

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Trafalgar Power, Inc.

Project No. 4900-071

ORDER APPROVING CHANGE IN PROJECT BOUNDARY

(Issued May 11, 2004)

1. Trafalgar Power, Inc., through its agent, Algonquin Power Systems (New York), Inc. (jointly, Algonquin), has filed an application for amendment of the license for its Forestport Generating Station Project No. 4900. As discussed below, we grant the application.

I. Background

2. The 3.3-megawatt Forestport Project is located on the Black River in Oneida County, New York. In March 1987, the Commission issued Lawrence R. Taft an original license to construct, operate and maintain the project. 38 FERC ¶62,293.

3. The project license states that the project includes specified project works and “[a]ll lands, to the extent of the licensee’s interests in those lands, enclosed by the project boundary shown by Exhibit G.” *Id.* at 63,532-33. License Article 304 required the licensee to file revised Exhibit G drawings within 90 days of the completion of project construction.

4. In July 1987, Taft and the New York State Department of Transportation (NYSDOT) executed an agreement (the New York Hydro Easement) giving Taft a hydropower easement over the lands and water flow owned by NYSDOT and necessary to the construction and operation of the project.

5. On October 5, 1987, the Commission approved the transfer of the project license from Taft to Trafalgar. 41 FERC ¶ 62,009. While Trafalgar constructed and owns the project penstock, power house, turbine-generator unit, and primary transmission line, the rest of the project works are owned by NYSDOT, as are certain of the project lands.¹

6. On May 3, 1989, Trafalgar filed “as-built” Exhibits A and G for the Forestport Project. The Exhibit G was approved and made part of the project license by unpublished order dated May 22, 1989.²

7. Trafalgar subsequently experienced serious operational and financial difficulties involving the Forestport Project and several other projects. As part of the resolution of these matters, Algonquin became Trafalgar’s agent and the operator of Trafalgar’s hydroelectric projects. See Hydro Investors, Inc. v. Trafalgar Power, Inc., 99 FERC ¶ 61,384 at ¶ 2 (2002).

8. In early 2002, the Commission received a letter referencing allegations that Alan B. Kirkland had been injured on lands within the project boundary downstream of the Forestport Dam, and stating that no information appeared in the Commission’s public files with respect to the alleged incident. See letter to Anton J. Sidoti (New York Regional Engineer) from Paul V. Nolan (February 25, 2002). The Regional Engineer then forwarded this correspondence to Algonquin, noting that the Commission’s regulations, 18 C.F.R. § 12.10(b), require licensees to promptly notify the Regional Engineer after becoming aware of a drowning or other serious accident at a hydroelectric project. The Regional Engineer ordered Algonquin to file an incident report, including a plan to avoid future incidents, within 14 days. See letter to Sean Fairfield (Algonquin Regulatory and Environmental Coordinator) from Anton J. Sidoti (February 27, 2002).

¹ The project includes Forestport dam; the 75-acre Forestport Reservoir; the project forebay, Alder Pond; Alder Pond Dike, which creates the pond; and a canal which carries water from the reservoir to Alder Pond and from the pond to the project intake. These facilities are owned by NYSDOT. From the powerhouse, flows are returned to the Black River. As discussed below, certain of the project lands are owned by third parties.

² The order was issued by the Director, Division of Project Compliance and Administration (now the Division of Hydropower Administration and Compliance, Office of Energy Projects).

9. On March 18, 2002, Algonquin filed a letter stating that its insurance company had demonstrated to the satisfaction of Mr. Kirkland's counsel that the area where the injury occurred is not owned or maintained by Algonquin, and that Mr. Kirkland had voluntarily dismissed his action against the company. See letter to Anton J. Sidoti from Sean Fairfield. On June 20, 2002, Algonquin sent to the Regional Engineer, via facsimile, a map showing the project boundary and, outside the boundary, the location of a steel pin³ on which Mr. Kirkland allegedly tripped.

10. On July 29, 2002, the Regional Engineer informed Algonquin that the map it had submitted was inconsistent with the project's approved "as-built" Exhibit G-1 (filed by Trafalgar on May 28, 1989), which showed the pin to be within the project boundary. The Regional Engineer again ordered Algonquin to file an incident report and to remove the pin and any other similar hazards within the project boundaries. See letter to Sean Fairfield from Anton J. Sidoti. Algonquin responded that the approved "as-built" drawing was part of the original license application and did not reflect the actual project boundary. See letter to Anton J. Sidoti from Sean Fairfield (filed August 16, 2002).

11. By letter dated September 27, 2002, the Regional Engineer informed Algonquin that the official project boundaries are those shown in the Exhibit G drawings, and once again ordered Algonquin to submit an incident report. With respect to Algonquin's statement that it did not own the land on which the accident has occurred, the Regional Engineer noted that Standard Article 5 of the project license requires the licensee to acquire title in fee, or the right to use in perpetuity, all lands necessary for the construction, maintenance, and operation of the project (which means all lands within the project boundary); and that a lack of such rights might place the licensee in non-compliance with Article 5. See letter to Sean Fairfield from Anton J. Sidoti.

12. On October 7, 2002, Algonquin filed a letter reiterating its contention that the incident in question did not occur on project property. The company asserted that the project was in compliance with license Article 5, and added that, "in order to further clarify the project boundary issue," it would file a request that the Commission amend Exhibit G in accordance with Algonquin's understanding of the lands necessary for the

³ The object is referred to in the various documents as both an "iron pipe" and a "steel pin."

project, which it averred were obtained through the New York Hydro Easement. See letter to Anton J. Sidoti from Sean Fairfield.

13. By letter dated October 11, 2002, the Regional Engineer informed Algonquin that its failure to file the incident report placed it in violation of section 12.10(b) of the Commission's regulations, 18 C.F.R. § 12.10(b), and that the failure to file the report within 10 days could subject the company to the enforcement and civil penalty provisions of the Federal Power Act (FPA).

14. On October 22, 2002, Algonquin filed a one-paragraph description of the incident. See letter to Anton J. Sidoti from Sean Fairfield. By letter dated October 29, 2002, the Regional Engineer informed Algonquin that the filing "is deficient since it does not provide adequate details of the incident, remedial measures to be taken to prevent a possible recurrence of the incident and was not verified as per section 12.13 [of the Commission's regulations]." See letter to Sean Fairfield from Anton J. Sidoti.

15. On November 13, 2002, Algonquin filed a letter stating that the state had determined that the land on which the incident occurred was not state-owned property, and that the land was not part of the project. Algonquin said that it was attempting to determine who owned the property and that it would "keep your office informed of the status of locating the owner and any action they may take in correcting the condition." See letter to Anton J. Sidoti from Sean Fairfield. By letter dated December 12, 2003, the Regional Engineer stated that he expected a complete incident report to be filed by January 31, 2003. See letter to Sean Fairfield from Anton J. Sidoti.

16. On February 4, 2003, Algonquin filed a "corrected" Exhibit G drawing, which it stated was based on an updated survey, and which excludes from the project boundary some 1.8 acres of land below the dam, including the area where the steel pin is located. On April 3, 2003, Algonquin filed a further revised Exhibit G, making some changes to the project boundary lines, as well as additional survey maps.

17. By letter dated May 5, 2003, Algonquin informed the entity which it believed to be the owner of the property of the existence of potential tripping hazards on the property. See letter to Tosun Associates from Algonquin (filed May 12, 2003)

18. On May 6, 2003 Mr. Kirkland filed a motion to intervene and request that the Commission either institute a formal proceeding regarding the proposed boundary change or dismiss the application as deficient. He argued that Algonquin's filing was an attempt to evade responsibility for filing the required incident report and for complying with

standard license article 5, and that the lands in question were currently within the project boundary, as demonstrated by the approved Exhibit G. He also asserted that Algonquin's

proposed alteration of the project boundary would eliminate public recreational access and use of project lands and waters,⁴ and that the lands are needed for other project purposes, including shoreline protection.

19. On October 17, 2003, the Regional Engineer informed Algonquin that its May 5, 2003 letter to the property owner satisfied the requirement for reporting the incident pursuant to section 12.10(b). See letter to Sean Fairfield from Anton J. Sidoti.

20. On October 20, 2003, Algonquin filed additional information with respect to the proposed revision of Exhibit G, including the results of consultation with resource agencies and other interested groups.

21. On November 6, 2003, the Commission issued public notice of Algonquin's filings of February 4, April 3, and October 20, 2003, as an application to amend the license for the Forestport Project by revising the project boundary, and soliciting comments, motions to intervene, and protests.

22. The only person to respond to the notice was Mr. Kirkland who questioned Algonquin's premise that the purpose of the proceeding was merely to correct an error in Trafalgar's 1989 submittal of the as-built Exhibit G. He also reiterated his contention that Algonquin had not demonstrated that the land it wants to exclude is not needed for any project purposes, such as recreation, project security, public safety, and dam safety.⁵

⁴ Mr. Kirkland stated that it was while recreating on project lands that he sustained his injuries.

⁵ Mr. Kirkland also sought clarification that his previous motion to intervene made him a party to the proceeding when it was filed. This is not correct. At the time Mr. Kirkland filed his May 6, 2003 motion to intervene, the Commission had not yet issued public notice of Algonquin's filings and there was thus no proceeding in which to intervene (until the Commission began the amendment proceeding, the only ongoing matter was the Commission's examination of whether Algonquin was in compliance with its license: such matters are solely between the Commission and its licensees, and the Commission generally does not permit intervention in them). However, because Mr. Kirkland incorporated by reference his May 6, 2003 pleading in his December 5, 2003

(continued....)

Algonquin's January 12, 2004 answer to Mr. Kirkland's protest⁶ repeated its position that it merely seeks to correct a "patent error" in the 1989 Exhibit G, and stated that the lands in question are not needed for any project purpose.

23. On March 23, 2004, Mr. Kirkland filed additional information, including affidavits by Lawrence Taft, the original licensee of the Forestport Project, and Dennis Mowers, who performed survey and map preparation work for Mr. Taft, to support Mr. Kirkland's contention that there was no error in the original Exhibit G filed with the Commission, and that the lands at issue were intended to be within the project boundary.

24. On April 29, 2004, Algonquin filed an answer to Mr. Kirkland's March 23 filing. Algonquin reiterated its earlier assertions that the land in question is not needed for project purposes. On May 3, 2004, Mr. Kirkland filed a response to Algonquin's April 29 filing, again contending that the land is within the project boundary and is necessary for project purposes.

II. Discussion

25. Part I of the FPA directs the Commission, when issuing a license for a hydroelectric project, to require the licensee to undertake appropriate measures on behalf of both developmental and non-developmental public interest uses of the waterway, including fish, wildlife, and recreation. See FPA sections 4(e), 16 U.S.C. ' 797(e), and 10(a)(1), 16 U.S.C. ' 803(a)(1). These requirements, as set forth in a license, constitute the "project purposes."⁷

(continued...)

pleading, the December pleading may be construed as renewing the motion to intervene. The December pleading was unopposed and intervention therefore was automatically granted 15 days after the pleading was filed. See 18 C.F.R. § 385.214(c) (2003).

⁶ Algonquin recognizes that the Commission's rules generally do not allow answers to protests, see 18 C.F.R. § 385.213(a)(2) (2003), and asks for leave to file its answer. Because the answer clarifies Algonquin's position and promotes a complete record, we will grant the company's request.

⁷ For a comprehensive discussion of "project purposes" and "project boundaries," see Wisconsin Public Service Corp., 104 FERC ¶ 61,295 (2003).

(continued...)

26. Standard license article 5 requires the licensee to acquire and retain all interests in non-federal lands and other property necessary or appropriate to carry out project purposes.⁸ The licensee may obtain these property interests by contract or, if necessary, by means of federal eminent domain pursuant to FPA section 21. See 16 U.S.C. ' 814. A licensee's property interests can range from fee simple to perpetual or renewable leases, easements, and rights-of-way.⁹

(continued...)

⁸ Standard article 5 appears in what are called "L-Forms," which are published at 54 FPC 1792-1928 (1975) and are incorporated into project licenses by an ordering paragraph. See 18 C.F.R. ' 2.9 (2003). Article 5 states in pertinent part:

The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. . . .

⁹ Thus, title to lands within the boundary can be owned by someone other than the licensee, so long as the licensee holds the necessary property interests (e.g., flowage easements) and permits (e.g., a Forest Service special use permit) to carry out licensed project purposes. If the Commission requires additional control in order to accomplish a project purpose, or amends the license to expand or add a project purpose, it can direct its licensee to obtain any necessary additional property rights, whether inside or outside the existing project boundary, and amend the boundary as appropriate. See, e.g., FPL Energy Maine Hydro LLC, 88 FERC & 61,116 at 61,274 (1999); PacifiCorp, 80 FERC & 61,330 at 62,113-14 (1997); Great Northern Paper, Inc., 77 FERC & 61,066 at 61,247-48 (1996);
(continued...)

27. Project boundaries are used to designate the geographic extent of the lands, waters, works, and facilities that the license identifies as comprising the licensed project and for which the licensee must hold the rights necessary to carry out the project purposes. A project boundary does not change property rights, nor does the conveyance of a property right change a project boundary.¹⁰ If a licensee wishes to remove lands from a project B i.e., from the Commission's regulatory control as defined in the project license B it must file an application to delete the lands from the license and from the project boundary.¹¹

28. Any application to remove lands from a project boundary will be approved only if the Commission determines that the land is no longer necessary or appropriate for project purposes; that is, that all project purposes will continue to be satisfied in the absence of the lands at issue.

A. Nature of This Proceeding

29. Algonquin characterizes this proceeding as dealing with the submission of a revised Exhibit G to correct an error in the “as-built” Exhibit G filed in 1989. According

(continued...)

Niagara Mohawk Power Corp., 77 FERC & 61,306 at 62,391 (1996); Georgia Power Co., 32 FERC & 61,237 (1985). If the Commission determines that less land is needed to meet project purposes, or if it redefines project purposes, it can remove land from the boundary. The Commission has regulatory authority only over the licensee, and thus can administer and enforce the terms of the license only through the licensee and the licensee's property rights.

¹⁰ See, e.g., Niagara Mohawk Power Corp., 77 FERC & 61,306 (1996). Property rights are governed by state law, whereas project boundaries are determined by the Commission.

¹¹ These are applications to amend the license by revising the license's description of project lands and the exhibits showing the project works and (if applicable; see n. 17, supra) boundaries (both referenced in a license's ordering paragraphs). See 18 C.F.R. 4.200 - 4.202 (2003).

to Algonquin, the 1989 Exhibit G contains a gap in the project boundary in the area downstream of the dam, as a result of which the project boundary is indefinite, and the extent of project lands is unclear. Algonquin argues that the project boundary was intended to be coextensive with the New York Hydro Easement, that that easement did not include the lands at issue here, and that the 1989 “as-built” Exhibit G inadvertently replicated an earlier version of Exhibit G that preceded execution of the easement. In consequence, Algonquin asks the Commission to accept the “corrected” Exhibit G.

30. Mr. Kirkland contends that the project boundary is determined by the approved Exhibit G, which does not track the New York Hydro Easement. In addition, Mr. Kirkland has submitted affidavits by Lawrence Taft, the original license applicant and licensee, and by Dennis Mowers, a surveyor hired by Mr. Taft, stating that Mr. Taft intended to include the lands in question within the project boundary.

31. As noted above, the 1987 license order states that the project includes lands within the project boundary shown on Exhibit G. The 1989 Exhibit G was approved by the Commission and made part of the license. In order to determine the project boundary, therefore, it is necessary to examine Exhibit G.

32. Examination of the 1989 Exhibit G indeed shows a gap in the line outlining the project boundary in the area downstream of the dam, such that, if that line were the only evidence of the project boundary, it might not be possible to determine where the boundary ends in that area. However, Exhibit G also contains a table of 45 geographical points along the project boundary, with course and distance listed for each point.¹² Following the points set forth in the table results in a complete, unbroken project boundary in the area around the dam. In specific, plotting points 41 through 44, which are located in the area around and below the dam, demonstrates that the area below the dam is in fact within the project boundary. This more detailed information, rather than the indefinite and inexact line drawn on the map, is dispositive of the project boundary. That being the case, there is no uncertainty as to the project boundary, and the lands at issue cannot be removed from the project via a “correction,” but only, as described above, through an application to remove them from the project boundary. As also discussed

¹² The course is set forth in geographical coordinates, e.g., S 63° 30' W, and the distance in feet, e.g., 350'.

above, the public notice of this proceeding construed Algonquin's filings¹³ as such an application.¹⁴

B. Need to Include the Lands in the Project Boundary

33. Algonquin asserts that the land at issue is not needed for any project purpose. The company states that the project recreation plan approved by the Commission does not contemplate any recreational activities downstream of the dam, and that the land at issue is not needed for any other project purpose. See Algonquin's answer at 9-11.

¹³ Mr. Kirkland also contends that the October 20, 2003 filing is improper because it was made by Algonquin, rather than Trafalgar, the licensee, and lacks a verification that the filing was made on Trafalgar's behalf. We have previously noted that, pursuant to the management agreement between Algonquin and Trafalgar, Algonquin is authorized to make filings on Trafalgar's behalf. See 99 FERC ¶ 61,384 at ¶ 8. In addition, Mr. Kirkland objects that he was not served a copy of the October 20, 2003 filing. As discussed above, see n.5, there was no amendment proceeding until the Commission issued the November 6, 2003 notice. In consequence, when Algonquin made the October 20, 2003 filing, there were no parties, and Algonquin was not obligated to serve Mr. Kirkland. In any case, Mr. Kirkland's December 2003 protest demonstrates that he in fact has the October 20 pleading.

¹⁴ Much of the debate between Algonquin and Mr. Kirkland appears focused on the project-related status of the lands where Mr. Kirkland was allegedly injured, possibly with a view toward determining tort liability. However, whether or not the lands are within the project boundary does not affect their ownership. See PP. 25 and 26, supra, and PacifiCorp, 80 FERC ¶ 61,334 at 62,113 (1997) ("The mere inclusion of these lands within the project boundary . . . does not by itself create or alter property rights."). Assuming, arguendo, that the land here was necessary for project purposes, this by itself would not give Trafalgar any rights in it. Rather, Trafalgar would need to acquire those rights through purchase, lease, or other means. In consequence, the evidence submitted in this proceeding concerning ownership of the lands, which appears to show that the licensee has never obtained any interest in the 1.8 acres at issue, is not relevant to our determination of the project boundary. Moreover, whether a licensee has acquired the interests in lands necessary to carry out project purposes is a matter solely between the Commission and its licensee.

34. Mr. Kirkland contends that the land is necessary for project purposes. He states that the land is currently used for recreation and that the land's location below the Forestport Dam affords unique recreational opportunities associated with the flows below the dam. He states that Algonquin's filing does not provide information sufficient to support a finding that control over the lands is not necessary for project security, public safety, dam safety, or project operation and maintenance. See December 5, 2003 Protest and Comment at 4-5.

35. Our review indicates that removal of the land from the project boundary will not affect any project purpose. There are no project facilities located on the land,¹⁵ nor have any biologically significant or archeological or historical sites been identified there. No recreation sites identified in the project's approved Recreation Use Plan, see 52 FERC ¶ 62,101 (1990), are located on the land, and the recreation plan does not discuss or require recreation downstream of the dam.¹⁶ Access trails for canoeists and fishermen located upstream and downstream of the powerhouse will remain in the project boundary, as will the recreational parking lot upstream of the dam.¹⁷ There has been no demonstration that the land is needed for any other project purpose.¹⁸ We therefore conclude that the land may be removed from the project boundary.¹⁹

¹⁵ Our engineering staff has informed us that the steel pin appears to be a remnant of an old dam or prior construction, and is not part of the current dam.

¹⁶ While Mr. Kirkland asserts that "[t]his area is presently used for access to waters below the dam and involves active and passive use of the area," December 5, 2003 protest at 4, recreational opportunities provided for elsewhere on project lands, including the fishing and canoeing access trails, are sufficient to provide adequate public access to project lands and waters. See 18 C.F.R § 2.7(b) (2003).

¹⁷ Algonquin submitted its proposal to change the project boundary to the U.S. Fish and Wildlife Service, National Park Service, New York State Department of Environmental Conservation, New York State Office of Parks, Recreation, and Historic Preservation, the Town of Forestport, Adirondack Mountain Club, and New York State Woodsmen's Field Days, Inc., and provided the Commission with the responsive comments that it received. None of the commenters opposed the proposal.

¹⁸ The fact, noted by Mr. Kirkland in his March 19, 2004 filing (see affidavit of David Longeretta at P 11), that during the course of a recent project safety inspection Commission staff walked on the land proposed to be removed has no bearing on whether
(continued....)

The Commission orders:

(A) The application to amend the license for the Forestport Generating Station Project No. 4900 and for approval of revised exhibits, filed by Algonquin Power Systems (New York), Inc. as agent for Trafalgar Power, Inc. (Trafalgar) on February 4, 2003, as supplemented on April 3 and October 20, 2003, is approved.

(B) The following revised exhibit G drawing, filed by Algonquin Power Systems New York, Inc. on October 20, 2003, is approved and made part of the license:

(continued...)

the land is needed for project purposes. Commission staff often traverses non-project lands in the course of safety and environmental inspections.

¹⁹ On March 31, 2004, counsel for Mr. Kirkland filed a letter questioning whether improper *ex parte* communications had occurred in this proceeding. See letter to Pat Wood III from David A. Longheretta. Specifically, counsel noted that Algonquin had, in a cover letter accompanying its March 12, 2004 filing, explained that it was making that filing “in response to a conference call between Algonquin . . . and the Federal Energy Regulatory Commission (dated February 10, 2004). . . .” In its April 29, 2004 pleading Algonquin asserted that the communication at issue “involved purely technical drafting matters regarding how the corrected Exhibit G was prepared.” The Commission’s rule on off-the-record communications, 18 C.F.R. § 385.2201 (2003), generally prohibits off-the-record communications between decisional employees and persons outside the Commission relevant to the merits of contested, on-the-record proceedings. The conference call in question, which was not publicly-noticed and appears to have dealt with substantive matters, may have violated the rule. As the rule further provides, the Secretary has placed in the public file a summary of the conference call prepared by Commission staff, and that summary will not be part of the decisional record of this proceeding. See 18 C.F.R. § 385.2201(f)(1) and (2). Moreover, to the extent that Mr. Kirkland wishes to file a response to the off-the-record communication and to ask the Commission to include the off-the-record communication and his response in the decisional record, he may do so. See 18 C.F.R. § 385.2201(f)(3). Notwithstanding the foregoing, we note that the material submitted by Algonquin in response to the off-the-record communication was itself filed with the Commission in the public record of the proceeding and was served on Mr. Kirkland, so that no prejudice has occurred as a result of the off-the-record communication.

| Exhibit | New FERC Drawing No. | Drawing Title | Superseding |
|---------|----------------------|------------------------------|-------------|
| G-1 | 4900-34 | Project Lands and Boundaries | 4900-32 |

(C) The superseded exhibit drawing is eliminated from the license.

(D) Within 45 days of the date of issuance of this order, the licensee shall file the approved exhibit drawing in aperture card and electronic file formats, consistent with following requirements:

(1) Three sets of the approved exhibit drawing shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-4900-34) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., G-1), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card.

Two 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.

(2) The licensee shall file two separate sets of exhibit drawings in electronic 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. Each drawing must be a separate electronic file, and the file name shall include: FERC Drawing Number, FERC Exhibit, Drawing Title, date of this order, and file extension [e.g., P-4900-34, G-1, Project Lands and Boundaries, xx-xx-2004.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
 DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)
 FILE SIZE – less than 1 MB

(3) The licensee shall file three separate sets of the project boundary data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo

files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this order, and file extension [e.g., P-4900, boundary vector data, xx-xx-2004.SHP]. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale, and contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates of each reference point must be shown. The data must include a separate text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this order, and file extension [e.g., P-4900, boundary metadata, xx-xx-2004.TXT].

(E) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.