

139 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

FPL Energy Maine Hydro LLC

Project No. 2612-020

ORDER AMENDING LICENSE AND LIFTING STAY

(Issued June 13, 2012)

1. On December 21, 2011, FPL Energy Maine Hydro LLC (FPL Energy) filed a request to lift the stay of the new license for the Flagstaff Storage Project No. 2612. The project is located on the Dead River, a tributary of the Kennebec River, in Somerset and Franklin Counties, Maine. The Commission stayed the license in 2004 because the state hearings board had denied the project's water quality certification on appeal, while rehearing was pending and the new license was not yet final. For the reasons discussed below, we amend the license to reflect Maine's recent waiver of water quality certification for the project and lift the stay.

Background

2. The Flagstaff Project is a storage reservoir that operates as part of the Kennebec River storage system to provide flood protection and flows for downstream industries, municipalities, and power generators at eight licensed hydroelectric projects on the Kennebec River, downstream of its confluence with the Dead River.¹ The storage reservoirs in this system are operated on an annual cycle under which they are filled by spring runoff and then drawn down throughout the year to supplement the natural flow of the Kennebec River for downstream users, reaching their lowest point just before the anticipated start of the next year's spring runoff.² For the Flagstaff Project reservoir, this operating pattern was at issue in both the relicensing proceeding and the litigation concerning the project's water quality certification.

¹ See *FPL Energy Maine Hydro LLC*, 106 FERC ¶ 62,232, at P 2 n.3 (2004).

² *Id.* P 9.

3. The Commission issued an original license for the Flagstaff Project in 1979, with an expiration date of December 31, 1997.³ FPL Energy's predecessor, Central Maine Power, filed its relicense application in 1995, and filed its first request for water quality certification in 1996.⁴ Between 1997 and 2002, the licensee withdrew and refiled its certification request six times, in order to avoid the state's denial of a request on which it was not yet ready to act. On November 14, 2003, the state certifying agency, Maine Department of Environmental Protection (Maine DEP), issued water quality certification for the project's continued operation. The Town of Eustis, Maine, where the project is located, and several non-governmental organizations filed an appeal of the certification.

4. The Commission issued a new license to FPL Energy for the Flagstaff Project on March 30, 2004,⁵ while the certification appeal was pending. Among other things, the new license required FPL Energy to prepare a whitewater boating plan (Article 401), lake management plan (Article 404), and comprehensive recreation and land management plan (Article 409), each after consulting with specified state and federal resource agencies. The Appalachian Mountain Club, an intervenor and active participant in the relicensing proceeding, filed a request for rehearing of the new license, asking that it be included as a consulted party in these three license articles. FPL Energy did not object to the request.

5. While rehearing was pending, the Maine Board of Environmental Protection (Maine Board) issued a decision on appeal of the project's water quality certification, denying certification without prejudice. FPL Energy filed a judicial appeal of the denial. On September 21, 2004, the Commission issued an order granting rehearing and amending the new license to add Appalachian Mountain Club as a consulted party for the plans required in Articles 401, 404, and 409.⁶ The Commission also found that the Maine Board's denial of certification called into question the validity of the new license, and issued a stay of the new license pending the outcome of FPL Energy's appeal of the

³ *Central Maine Power*, 7 FERC ¶ 61,045 (1979).

⁴ In 1998 while relicensing was pending, the Commission approved Central Maine's request to transfer the license to FPL Energy. *Central Maine Power and FPL Energy Maine Hydro LLC*, 88 FERC ¶ 62,208 (1999).

⁵ *FPL Energy Maine Hydro LLC*, Order Issuing New License (Major Project), 106 FERC ¶ 62,232 (2004).

⁶ *FPL Energy Maine Hydro LLC*, Order Granting Rehearing and Staying New License, 108 FERC ¶ 61,261 (2004).

certification denial and any new certification that might be issued.⁷ FPL Energy filed a request for rehearing of the stay, which the Commission denied on April 19, 2005.⁸

6. On July 26, 2007, the Maine Supreme Judicial Court affirmed the Maine Board's denial of water quality certification.⁹ Subsequently, on December 23, 2008, the U.S. Court of Appeals for the First Circuit upheld the Commission's stay order and found that further review of the certification denial was precluded by the earlier state court ruling on the merits.¹⁰ As a result, all appeals of the state's denial of water quality certification were denied and the stay remained in effect.

7. On September 24, 2009, Commission staff advised FPL Energy that its stayed license required either a new certification or waiver, and directed the licensee to provide evidence that it had filed a new certification request for the project. FPL Energy filed a new request for water quality certification with the Maine DEP on November 16, 2009.

8. On December 7, 2009, the Maine DEP filed a letter acknowledging receipt of the certification request and discussing issues related to its status. Among other things, the Maine DEP stated that the earlier certification that was overturned required a maximum winter drawdown of 24 feet below full pond, except when excessive snowpack or precipitation required an additional drawdown in order to maintain the historic level of flood protection for the Kennebec River. The Maine DEP noted that, in keeping with the Maine Board's decision denying certification, the maximum drawdown of Flagstaff Lake would have to be limited to approximately 8 feet in order to maintain sufficient aquatic habitat to meet water quality standards. The Maine DEP added that any drawdown in excess of approximately 8 feet would require further analysis that would lead to the adoption of new water quality standards for the lake. The Maine DEP stated its interest in working with FPL Energy to conduct the required analysis for Flagstaff Lake to accommodate a drawdown that would maintain the flood control and energy benefits of the project, and requested that FPL Energy advise it on how it would like to proceed.

⁷ *Id.* PP 9, 12.

⁸ *FPL Energy Maine Hydro LLC*, Order Denying Rehearing, 111 FERC ¶ 61,104 (2005).

⁹ See letter from Dana P. Murch, Maine Department of Environmental Protection, to Kimberly D. Bose, Commission Secretary (filed July 30, 1997), attaching a copy of the order.

¹⁰ *FPL Energy Maine Hydro LLC v. FERC*, 551 F.3d 58 (1st Cir. 2008).

9. On August 11, 2010, the Town of Eustis, an intervenor in the relicensing proceeding, filed a letter expressing concern that the new license remained stayed, without any requirements in place to control the level of Flagstaff Lake. The Town asked the Commission to give serious consideration to reinstating the previously-issued license. On August 20, 2010, Commission staff responded that the Commission would be able to determine what action may be appropriate once the Maine DEP had taken action on FPL Energy's pending certification request.

10. On November 16, 2010, FPL Energy simultaneously withdrew and refiled its request for water quality certification, thus establishing a new one-year deadline for the Maine DEP to act on the request. On November 17, 2010, the Maine DEP filed a letter acknowledging the withdrawal and refile, and discussing the status of FPL Energy's certification request. Among other things, the Maine DEP noted that FPL Energy planned to develop some additional information concerning lake depths and that, once this information was filed, the Maine DEP would reevaluate its position on the maximum allowable drawdown for the lake.

11. On December 12, 2011, FPL Energy filed a letter with the Commission, stating that because the Maine DEP did not act on the certification request within the one-year deadline, certification was deemed waived. In that letter, FPL Energy requests that the Commission lift the stay of the new license. FPL Energy adds that, although the conditions of the overturned certification listed in Appendix A to the new license are no longer part of an applicable water quality certification, it will accept the license containing those conditions for the protection of environmental resources.

12. On January 3, 2012, the Maine DEP filed a similar letter, noting that although it has waived certification for the project, it strongly endorses the content and conditions of the license that the Commission issued on March 30, 2004. The Maine DEP requests that the Commission lift the stay and implement the previously-issued license.

13. On January 4, 2012, the Environmental Protection Agency (EPA) filed a letter requesting that the Commission continue to stay the new license until an evaluation is conducted under the appropriate state water quality standards. On January 9, 2012, the Appalachian Mountain Club and Trout Unlimited filed a letter in support of EPA's request.¹¹

¹¹ The Appalachian Mountain Club and Trout Unlimited were both intervenors in the relicensing proceeding. The following entities (some of which were intervenors) joined in their letter: Trout Unlimited, Conservation Law Foundation, Maine Rivers, Council for Maine Petitioners, Natural Resources Council of Maine, New England FLOW, and Clinton Townsend. They attached a copy of a letter from the Conservation

Discussion

14. Under section 401(a)(1) of the Clean Water Act (CWA),¹² the Commission may not issue a license for a hydroelectric project unless the state has either issued a certification that the project will comply with the state's water quality standards or has waived certification by failing to act on a certification request within a reasonable time, not to exceed one year. The Commission's regulations give the state certifying agency the entire year.¹³ In this case, we stayed the new license to allow time for FPL Energy to file a new certification request. Certification is now deemed waived under section 401(a)(1) of the CWA because the Maine DEP did not grant or deny certification within the one-year deadline. As a result, the requirements of the CWA have been met for the new license and we can lift the stay.

15. Concurrently with lifting the stay, we amend the new license to delete references to the earlier certification that the Maine Board denied on appeal. This is necessary to avoid confusion, because there is now no valid certification that would apply to the new license. However, both FPL Energy and the Maine DEP have filed comments in support of the conditions included in the earlier certification. In addition, Commission staff previously reviewed these conditions and found them appropriate. We therefore include them in the amended license, as discussed and modified below. We also make minor changes to adjust filing deadlines or to reflect current requirements for exhibits. For convenience, this order reproduces the complete text of the license conditions as amended in this order and in our September 21, 2004 order on rehearing and issuing a stay, so that there is no need to refer to any prior Commission orders for the text of any condition of the new license.¹⁴

A. Requests to Continue the Stay

16. EPA, Appalachian Mountain Club, and Trout Unlimited request that the Commission continue to stay the new license until a proper evaluation of the Flagstaff

Law Foundation to the Maine DEP, in which the Foundation asserted its belief that the Maine DEP's waiver was intentional.

¹² 33 U.S.C. § 1341(a)(1) (2006).

¹³ See 18 C.F.R. § 4.34(b)(5)(iii) (2011).

¹⁴ This amended license includes all articles from the 2004 license that are unchanged, all articles that were amended in the prior Commission order granting rehearing or are amended in this order, and standard Form L-3 license articles.

Project under the appropriate state water quality standards has been conducted. EPA states that a use attainability analysis¹⁵ is needed to determine whether water quality standards can be met, or to change a designated use of the water or adopt less protective water quality criteria if the analysis demonstrates that attaining the use is not feasible. EPA points out that, after FPL Energy filed its new certification request, the Maine DEP stated that the drawdown of Flagstaff Lake would have to be limited to about 8 feet to meet Maine's existing water quality standards for the lake, and that any drawdown in excess of this amount would require a use attainability analysis.

17. The Maine Board's July 30, 2004 decision denying certification discusses in some detail the history of EPA's and Maine's efforts to address this issue, at least since 1995.¹⁶ It states that Flagstaff Lake is classified as a Class Great Pond A (GPA) water body suitable for various designated uses, including habitat for fish and other aquatic life.¹⁷ If an existing hydropower impoundment with that classification does not satisfy the habitat and aquatic life standard for Class GPA, the impoundment must at a minimum meet the Class C aquatic life criteria.¹⁸ Discharges to Class C waters may cause some change to aquatic life, provided that the receiving water shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.¹⁹ Although the Maine DEP has rules for determining attainment with aquatic life standards for rivers and streams, no rules exist for assessing compliance with Class C standards in lakes.²⁰ Attempts by the Maine

¹⁵ A use attainability analysis is a scientific assessment of the factors affecting the attainment of uses specified in section 101(a)(2) of the CWA. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use criteria described in EPA's water quality standards regulation. *See* 40 C.F.R. §§ 131.10(g)(1)-(6) (2010).

¹⁶ *See* the Maine Board's decision at 6-9 (attached to the Maine DEP's July 30, 2004 letter to the Commission's Secretary).

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.* at 8.

²⁰ *Id.*

Legislature to address this were met with EPA disapproval in all but one case that included a use attainability analysis.²¹

18. As noted earlier, the certification process was a substantial source of delay in the relicensing proceeding. FPL Energy's new certification request had been withdrawn and refiled once, and the refiled request had been pending for over a year when certification was deemed waived. In these circumstances, we find no basis for continuing the stay of the new license to allow more time for resolution of these issues. Continuing the stay would require that the Flagstaff Project operate under an annual license and would delay the benefits of resource protection measures in the new license, such as minimum flows and requirements to maintain summer lake levels. Moreover, the CWA requires Maine, not EPA, to provide or waive water quality certification. Maine has waived certification and, as discussed above, has expressed satisfaction with the terms of the license. To the extent that Maine and EPA disagree as to process or substance, those are matters to be dealt with in a forum other than this relicensing proceeding.

B. Amended License Articles

19. In this section, we review the provisions of the 2004 license, the order granting rehearing (modifying certain license articles),²² and the changes necessary to remove references to the now waived certification conditions. License articles that are unchanged are also noted. We have included the revised articles in the manner consistent with Commission orders.

Article 201: Annual Charges

20. The Commission collects annual charges from licensees to pay the United States an annual charge for the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act (FPA), as determined by the Commission. Article 201 of the 2004 license requires FPL Energy to pay the United States an annual charge based on the authorized installed capacity, listed in this case as 0 horsepower. The Commission currently collects annual charges from licensees based, in part, on the authorized installed capacity in kilowatts (kW). Article 201 is revised to change the authorized installed capacity for that purpose to 0 kW.

²¹ *Id.* at 9.

²² 108 FERC ¶ 61,261 (2004).

Articles 202-203: Administrative Provisions

21. Article 202 of the 2004 license requires that for new major licenses, non-municipal licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 of the 2004 license requires FPL Energy to reimburse the owner of a headwater improvement for any benefits it receives from such improvement. No changes are needed to these articles. We therefore include them without modification.

Articles 204-205: Exhibit Drawings

22. Article 204 of the 2004 license requires FPL Energy to file aperture cards and electronic file formats of approved Exhibit F and G drawings. On May 17, 2004, FPL Energy filed electronic formats of the approved Exhibit F and G drawings,²³ and stated that Exhibit G-3 and G-5 drawings were revised to remove certain lands from the project boundary. In a letter filed September 13, 2004, FPL Energy stated that new guidelines for electronic format Exhibit G drawings were established after issuance of the 2004 license. FPL Energy estimated that it would submit the electronic format Exhibit G drawings using the new guidance by April 30, 2005.²⁴

23. In a letter to FPL Energy issued on December 10, 2004, Commission staff stated that it could not determine whether the lands deleted from the project boundary are needed for project operation or to fulfill the requirements of certain plans that have not yet been filed or approved. Specifically, the lands might be needed in connection with the comprehensive recreation and land management plan in Article 409, or the loon management plan in Article 408. Commission staff therefore rejected the Exhibit G-3 and G-5 drawings, and stated that when the stay is lifted and the required plans are filed and approved, FPL Energy may refile these drawings for review and approval. In addition, the Exhibit G drawings filed on May 17, 2004, do not conform to the Commission's regulations, because they are not stamped by a registered land surveyor and do not contain a minimum of three known reference points.

24. Article 204 is revised to reflect the fact that we are not approving Exhibit G drawings at this time, and to follow current staff guidance regarding hydropower project

²³ In the May 17, 2004 letter, FPL Energy stated that the aperture cards would be submitted to the Commission by June 14, 2004. No aperture cards were filed.

²⁴ In a letter issued September 20, 2004, Commission staff granted FPL Energy's request for an extension of time to submit Exhibit G drawings until April 30, 2005.

exhibits.²⁵ Article 205 is added to require the licensee to file revised Exhibit G drawings that conform to sections 4.39 and 4.41 of the Commission's regulations.

Article 301: Revised Exhibits

25. Article 301 of the 2004 license requires FPL Energy to file revised Exhibits A, F, and G drawings, as appropriate, showing any new facilities or modifications required by the comprehensive recreation and land management plan in Article 409. As discussed above, Exhibit G drawings were filed but do not conform to the Commission's regulations, and the project boundary that may be relevant to the comprehensive recreation and land management plan required by Article 409 has not been approved. Further, Article 301 requires the licensee to submit revised Exhibits to, among others, the Division of Project Compliance and Administration. That Division now has a different name. Therefore, we revise Article 301 to reference the Division of Hydropower Administration and Compliance.

Article 401: Whitewater Boating Plan

26. Article 401 of the 2004 license requires FPL Energy to submit a plan for annually consulting and scheduling whitewater boating flows with the same duration, frequency, and magnitude as it has done historically, as required by certification Condition 2 of Appendix A.²⁶ Commission staff recommended this condition in the final EA.²⁷ Because the certification was denied and deemed waived, the reference to certification Condition 2 is no longer appropriate. We delete Appendix A from the license, and revise Article 401 to remove the reference to Condition 2 and to substitute the staff-recommended measures as a license requirement.

27. Further, the Commission revised Article 401 to add the Appalachian Mountain Club as a consulted party in its September 21, 2004 order granting rehearing and staying the new license.²⁸ Article 401 as reproduced in this order includes this change.

²⁵ See Managing Hydropower Project Exhibits, January 2012 Guidance Document, available at: <http://www.ferc.gov/industries/hydropower/gen-info/guidelines/drawings-guide.pdf>.

²⁶ 106 FERC ¶ 62,232 at P 59.

²⁷ Final EA at 94.

²⁸ 108 FERC ¶ 61,261 (2004).

Article 402: Flow and Lake Level Requirements

28. The 2004 license requires FPL Energy to maintain the minimum flow regime in Condition 1 of Appendix A, and to include these minimum flows in its lake management plan under Article 404 to ensure that the flow and lake level requirements are met. Commission staff recommended these minimum flows in the final EA.²⁹ Because the certification was denied and deemed waived, the reference to certification Condition 1 of Appendix A is no longer appropriate. We therefore delete the reference to certification Condition 1 in Article 404 and add the staff-recommended minimum flow requirements to Article 402.

29. Article 402 of the 2004 license requires FPL Energy to operate the project to maintain certain seasonal water levels in Flagstaff Lake, as required by certification Condition 3 of Appendix A.³⁰ Commission staff recommended this condition in the final EA.³¹ Because the certification was denied and deemed waived, the reference to certification Condition 3 is no longer appropriate. We revise Article 402 to remove the reference to Condition 2 and add the staff-recommended lake level requirements.

Article 403: Lake Level Evaluation

30. Article 403 of the 2004 license requires FPL Energy to consult with the Town of Eustis and other interested entities to identify and evaluate alternatives for maintaining higher lake levels or other measures to address the town's concerns related to recreation and aesthetics, and to file a report on the results of the evaluation.³² Commission staff recommended this condition in the final EA.³³ Article 403 incorrectly references Article 403 instead of Article 402, which establishes the lake drawdown limits. It also references the certification conditions in Appendix A, which is no longer part of the license. We revise Article 403 to correct the reference to Article 402 and to remove the reference to the certification conditions in Appendix A.

²⁹ Final EA at 96.

³⁰ 106 FERC ¶ 62,232 at P 40.

³¹ Final EA at 93.

³² 106 FERC ¶ 62,232 at P 41.

³³ Final EA at 93.

Article 404: Lake Level and Flow Management Plan

31. Article 404 of the 2004 license requires FPL Energy to develop and file a lake management plan for managing potentially conflicting drawdown levels and downstream minimum flow needs, as required by Article 402 and certification Conditions 1, 2, and 3 of Appendix A.³⁴ Commission staff recommended this measure in the final EA.³⁵ Because the certification was denied and deemed waived, reference to certification Conditions 1, 2, and 3 is no longer appropriate. We therefore revise Article 404 to remove the reference to these conditions.

32. Further, the Commission revised Article 404 to add the Appalachian Mountain Club as a consulted party in its September 21, 2004 order granting rehearing and staying the new license.³⁶ Article 404 as reproduced in this order includes this change.

Article 405: Streamflow and Lake Level Monitoring

33. Article 405 of the 2004 license requires FPL Energy to develop and implement a streamflow and lake level monitoring plan to monitor and record compliance with the minimum flows and impoundment water level elevations required by certification Conditions 1 and 3 of Appendix A, staff gages required by certification Condition 5.A, and any alternative proposed as a result of the lake level evaluation required by Articles 403 and 404.³⁷ Commission staff recommended this measure in the final EA.³⁸ Because the certification was denied and deemed waived, reference to certification Conditions 1, 3, and 5.A is no longer appropriate. We revise Article 405 to remove the reference to these conditions and to substitute the staff-recommended measures.

Article 406: Fishway Reservation

34. Article 406 of the 2004 license reserves the Commission's authority to require FPL Energy to construct, operate, and maintain fishways that the Secretary of the Interior

³⁴ 106 FERC ¶ 62,232 at P 31 and P 45.

³⁵ Final EA at 95-96.

³⁶ 108 FERC ¶ 61,261 (2004).

³⁷ 106 FERC ¶ 62,232 at P 22.

³⁸ Final EA at 96-97.

may prescribe in the future, pursuant to Section 18 of the FPA.³⁹ No changes to this article are needed, and we include it without modification.

Article 407: Mercury Analysis

35. Article 407 of the 2004 license requires FPL Energy to develop and implement a mercury evaluation plan to consider the potential effects of mercury levels at the Flagstaff Project on fish and common loons, as required by certification Condition 4 of Appendix A.⁴⁰ The plan must also include bald eagles, as the U.S. Fish and Wildlife Service recommended as a conservation measure and Commission staff recommended in the final EA.⁴¹ Because the certification was denied and deemed waived, reference to Condition 4 is no longer appropriate. Further, Article 407 refers to the bald eagle as federally listed, which is no longer the case.⁴² We revise Article 407 to remove the reference to Condition 4 of Appendix A, remove the reference to the bald eagle as federally listed, and substitute the staff-recommended measures.

Article 408: Loon Management Plan

36. Article 408 of the 2004 license requires FPL Energy to develop and implement a loon management plan that provides measures to benefit common loons and evaluates the success of those measures, as required by certification Condition 6 of Appendix A.⁴³ Commission staff recommended this measure in the final EA.⁴⁴ Because the certification was denied and deemed waived, the reference to Condition 6 is no longer appropriate. We revise Article 408 to remove the reference to Condition 6 and substitute the staff-recommended measures.

³⁹ 106 FERC ¶ 62,232 at P 14.

⁴⁰ 106 FERC ¶ 62,232 at P 20.

⁴¹ Final EA at 93-94 and 97-98.

⁴² See Final Rule, Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife, 72 Fed. Reg. 37346 (July 9, 2007).

⁴³ 106 FERC ¶ 62,232 at P 48.

⁴⁴ Final EA at 97-99.

Article 409: Comprehensive Recreation and Land Management Plan

37. Article 409 of the 2004 license requires FPL Energy to develop and implement a comprehensive recreation and land management plan to protect and enhance terrestrial resources and recreation resources, protect the shoreline, and ensure acceptable uses, including public access to project lands and waters.⁴⁵ Commission staff recommended this measure in the final EA.⁴⁶ Among other things, Article 409 includes a reference to certification Conditions 2 and 5, and refers to the bald eagle as federally listed. Because the certification was denied and deemed waived, reference to the certification conditions is no longer appropriate. Further, as discussed above in connection with Article 407, the bald eagle is no longer federally listed. We revise Article 409 to remove the reference to certification Conditions 2 and 5, remove the reference to the bald eagle as federally listed, and add the staff-recommended measures.

38. Further, the Commission revised Article 409 to add the Appalachian Mountain Club as a consulted party in its September 21, 2004 order granting rehearing and staying the new license.⁴⁷ Article 409 as reproduced in this order includes this change.

Article 410: Recreation Monitoring

39. Article 410 of the 2004 license requires FPL Energy to monitor recreation use at the Flagstaff Project area to determine whether existing recreation facilities are meeting recreation needs and to file reports concurrent with filing FERC Form 80.⁴⁸ There is no need to revise this article and we include it without modification.

Article 411: Historic Properties

40. Article 411 of the 2004 license requires FPL Energy to implement the Programmatic Agreement for managing historic properties, including a cultural resources management plan that provides protection for all existing and future cultural sites located within the project boundary.⁴⁹ There is no need to revise this article and we include it without modification.

⁴⁵ 106 FERC ¶ 62,232 at P 52.

⁴⁶ Final EA at 99-101.

⁴⁷ 108 FERC ¶ 61,261 (2004).

⁴⁸ 106 FERC ¶ 62,232 at P 58.

⁴⁹ 106 FERC ¶ 62,232 at P 60.

Article 412: Use and Occupancy

41. Article 412 of the 2004 license allows FPL Energy to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting.⁵⁰ Among other things, Article 412 requires filing a marked Exhibit G or K map showing proposed lands conveying any interest in project lands, or not inconsistent with any approved Exhibit R. The Commission no longer requires Exhibits K and R. We revise Article 412 to remove the reference to those exhibits.

The Commission orders:

(A) This amended license is issued to FPL Energy (licensee) to operate and maintain the Flagstaff Project, for a period of 32 years, effective the first day of the month in which the 2004 license order was issued (i.e., March 1, 2004).⁵¹ This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) FPL Energy's request, filed on December 12, 2011, to lift the stay of the new license issued on March 30, 2003, is granted. The stay of the new license issued on September 21, 2004, effective July 15, 2004, pending the outcome of any appeal of the certification denial and further order of the Commission, is lifted.

(C) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G, filed on December 22, 1995:

Exhibit	FERC Drawing No.	Title
G-1	2612-1003	Detail Map - Reservoir

⁵⁰ 106 FERC ¶ 62,232 at P 61.

⁵¹ The 2004 license granted a 32-year term to ensure that the Flagstaff Project license would expire in 2036, concurrently with several other projects in the Kennebec River Basin. 106 FERC ¶ 62,232 at P 84. The stay had no effect on the license term.

Exhibit	FERC Drawing No.	Title
G-2	2612-1004	Detail Map - Reservoir
G-3	2612-1005	Detail Map - Reservoir
G-4	2612-1006	Detail Map - Reservoir
G-5	2612-1007	Detail Map - Reservoir

(2) The project works consisting of: (1) the 1,339-foot-long, 45-foot-high Long Falls dam containing: (i) a 450-foot-long concrete spillway section topped with 2-foot-high flashboards; (ii) a 125-foot-long concrete section containing five, 20-foot-wide Taintor gates; (iii) a 70-foot-long concrete section containing two Broome gates, a fishway, and a log sluice; and (iv) a 694-foot-long earthen dike topped with a 2-foot-high wave barrier; (2) a 17,950-acre reservoir having a length of about 23 miles, a width of about 6 miles at the widest point, and a storage capacity of about 275,482 acre-feet at full pond elevation of 1,146.0 feet U.S. Geological Survey datum; and (3) appurtenant facilities.

(3) The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below.

Exhibit A - The following sections of Exhibit A filed December 22, 1995: The project description on pages A-1 to A-6; and table A-1, Summary Description of the Project, on page A-7.

Exhibit F - The following Exhibit F drawings filed on December 22, 1995:

Exhibit	FERC Drawing No.	Title
F-1	2612-1001	Plan – Upstream Elevation and Spillway Sections
F-2	2612-1002	Sections-Earth Dam-Fishway-Log Sluice-Intake & Taintor Gate

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

(D) The Exhibits A and F, as designated in Ordering Paragraph (C) above, are approved and made part of this license. The Exhibit G drawings do not meet the Commission's regulations and are required by Article 205.

(E) Articles 201, 204, 301, 401, 402, 403, 404, 405, 407, 408, 409, and 412 are amended, and Article 205 is added, as set forth in Ordering Paragraph (F).

(F) This license is subject to the articles set forth in form L-3 [54 FPC 1817] (revised October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" and the following additional articles:

Article 201. Annual Charges. The licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act, as determined by the Commission. The authorized installed capacity for that purpose is 0 kilowatts.

Article 202. Amortization Reserves. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the license shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203. Headwater Benefits. If the project is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

Article 204. Exhibit Drawings. Within 45 days of the date of issuance of this amended license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-2612-1001 through P-2612-1007) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1), Drawing Title, and date of this license amendment shall be typed on the upper left corner of each aperture card. (See Figure 1).

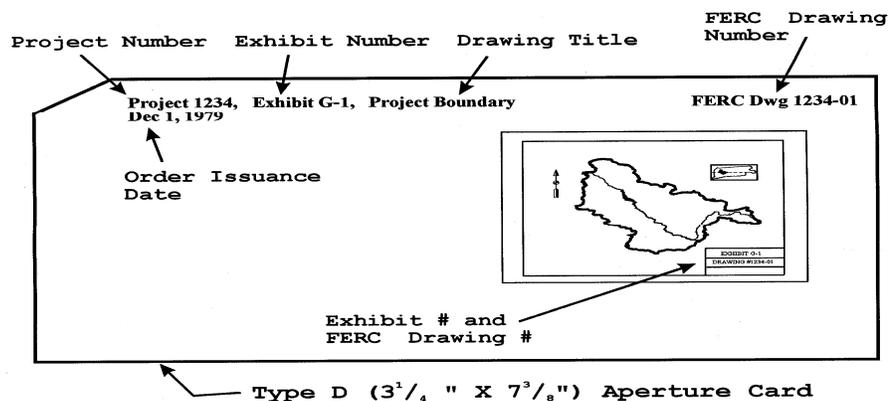


Figure 1. Sample Aperture Card Format

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

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional

Office. Exhibit F drawings must be segregated from other project exhibits and identified as **Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113(c) (2011)**. Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-2612-1001, F-1, Plan – Upstream Elevation and Spillway Sections, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY – black & white raster file

FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4

RESOLUTION – 300 dpi desired, (200 dpi min)

DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)

FILE SIZE – less than 1 MB desired

Article 205. Exhibit G Drawings. Within 90 days of the issuance date of this amended license, the licensee shall file, for Commission approval, revised Exhibit G drawings that are stamped by a registered land surveyor and contain a minimum of three known reference points. The exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission’s regulations.

Article 301. Revised Exhibits. Within 180 days of the approval of any new facilities and/or modifications required by Article 409, the licensee shall submit revised Exhibit A, F, and G drawings, as appropriate, with the Commission for approval. The exhibits shall show any existing, new and/or modified project facilities, the project boundary, and the delineation and acreage of the shoreline buffer zone. The revised project boundary shall include the portage trail around the south side of Poplar Hill Falls, day-parking at the Bog Brook Road boat launch, access road near the confluence of Enchanted Stream and the Dead River, including the foot path, and a public access road to the Spencer Stream put-in near the confluence of Spencer Stream and the Dead River, as well as any other lands the Commission deems necessary to be included in the Commission-approved Comprehensive Recreation and Land Management Plan, as required by Article 409. Along with the drawings, the licensee shall include a written statement clarifying the precise acreages associated with each recreation facility. The exhibits shall have sufficient detail to adequately delineate the width of the buffer zone and the relative location of project features. The licensee shall submit six copies to the Commission, one copy to the Commission’s Regional Director, and one to the Director, Division of Hydropower Administration and Compliance.

Article 401. Whitewater Boating Plan. Within six months of the date of issuance of this amended license, the licensee shall file for Commission approval, a whitewater boating plan for providing and monitoring whitewater boating flows and reporting the results of the monitoring. The plan shall be developed after consultation with the U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), Appalachian Mountain

Club (AMC), Maine Department of Inland Fisheries and Wildlife (Maine DIFW), and the Maine Department of Environmental Protection (Maine DEP). The plan shall include:

(1) provisions for releasing whitewater boating flows from the Long Falls Dam to the Dead River for 18 to 20 days annually. Whitewater boating releases shall be between 1,300 cubic-feet-per-second (cfs) and 7,500 cfs, with releases of similar magnitude, duration and frequency to those historically provided, but with the actual magnitude and schedule of flow releases established following an annual meeting with FWS, NPS, AMC, Maine DIFW, and Maine DEP. Whitewater boating releases may be temporarily modified for: (i) Commission-approved maintenance activities, (ii) extreme hydrologic conditions, as defined below, (iii) emergency electrical system conditions, as defined below, or (iv) through agreement between the licensee and FWS, NPS, AMC, Maine DIFW, and Maine DEP.

(2) a definition of “Extreme Hydrologic Conditions” as the occurrence of events beyond the licensee’s control such as, but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained in this license are impossible to achieve or are inconsistent with the safe operation of the project.

(3) a definition of “Emergency Electrical System Conditions” as operating emergencies beyond licensee’s control that require changes in flow regimes to eliminate such emergencies, including, but not limited to, equipment failure or other abnormal temporary operating condition, operational interruptions during power supply emergencies; or orders from local, state, or federal law enforcement or public safety authorities.

(4) provisions for monitoring the whitewater boating flows required by item 1 above; and

(5) provisions for conducting an annual meeting with FWS, NPS, AMC, Maine DIFW, and Maine DEP to establish annual whitewater boating flows consistent with item 1 above.

The whitewater boating plan shall be developed after consultation with FWS, NPS, AMC, Maine DIFW, and Maine DEP. The licensee shall include with the plan an implementation schedule, documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the entities above, and specific descriptions of how the entities’ comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee’s reasons, based on project-specific reasons.

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

Article 402. Flow and Lake Level Requirements. The licensee shall provide a minimum flow of 200 cubic feet per second (cfs), or higher flow as needed, from the Long Falls Dam to the Dead River to achieve a target minimum flow of 300 cfs downstream of Spencer Stream, except: 1) from March 16 through May 31, the minimum flow released from Long Falls Dam may be reduced as needed to facilitate the refilling of Flagstaff Lake, provided that a target minimum flow of 300 cfs is achieved downstream of Spencer Stream; and 2) from June 1 through August 31, the minimum flow released from Long Falls Dam will be reduced to 100 cfs when water levels in Flagstaff Lake are 4.5 feet or more below full pond (as defined in Ordering Paragraph C).

Minimum flows may be temporarily modified for: (i) Commission-approved maintenance activities, (ii) extreme hydrologic conditions, as defined below, (iii) emergency electrical system conditions, as defined below, or (iv) through agreement between the licensee and U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), Maine Department of Inland Fisheries and Wildlife (Maine DIFW), and Maine Department of Environmental Protection (Maine DEP).

In addition to general conformance with the long-term average operating curve as defined in Appendix A, the licensee shall maintain water surface levels in Flagstaff Lake at or above 1 foot below full pond during June; 2 feet below full pond during July; 3 feet below full pond during August; and 4.5 feet below full pond during September, based on full pond elevation of 1,146 feet U.S. Geological Survey datum. Temporary exceptions may occur as provided in the Commission-approved Lake Management Plan required by Article 404 or for Commission-approved maintenance activities, extreme hydrologic conditions (as defined below), emergency electrical system conditions (as defined below), or by agreement between the licensee and FWS, NPS, Maine DIFW, and Maine DEP. The drawdown of Flagstaff Lake may only exceed 24 feet below full pond when excessive snowpack or precipitation requires an additional drawdown in order to maintain the historic level of flood protection on the Kennebec River, and upon notification of FWS, NPS, Maine DIFW, and Maine DEP.

Extreme hydrologic conditions means the occurrence of events beyond the licensee's control such as, but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained in this license are impossible to achieve or are inconsistent with the safe operation of the project.

Emergency electrical system conditions means operating emergencies beyond the licensee's control that require changes in flow regimes to eliminate such emergencies including, but not limited to, equipment failure or other abnormal temporary operating condition, operational interruptions during power supply emergencies; or orders from local, state or federal law enforcement or public safety authorities.

Article 403. Lake Level Evaluation. Within nine months from the date of issuance of this amended license, the licensee shall file with the Commission, for approval, a report on the results of an evaluation of alternatives to address the effects of a lake drawdown on the recreational use and aesthetic values of Flagstaff Lake in the vicinity of the Town of Eustis. The report shall include any proposed project modification based upon this evaluation. The report shall consider modifications to the lake drawdown limits required by Article 402, or other project modifications, that would: (1) further improve the recreational use and aesthetic values in the vicinity of the Town of Eustis; and (2) be consistent with the beneficial purposes of the project. The report shall include an estimated implementation cost and an analysis of the effects of the alternatives on other beneficial uses of the project, including recreational use, flood control, power development, downstream industrial and municipal water supplies, and wastewater assimilation capacity. The report shall include an analysis of the effects of the alternatives on cultural resources in accordance with the requirements of the Cultural Resources Management Plan required by Article 411. The licensee shall ensure that any operational modifications proposed in the report are consistent with the Lake Management Plan required by Article 404.

The licensee shall prepare the report in consultation with the Maine Department of Environmental Protection, U.S. Fish and Wildlife Service, Maine State Planning Office, Maine State Historic Preservation Office, and Maine Department of Inland Fish and Wildlife, in addition to the Town of Eustis. The licensee shall include with the report documentation of consultation, copies of comments and recommendations on the completed report after it has been prepared and provided to the consulted entities, and a description of how the entities' comments are accommodated by the report. The licensee shall allow a minimum of 30 days for the consulted entities to comment and to make recommendations before filing the report with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific conditions.

The Commission reserves the right to require changes to the report or any alternative recommended for implementation. No alternative shall be implemented until the licensee is notified by the Commission that it is approved. Upon Commission approval, the licensee shall implement the alternative, including any changes required by the Commission.

Article 404. Lake Level and Flow Management Plan. Within nine months of the date of issuance of this amendment of license, the licensee shall file with the Commission for approval, a Lake Level and Flow Management Plan to ensure reservoir levels and flow releases required by Article 402 are met in normal and dry water years. The plan shall also provide for temporary modifications of such reservoir levels and/or flow releases that may be needed to respond to unplanned maintenance requirements; drought, or other extreme hydrologic conditions; or emergency electrical system conditions defined in Article 402. The plan shall include, but need not be limited to: (1) a description of the operational rules covering the refilling of Flagstaff Lake; (2) a description of the methods for releasing minimum flows and whitewater boating flows; (3) a definition of “normal water year” as used in the plan; (4) a definition of “dry water year” as used in the plan; (5) a schedule for implementation of the plan; and (6) an analysis of the operation’s effects on recreational and environmental resources in Flagstaff Lake and downstream of Long Falls when the lake levels and flow releases required by Article 402 would not be met.

The licensee shall prepare the plan in consultation with the Maine Department of Environmental Protection, U.S. Fish and Wildlife Service, Maine State Planning Office, Maine Department of Inland Fish and Wildlife, and Appalachian Mountain Club. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific conditions.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the Lake Management Plan, including any changes required by the Commission. If the minimum flows and/or lake levels as required by this license are modified for any reason, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 405. Streamflow and Lake Level Monitoring. Within one year of the date of issuance of this amended license, the licensee shall file with the Commission, for approval, after consultation with the Maine Department of Environmental Protection, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, and the Maine Department of Inland Fisheries and Wildlife, a plan to install, operate, and maintain all equipment necessary: (1) to monitor and record compliance with the minimum flows and impoundment water level elevations required by Article 402; (2) to measure water level

using staff gages at Spencer Stream put-in, Elephant Rock, and the head of Popular Hill Falls; and (3) to monitor and record compliance with any alternative proposed as a result of the Lake Level Evaluation required by Article 403 and the Lake Level and Flow Management Plan required by 404. Compliance with the minimum flows in the Dead River immediately downstream of its confluence with Spencer Stream shall be recorded at least every 15 minutes.

The plan shall include, but need not be limited to: (1) the method of collecting and recording data; (2) a schedule for installing the monitoring equipment; (3) the proposed location, design, and calibration of the monitoring equipment; (4) design drawings of the devices, including any pertinent hydraulic calculations, technical specifications of proposed instrumentation, and erosion and sediment control measures, as appropriate; and (5) a provision for providing recorded data to the consulted agencies within 30 days from the date of an agency's request for the data.

The licensee shall include with the plan documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted agencies, and specific descriptions of how the consulted agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted agencies to comment and to make recommendations prior to filing the plan for Commission approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

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

Article 406. Fishway Reservation. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior, pursuant to Section 18 of the Federal Power Act.

Article 407. Mercury Analysis. Within one year of the date of issuance of this amended license, the licensee shall file, for Commission approval, after consultation with the Maine Department of Environmental Protection, U.S. Fish and Wildlife Service, Maine Department of Inland Fisheries and Wildlife, and U.S. Environmental Protection Agency, a Mercury Evaluation Plan. In addition to mercury analysis for fish and the common loon (*Gavia immer*), the analysis shall also consider the potential effects of mercury levels at the Flagstaff Project on the bald eagle (*Haliaeetus leucocephalus*).

The plan shall include, but need not be limited to: (1) the methods of collecting, recording, and analyzing total mercury levels; (2) the species of mercury to be analyzed; (3) a schedule for implementing the plan; (4) a provision for submitting a report to the consulted agencies and the Commission to include the methodology, data, analysis and discussion, including project-related effects, if any, conclusions, and any recommendation and proposal based on the analysis; (5) a provision for providing data to the consulted agencies within 30 days from the date of an agency's request for the data; and (6) a provision for mercury analysis throughout the term of the license.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted agencies, and specific descriptions of how the consulted agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted agencies to comment and to make recommendations prior to filing the plan for Commission approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

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

Article 408. Loon Management Plan. Within one year of the date of issuance of this amended license, the licensee shall file, for Commission approval, after consultation with the Maine Department of Inland Fisheries and Wildlife (Maine DIFW), Maine Department of Environmental Protection (Maine DEP), and the U.S. Fish and Wildlife Service (FWS), a Loon Management Plan for Flagstaff Lake. The purpose of the plan shall be to develop, implement, and evaluate measures to enhance common loon (*Gavia immer*) productivity at Flagstaff Lake.

The plan shall include, but need not be limited to: (1) proposed enhancement measures; (2) a target goal for the plan; (3) the method of collecting, recording, and analyzing data; (4) a schedule for implementing the plan; (5) a provision to meet with Maine DIFW, Maine DEP, and the FWS annually to review loon management efforts at the Flagstaff Project; and (6) a provision to review the Loon Management Plan, in consultation with Maine DIFW, Maine DEP, and the FWS, every five years and submit a progress report to the consulted agencies and the Commission, for approval, including a recommendation as to whether the plan shall be modified, if necessary, to improve the effectiveness of the plan.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and

provided to the consulted agencies, and specific descriptions of how the consulted agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted agencies to comment and to make recommendations prior to filing the plan for Commission approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the Loon Management Plan, including any changes required by the Commission. The Commission may require additional measures to enhance the common loon population based upon the analysis filed with the Commission.

Article 409. Comprehensive Recreation and Land Management Plan. Within one year of the date of issuance of this amended license, the licensee shall file for Commission approval, after consultation with the U.S. Fish and Wildlife Service (FWS), Maine Department of Inland Fisheries and Wildlife (Maine DIFW), Maine Department of Environmental Protection (Maine DEP), Maine Department of Conservation (Maine DOC), National Park Service (NPS), and the Maine State Historic Preservation Office, a Comprehensive Recreation and Land Management Plan to protect and enhance terrestrial resources, including the bald eagle (*Haliaeetus leucocephalus*), and to enhance recreation resources.

The plan shall include the following land management elements: (1) a provision for retaining the existing Flagstaff Project boundary up to an elevation of 1,150 feet U.S. Geological Survey datum to protect riparian habitat; (2) a proposal for including in the project boundary any additional lands needed for any recreational facilities required by this license; (3) identification of acceptable uses, such as timber harvest management and public access, for the buffer zone; (4) site-specific erosion and sediment control measures to be implemented during and after construction to minimize loss of the area's natural vegetation and provide for revegetation, stabilization, and landscaping of new construction areas and slopes affected by erosion; (5) measures to control project-induced shoreline erosion at Stratton Brook and the north and south branches of the Dead River at the Town of Eustis; and (6) a provision for monitoring and updating bald eagle nest site locations on project land map(s) and notifying the FWS, Maine DIFW, Maine DEP, Maine DOC, and NPS of such locations.

The plan shall include the following recreation elements: (7) the whitewater boating flows required in Article 401 and provisions for: (a) improving signs and parking areas at the Myers Lodge camping area and Big Eddy camping area; (b) developing and maintaining a portage trail around the south side of Poplar Hill Falls; (c) providing access to the Long Falls Dam picnic area for people with disabilities; (d) developing a

cooperative recreational management plan with the Maine Department of Conservation for abutting applicant and state-owned lands around Flagstaff Lake that have shared recreational facilities; (e) providing day-parking at the Bog Brook boat launch; (f) improving and maintaining emergency vehicle access near the confluence of Enhanced Stream and the Dead River during the whitewater recreational season; and (g) providing a toll-free telephone service for recreational flow release information; (8) a provision for improving and maintaining foot access to Enchanted Stream from the existing foot path; (9) provisions for posting known angler access sites near the Dead River with notices to warn the public of water level increases, providing basic information on wading angler safety, and posting the annual whitewater release schedule; (10) provisions for public access to the Spencer Stream put-in near the confluence of the Dead River and Spencer Stream; (11) provisions to ensure continuation of public access to project recreation facilities for the duration of the license; (12) a construction schedule, and associated costs, for any recreational enhancements required by this license; (13) provisions for operation and maintenance of existing and new project recreation facilities and assessment of associated costs, including any maintenance agreements, and fees charged for public use; (14) a discussion of how the needs of people with disabilities were considered in the planning and design of the recreation facilities; and (15) detailed site plans for existing recreational facilities and preliminary site plans for recreational enhancements, including delineation of location relative to the project boundary.

The licensee shall include with the plan an implementation schedule, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted agencies, and specific descriptions of how the consulted agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted agencies to comment and to make recommendations prior to filing the plan for Commission approval. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

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

Article 410. Recreation Monitoring. The licensee shall, after consultation with the U.S. Fish and Wildlife Service, Maine Department of Conservation, Maine Department of Inland Fisheries and Wildlife, and National Park Service, monitor recreation use at the Flagstaff Project area to determine whether existing recreation facilities meet recreation needs.

During the term of the license, concurrent with the filing of FERC Form 80, required by section 8.11 of the Commission's Regulations (18 C.F.R. § 8.11), the licensee

shall file a report with the Commission on the monitoring results. The report shall include: (1) recreational use figures; (2) a discussion of the adequacy of the licensee's recreation facilities at the project site to meet recreation demand; (3) a description of the methodology used to collect all study data; (4) if there is a need for additional facilities, measures proposed by the licensee to accommodate recreation needs in the project area; (5) documentation of agency consultation and agency comments on the report after it has been prepared and provided to the agencies; and (6) specific descriptions of how the agencies' comments are accommodated by the report.

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

Article 411. Historic Properties. The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the Maine State Historic Preservation Officer, for Managing Historic Properties That May Be Affected by a License Issuing to Central Maine Power Company for the Continued Operation of the Flagstaff Project in Maine," executed on August 6, 1998, including but not limited to the Cultural Resources Management Plan (CRMP) for the project. In the event that the Programmatic Agreement (PA) is terminated, the licensee shall implement the provisions of its approved CRMP. The Commission reserves the authority to require changes to the CRMP at any time during the term of the license. If the PA is terminated prior to the Commission approval of the CRMP, the licensee shall obtain approval from the Commission and Maine State Historic Preservation Office before engaging in any ground disturbing activities or taking any other action that may affect any Historic Properties within the project's Area of Potential Effect.

Article 412. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee also shall have continuing responsibility to supervise and control the use and occupancies, for which it grants permission, and to monitor the use of, and ensure compliance with, the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance

made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee also shall ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least 0.5 mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

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

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(G) The licensee shall serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

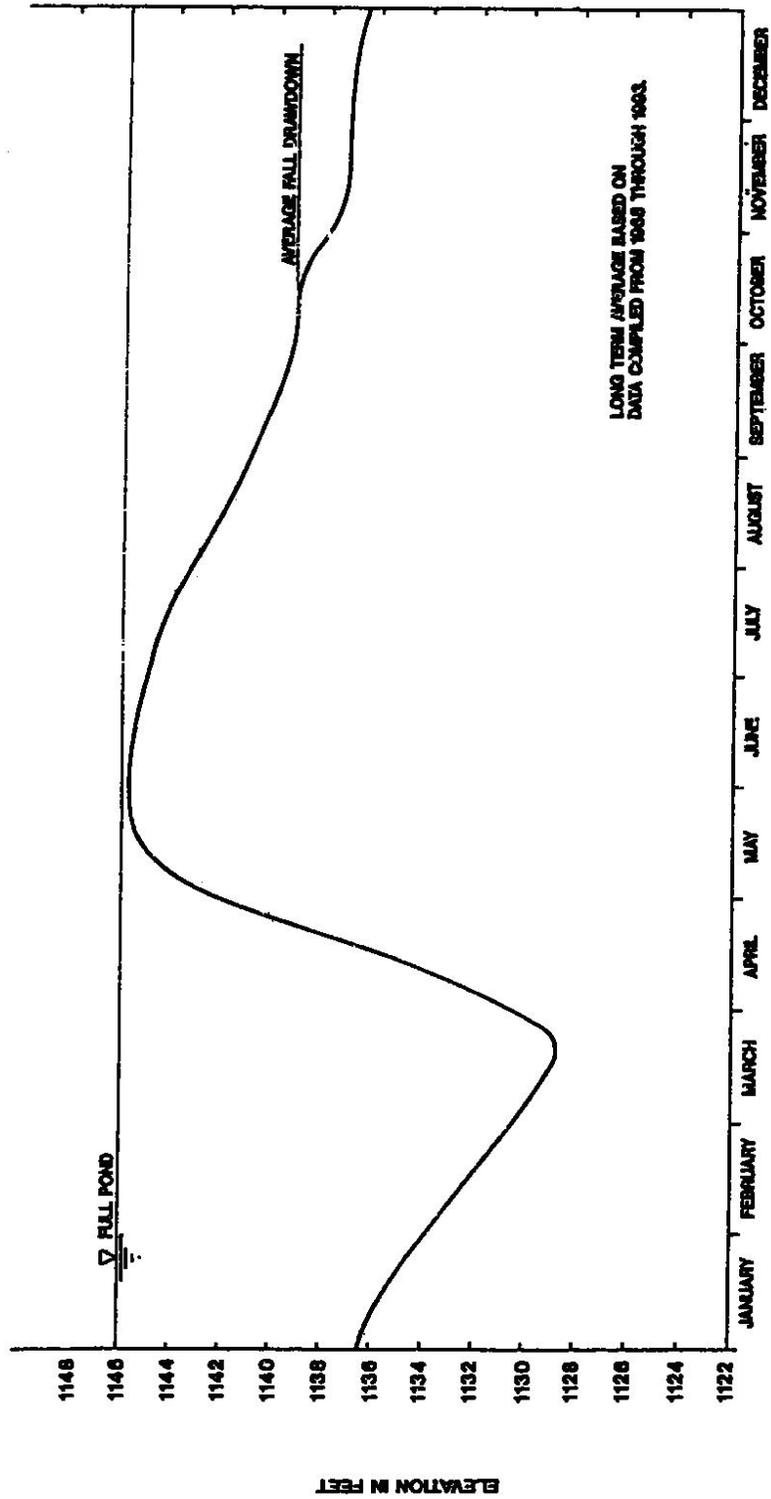
By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Flagstaff Lake Long Term Average Operating Curve



Form L-3
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

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

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

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

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

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

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

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

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15

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

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

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

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

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other

projects or power systems and in such manner as the Commission any direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to

the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

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

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

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

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

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

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