ellen Sue & Winslow, Gregory R. Deutsch-Taylor
1 Eagle Point
Durham, ME 04222

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Adult Signature Restricted Delivery \$

Postage \$

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Marcel Doyon
73 King Rd
Lisbon, ME 04250

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Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

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Deborah A. Gilikson
190 Brickyard Hill Road
Durham, ME 04222

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Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

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Postmark Here
MAY 18 2021

Eastbrook Timber Co. Inc.
PO Box 49
Westfield, ME 04493

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Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

Sent To
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City, State, ZIP+4®

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Perley E. & Nancy S. Gowell, Trustees
765 River Rd
Brunswick, ME 04011

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Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage \$

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Street and Apt. No.
City, State, ZIP+4®

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Clifford & Susan Hardison
83 Deervale Road
Durham, ME 04222

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Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

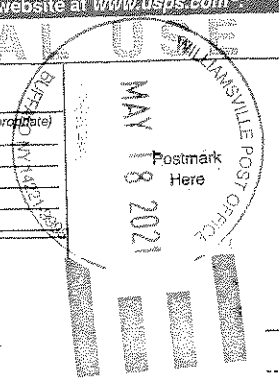
Postage \$

Total Postage \$

Sent To
Darryl R. Couture
860 River Rd
Brunswick, ME 04011

Street and
City, State

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



7292 9666 0000 0600 0202

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Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

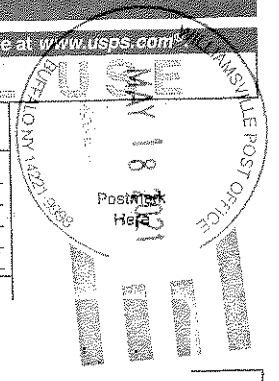
Postage \$

Total Postage \$

Sent To
David Crafts
711 Lisbon Street
Lisbon, ME 04252

Street and
City, State

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Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

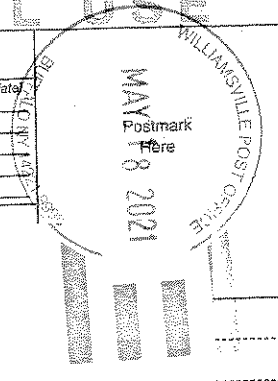
Postage \$

Total Postage \$

Sent To
John D. Crafts
2 Passing Lane
Lisbon Falls, ME 04252

Street and
City, State

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



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Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

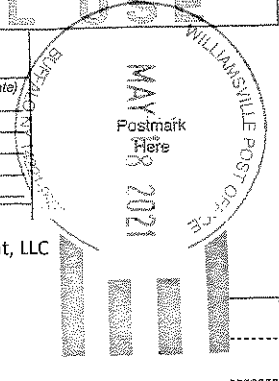
Postage \$

Total Postage \$

Sent To
Crooker Realty/Equipment, LLC
PO Box 5001
Topsham, ME 04086

Street and
City, State

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Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

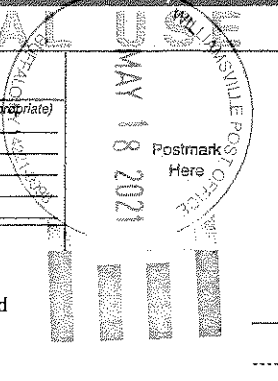
Postage \$

Total Postage \$

Sent To
Glenda Demers
21 Pinkham Brook Road
Durham, ME 04222

Street and
City, State

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Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

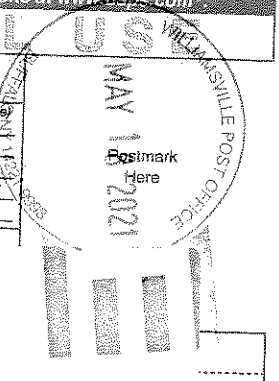
Postage \$

Total Postage \$

Sent To
Troy C. & Katinna Demers
53 Cottage Woods Road
Durham, ME 04222

Street and
City, State

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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Total P
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Sent To
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Street

City, St

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Robert & Hasenus, Nancy A. Anderson, JT
 863 River Rd
 Brunswick, ME 04011

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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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Total P
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Sent To
 \$ _____

Street

City, St

Postmark Here
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Mary L. Anguiano
 PO Box 265
 Lisbon Falls, ME 04252

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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Total P
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Sent To
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Street

City, St

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Bethany & Richard Brassard
 497 Route 135
 Monmouth, ME 04259

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
 \$ _____

Total P
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Sent To
 \$ _____

Street

City, St

Postmark Here
 WILLIAMSBURG POST OFFICE
 MAR 1 2021

Brown Bear II Hydro, Inc.
 1448 North Main St
 Palmer, MA 01069

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
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Total P
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Sent To
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Street

City, St

Postmark Here
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 MAR 1 2021

Alexander C. & Wendy Buxbaum
 98 Pinkham Brook Rd
 Durham, ME 04222

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Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage
 \$ _____

Total P
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Sent To
 \$ _____

Street

City, St

Postmark Here
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 MAR 1 2021

Copp, LLC
 190 Pinkham Brook Rd
 Durham, ME 04222

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7020 0090 0000 9398 2746

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PS Form 3800, April 2015

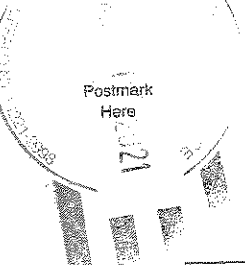
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\$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____



Postage
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Total Postage
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Street or PO Box

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Annda S. Adinson
812 River Rd
Brunswick, ME 04011

Attachment 2 - FERC License and Amendments

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES ;

20 FERC 162,483

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Worumbo Hydro, Incorporated)	Project No. 3631-000
Androscoggin Water Power Company)	Project No. 4784-000

ORDER ISSUING LICENSE (MAJOR)
AND DENYING APPLICATION FOR PRELIMINARY PERMIT

(Issued September 16, 1982)

The Androscoggin Water Power Company (AWP) filed on June 2, 1981, and revised on November 2, 1981, an application for a license under the Federal Power Act (Act) for the proposed Pejepscot Project, FERC No. 4784. 1/ 2/ The project would be located on the Androscoggin River in the towns of Topsham, Lisbon, Brunswick and Durham, in Sagadahoc, Cumberland and Androscoggin Counties, Maine. The Androscoggin River, in the reach of the project, is a navigable water of the United States. 3/

The project consists of an existing dam, reservoir at elevation 64.5 feet m.s.l. and powerhouse with seven turbine-generators with a total rated capacity of 2.5 MW. The existing project works were constructed at the turn of the century and have been operated since then. Applicant proposes to expand the existing powerhouse to accommodate five new turbine-generators with a total rated capacity of 9,125 kW which would replace all but two

-
- 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 (1981). 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, 47 Fed. Reg. 19047 (1982). 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/ Previously an application for preliminary permit was filed by Worumbo Hydro, Inc., on October 30, 1980; for the same project as FERC Project No. 3631-000.
 - 3/ Public Service Company of New Hampshire, Project No. 2288, 27 F.P.C. 830, 834 (1962).

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of the existing turbines. The two units to be retained have a total rated capacity of 900 kW. Downstream fish passage facilities would be provided at the project dam with provisions for upstream passage facilities, if needed, in the future. The enlarged project would generate up to 60,000,000 kWh annually. 4/

Energy produced at the project would be sold to Central Maine Power Company, to another electric utility or electric customer or would be available for consumption by Applicant's affiliated papermill operations.

Public Notice, Intervention and Agency Comments

Public notice of the application was given on November 21, 1981, with January 4, 1982, as the last date to file comments, protests or petitions to intervene. On December 30, 1981, Miller Hydro Group (Miller) filed a petition to intervene. Miller was primarily concerned with the possible adverse impact of the proposed project if, at some point in the licensing proceeding, AWP would modify its application or amend a subsequent license to increase the elevation of its existing reservoir. Miller, representing Worumbo Hydro, Inc. which has a preliminary permit in effect for the upstream proposed Worumbo Hydroelectric Project No. 3428, indicated that an increase of reservoir elevation of Pejepscot Project above its existing level would diminish the available head upstream and would thus reduce the potential energy production at the Worumbo Project. Miller further indicated that it has no objection to the Commission granting AWP a license for the Pejepscot Project as currently proposed. Miller's petition was subsequently granted.

On December 30, 1981, Central Maine Power Company and Union Water Power Company (Petitioners) filed a petition to intervene. Petitioners operate hydroelectric and water storage projects upstream of the proposed project which are currently under license or under preliminary permits. Petitioners projects would have a beneficial affect upon the generation of electric energy through upstream regulation and storage releases. Petitioner requested intervenor status primarily to assure that the costs for the upstream storage are equitably shared by Petitioner, AWP and other Licensees on the river. Pursuant to Section 10(f) of the Act and Article 11 of this license, if AWP "... is directly benefited by the construction work of another Licensee, or the United States by a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement

4/ The project would save up to 98,500 barrels of oil or 27,800 tons of coal annually.

for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission." In the event that an agreement cannot be reached between AWP and Petitioners, one of the parties may file pursuant to Section 13.1 of the Commission's regulations a request for determination of such headwater benefits. Petitioners intervention has been subsequently granted.

The Commission staff also solicited and received comments on the application from various Federal, State and local agencies. Substantive comments are discussed below.

Competing Applications

The preliminary permit application filed by Worumbo Hydro, Incorporated (Worumbo) FERC Project No. 3631-000 would include a new powerhouse at the existing Pejepscot Dam containing four new turbine-generators with a total rated capacity of 10 MW generating 55,000,000 kWh annually. Staff has compared the proposals made by Worumbo and AWP and finds that the two proposals would equally develop, conserve, and utilize the same water resources. AWP has demonstrated its ability to carry out its plans. Pursuant to Section 4.33(f) of the Commissions regulations [18 C.F.R. 4.33(f)] the Commission will favor the Applicant for license.

Evaluation of Design, Construction and Performance

The New York Regional Office (NYRO) has inspected the existing project works and classified the dam as having a significant hazard potential because of the downstream populated area and its proximity to the Brunswick-Topsham Project No. 2284 located 5 miles downstream. The NYRO inspection also concluded that the project structures appear to be in sound condition.

The dam was analyzed under normal and earthquake conditions and was found stable. The spillway capacity was determined to be adequate. During extreme flood conditions the dam would become submerged. If the dam were to fail under flood conditions, the small storage released would not significantly increase the flows downstream. 5/ It is concluded that the project structures are safe and adequate.

5/ As with any licensed project, the Commissions dam safety regulations under 18 C.F.R. Part 12 would apply.

Comprehensive Development and Economic Feasibility

The proposed project has been analyzed and it is concluded that the project would develop all the flow and fall of the reach of the Androscoggin River that is practical to be utilized. The project as proposed with the existing dam and with a reservoir elevation of 64.5 feet m.s.l., is not in conflict with any planned development and would be best adapted to the comprehensive development of the Androscoggin River Basin upon compliance with the terms and conditions of the license.

The economic feasibility of the proposed project has been analyzed. The annual cost of electric power generated by the project was compared with the annual cost of fuel required to generate an equal amount of power from an oil fired steam electric plant. The project was found to be an economically feasible source of energy. All energy produced at the project could be consumed in the Applicant's affiliated paper mill on site, or sold to a local utility.

License Term and Effective Date of Annual Charges

This license is issued for a term of 40 years. 6/ It shall be effective as of September 1, 1982. Annual charges will be based upon that effective date. Additionally, the Licensee will be required to pay an amount equivalent to the annual charges that would have been due if the project would have been licensed for the period between April 1, 1962, when the Androscoggin River was found navigable, and August 31, 1982. 7/

Ordering Paragraph (F) requires the filing of a statement under oath of the gross annual generation for each year beginning April 1, 1962. Article 30 specifies the effective dates and horsepower for assessment of annual charges.

6/ The application for initial license of the Pejepsco Project presents a factual basis similar to the relicensing of a project for which a moderate amount of redevelopment is proposed. Therefore a license term of 40 years is consistent with the Commission policy set forth in its Order Issuing License for FERC Project No. 2301. (Montana Power Company Mystic Lake Project No. 2301 issued October 5, 1976).

7/ See Idaho Power Company, Upper Salmon Project No. 2777, Order On Rehearing (Issued July 24, 1981).

Fish Passage

The Town of Brunswick (Town) stipulated that an upstream fish passage facility be incorporated into the project during construction. The AWP stated that the position of the Town is contrary to the recommendations of the DMR, the Department of Inland Fisheries and Wildlife, the U.S. Department of the Interior, and the NMFS. These agencies recommended that the Applicant provide space only for an upstream fish passage facility. AWP has agreed in principle to construct a downstream fish passage facility during the construction of the proposed project and an upstream fish passage facility in the future, dependent on the success of fish passage efforts at the downstream Brunswick Topsham Project, FERC No. 2284.

Since present plans for fish restoration include trapping American shad and alewife at the Brunswick Topsham Project and trucking them to upstream waters, a downstream fish passage facility is necessary at this time. Article 34 requires AWP to consult with the appropriate agencies in designing the downstream passage facility. Standard Article 15 of the license provide for the installation of an upstream fish passage facility at the appropriate time.

Minimum Flows

The U.S. Environmental Protection Agency (EPA) recommended that AWP provide a minimum flow release equivalent to the 7Q10 flow (1,685 cfs) at the project site during periods of non-generation for protection of downstream water quality. AWP stated that the project would be a run-of-river facility with no headrace or tailrace diversions. AWP further stated that since project inflows are controlled by upstream releases and project reservoir storage capability is negligible, essentially all flows reaching the project would be released. Therefore, the AWP does not believe an instantaneous minimum flow requirement is appropriate for the proposed project.

Staff generally concurs with EPA that a minimum flow release may be required at the project during periods of non-generation. Staff also notes that AWP proposes to maintain the reservoir near elevation 64.5 feet msl by controlling the number of units operating and by varying the flow through the units. The old and new turbine/generator units can operate at reduced efficiency with a minimum flow of 200 and 370 cfs, respectively. Given the operating constraints of maintaining an optimum reservoir elevation near 64.5 feet msl and the minimum flow needed to run a unit, there exists the possibility that the generating facilities would

be shut down and that no flows would be released downstream during part of the day during the low-flow season. A no-flow condition could degrade local water quality and may have adverse impacts on downstream aquatic resources. Because of the planning efforts by Federal and State fishery agencies to reestablish anadromous fishes in the lower Androscoggin River, Staff believes that it is important to establish a minimum flow to maintain and enhance downstream fishery resources and habitat, and water quality.

Based on discussions with the Maine Department of Inland Fisheries and Wildlife, U.S. Fish and Wildlife Service, and a review of the application, it is concluded that the need for a minimum flow release at the project warrants further study. Therefore Article 37 requires AWP, in cooperation with appropriate fishery resource agencies, to determine the need for a minimum flow release from the project for protection and enhancement of downstream water quality and the fishery resources.

No threatened or endangered plant or animal species are known to exist in the project area. The shortnose sturgeon, a Federally-listed endangered fish species, is found below Brunswick Dam, FERC Project No. 2284. The NMFS by letter dated January 8, 1982, stated that the proposed project would not adversely affect this species.

Recreation

Interior recommended that the license include a condition requiring AWP to periodically review recreational needs on project lands and provide access as needed. Standard Articles 17 and 18 of the license would provide for future recreational needs at the project.

Historical and Archeological Resources

No archeological or historic sites on the National Register of Historic Places are known to exist in the project area. By letter dated September 30, 1981, the Maine State Historic Preservation Officer stated that the project would have no effect upon any structure or site of historical, architectural, or archeological significance. Article 29 of the license provide for cultural resource protection measures in the event of further construction at the project other than that proposed herein.

Environmental Impacts

During the construction period, increases in turbidity would occur due primarily to the construction and removal of cofferdams. AWP will however, maintain existing river flow during this period and will utilize appropriate measures to reduce soil erosion and

erosion and sedimentation. Any sanitary or industrial wastes arising from operation of the project will be treated at the existing treatment facility of the Pejepscot Paper Division Plant before release downstream fish passage facility and additional excavation to accommodate an upstream passage facility if required in the future. On the basis of the record, and Staff's independent analysis, it is concluded that issuance of license for the project will not constitute a major Federal action significantly affecting the quality of the human environment. 8/

It is ordered that:

(A) This license is issued to Androscoggin Water Power Company (Licensee) under Part I of the Federal Power Act (Act) for a period of 40 years effective September 1, 1982, for the construction, operation and maintenance of the Pejepscot Project No. 4784, located on the Androscoggin River, a navigable water of the United States. This license is subject to the terms and conditions of the Act, which is incorporated by reference as a part of this license, except as expressly waived below, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The preliminary permit application filed by Worumbo Hydro, Incorporated for the Pejepscot Project No. 3631 is denied.

(C) The project consist of: (1) all lands constituting the project area and enclosed by the project boundary; to the extent of the Licensee's interests in those lands; the project boundary and area are shown and described by a certain exhibit which forms part of the application for license and which is designated and described as:

<u>Exhibit</u>	<u>FERC No. 4784-</u>	<u>Showing</u>
G Sheet 1	8	General Area Map
G Sheet 2	9	Project Detail Map
G Sheet 3	One typewritten page	Land and Rights owned

8/ The Applicant was issued water quality certification pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972, by letter dated May 27, 1982.

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(1) Project works consisting of: (1) a rock, gravel and concrete filled timber crib dam, which is 430 feet long, has a maximum height of 40 feet and has a crest elevation, including flashboards, at 64.5 feet above mean sea level; (2) a reservoir with a normal surface area of about 203 acres at elevation 64.5 feet above mean sea level extending about 3 miles upstream from the dam; (3) a powerhouse, with associated headworks and intake structures, located on the left bank of the river adjacent to the dam, and containing seven turbine-generators with a total rated capacity of 10,025 kW; (4) downstream fish passage facilities and provisions for future upstream fish passage facilities; (5) the 900-foot-long, 12.5 kV bus connection; (6) the 50-foot-long 0.480 kV and 12.5 kV generator leads; and (7) appurtenant facilities.

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

<u>Exhibit</u>	<u>FERC No. 4784-</u>	<u>Showing</u>
F Sheet 1	1	Dam and Powerhouse
F Sheet 2	2	Powerhouse Plan - EL 36.00
F Sheet 3	3	Powerhouse Plan - EL 45.00 EL 55.17
F Sheet 4	4	Powerhouse Plan - EL 62.00
F Sheet 5	5	Powerhouse Plan - EL 78.00
F Sheet 6	6	Powerhouse - Roof Plan
F Sheet 7	7	Powerhouse - Section 1-1
F Sheet 8	8	Powerhouse - Section 2-2

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

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(D) Exhibit A text describing the project (Sections A.3, A.4 and A.5) and the Exhibits F and G designated and described in ordering paragraph (B) above, are approved and made a part of this license.

(E) This license is also subject to Articles 1 through 28 which are set forth in Form L-4 revised (October 1975) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States", and attached to this license. In addition this license is subject to the following special conditions set forth as additional articles:

Article 29. Licensee shall, prior to the commencement of any construction or alteration of facilities at the project, consult with the State Historic Preservation Officer (SHPO) to determine the need for, and extent of, any archeological or historic resource surveys and any mitigative measures that may be necessary. 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 the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical 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. The Licensee shall pay the United States the following annual charges:

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

- (a) from April 1, 1962, until August 31, 1982, 3,330 horsepower.
- (b) from September 1, 1982, and thereafter 13,370 horsepower.

Article 31. Pursuant to Section 10(d) of the Act, the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

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

Article 32. Licensee shall consult and cooperate with the Maine Department of Marine Resources, Maine Department of Inland Fisheries and Wildlife, and the U.S. Fish and Wildlife Service in conducting studies to determine the minimum flow release needed at the Pejepscot Project to ensure protection and enhancement of fishery and wildlife resources. Further, Licensee shall, within 1 year from the date of issuance of this license, file a report of its findings and, for Commission approval, recommendations for a minimum flow release from the project.

Article 33. (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; 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 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.

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(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 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 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 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.

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(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.

(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.

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Article 34. The Licensee shall, at least 60 days prior to commencement of construction of the downstream migrant fish passage facility, file for Commission approval functional design drawings of the proposed facility, prepared in consultation with the Maine Departments of Marine Resources and Inland Fisheries and Wildlife, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. Letters from the agencies documenting consultation shall be attached to the filing. Further, Licensee shall file as-built drawings with the Commission within 6 months after completion of the passage facility.

Article 35. Licensee shall commence construction of the proposed project within two years of the date of issuance of the license and shall complete construction within three years from the start of construction.

Article 36. Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouses, and water conveyance structures, at least 60 days prior to start of construction. The Director, Office of Electric Power Regulation may require changes in the plans and specifications to assure a safe and adequate project.

Article 37. The Licensee shall review and approve the design and construction procedures for contractor-designed cofferdams and deep excavations prior to the start of construction. The Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved construction drawings and specifications, and a copy of the letter of approval.

Article 38. The Licensee shall within 90 days of completion of construction file in accordance with Commission's Rules and Regulations revised Exhibit F and G drawings showing the project as-built.

(F) Within 6 months from the date of acceptance of this license, the Licensee shall file a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing April 1, 1962, in accordance with the provisions of §11.20(a)(4) of the Commission's regulations.

Lawrence R. Anderson
Director, Office of Electric
Power Regulation

Project No. 4784-000

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this Order, Androscoggin Water Power Company this ____ day _____, 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-4
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION.

TERMS AND CONDITIONS OF LICENSE FOR
UNCONSTRUCTED MAJOR PROJECT AFFECTING
NAVIGABLE WATERS OF THE UNITED STATES

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

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

Article 3. The project 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 shall be 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 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. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

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

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may 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 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

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

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

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

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

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

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

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

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

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

Article 20. The Licensee shall 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, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. 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 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner

as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

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

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

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

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee

or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Androscoggin Water Power Company)

Project No. 4734-006

ORDER AMENDING LICENSE

(Issued August 7, 1984)

The Androscoggin Water Power Company (AWPC), Licensee for the operating Pejepscot Project No. 4784, filed on May 29, 1984, an application for amendment of license to extend the time to commence construction of the project's redevelopment. 1/ The redeveloped project would consist of expansion of the existing powerhouse to accommodate five new turbine-generators to replace all but two of the existing units which would be rehabilitated. Total capacity would be 10 MW. The license was issued September 16, 1982, and required that construction commence by September 16, 1984. 2/ The Licensee has requested an additional two-year period, until September 16, 1986, to start construction.

The Licensee states that it will be unable to commence project construction by September 16, 1984, due to the following reasons:

(1) Central Maine Power (CMP), the local electric public utility, has refused to enter into a long-term contract to purchase project output. The Licensee states that the inability to reach agreement with CMP is attributable to CMP's refusal to pay the full avoided cost rate. The Licensee is awaiting action by the Maine Public Utility Commission (PUC) to establish the cost rate, in order to be able to finalize the power purchase contract. By letter filed June 18, 1984, the Licensee informed the Commission that the PUC has progressed on this matter by scheduling a hearing in late June.

1/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.313 of the Commission's regulations, 18 C.F.R. §375.313 (1984). 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/ See 20 FERC ¶62,483.

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Commission staff has since learned that a contract between CMP and AWPC has now been signed and that the PUC hearing was cancelled. 3/

(2) Subsequent to the issuance of the license, the Licensee re-evaluated its redevelopment plan and found that an alternative configuration for the turbine-generators would be more economical and efficient. Total installed capacity would remain unchanged. The Licensee intends to make a separate filing for amendment of license to authorize the change in the turbine-generator configuration; however, the September 16, 1984, deadline for commencement of construction does not allow sufficient time to obtain FERC approval of this action. By letter filed June 18, 1984, the Licensee reported of the execution of a contract for engineering and construction management services.

(3) The Licensee's project is located 3.3 miles downstream of the proposed Worumbo Project No. 3428. The right to develop the six feet of head lying between the two projects is being disputed by the two parties. This dispute is currently before the Commission in the form of an application for amendment of license by AWPC (Project No. 4784-005) and a license application by Miller Hydro Group, Inc. (Project No. 3428-001). The nature of the Licensee's dispute with Miller Hydro has created uncertainty as to the eventual capacity and output of the Pejepscot Project. The two parties have been actively discussing a possible settlement of this issue.

Upon review, the start of construction has been delayed by the aforementioned problems which were beyond the control of the Licensee. It is appropriate and in the public interest that the date for required commencement of construction be extended as requested.

The Licensee is put on notice that Section 13 of the Federal Power Act allows the period for commencement of construction to be extended only once, and for no more than two additional years.

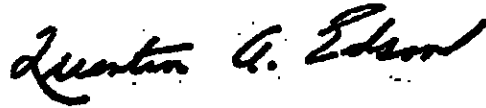
It is ordered that:

(A) The request for a two-year extension of time to commence construction is granted.

(B) Article 35 of the Order Issuing License (Major) for Project No. 4784, issued September 16, 1982, is revised as follows:

3/ Telephone conversation with Douglas Davidson, agent for AWPC, on July 9, 1984.

Article 35. Licensee shall commence construction of the proposed project within four years of the date of issuance of the license and shall complete construction within three years of the start of construction.



Quentin A. Edson
Director, Office of
Hydropower Licensing

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Androscoggin Water Power Company) Project No. 4784-009

ORDER AMENDING LICENSE AND SETTING MINIMUM FLOWS

(Issued June 21, 1985)

Androscoggin Water Power Company (Licensee) filed for Commission approval ^{1/} on May 24, 1985, recommendations for minimum flow releases, as required by Article 32 of the license, issued September 16, 1982, for the Pejepscot Project, FERC No. 4784. The Pejepscot Project is located on the Androscoggin River in the towns of Topsham, Brunswick, Dunham, and Lisbon, and in the counties of Sagadahoc, Cumberland, and Androscoggin, Maine. Article 32 requires the Licensee to conduct studies, after consultation with state and Federal fish and wildlife agencies, to determine the minimum flow release needed at the Pejepscot Project to ensure protection and enhancement of fish and wildlife resources.

The Licensee proposes, in lieu of conducting studies, that the appropriate minimum flow should be a continuous discharge of 1,710 cubic feet per second (cfs) or the inflow to the project reservoir, whichever is less, minus process water withdrawn for paper making (amounting to approximately 5 million gallons per day) and plus or minus 100 cfs to permit pond level control during project operation. The Licensee concludes that since the project would be operated as run-of-river and the inflow to the project is controlled by upstream projects, it has no significant control over the flow of the river. Therefore, a condition requiring the minimum flow proposed set forth above is appropriate.

The U.S. Fish and Wildlife Service and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife do not object to the Commission waiving the study requirement if the license is formerly amended to include the proposed release of 1,710 cfs, plus

- 1/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.314 of the Commission's regulations, 49 Fed. Reg. 29,369 (1984) (Errata issued July 27, 1984)(to be codified at 18 CFR §375.314). This order may be appealed to the Commission within 30 days of its issuance pursuant to Rule 1902, 18 CFR 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.

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allowances for pond level control and process water withdrawal. A flow of 1,710 cfs approximates the historical (unregulated) median August flow in the Androscoggin River in the project area.

The Licensee's request is appropriate. Maintaining Licensee's flow proposal will require that the project be operated essentially as run-of-river. Flow would be discharged from the powerhouse, over the spillway, through fish passage facilities, or a combination thereof. No reach of river below the project dam would be dewatered. It is concluded that there would be no adverse impacts to fish and wildlife resources from approval of Licensee's minimum flow proposal. Therefore, approval of the proposed action will not constitute a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

- (A) Article 32 of the license for the Pejepscot Project, FERC No. 4784, is superseded by the following:

Article 32. Licensee shall discharge from the Pejepscot Project, a continuous minimum flow of 1,710 cubic feet per second (cfs), as measured immediately downstream from the project powerhouse, or inflow to the reservoir, whichever is less, minus process water (approximately 5 million gallons per day) and 100 cfs for pond level control, for the protection and enhancement of fish and wildlife resources in the Androscoggin River. These flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife.

- (B) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 385.1902 of the Commission's regulations, 18 CFR 385.1902 (1983).



Quentin A. Edson
Director, Office of
Hydropower Licensing

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Androscoggin Water Power Company)

Project No. 4784-007

ORDER AMENDING LICENSE

(Issued December 26, 1985)

The Androscoggin Water Power Company (Licensee) filed on December 10, 1984, an application for amendment of the license for the Pejepscot Project No. 4784, under Part I of the Federal Power Act (Act). The project is located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties, Maine. A license was issued for the Pejepscot Project on September 16, 1982. 1/ The Licensee proposes to amend the license to increase the project's gross head from 22 feet to 25 feet by raising the Pejepscot reservoir by three feet.

Notice of the application has been published and comments have been received from interested Federal, state, and local agencies. No protests were received and none of the agencies objected to the amendment of the license. The State of Maine, Department of Environmental Protection was granted intervention.

Safety and Adequacy

The Commission's New York Regional Office inspected the project and classified the dam as significant hazard. The major changes proposed in this amendment include the placing of a two-foot-high concrete cap on the existing dam crest and the installation of three-foot-high crest gates with hydraulic operators. The proposed modifications to the project, if constructed using sound engineering principles, will not affect the safety of the existing dam.

1/ Androscoggin Water Power Company, 20 FERC ¶ 62,483 (1982).

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Economic Feasibility

Although no new capacity is proposed, the increase in the gross head from 22 feet to 25 feet would result in an increase in the average annual generation from 60,000,000 kWh to 68,000,000 kWh. 2/ The proposed project would be economically feasible based on project power being sold at PURPA rates for the State of Maine, adjusted for escalation.

ENVIRONMENTAL CONSIDERATIONS

Minimum Flows

The U.S. Department of the Interior (Interior), and the Maine Departments of Environmental Protection (DEP) and Marine Resources (DMR) recommend that the Licensee release an instantaneous minimum flow of 1,710 cubic feet per second (cfs), as measured immediately downstream from the project powerhouse, or inflow to the project reservoir, whichever is less, minus 5 million gallons per day process water and 100 cfs for pond level control, for the protection of downstream aquatic resources in the Androscoggin River. By order issued June 21, 1985, the Commission amended Article 32 of the project license to provide for these minimum flow requirements. 3/

Fish Passage Facilities

Interior, DMR, and DEP state that the Licensee shall construct downstream fish passage facilities concurrently with construction of the proposed project and that such facilities shall be operational concurrent with the commencement of project operation. The agencies also recommend that upstream passage facilities be constructed and operational by May 1, 1988.

The Licensee has agreed to install both upstream and downstream fish passage facilities as part of project construction. The Licensee states that facilities have been designed and that approval of the designs is being sought from the U.S. Fish and Wildlife Service (FWS), and the Maine fish and wildlife agencies. The Licensee further states that it intends to construct the fish passage facilities within the time frame prescribed by the agencies.

2/ The proposed project generating 68,000,000 kWh annually would utilize a renewable resource that will save the equivalent of approximately 111,656 barrels of oil or 31,484 tons of coal per year.

3/ 31 FERC ¶ 62,369 (1985).

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Article 34 of the license requires the Licensee to file for Commission approval, at least 60 days prior to commencement of construction of the downstream fish passage facilities, functional design drawings prepared in consultation with the Maine Department of Inland Fisheries and Wildlife (DIFW), DMR, FWS, and National Marine Fisheries Service (NMFS).

With respect to upstream fish passage facilities, the resource agencies stated during the prelicense consultation period that upstream passage facilities would be dependent upon (a) the alewife run reaching 10,000 adults or (b) the shad run reaching 500 adults through the downstream Brunswick-Topsham Project (FERC No. 2284), plus satisfactory exclusion of undesirable fish species above the Brunswick-Topsham Dam, or upon approval of DIFW. The agencies further stated that no upstream passage facility would be requested until the Brunswick-Topsham fishway has been in operation at least 5 years.

The fish passage facility at Brunswick-Topsham began operation on April 25, 1983. During 1985, approximately 24,000 alewife and 20 Atlantic salmon were collected at the fishway. Undesirable fish species (i.e., carp) have been excluded thus far from the Brunswick-Topsham head pond. Therefore, upstream fish passage facilities would be desirable at the Pejepscot Project by 1988 to continue the fish restoration effort. Article 34 is revised herein to also require functional design drawings of an upstream fish passage facility.

Reservoir Clearing Plan

The DEP states that prior to the filling of the reservoir, all trees in the reservoir area which may die as a result of inundation should be cleared. Standard Article 20 of the license requires the Licensee to submit for Commission approval a plan for clearing the reservoir.

Erosion and Sediment Control

The DEP is concerned about project-related erosion, sedimentation and reservoir shoreline stability, and has conditioned the Section 401 Water Quality Certificate to require DEP review and approval of specific erosion and sediment control plans prior to project construction. DEP is also requiring the Licensee to undertake a survey of the impoundment area and to stabilize all shoreline areas that appear susceptible to sloughing or erosion as a result of project operation.

The Licensee states that it has no objection to such terms and conditions or to the extent considered necessary, their inclusion as articles in any amended license issued.

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Placement and removal of cofferdams, excavations and disposal of spoil, reservoir clearing, and other soil-disturbing construction activities would result in unavoidable, localized, temporary increases in erosion and sedimentation. Project operations may aggravate shoreline stability. A plan to minimize such should be formulated following DEP and Soil Conservation Service guidelines. Article 39 requires the Licensee to consult with the DEP and other appropriate resource agencies in preparing and implementing an erosion and sediment control and slope stability plan for the project.

Recreational Resources

The Maine Department of Conservation has conducted a recreational analysis of the waterways throughout the state and has determined that the portion of the Androscoggin River, on which the Pejepscot Project is located, is one of the most deficient in access points for recreational boating. In the 1977 Maine State Comprehensive Outdoor Recreation Plan (SCORP), deficiencies in recreational facilities were identified for picnicking, bicycle trails, interpretive trails, swimming, cross-county skiing, hiking, boating, and downhill skiing. DEP also identifies deficiencies in recreational facilities in the project area and recommends that the Licensee be required to consult with State and local resource agencies and prepare a plan to address future recreational needs in the project area. The National Park Service recommends that the Licensee, after consultation with the State and local resource agencies, design, construct, and commence operation of boat access facilities within 24 months of issuance of this amendment to license.

The Licensee agrees that the project reservoir may provide a recreational resource for fishing and boating and has agreed to the conditions of the DEP that a study be conducted assessing future recreational access needs and to provide such access facilities as may be required in the future.

The project impoundment generally has limited access due to steep slopes along the river embankments. There are also high flow velocities within the project area. Therefore, before any recreational development takes place, an assessment of what practical recreational development is feasible with consideration given to public safety should be undertaken. Article 40 requires the Licensee to consult with State and local agencies and to prepare and file with the Commission, for approval, a report that describes the recreational measures and facilities needed and that the Licensee proposes to implement.

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Cultural Resources

Article 29 of the license issued September 16, 1982, requires the Licensee to provide a plan to mitigate any impacts to historical or archeological resources discovered during construction or development of any project works. Since the license was issued, one archeological site potentially eligible for inclusion in the National Register of Historic Places has been located within the project area. The Maine State Historic Preservation Officer (SHPO) has stated that the project would have no effect on the site if the cultural resources management plan agreed to by the Licensee, the SHPO, and a neighboring landowner, is implemented. Therefore, Article 29 of the license is revised, herein, to require implementation of this plan and other measures necessary to protect any archeological or historic sites discovered during construction.

OTHER ENVIRONMENTAL CONCERNS

Water Quality Certification as required by Section 401 of the Clean Water Act, was granted for the proposed amendment of the license for the project on June 12, 1985. No Federally listed threatened or endangered species or critical habitat, or sites listed on or eligible for listing on the National Register of Historic Places will be affected by the project.

FINDING OF NO SIGNIFICANT IMPACT

Raising the project impoundment surface elevation three feet will result in the inundation of approximately 22 acres of land currently subject to seasonal flooding. The land cover types include mixed hardwoods, softwoods, and old field vegetation. The impoundment would also encroach on 75 feet of riverine habitat. The resource agencies and Staff have reviewed studies on the impact of increasing the impoundment surface elevation and have concluded that no significant adverse impacts would occur to the fish and wildlife resources of the project area.

In accordance with the National Environmental Policy Act of 1969, an Environmental Assessment was prepared for the Amendment of License for the Pejepscot Project (FERC No. 4784-007). 4/ On the

4/ Environmental Assessment, Pejepscot Project, FERC No. 4784-007 Maine, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, December 18, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

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basis of the record and of Staff's independent analysis, approval of the amendment to the license for the project, as conditioned herein, will not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The proposed modifications make good use of the flow and fall of the Androscoggin River, would not be in conflict with any planned or potential development, and would be best adapted to the comprehensive development of the Androscoggin River for beneficial public uses upon compliance with the terms and conditions of the amended license.

The Director of the Office of Hydropower Licensing or the Director's designee, under 18 C.F.R. §375.314, orders:

(A) The license for the Pejepscot Project No. 4784 is amended by this order, effective the first day of the month in which this order is issued.

(B) The description of the project contained in ordering paragraph (C)(1) of the license is amended as follows:

(1) Project works consisting of: (1) a rock, gravel, and concrete filled timber crib dam, which is 430 feet long, has a maximum height of 43 feet and has a crest elevation, including a two-foot-high concrete cap and three-foot-high crest gates with hydraulic operators, at 67.5 feet above mean sea level; (2) a reservoir with a normal surface area of about 225 acres at elevation 67.5 feet above mean sea level extending about 3 miles upstream from the dam; (3) a powerhouse, with associated headworks and intake structures, located on the left bank of the river adjacent to the dam, and containing four turbine-generators with a total rated capacity of 13,880 kW; (4) upstream and downstream fish passage facilities; (5) the 900-foot-long, 12.5-kV bus connection; (6) the 50-foot-long, 0.480-kV and 12.5-kV generator leads; and (7) appurtenant facilities.

(C) The following Exhibit F is approved and made a part of this license.

<u>Exhibit Drawing No.</u>	<u>FERC No.</u>	<u>Description</u>	<u>Superseding FERC No.</u>
F-1	4784-17	General Plan Dam and Power- house	4784-1

The superseded drawing is deleted from the license.

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(D) Articles 29 and 34 are revised as follows:

Article 29. Licensee shall implement the cultural resources management plan developed in consultation with the Maine State Historic Preservation Officer (SHPO) and filed with the Commission by letter dated December 2, 1985. Within 3 years of the date of this order, Licensee shall file with the Commission a copy of a letter from the SHPO indicating that the plan has been implemented in a manner consistent with the SHPO's recommendations, or a copy of a letter to the SHPO indicating that the SHPO has been provided 60 days to submit comments, if the SHPO does not respond.

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

Article 34. The Licensee shall, at least 60 days prior to commencement of construction of the upstream and downstream fish passage facilities, file for Commission approval functional design drawings of the proposed facilities, prepared in consultation with the Maine Department of Marine Resources, the Maine Department of Inland Fisheries and Wildlife, the Atlantic Sea Run Salmon Commission, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. Letters from the agencies documenting consultation shall be attached to the filing. Further, Licensee shall file as-built drawings with the Commission within 6 months after completion of the passage facilities.

(E) The license is also subject to following additional articles:

Article 39. Licensee shall, after consultation with the Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife, and the U.S. Fish and Wildlife Service, prepare and file with the Commission, within 1 year from the date of issuance of this license, a plan to control

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erosion, dust, and slope stability, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project, including spoil disposal areas. The plan shall also include: descriptions and map locations of control measures; an implementation schedule; monitoring and maintenance programs for project construction and operation; and provisions for periodic review of the plan and for making any necessary revisions to the plan. Documentation of agency consultation on the plan and copies of any agency comments or recommendations shall be included in the filing.

In the event that the Licensee does not concur with any agency recommendations, Licensee shall provide a discussion of the reasons for not concurring, based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the Licensee may commence ground disturbing or spoil activities at the project 90 days after filing the above plan.

Article 40. Licensee shall, after consultation with the Maine Department of Conservation, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Androscoggin Valley Regional Planning Commission, and the Towns of Topsham, Durham, and Brunswick, prepare and file with the Commission for approval within 1 year from the date of issuance of this order, a revised Report on Recreational Resources. The report shall reflect an analysis of the future recreational needs in the region and shall as a minimum consider measures and facilities related to: public safety, fishing and boating access above and below the dam, picnicking, parking, sanitation, public information, and education, and the needs of the handicapped. Further, the filing shall include a drawing showing the type and location of any facilities to be provided at the project, a construction schedule, and documentation of consultation with the above-named agencies.

(F) This order is final unless appealed to the Commission by any party within 30 days from the issuance date of this order under 18 C.F.R. 385.1902 (1985). The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. 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.

Don Garber

Kenneth M. Pusateri
Acting Director, Office of
Hydropower Licensing

Project No. 4784-007

IN TESTIMONY of its acknowledgment of acceptance of all the terms and conditions of this order, Androscoggin Water 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 assented 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)

UNITED STATES OF AMERICA 65 FERC • 62, 150
FEDERAL ENERGY REGULATORY COMMISSIONTopsham Hydro Partners, L.P.
Chrysler Capitol Corporation
and Utilco Group, Inc.Project No. 4784-045
MaineORDER AMENDING LICENSE
(ISSUED NOVEMBER 18, 1993)

On October 6, 1993, and supplemented on November 9, 1993, Topsham Hydro Partners, licensee for the Pejepscot Project, FERC No. 4784, filed a revised exhibit A for an amendment of its license.¹ The filing was made to correct discrepancies between the project description as stated in the license and the project's as-built conditions.

Background

The Pejepscot Project consists of the Pejepscot Dam and a powerhouse containing four generating units, for a total installed capacity of 13,880 kW. The units are: Unit 1 (new unit), with an installed capacity of 12,300 kW; Unit 2 (rehab unit 21), with an installed capacity of 490 kW; Unit 3 (rehab unit 22), with an installed capacity of 545 kW; and Unit 4 (rehab unit 23), with an installed capacity of 545 kW.

An Order Amending License, issued December 26, 1985,² increased the project's gross head from 22 feet to 25 feet by raising the Pejepscot reservoir three feet. In the order, paragraph (B)(1) of the project description did not include an 80-foot-abutment wall on the right (west) bank of the river, which is, in fact, part of the dam depicted on exhibit F, Sheet 1.3

The dam length of 430 feet was the length of the main structure. The December 1984 application depicted the length of the rehabilitated dam to be 510 feet. Final design of the project resulted in a dam length of 560 feet, including space for the upstream fish passage facilities.⁴

1 20 FERC •62,483, Order Issuing License (Major), issued September 16, 1982.

2 33 FERC •62,441.

3 Order Approving As-Built Exhibits, 43 FERC •62,142, issued May 5, 1988.

4 36 FERC •62,097, issued July 29, 1986.

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Project Works

The licensee states in its filing, that the new rehabilitated timber crib section of the dam is 82 feet wide and approximately 47.5 feet high, and includes five 3-foot-high hydraulic crest gates to raise the reservoir level to 67.5 msl. This as-built configuration was approved by the Commission Order Approving As-Built Exhibits, 43 FERC •62,142, issued May 5, 1988; however, the project description as contained in the license was never modified. The description will be changed herein to reflect the as-built configuration of the Pejepscot Project.

This order correcting minor discrepancies within the project description for the Pejepscot Project does not materially affect the Commission's determination that the Pejepscot Project is best adapted to a comprehensive plan for the waterway. This order does not authorize a change in the installed capacity and doesn't affect the annual charges for the Pejepscot Project.

The Director orders:

(A) The license for the Pejepscot Project, FERC No. 4784, is amended as provided by this order, effective the first day of the month in which this order is issued.

(B) The exhibit A filed on October 6, 1993, and supplemented on November 9, 1993, conforms to the Commission's rules and regulations and is approved and made a part of the license. The superseded exhibit A is eliminated from the license.

(C) The project description in Ordering Paragraph (C) (1) of the license is amended as follows:

(1) Project works consisting of: (1) a 560-foot-long dam, including a 430-foot-long concrete-filled timber crib section and 130-foot-long concrete and rock section (including space for the upstream fish passage facility, crest gates, and piers), with a maximum height of 47.5 feet, including five 3-foot-high hydraulic crest gates; (2) a reservoir with a normal surface area of 225 acres at elevation 67.5 feet msl extending 3 miles upstream from the dam; (3) a powerhouse, with associated headworks and intake with two sectional bulkhead gates, located on the left bank of the river adjacent to the dam and containing four turbine-generators with a total rated capacity of 13,880 kW; (4) upstream and downstream fish passage facilities; (5) the 900-foot-long, 15 kV cable connections to the substations; and (6) appurtenant facilities.

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(D) The licensee shall notify the Commission of any future changes within the project works.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. *385.713.

J. Mark Robinson
Director, Division of Project
Compliance and Administration

141 FERC ¶ 62,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Topsham Hydro Partners Limited Partnership

Project No. 4784-079

ORDER APPROVING INTERIM SPECIES PROTECTION PLAN
FOR ATLANTIC SALMON

(Issued November 28, 2012)

1. On April 12, 2012, and supplemented October 16, 2012, Topsham Hydro Partners Limited Partnership (licensee) filed an Interim Species Protection Plan (Interim SPP) outlining measures it would take in the years 2012 through 2016 to increase protection of federally-listed Atlantic salmon during operation of the Pejepscot Project. The Interim SPP was attached to a draft Biological Assessment (BA) that the licensee filed on the same date, which was then adopted by the Commission and forwarded to the National Marine Fisheries Service (NMFS). This order addresses the licensee's Interim SPP, as well as the actions required by NMFS through its Biological Opinion (BO), which was filed with the Commission on October 10, 2012. The Pejepscot Project is located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties, Maine.

BACKGROUND

2. The Pejepscot Project includes a 560-foot-long, 48-foot-high, rock- and gravel-filled timber crib overflow dam, which is topped with five 96-foot-long, 3-foot-tall hydraulically operated gates separated by concrete piers. The project's two powerhouses contain a total of four generating units. The project is operated in a run-of-river mode.

3. Pursuant to article 34 of the 1982 license for the Pejepscot Project,¹ as amended,² and standard license article 15, upstream and downstream fish passage facilities have been installed at the Pejepscot Project. The passage facilities were designed in consultation with the Maine Department of Marine Resources (Maine DMR), Maine Department of Inland Fisheries and Wildlife (Maine DIFW), and the U.S. Fish and Wildlife Service (FWS). The focus of fish passage at the project has been restoration of

¹ Order Issuing License (Major) and Denying Application for Preliminary Permit, 20 FERC ¶ 62,483 (issued September 16, 1982).

² Order Amending License, 33 FERC ¶ 62,441 (issued December 26, 1985).

American shad, alewife, and blueback herring populations, while working to increase the potential to restore Atlantic salmon and American eel.

4. The project's upstream passage facilities consist of a fish lift that raises migratory fish in a hopper tank from the tailrace to the level of the reservoir, where it discharges into a metal channel that sluices into the reservoir. Four pumps supply attraction flows that are automatically adjusted according to the level of generation releases. Additional attraction flows are also provided through the hopper. The lift operates every two hours, for a total of five lifts per day, during upstream passage seasons. Passage seasons are identified in annual meetings with Maine DMR pursuant to a Commission order issued August 19, 1997.³ In 2010 and 2011, the upstream fish lift was operated from late May to late October, and from late May to early November, respectively.

5. The project's downstream fish passage facilities use two entrance weirs with wide-spaced trashracks that prevent entrance of large debris. Attraction lights are located near the entrances at the water surface. Flows of about 40 cubic feet per second pass through each weir into two pipes which transport fish to the tailrace below the dam. The downstream passage facilities are normally operated each year from April 1 to June 30, and from October 15 to December 31, as river conditions allow, as directed annually by Maine DMR.

6. During downstream fish passage seasons, the project's fish passage facilities are inspected daily and trash is removed from the trashracks at the passage entrances as necessary. However, access to the trashracks at the passage entrances can be difficult, and fouling of the racks reduces the effectiveness of downstream fish bypass facilities.

7. Currently, upstream-migrating Atlantic salmon are tagged with passive integrated transponder (PIT) tags as they pass through the fish lift at the Brunswick Project (P-2284), located immediately downstream on the Androscoggin River. These tagged fish are then monitored as they move upstream through the passage facilities at the Pejepscot Project, and as they continue on through the passage facilities at the Worumbo Project (P-3428), approximately 3.5 miles above Pejepscot. The need for additional fish passage studies at the Pejepscot Project is discussed with Maine DMR at the same annual meetings in which passage operations for the coming season are determined.

LICENSEE'S INTERIM SPECIES PROTECTION PLAN

8. The licensee filed its Interim SPP in order to proactively address additional protection and enhancement of federally-listed Atlantic salmon ahead of any pending

³ Order Approving Modifications to the Downstream Fish Passage Facility and Operating Plan, 80 FERC ¶ 62,160.

action before the Commission, such as relicensing of the project. The license for the Pejepscot Project expires August 31, 2022.

9. The Interim SPP identifies measures the licensee would take to avoid and minimize potential adverse effects of project operation on Atlantic salmon, and evaluate the effectiveness of Atlantic salmon protection. The plan covers a five-year period, beginning in late 2012, during which the licensee would also study and, as necessary, develop additional measures to protect Atlantic salmon at the project.

Expansion of Fish Passage Operation and Debris Management Investigation

10. In 2012, the licensee would expand the period in which upstream passage facilities are operated to cover the full Atlantic salmon upstream migration season of April 15 to November 15, as river conditions allow, or to coincide with operation of the upstream fish passage facilities at the downstream Brunswick Project. Operation of the downstream passage facilities would be expanded to the full salmon downstream migration season of April 1 to December 31, as river conditions allow.

11. The licensee would also complete investigations into improving the removal of debris that can block the entrances to the downstream fish passage facilities. Potential options include installation of new access platforms that would help ensure safe access for removal of debris and guiding it towards the project's trash mechanical rake.

Salmon Passage Studies and Debris Management Implementation

12. Under the Interim SPP, the licensee would conduct studies of upstream and downstream passage of Atlantic salmon at the project for up to three years beginning in 2013, with agency consultation after the second year (2014) to determine if a third year is necessary based on study results. The upstream and downstream passage studies would be conducted in cooperation with other dam owners on the Androscoggin River, to the extent practicable.

13. The licensee is now in the process of developing detailed plans and schedules for its passage studies in consultation with NMFS, FWS, and Maine DMR. The upstream passage studies would begin in June 2013, and would use PIT-tagged salmon and detection equipment at the entrance and exit of the project's upstream fish passage facilities to evaluate upstream passage effectiveness. The downstream passage studies would begin in May 2013, and would use radio-tagged salmon smolts to determine the effectiveness of the project's downstream passage facilities, as well as smolt delay and survival. Downstream passage studies of salmon kelts would be performed in the future in accordance with schedules coordinated with the resource agencies. The licensee indicates that, after completion of agency consultation on the upstream and downstream passage study plans, it would file the study plans with the Commission, including

documentation of agency consultation for Commission approval. The licensee would then implement the studies. Also in 2013, 2014, and 2015, the licensee would implement debris management measures based on its investigations in 2012.

Evaluation of Passage Study Results and Identification of Possible Enhancements

14. In late 2015 and 2016, the licensee would evaluate the results of the upstream and downstream fish passage studies in consultation with NMFS and FWS. If it is determined that enhancements would be appropriate to further protect Atlantic salmon, the licensee would prepare a revised SPP, to potentially include further salmon protection and enhancement measures based on the study results, to be effective until a new project license is issued. Preparation of a revised SPP would require re-initiation of section 7 consultation under the Endangered Species Act (ESA).

Reporting

15. The licensee would prepare annual reports on each year's passage study results in coordination with the resource agencies, to include copies of resource agency consultation, and file the reports with the Commission by March 31 of the years following the studies. The reports would include assessments of the need for continuing the studies through 2015. In 2016, the licensee would prepare a summary report of the results of the upstream and downstream fish passage studies. The licensee would also consult with the resource agencies to determine the need to prepare a revised SPP as discussed above. The licensee would file any revised SPP for Commission approval.

ENDANGERED SPECIES ACT CONSULTATION

16. Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species. In this instance, because Atlantic salmon using project waters have been federally listed as endangered species,⁴ the licensee acted proactively by coordinating with NMFS to enhance protection of federally-listed Atlantic salmon during ongoing project operation. On June 22, 2010, the licensee requested that the Commission designate it as the Commission's non-federal representative in order to informally consult with NMFS under section 7 of the ESA regarding project operation. The Commission designated the licensee as its non-federal representative in a letter dated July 14, 2010. The licensee developed its draft BA, with its Interim SPP, in coordination with NMFS,

⁴ Atlantic salmon that use the Androscoggin River are part of the species' Gulf of Maine Distinct Population Segment, which was listed as endangered under the ESA on November 17, 2000. The river reach where the Pejepscot Project is located is within designated critical habitat of these salmon.

and filed it with the Commission on April 12, 2012. The Commission adopted the BA without modification and forwarded it to NMFS on May 7, 2012. Based on the analysis in the BA, the Commission concluded that project operation, including implementation of the Interim SPP, may adversely affect federally-listed Atlantic salmon.

17. In response to the BA, NMFS filed its September 19, 2012 BO with the Commission on October 10, 2012. In its BO, NMFS concluded that ongoing project operation and the Interim SPP may adversely affect, but is not likely to jeopardize, the continued existence of federally-listed Atlantic salmon. Although project operation would continue to adversely affect essential features of the species' designated critical habitat, NMFS anticipated that the Interim SPP would improve the functioning of critical habitat in the Androscoggin River. NMFS, therefore, concurred with the Commission that the action would not lead to adverse modification or destruction of critical habitat.

18. The incidental take statement included with NMFS's BO contains one reasonable and prudent measure and four implementing terms and conditions. The reasonable and prudent measure indicate that the Commission must ensure that the licensee completes an annual monitoring and reporting program to confirm that it is minimizing incidental take of federally-listed Atlantic salmon, and that it reports all project-related observations of dead or injured salmon to NMFS.

19. The terms and conditions in the incidental take statement are non-discretionary actions that the Commission must comply with in order to be exempt from prohibitions of section 9 of the ESA. In summary, the terms and conditions involve: (1) notifying NMFS of any changes in operation, including maintenance activities and debris management, during the term of the Interim SPP and allowing NMFS to inspect fishways at the project at least annually; (2) contacting NMFS within 24 hours of any interactions with Atlantic salmon, including non-lethal and lethal takes; (3) in the event of lethal takes, photographing, measuring, and preserving any dead specimens or body parts until disposal is discussed with NMFS; and (4) preparing a plan in consultation with NMFS to study the survival of migrating salmon adults, smolts, and kelts at the Pejepscot Project. The terms and conditions are attached to this order as Appendix A.

20. NMFS also included four conservation recommendations in its September 19, 2012 BO. Conservation recommendations are discretionary agency activities designed to minimize or avoid effects to listed species or critical habitat, to help implement recovery plans, or to develop information. The first conservation recommendation provides guidance for contaminant testing of any salmon involved in lethal take at the project. While the licensee may choose to pursue this recommendation, we will not require the license to do so, because there is no direct link between the recommendation and protection of salmon at the project. The last three recommendations broadly address operation of hydroelectric projects under Commission jurisdiction that are within the range of federally-listed Atlantic salmon, and are not specific to the Pejepscot Project.

DISCUSSION AND CONCLUSIONS

21. Implementation of the licensee's Interim SPP, filed with the Commission on April 12, 2012, would help protect and enhance federally-listed Atlantic salmon in the waters of the Pejepscot Project. The Interim SPP would be implemented in the years 2012 through 2016, in consultation with NMFS and other resource agencies, by expanding periods of fish passage operation, improving management of debris that can block the fish passage facilities, and conducting fish passage studies in order to identify possible passage enhancements. Implementation of the Interim SPP would also help to ensure compliance with the ESA. The licensee's Interim SPP should therefore be approved.
22. Approval of the Interim SPP does not require amendment of the project license beyond incorporation of the terms and conditions of NMFS's incidental take permit (as discussed below). However, implementation of some elements of the Interim SPP may involve changes to the project and its operation that would require license amendments or other approvals from the Commission. For example, the licensee indicates that new access platforms may be installed to improve debris removal. Plans for such installations would require Commission review and approval. Also, the plans for fish passage studies now being developed by the licensee and resource agencies will need to be filed for Commission approval prior to the start of the studies, and will need to include copies of consultation with NMFS, FWS, Maine DMR, and Maine DIFW. In addition, the licensee should review the project license and determine whether any other actions under the Interim SPP may require Commission approval, and contact the Commission as far in advance as possible to discuss the need for approvals.
23. We note that changes to annual fish passage operating periods would not require Commission approval, because operating periods are directed each year by Maine DMR pursuant to the Commission's August 19, 1997 order. Any decisions regarding operating periods should be made in consultation with Maine DMR, and other resource agencies as appropriate, in part because changes to fish passage operation could affect passage of fishes other than Atlantic salmon, such as alewife.
24. The licensee must follow the terms and conditions of the incidental take permit included with NMFS's September 19, 2012 BO to ensure exemption from the take prohibitions of Section 9 of the ESA. Therefore, the terms and conditions, which are attached to this order as Appendix A, are incorporated into the license for the Pejepscot Project through paragraph (B) of this order.
25. The terms and conditions in the incidental take statement include requirements for contacting NMFS in the event of changes in project operations and any interactions with Atlantic salmon. The licensee should inform Commission staff, via telephone or email,

as soon as possible after contacting NMFS of any issues pursuant to the terms and conditions. The licensee should then file a written report on the issue within 15 days.

26. The licensee proposes to prepare annual reports on each year's passage study results, and file the reports with the Commission by March 31 of the years following the studies. The annual reports should be expanded to keep Commission staff apprised of the licensee's progress in implementing all the measures in the Interim SPP, and should include any other relevant information regarding Atlantic salmon at the project. Therefore, each annual Interim SPP progress report should include, at minimum: (1) results of fish passage studies, and a summary of progress on the elements described in the Interim SPP; (2) a summary of consultation and other correspondence with NMFS and other resource agencies regarding progress on the elements in the Interim SPP, as well as any other pertinent issues regarding Atlantic salmon; (3) anticipated schedules associated with the elements in the Interim SPP; and (4) descriptions of any issues that arise that may affect the timely completion of the elements in the Interim SPP, and how the issues are being addressed in consultation with NMFS and other resource agencies. The annual progress reports should also describe any plans and schedules discussed with NMFS regarding revisions to the Interim SPP and preparation of a revised SPP. The annual progress reports should be filed with the Commission for the years 2012 through 2016, which are the years included in the Interim SPP, by March 31 of each following year. Therefore, the first annual Interim SPP progress report, for 2012, should be filed by March 31, 2013. Copies of the annual Interim SPP progress reports should be provided to NMFS, FWS, Maine DMR, and Maine DIFW at the same time they are filed with the Commission.

The Director orders:

(A) Topsham Hydro Partners Limited Partnership's (licensee) Interim Species Protection Plan for the Pejepscot Project, filed April 12, 2012, as supplemented October 16, 2012, is approved.

(B) The terms and conditions of the incidental take permit included with the National Marine Fisheries Service's September 19, 2012 Biological Opinion are hereby incorporated into the license for the Pejepscot Project. The terms and conditions are attached to this order as Appendix A.

(C) The licensee shall inform Commission staff, via telephone or email, as soon as possible after contacting the National Marine Fisheries Service (NMFS) of any issues pursuant to the terms and conditions of the incidental take statement included with the NMFS September 19, 2012 Biological Opinion. The licensee shall then file a written report on the issue within 15 days.

(D) The licensee shall file annual Interim Species Protection Plan (Interim SPP) progress reports with the Commission. Each annual Interim SPP report shall include, at minimum: (1) results of fish passage studies, and a summary of progress on the elements described in the Interim SPP; (2) a summary of consultation and other correspondence with the National Marine Fisheries Service (NMFS) and other resource agencies regarding progress on the elements in the Interim SPP, as well as any other pertinent issues regarding Atlantic salmon; (3) anticipated schedules associated with the elements in the Interim SPP; and (4) descriptions of any issues that arise that may affect the timely completion of the elements in the Interim SPP, and how the issues are being addressed in consultation with NMFS and other resource agencies. The annual progress reports shall also describe any plans and schedules discussed with NMFS regarding revisions to the Interim SPP and preparation of a revised SPP. The annual progress reports shall be filed with the Commission for the years 2012 through 2016, which are the years included in the Interim SPP, by March 31 of each following year. Therefore, the first annual Interim SPP progress report, for 2012, shall be filed by March 31, 2013. Copies of the annual Interim SPP progress reports shall be provided to NMFS, U.S. Fish and Wildlife Service, Maine Department of Marine Resources, and Maine Department of Inland Fisheries and Wildlife at the same time they are filed with the Commission.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking
Chief, Environmental Review Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICEREASONABLE AND PRUDENT MEASURES
AND TERMS AND CONDITIONS OF THE INCIDENTAL TAKE STATEMENT
INCLUDED IN THE BIOLOGICAL OPINION FOR THE
PEJEPSCOT PROJECT (FERC NO. 4784)

Filed October 10, 2012

Reasonable and Prudent Measures

1. FERC must ensure, through enforceable conditions of the project license, that Topsham Hydro complete an annual monitoring and reporting program to confirm that Topsham Hydro is minimizing incidental take and reporting all project-related observations of dead or injured salmon to NMFS.

Terms and Conditions

1. To implement reasonable and prudent measure #1, FERC must require Topsham Hydro to do the following:
 - a. Notify NMFS of any changes in operation including maintenance activities and debris management at the project during the term of the ISPP. Also, allow NMFS to inspect fishways at the projects at least annually.
 - b. Contact NMFS within 24 hours of any interactions with Atlantic salmon, including non-lethal and lethal takes (Dan Tierney: by email (Dan.Tierney@noaa.gov) or phone (207) 866- 3755 and the Section 7 Coordinator (incidental.take@noaa.gov)
 - c. In the event of any lethal takes, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with NMFS.
 - d. Prepare in consultation with NMFS a plan to study the survival of migrating adults, smolts, and kelts at the Pejepscot Project.

168 FERC ¶ 62,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Topsham Hydro Partners Limited

Project No. 4784-089

ORDER APPROVING FINAL SPECIES PROTECTION PLAN FOR ATLANTIC
SALMON

(Issued July 10, 2019)

1. On December 22, 2016, Topsham Hydro Partners Limited Partnership, licensee for the Pejepscot Hydroelectric Project No. 4784, filed, for Commission approval, a final species protection plan (Final SPP) and draft biological assessment (BA) to address measures to protect the Gulf of Maine (GOM) Distinct Population Segment (DPS) of Atlantic salmon (*Salmo salar*), listed as endangered under the Endangered Species Act (ESA). The Pejepscot Project was licensed on September 16, 1982,¹ and is located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties, Maine. The project does not occupy federal lands.

Background

2. The Pejepscot Project is located at river mile 10.6 and is the second dam on the mainstem of the Androscoggin River. Project features include a 560-foot-long, 48-foot-high, rock-and-gravel-filled timber crib overflow dam, which is topped with five 96-foot-long, 3-foot-tall hydraulically operated gates separated by concrete piers. The project's two powerhouses contain a total of four generating units. The project is operated in a run-of-river mode. The Brunswick Project No. 2284 is located downstream of the Pejepscot Project at river mile 6 (head of tide) and is the first dam on the Androscoggin River. The Brunswick Project is licensed to Brookfield White Pine Hydro, LLC.

3. The license for the Pejepscot Project expires on August 31, 2022. The licensee filed a Notice of Intent (NOI) and Pre-Application Document (PAD) to relicense the project on August 31, 2017. The NOI and PAD were noticed by the Commission on October 30, 2017, and relicensing of the project is ongoing.

¹ *Androscoggin Water Power Company*, 20 FERC ¶ 62,483 (1982). See also *Androscoggin Water Power Company*, 33 FERC ¶ 62,441 (1985).

4. Project features include upstream and downstream fish passage facilities that have historically focused on passage of alewife (*Alosa pseudoharengus*) and American shad (*A. sapidissima*). The listing of the GOM DPS of Atlantic salmon as endangered under the ESA was expanded to include the Androscoggin River in 2009.² The boundaries of the freshwater range of GOM DPS Atlantic salmon on the Androscoggin River include the project area. The river reach where the project is located is also within the designated critical habitat of the Merrymeeting Bay salmon habitat recovery unit (SHRU) for Atlantic salmon.

5. Upstream fish passage facilities consist of a fish lift that raises migratory fish in a hopper about 30 feet vertically from near the powerhouse tailrace to reservoir level behind the dam. The lift discharges fish into a 110-foot-long metal channel about 6 feet wide and 8 feet high that includes a viewing window. The lift operates every two hours beginning at 8 a.m. during the upstream passage season. Passage seasons are identified in consultation with the Maine DMR.

6. Downstream fish passage facilities consist of two entry weirs, one on either side of the turbine intake, with attraction lights near the water surface. Flows of about 40 cubic feet per second (cfs) pass through each weir into a pipe which transport fish to the tailrace below the dam. Downstream fish passage facilities are normally operated from April 1 to December 31, as river conditions allow, and as directed by the Maine DMR.

7. On November 28, 2012, the Commission approved an Interim Species Protection Plan (Interim SPP) for the project to proactively address protection and enhancement of federally-listed Atlantic salmon.³ The Interim SPP identified measures the licensee would take to avoid and minimize potential adverse effects of project operation on Atlantic salmon, and evaluate the effectiveness of those measures. The plan covered a five-year period (2012-2016), during which the licensee evaluated upstream and downstream passage and also identified ways to protect Atlantic salmon at the project. Annual reports on the licensee's progress were filed with the Commission in 2013-2015.

8. Following completion of the studies under the Interim SPP, the licensee consulted with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS) and the Maine Department of Marine Resources (Maine DMR), and prepared a draft Biological Assessment (BA) and the Final SPP, which is the subject of this order.

² Designation of critical habitat for Atlantic salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment. Final Rule. Federal Register, Vol. 74, No. 117. June 19, 2009.

³ *Topsham Hydro Partners Limited Partnership*, 141 FERC ¶ 62,143 (2012).

Final Species Protection Plan

Upstream Passage

9. The licensee currently operates the fish lift from about April 15 to November 15, as river conditions allow, or when the fish passage facility is operational at the Brunswick Project.⁴ Operation of the upstream fish passage facilities would continue under the Final SPP with migration seasons defined annually in consultation with the Maine DMR.

Upstream Passage Monitoring

10. The licensee indicates the Maine DMR collects biological information on each Atlantic salmon using the Brunswick Project fishway. The use of PIT and/or radio tagging at the Brunswick Project, combined with tracking at the Pejepscot Project can provide valuable information on the number and timing of upstream migration by individual Atlantic salmon.

11. As part of the SPP, the licensee proposes to conduct upstream passage monitoring studies if adult Atlantic salmon begin to return to the Androscoggin River in large numbers, i.e., 40 adult Atlantic salmon of Androscoggin River origin counted at the Brunswick facility for two consecutive years.⁵ The licensee plans an adaptive management approach to determining when to implement the study. Installation of tracking equipment at the Pejepscot fish lift entrance and exit would track salmon successfully using the fishway and migrating upstream. Tagging would occur concurrent with the current collection activities at the Brunswick Project in order to minimize handling stress. Monitoring equipment would remain in place, adjusted, or equipment would be added to monitor downstream passage of kelts through late fall. Upon identifying that sufficient numbers of adults are returning to the Androscoggin River, the licensee proposes to prepare a detailed monitoring plan in consultation with and approval by the NMFS, FWS, and Maine DMR prior to implementing the study.

⁴ The Brunswick Project's fishway is operated and monitored by the Maine DMR.

⁵ From 2012 to 2016, the number of adult Atlantic salmon returning to the Androscoggin River was estimated to range from 0 fish in 2012 to 7 fish in 2016. These fish were mostly comprised of stray, hatchery-origin fish from active restoration programs on other rivers. The average number of all adult Atlantic salmon regardless of origin or whether they remained in the Androscoggin River collected at the Brunswick facility since 2003 is 11.8 fish.

12. In addition to this study, the licensee proposes to install a video camera to monitor the number of Atlantic salmon using the project's fish lift, in order to quantify the number of Atlantic salmon passing the project annually.

Downstream Atlantic Salmon Passage Performance Standard

13. The licensee proposes to operate the project and downstream fish passage facilities to meet a minimum performance standard for downstream migrating Atlantic salmon of 91.6 percent survival, evaluated by being within the lower and upper 95 percent confidence limits. The licensee indicates this standard represents the estimated take that was included in the Incidental Take Statement of the BO covering the Interim SPP. In the event future monitoring reveals that the performance standard is not being met, the licensee proposes to evaluate, in consultation with NMFS and the other resource agencies, additional measures designed to direct migrating salmon to the most effective passage routes or implement additional mitigation measures, as discussed below.

14. The licensee also indicates that additional monitoring may include an evaluation of alternative spill conditions and information from the studies proposed may result in changes to the plan through adaptive management.

Downstream Passage Monitoring Study

15. The licensee indicates studies conducted for the Interim SPP found that in years when spill was limited, tagged smolts used the powerhouse route at higher rates and overall passage survival was lower than at other times. When river flows were higher and passage over the spillway was an option, most smolts used the spillway or the downstream fish passage facilities.

16. The licensee proposes to conduct a one-year passage effectiveness study to evaluate the downstream fishway effectiveness under additional spill conditions and confirm compliance with the performance standard. Results of this study would be used to determine if any additional operational modifications are appropriate to enhance smolt passage survival at the project. The licensee proposes to consult with the resource agencies to develop a detailed downstream smolt passage study and obtain approval by the NMFS, FWS, and Maine DMR, prior to its implementation.⁶

⁶ This study plan was filed with the Commission on March 30, 2018. The plan included a radio-telemetry evaluation where survival of fish would be estimated using Cormack-Jolly-Seber model approach. Operation at the project was modified to provide additional spill during May 2018 by opening the section of hinged gate closest to the powerhouse to 50 percent and providing approximately 500 cfs during night hours.

Additional Measures Under Consideration

17. The licensee identified a number of different recovery actions outlined in a 2016 draft recovery plan for the GOM DPS Atlantic Salmon⁷ including developing SPPs for the three mainstem dams on the lower Androscoggin River (Brunswick, Pejepscot, and Worumbo),⁸ developing Atlantic salmon passage performance standards, identifying problems that limit use of the Little River⁹ as salmon spawning and rearing habitat, working with dam owners along the Sabattus River¹⁰ to identify fish passage improvements/dam removal, and working to ensure land use and development along the Sabattus River and around Sabattus Pond are protective of fish habitat and water quality.

18. Consistent with these recovery actions, and in cooperation with the resource agencies, the licensee identified the following measures that may be implemented to protect Atlantic salmon in the Androscoggin: (1) conducting habitat mapping surveys in the Little River; (2) continuing to work with the Maine DMR on management and research efforts related Atlantic salmon passage on the Androscoggin River; (3) provide funding support for the Maine DMR's operation of the Brunswick Project's fishway; (4) Sabattus River habitat mapping and potential fish passage improvements including dam removal or breaching; (5) Sandy River habitat enhancements; and (6) reducing avian predation.

Monitoring and Reporting

19. The licensee plans to prepare annual reports based on the previous year's activities associated with implementation of the Final SPP and provide the report to the resource agencies. Implementation of the plan would be coordinated with the resource agencies to assess the need to modify the measures described here using an adaptive management strategy, as described in the Final SPP.

⁷ The recovery plan was finalized in 2018. See <http://www.greateratlantic.fisheries.noaa.gov/protected/atlsalmon/>

⁸ A Final SPP for the Worumbo Project No. 2428 was approved by the Commission on May 11, 2018. See *Brown Bear II Hydro, Inc.*, 163 FERC ¶ 62,091 (2018). For the Brunswick Project No. 2284, the development of a Final SPP is ongoing. See the Commission's letter dated June 13, 2019.

⁹ A tributary of the Androscoggin River.

¹⁰ A tributary of the Androscoggin River.

Public Notice and Agency Consultation

20. The licensee included with its filing documentation of consultation with the resource agencies, including NMFS, FWS, and the Maine DMR. Consultation between NMFS and the licensee, Commission's non-federal representative for the purposes of informal ESA consultation, are described in the following section.

21. The Commission issued a public notice of the application on September 1, 2017. The deadline to file protests, comments, and motions to intervene was October 2, 2017. The Department of Interior, on behalf of the FWS and Bureau of Indian Affairs, filed a notice of intervention on September 28, 2017, as well as filed a letter indicating it had no comments on the plan. NMFS filed a late notice of intervention on October 16, 2017.¹¹ No additional comments or protests were filed in response to the Commission's notice.

Endangered Species Act Consultation

22. Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species. In this instance, because Atlantic salmon using project waters have been federally listed as endangered species, the licensee has acted proactively by coordinating with NMFS to enhance protection of federally-listed Atlantic salmon during ongoing project operation. By letter dated March 24, 2016, the Commission designated the licensee as its non-federal representative for the purpose of consultation on the development of the Final SPP.

23. The licensee developed its Final SPP, and draft BA, in coordination with NMFS, and filed it with the Commission on December 22, 2016. Commission staff adopted the BA without modification and forwarded it to NMFS on March 3, 2017. Based on the analysis in the BA, Commission staff concluded that project operation, including implementation of the Final SPP, may adversely affect federally-listed GOM DPS of Atlantic salmon, but would not likely adversely modify or destroy critical habitat.

24. In response to the BA, NMFS filed on August 30, 2017, its Biological Opinion (BO). In its BO, NMFS agreed that continued operation of the project may adversely affect but is not likely to jeopardize the GOM DPS of Atlantic Salmon. Further, NMFS indicated that although ongoing project operations would continue to adversely affect essential features of this habitat, approval of the Final SPP would improve the functioning of critical habitat in the Androscoggin River. In the BO, NMFS concluded that approval of the Final SPP would not result in adverse modification or destruction of critical habitat.

¹¹ Granted by Commission order dated May 20, 2019.

25. The incidental take statement included with NMFS's BO contains two reasonable and prudent measures and 13 terms and conditions to minimize and monitor incidental take of Atlantic salmon at the project. The reasonable and prudent measures require that the Commission (1) ensure the licensee implement, measure, and monitor the provisions contained in the Final SPP in a way that is adequately protective of listed Atlantic salmon; and (2) ensure that the licensee complete an annual monitoring and reporting program to confirm that they are minimizing incidental take and reporting all project-related observations of dead or injured salmon to NMFS.

26. The terms and conditions in the incidental take statement are non-discretionary actions that the Commission must comply with in order to be exempt from prohibitions of section 9 of the ESA. In summary, the terms and conditions involve: (1) preparing a plan in consultation with NMFS to study the passage and survival of migrating smolts at the project in 2018; (2) preparing in consultation with NMFS a plan to study adult salmon upstream passage efficiency and downstream survival for two consecutive years; (3) inspecting upstream and downstream fish passage facilities daily when operational; (4) operating the downstream fishway under all flow conditions, unless in an emergency situation, and install pressure transducers at the entrances and within the bypasses in order to monitor head loss through the bypass due to debris/trash; (5) notifying NMFS of any changes in operation including maintenance activities and debris management at the project within 24 hours; (6) removing any debris that could affect the ability of fish to pass either the downstream or upstream fish passages immediately upon inspection; (7) raising hydraulic flashboards within eight hours after flows recede below the hydraulic capacity of the powerhouse, except during the May spill proposal; (8) opening the upstream fishway within 24 hours of the opening of the Brunswick upstream fishway or by May 1, whichever comes first; (9) preparing an operations and maintenance plan for the fishways in consultation with NMFS; (10) submitting as-built drawings to NMFS for the current configuration of the upstream and downstream fishways; (11) allowing NMFS staff to inspect the fishways any time; including an annual engineering inspection (12) contacting NMFS within 24 hours of any interaction with Atlantic salmon, including non-lethal and lethal takes; and (13) documenting and preserving any dead specimens or body parts until disposal procedures are coordinated with NMFS. The terms and conditions are attached to this order as Appendix A.

27. NMFS also included two conservation recommendations in its August 30, 2017 BO. Conservation recommendations are discretionary agency activities designed to minimize or avoid effects to listed species or critical habitat, to help implement recovery plans, or to develop information. The first conservation recommendation suggests that the Commission should require increased protection for non-listed diadromous species migrating downstream of the project, specifically alewives and blueback herring. The second conservation recommendation suggests that the Commission should require the licensee compensate for all unavoidable effects of their actions by requiring the licensee

to carry out activities that improve the environmental baseline in the action area or in the larger Merrymeeting Bay Salmon Habitat Recovery Unit (SHRU).

Current Status

28. The Atlantic salmon smolt downstream passage study, described in the Final SPP and required by Term and Condition 1 of the BO, was implemented by the licensee in 2018. A report on the results of the study was filed with the Commission on March 26, 2019.¹² A total of 250 radio-tagged Atlantic smolts were released upstream of the project, with 173 of those smolts identified as approaching the project's trashracks. Forty-one percent of those smolts passed via spill (71 of 173); 31.8 percent passed through Unit 1 percent (55 of 173); 2.3 percent passed through the Francis units (4 of 173); while 14.5 percent (25 out of 173) passed via the downstream fish passage facilities. Passage routes for 16 smolts (9.2 percent) were unknown, but likely passed via the spillway. Two smolts approached the project dam but did not pass.

29. Residence duration was defined as the length of time from the initial detection indicating arrival at the dam to a receiver location that indicated downstream passage. Approximately 79 percent of smolts resided upstream of the dam for 4 hours or less and 86 percent did so in 12 hours or less.

30. Overall, the results indicated that the adjusted smolt survival percentage met the 92 percent minimum survival criteria (i.e., 8 percent mortality of smolts), as stipulated in the BO (attached). The report was provided to the NMFS, FWS, Maine DMR, Maine Department of Environmental Protection, and the Maine Department of Inland Fisheries and Wildlife. NMFS provided comments in correspondence dated February 15, 2019. The licensee addressed these comments in its March 26, 2019 filing with the Commission. No other agency commented on the report.

31. The adult salmon passage study required by Term and Condition 2 of the BO, has not been implemented due to low numbers of adult Atlantic salmon returning to the Androscoggin River, i.e., following two consecutive years of 40 or more pre-spawn Atlantic salmon (regardless of origin) being released upriver of the Brunswick Project.

Discussion and Conclusion

32. Implementation of the licensee's Final SSP would help protect and enhance federally-listed Atlantic salmon in the project area in the remaining years of this license term, and is required by the terms and conditions of the BO, dated August 30, 2017. The licensee must follow the terms and conditions of the incidental take permit included with

¹² This report included information on the tagged smolts passing the downstream Brunswick Project No. 2284.

BO to ensure exemption from the take prohibitions of Section 9 of the ESA. Therefore, the terms and conditions, which are attached to this order as Appendix A, are incorporated into the license for the project through paragraph (B) of this order. Approval of the Final SPP does not require amendment of the project license beyond incorporation of the terms and conditions of the NMFS's incidental take permit.

33. The Final SPP includes measures that are not specific to the Pejepscot Project and are not required by NMFS's August 30, 2017 BO. These measures include habitat mapping in the Little and Sabattus Rivers, improving passage on the Sabattus River, restoration enhancements on the Sandy River, providing funding for the Maine DMR's operation of the Brunswick fishway, reducing avian predation, and working with Maine DMR on management and research of fish passage issues on the Adroscoggin River. Implementation of these measures would require action outside the Commission's jurisdiction to enforce and therefore, we cannot approve these measures as part of this SPP.¹³ However, we encourage the licensee to cooperatively work with the resource agencies in these efforts and recognize that these measures may satisfy one of NMFS's conservation recommendations included in the BO. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

34. As with the Interim SPP, the terms and conditions in the incidental take statement include requirements for contacting NMFS in the event of changes in project operations and any interactions with Atlantic salmon, i.e., Terms and Conditions 5 and 12. In the event the licensee contacts NMFS in this regard, the licensee should then file a written report with the Commission within 30 days.

35. The licensee proposes to prepare annual reports for the resource agencies identifying the previous year's activities associated with listed protection measures and to assess the need to continue or modify these activities. The Final SPP did not include provisions for filing these reports with the Commission. Consistent with requirements of the Interim SPP and so that Commission staff can monitor implementation of the Final SPP, the licensee should file these reports with the Commission as well. We will establish a due date of March 31 of each year for the filing of these reports.

36. The licensee's Final SPP, with these modifications, should be approved.

¹³ This is consistent with the Commission's finding in approving the Final SPP for the Worumbo Project No. 3428, where a proposed measure to map salmon habitat in the Little River was excluded. *See* 163 FERC ¶ 62,091 (2018).

Project No. 4784-089

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The Director orders:

(A) Topsham Hydro Partners Limited Partnership's (licensee) Final Species Protection Plan (Final SPP) for the Pejepscot Hydroelectric Project No. 4784, filed on December 22, 2016, excluding the measures not specifically related to the project and as modified in paragraphs (B) through (D), is approved.

(B) The terms and conditions of the incidental take permit included with the National Marine Fisheries Service's (NMFS) August 30, 2017 Biological Opinion are hereby incorporated into the license for the Pejepscot Project. The terms and conditions are attached to this order as Appendix A.

(C) The licensee shall file a report with the Commission within 30 days of contacting the NMFS of any issues pursuant to Terms and Conditions 5 and 12 of the incidental take statement included with the NMFS August 30, 2017 Biological Opinion.

(D) The licensee shall file annual Final SPP progress reports with the Commission by March 31 of each year. Each annual report shall include, at a minimum: (1) a summary of the progress on the elements described in the Final SPP; (2) a summary of consultation and other correspondence with the NMFS and other resource agencies regarding progress on the elements in the Final SPP; (3) anticipated schedules associated with the elements of the Final SPP; and (4) a description of any issues that arise that may affect the timely completion of the elements of the Final SPP, and how the issues are being addressed in consultation with NMFS and other resource agencies. The annual progress reports shall be filed with the Commission beginning March 31, 2020, until such time that the Commission takes action on any license application for the project.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2018). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Andrea Claros, Acting Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICEREASONABLE AND PRUDENT MEASURES
AND TERMS AND CONDITIONS OF THE INCIDENTAL TAKE STATEMENT
INCLUDED IN THE BIOLOGICAL OPINION FOR THE PROPOSED AMENDMENT
OF THE LICENSE TO INCLUDE A SPECIES PROTECTION PLAN FOR THE
PEJEPSCOT PROJECT (FERC NO. 4784)

Filed August 30, 2017

Reasonable and Prudent Measures

NMFS believes the following reasonable and prudent measures are necessary and appropriate to minimize and monitor incidental take of Atlantic salmon. These reasonable and prudent measures and terms and conditions are in addition to the measures contained in the December 22, 2016 SPP that Topsham Hydro has committed to implement and FERC is proposing to incorporate into the project license through a license amendment. As those measures will become mandatory requirements of any new license issued, we do not repeat them here as they are considered to be part of the proposed action. FERC must implement the following:

1. FERC must ensure, through enforceable conditions of the Project license, that the licensee implement, measure, and monitor the provisions contained in the December 22, 2016 Species Protection Plan (SPP) in a way that is adequately protective of listed Atlantic salmon.
2. FERC must ensure, through enforceable conditions of the Project licenses, that the licensee complete an annual monitoring and reporting program to confirm that they are minimizing incidental take and reporting all project-related observations of dead or injured salmon to us.

Terms and Conditions

In order to be exempt from prohibitions of section 9 of the ESA, FERC must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and which outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

To implement reasonable and prudent measure #1, FERC must require [Topsham

Hydro] to do the following:

1. Prepare in consultation with [NMFS] a plan to study the passage and survival of migrating smolts at the Pejepscot Project to be conducted in 2018.
 - a. Require Topsham Hydro to measure the survival of downstream migrating Atlantic salmon smolts at the Pejepscot Project using a scientifically acceptable methodology.
 - i. Measure the survival of downstream migrating smolts approaching within 200 meters of the trashracks downstream to the point where delayed effects of passage can be quantified.
 - ii. A Cormack-Jolly-Seber (CJS) model, or other acceptable approach, must be used to determine if the survival estimate and associated error bounds are within the scope of published telemetry work for salmon in the region.
 - iii. Topsham Hydro must consult with us concerning the application of appropriate statistical methodology and must provide an electronic copy of model(s) and data to us.
 - b. All tags released in the system should have codes that are not duplicative of tags used by other researchers in the river, including university, state, federal and international tagging programs.
2. Prepare, in consultation with [NMFS], and for our review and approval, a plan to study adult salmon upstream passage efficiency and downstream survival at the Project following two consecutive years of 40 or more pre-spawn Atlantic salmon (regardless of origin) being released upriver of the Brunswick Project. The plan should be submitted for our review no later than 60 days after the second-year count.
 - a. Require Topsham Hydro to measure the passage efficiency of upstream migrating Atlantic salmon adults at the Pejepscot Project using a scientifically acceptable methodology.
 - i. Measure the passage efficiency of pre-spawn adults that approach within 200 meters of the upstream fishway at the Pejepscot Project

To implement reasonable and prudent measure #2, FERC must require Topsham Hydro to do the following:

3. Inspect the upstream and downstream fish passage facilities at the Project daily when they are open. The licensee must submit summary reports to us

weekly during the fish passage season.

4. Operate the downstream fishway under all flow conditions up to the point the downstream bypass entrances are completely submerged, unless emergency conditions require the fishway to be closed. Install pressure transducers at the entrances and within the downstream bypasses in order to monitor increases in head loss through the bypass due to trash and debris build-up. Transducer data should be collected at least in half hour intervals through the fish passage season and corroborated with operator logs coinciding with trash removal.
5. Notify us of any changes in operation including maintenance activities and debris management at the project within 24 hours.
6. Remove any debris that could affect the ability of fish to pass either the downstream or upstream fish passages immediately upon inspection.
7. With the exception section of hinged gate included in your May spill proposal, to reduce false attraction to the bypass reach, raise hydraulic flashboards within eight hours after flows recede below the hydraulic capacity of the powerhouse.
8. Open the upstream fishway within 24 hours of the opening of the Brunswick upstream fishway or by May 1, whichever comes first.
9. Prepare an Operations and Maintenance plan for the upstream and downstream fishways in consultation with us. The Operations and Maintenance plan should be reviewed every other year with us and the licensee and updated to accurately reflect any changes in operation and upcoming maintenance scheduling.
10. Submit as-built drawings to us for the current configuration of the upstream and downstream fishways.
11. Allow our staff to inspect the upstream and downstream fishways any time we deem it necessary, including but not limited to an annual engineering inspection.
12. Contact us within 24 hours of any interactions with Atlantic salmon, including non-lethal and lethal takes (Matt Buhyoff: by email (Matt.Buhyoff@noaa.gov) or phone (207) 866- 4238 and to: incidental.take@noaa.gov).
13. In the event of any lethal takes, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with us.

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. We have determined that the proposed action is not likely to jeopardize the continued existence of endangered Atlantic salmon in the action area. To further reduce the adverse effects of the proposed project on Atlantic salmon, we recommend that FERC

implement the following conservation measures.

1. FERC should require increased protection for non-listed diadromous species migrating downstream of the Pejepscot Project, specifically alewives and blueback herring. A healthy diadromous community is an essential feature of the designated critical habitat for Atlantic salmon. Improvements could include increasing flow to non-turbine passage routes (i.e. floodgate, spillway, bypass) during their downstream passage seasons (May and June for adults; August through October for juveniles). Alternatively, narrow spaced bar racks, or a Worthington boom, could be used to guide fish away from the turbines to alternative passage routes. Such improvements would reduce the effect the Project has on designated critical habitat for Atlantic salmon.
2. FERC should require that the licensee compensate for all unavoidable effects of their actions by requiring the licensee to carry out activities that improve the environmental baseline in the action area or in the larger Merrymeeting Bay SHRU. This could involve the removal of other barriers to fish migration in the Androscoggin River watershed, or the construction of fishways. FERC and the licensee should work closely with the state and federal fisheries agencies to identify suitable projects that are likely to contribute to the recovery of Atlantic salmon and address the effects of degradation of designated critical habitat, over the duration of the amended license. Particular focus should be put on restoring access to habitat in the Lower Androscoggin River upstream of the Project, and in the Little River, also upstream of the Project.