

Brookfield

Brookfield Renewable Power Inc.
Brookfield Energy Marketing Inc.
480 de la Cité Blvd
Gatineau, Québec J8T 8R3
Canada

Tel 819.561.2722
Fax 819.561.7188
www.brookfieldpower.com

November 24, 2011

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
Attn: Debra A. Howland, Executive Director & Secretary

Subject: Application for NH Class IV Eligibility – Fulton Development, Oswego River
Hydroelectric Project

Dear Miss Howland;

Attached, per the requirements posted on the NHPUC website, please find one original and 7 copies of a completed application for Renewable Energy Source Eligibility for our Fulton Development, which is part of the Oswego River Hydroelectric Project in New York state.

The application includes:

- Executed and Notarized Affidavit
- Completed Application Form
- Supplement to the Application Form – containing responses to questions on the application form for which an answer could not be input due to locked cells on the application spreadsheet
- Relevant attachments referred to in the Application

I trust the attached constitutes a complete application and provides sufficient information for you to make a determination on eligibility, however, please contact the undersigned if you require anything further, or have any questions regarding the application.

Yours sincerely,



Sean Faulds

Manager, Ancillary Services and Renewable Energy

Sean.faulds@brookfieldpower.com

Ph: (819) 561-2722 ext. 6718

NHPUC NOV28'11 AM10:31

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Att'd: GIS Import Procedure

Section 401 Water Quality Certification

September 2006 FERC Order Amending License and Accelerating Eel Passage Schedule

November 2004 FERC Order on Offer of Settlement and Issuing New License

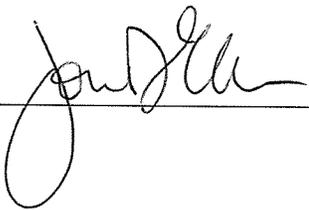
Settlement Offer

Supplement to NH CI IV Application

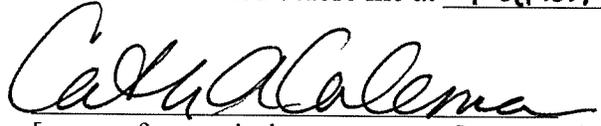
Project: *Fulton Development – Oswego River Hydroelectric Project*

Affidavit:

I hereby swear or affirm that the information provided in this Application is true and correct to the best of my knowledge.

 11/1/2011

Sworn or affirmed before me at Fulton NY on 11/1/2011.



[name of commissioner or notary] a commissioner
in and for the [State] of [NY].

Catherine A. Coleman
Notary Public State of New York
No. 4978020
Qualified in Onondaga County
Commission Expires February 19, 2015

(2)

Fulton New York 13069
(City) (State) (Zip code)

9. Latitude: 43 Longitude: -76

10. The name and telephone number of the facility's operator, if different from the owner: Same

Erie Boulevard Hydropower, L.P. Control Center: 508-251-7744
(Name) (Telephone number)

11. The ISO-New England asset identification number, if applicable: _____ or N/A:

12. The GIS facility code, if applicable: _____ or N/A:

13. A description of the facility, including fuel type, gross nameplate generation capacity, the initial commercial operation date, and the date it began operation, if different.

14. If Class I certification is sought for a generation facility that uses biomass, the applicant shall submit:
- (a) quarterly average NOx emission rates over the past rolling year,
 - (b) the most recent average particulate matter emission rates as required by the New Hampshire Department of Environmental Services (NHDES),
 - (c) a description of the pollution control equipment or proposed practices for compliance with such requirements,
 - (d) proof that a copy of the completed application has been filed with the NHDES, and
 - (e) conduct a stack test to verify compliance with the emission standard for particulate matter no later than 12 months prior to the end of the subject calendar quarter except as provided for in RSA 362-F:12, II.
 - (f) N/A: Class I certification is NOT being sought for a generation facility that uses biomass.

15. If Class I certification is sought for the incremental new production of electricity by a generation facility that uses biomass, methane or hydroelectric technologies to produce energy, the applicant shall:
- (a) demonstrate that it has made capital investments after January 1, 2006 with the successful purpose of improving the efficiency or increasing the output of renewable energy from the facility, and
 - (b) supply the historical generation baseline as defined in RSA 362-F:2, X.
 - (c) N/A: Class I certification is NOT being sought for the incremental new production of electricity by a generation facility that uses biomass, methane or hydroelectric technologies.

16. If Class I certification is sought for repowered Class III or Class IV sources, the applicant shall:
- (a) demonstrate that it has made new capital investments for the purpose of restoring unusable generation capacity or adding to the existing capacity, in light of the NHDES environmental

permitting requirements or otherwise, and

- (b) provide documentation that eighty percent of its tax basis in the resulting plant and equipment of the eligible generation capacity, including the NHDES permitting requirements for new plants, but exclusive of any tax basis in real property and intangible assets, is derived from the new capital investments.
 - (c) N/A: Class I certification is NOT being sought for repowered Class III or Class IV sources.
17. If Class I certification is sought for formerly nonrenewable energy electric generation facilities, the applicant shall:
- (a) demonstrate that it has made new capital investments for the purpose of repowering with eligible biomass technologies or methane gas and complies with the certification requirements of Puc 2505.04, if using biomass fuels, and
 - (b) provide documentation that eighty percent of its tax basis in the resulting generation unit, including NHDES permitting requirements for new plants, but exclusive of any tax basis in real property and intangible assets, is derived from the new capital investments.
 - (c) N/A: Class I certification is NOT being sought for formerly nonrenewable energy electric generation facilities.
18. If Class IV certification is sought for an existing small hydroelectric facility, the applicant shall submit proof that:
- (a) it has installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and
 - (b) when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.
 - (c) N/A: Class IV certification is NOT being sought for existing small hydroelectric facilities.
19. If the source is located in a control area adjacent to the New England control area, the applicant shall submit proof that the energy is delivered within the New England control area and such delivery is verified using the documentation required in Puc 2504.01(a)(2) a. to e.
20. All other necessary regulatory approvals, including any reviews, approvals or permits required by the NHDES or the environmental protection agency in the facility's state.
21. Proof that the applicant either has an approved interconnection study on file with the commission, is a party to a currently effective interconnection agreement, or is otherwise not required to undertake an interconnection study.
22. A description of how the generation facility is connected to the regional power pool of the local electric distribution utility.
23. A statement as to whether the facility has been certified under another non-federal jurisdiction's renewable portfolio standard and proof thereof.
24. A statement as to whether the facility's output has been verified by ISO-New England.

Supplement to NH CI IV Application

Project: *Fulton Development – Oswego River Hydroelectric Project*

Question 13: A description of the facility, including fuel type, gross nameplate generation capacity, the initial commercial operation date, and the date it began operation, if different.

The Fulton Hydroelectric Development (FERC No. 2474), was originally built in 1884 and is located on the Oswego River in the city of Fulton, New York. The Fulton Development is located between the Barge Canal Lock No. 3 on the eastern shore of the Oswego River and the right abutment of the New York State Dam No. 3. The Fulton Development consists of: (1) a 509-foot-long, 15-foot-high concrete buttress dam with a crest elevation of 334.0 feet (USGS) and topped with 6-inch-high flashboards, and consisting of (a) a 35-foot-high, 41-foot-long, 14-foot-wide concrete headgate structure with three steel gates each covering a discharge area measuring 6.5 feet wide by 8.0 feet high; (b) a 10-foot-long, 40-foot-wide, 11-foot-deep forebay with two concrete gravity retaining walls forming the sides of the forebay; and (c) trashracks with 1-inch clear openings; (2) a 33-acre reservoir with a normal pool elevation of 334.5 feet (USGS); (3) a 1,850-foot-long bypassed reach; and (4) a powerhouse containing two generating units with a combined installed capacity of 1.25 megawatts (MW). The concrete headgate structure is owned by the NYS Canal Corporation. There is a small inspection gallery through the dam accessible through a hatch located on the Fulton side of the dam.

Question 18: If Class IV certification is sought for an existing small hydroelectric facility, the applicant shall submit proof that:

- a) it has installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and
 - b) when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.
- a) Section 25 of the FERC Order on Offer of Settlement and Issuing New License, issued on November 30, 2004 (attached) describes the fish passage protocol for the Fulton Development, which includes flows of 75 cubic feet per second through an existing sluice gate adjacent to the Fulton powerhouse. This fishway discharges into a series of plunge pools with conveyance leading into the Oswego River. As described in the 2006 order amending the Oswego River Project license, since 2008 upstream fish passage is provided at the Fulton Development via an eel conveyance system that is installed seasonally from June 15 – September 15 (attached [116 FERC ¶62,191]).

- b) The New York State Department of Environmental Conservation (NYSDEC) issued the Section 401 Water Quality Certification for the Oswego River Project on October 4, 2004 (attached).

Question 19: If the source is located in a control area adjacent to the New England control area, the applicant shall submit proof that the energy is delivered within the New England control area and such delivery is verified using the documentation required in PUC 2504.01(1)(2)a. to e.

The energy from this facility is not currently routinely delivered into the New England control area. However, upon certification, Brookfield Energy Marketing LP will verify delivery into the New England control area by providing to NH PUC:

- (i) Documentation of unit-specific contracts entered in the ISO-NE EES system (ISO-NE ID) captured by the GIS with the ISO-NE Generator Asset ID Number (GIS Import Procedures in attachment for details);
- (ii) Proof of associated transmission rights for delivery of the source's Energy from the generation unit to the ISO-NE control area which will be demonstrated by the OASIS numbers included in the NERC tags;
- (iii) Documentation that the Energy delivered was settled in the ISO-NE wholesale market system which will also be captured by the GIS with the ISO-NE Generator Asset ID Number;
- (iv) Documentation that the source produced, during each hour of the applicable month, the amount of megawatt-hours claimed, as verified by the GIS administrator; and
- (v) Confirmation that the Energy delivered under the legal obligation received a NERC tag by providing a list of NERC tags and ISO-NE ID also captured by the GIS with the ISO-NE Generator Asset ID Number.

Question 20: All other necessary regulatory approvals, including any reviews, approvals or permits required by the NHDES or the environmental protection agency in the facility's state.

All applicable approvals or permits are referenced in question 18.

Question 21: Proof that the applicant either has an approved interconnection study on file with the commission, is a party to a currently effective interconnection agreement, or is otherwise not required to undertake an interconnection study.

N/A. The facility is already existing, and is interconnected in an adjacent control area.

Question 22: A description of how the generation facility is connected to the regional power pool of the local electric distribution utility.

N/A. The Project is interconnected with the National Grid distribution and transmission system in New York. The facility is part of a shared PTID, or connection point, as modeled by NYISO.

Question 23: A statement as to whether the facility has been certified under another non-federal jurisdiction's renewable portfolio standard and proof thereof.

This facility is currently certified under the Maryland renewable portfolio standard under the Registration Number: MD-90128-WAT-01 (see MD PSC document attached).

Question 24: A statement as to whether the facility's output has been verified by ISO-New England.

N/A. The facility is located in an adjacent control area, so its output is not verified by ISO-New England.

Question 25: A description of how the facility's output is reported to the GIS if not verified by ISO-New England.

According to the GIS Import Procedures (see attachment).

Brookfield Energy Marketing LP will also provide the GIS the following:

- (i) evidence that the generating unit actually generated such Energy,
- (ii) NERC tags for such Energy showing that the Energy was actually delivered in ISO-NE, and
- (iii) a certification to the effect that the specified attributes have not been and will not be otherwise sold, retired, claimed, represented as part of Energy sold elsewhere or used to satisfy obligations in another jurisdiction.

Question 26: An affidavit by the owner attesting to the accuracy of the contents of the application.

Signed affidavit attached.

Question 27: Such other information as the applicant wishes to provide to assist in classification of the generating facility.

None.

ATTACHMENT 1

GIS Import Procedure

How to successfully register an import generator through the ISO-NE Enhanced Energy Scheduling (EES) system, and successfully claim the Certificates through the APX GIS system.

- I. Registering an import contract in the ISO-NE EES system
 - A. Responsibility of the GIS Importing Account Holder (through a NEPOOL Participant if the GIS Importing Account Holder is a Non-NEPOOL Participant)
 - a) Create an ISO-NE generator asset ID number for the GIS by utilizing the current asset ID number from the external control area and add a prefix of 'NY' (New York), 'HQ' (Hydro Quebec) or 'NB' (New Brunswick) to the external control area asset ID number (e.g., NY123456).
 - b) Access the ISO-NE EES system. Please see the following site for more detailed instructions on how to use the EES system.
http://www.iso-ne.com/support/user_guides/external_transactions_using_EES.pdf
 - c) Identify the import generator in the ISO's EES system when entering the External Transaction information.
 - (1) Access the "Schedule Options" page in the EES system (see page 25 of the linked User Guide (under the Tasks Section)).
 - (2) Select the box to the left of the "Generation Information System" Special Exception Type.
 - (3) Continue in the "Schedule Options" page in the EES system and enter the ISONE generator asset ID number (as defined in (a) above) in the corresponding "Special Exception Comments" field.
 - B. Responsibility of ISO-NE
 - a) ISO-NE's Settlement Market System will capture the executed External Transaction in the creation of the NEPOOL monthly electronic data file that is sent to APX on a monthly basis to be loaded into the GIS system.
 - C. Responsibility of APX
 - a) On a monthly basis APX will receive the Asset I.D. number through the designated NEPOOL monthly electronic data file for each GIS Importing Account Holder and load the data into the Import Module for that GIS participant.
- II. Registering an import unit and claiming a contract in the APX GIS system. (Contact the GIS Administrator for detailed instructions on how to use the GIS software)
 - A. Locate and review the Import Module in your GIS account and check schedules for accuracy.
 - B. In the Unit Contract Certificates column, click on the link for that schedule and review the Imported Energy screen.
 - C. Under the Source column the system will either reflect, "Not Registered" or it will reflect the unit name depending on whether the system recognizes the GIS I.D. from the data files as a registered import generator. If the unit is "Not Registered", the user must first register the unit before any contracts can be claimed.
 - D. Under the Claimed column the contract will either have "No" or "NA". "NA" tells the user that the contract is a system contract and can not be claimed. "No" signals the user that the contract has been scheduled in the EES system and is recognized in the ISO-NE data files.
 - E. Once the user is in the Unit Contract module, the first step is to complete the two requirements pertaining to sending the GIS Administrator proof that the unit generated the claimed energy and certification that the Certificates' attributes have not been sold in any other jurisdiction.

- F. To claim the schedule the user must click on the "No" link and enter the MWh claimed. The system will not allow the user to proceed unless they have completed and checked off "yes" to the requirements in (E) above.
- G. Once the GIS Administrator receives the required documents the schedule will be approved and the Certificates will be created in the next scheduled GIS trading period.

ATTACHMENT 2

Section 401 Water Quality Certification



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
ERIE BOULEVARD HYDROPOWER LP
225 GREENFIELD PARKWAY

SUITE 201
LIVERPOOL, NY 13088
(315) 413-2787

Facility:
OSWEGO RIVER HYDRO PROJECT
MINETTO, VARICK AND FULTON
DEVELOPMENTS
OSWEGO COUNTY, NY

Facility Location: In MULTIPLE TOWNS in OSWEGO COUNTY
Facility Principal Reference Point: NYTM-E: NYTM-N:
Project Location: Minetto, Varick and Fulton Developments

Authorized Activity: Operation and maintenance of the Oswego River Hydro Project at the Fulton, Minetto and Varick Developments (FERC No. 2474) in accordance with the applicable provisions of the Oswego River offer of Settlement submitted to to the Federal Energy Regulatory Commission on February 19, 2004 and the attached conditions.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 7-3599-00021/00001

New Permit

Effective Date: 10/4/2004

Expiration Date: No Exp. Date

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: WILLIAM R ADRIANCE, Chief Permit Administrator
Address: NYSDEC HEADQUARTERS
625 BROADWAY
ALBANY, NY 12233

Authorized Signature: _____

William R. Adriance

Date 10/04/04

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS



GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following
Permits: WATER QUALITY CERTIFICATION**

- 1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application. Such approved plans were prepared by (See Natural Resource Permit Condition 11).
- 2. State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.
- 3. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
- 4. Permittee Responsible For Other Approvals** Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or local government which may be required.
- 5. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.
- 6. No Interference With Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.
- 7. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.
- 8. Water Quality Certification** The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under



Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

9. Notification Requirements for Emergencies The following procedures shall apply to all activities conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Permittee must notify NYS DEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the NYSDEC is not possible, then the NYSDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

- a. a description of the action;
- b. location map and plan of the proposed action;
- c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition 10.

10. Department contacts Except as otherwise specified, all contacts with the Department concerning this certificate shall be addressed to the following:

NYSDEC - Region 7 Headquarters
Regional Permit Administrator
Division of Environmental Permits
615 Erie Boulevard
West Syracuse, NY 13204-2400

11. Offer of Settlement This certificate includes and incorporates the Oswego River "Offer of Settlement" (Settlement) dated November 2003 and submitted to the Federal Energy Regulatory Commission on February 19, 2004.

OPERATIONS

12. Base Flows The certificate holder shall maintain instream flows in accordance with the settlement, in particular, Section 3.2.

13. Impoundment Fluctuations The reservoirs at the Fulton, Minetto and Varick Developments as well as the reservoir at Oswego Falls (Project reservoirs) shall be operated in accordance with the Settlement, in particular, Section 3.1.2. Alternative impoundment operating plans must be reviewed and approved by NYSDEC prior to being implemented. Emergencies shall be dealt with in accordance with special condition 9 of this certificate.

14. Bypass Flows The certificate holder shall maintain bypass flows in accordance with the Settlement, in particular, Section 3.3.

15. Flow Monitoring The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, Section 3.6.



16. Fish Protection/Passage Fish protection passage and movement provisions shall be provided in accordance with the Settlement, in particular, Section 3.5.

17. Public Access Public access and recreational opportunities shall be provided in conformance with the Settlement, in particular, Section 3.7.

CONSTRUCTION REQUIREMENTS

18. Maintenance Dredging The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake/forebay area.

19. Sediment Analysis and Disposal The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department beforehand. Approval from the Department shall include all disposal locations for any sediments to be removed from the project waters.

20. Erosion & Sediment Control Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 90 days before the intended date for commencing work. All work shall conform to the goals below.

At minimum, the certificate holder must accomplish the following objectives:

- a. isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities;
- b. Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered, except where an emergency response requires immediate action;
- c. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the waterbody;
- d. Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/ sedimentation potential;
- e. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project;
- f. Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance;
- g. Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site;
- h. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

21. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river The design and



installation of cofferdams, temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river must be approved by the Department prior to installation.

22. Construction Drawdowns Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.

23. Maintenance of River Flow During all periods of construction, flows immediately downstream of work sites shall be maintained in accordance with condition 12 of this permit.

24. Turbidity Monitoring During Construction During construction related activities, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

25. Notification of DEC of construction activities The NYS DEC contact referenced in Special Condition 10 must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator



NYSDEC REGION 7 HEADQUARTERS
615 ERIE BOULEVARD WEST
SYRACUSE, NY13204 -2400

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittees agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits



The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

ATTACHMENT 3

**September 2006 FERC Order Amending License and Accelerating Eel Passage
Schedule**

116 FERC ¶62,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project Nos. 5984-055 & 2474-024

ORDER AMENDING LICENSE AND ACCELERATING EEL PASSAGE
SCHEDULE

(Issued September 07, 2006)

On March 15, 2006, Erie Boulevard Hydropower, L.P. (Erie) (licensee) filed a license amendment application to increase the authorized generating capacity at its Oswego Falls Project, FERC No. 5984, and to accelerate the installation of upstream eel ladder facilities at its Oswego Falls Project and its Oswego River Project, FERC No. 2474. The projects are located on the Oswego River, Oswego County, New York.

BACKGROUND

The license,¹ as amended by an order issued May 21, 1999,² authorizes the Oswego Falls project with two developments: (1) the East development with three turbine-generator units, each rated at 1,500 kW, for a total installed capacity of 4,500 kW and a total hydraulic capacity of 4,230 cfs; and (2) the West development with five quadruplex-type turbine-generator units: Units 1 and 2, inoperable; Unit 3, modified to contain only two of the original four runners, limiting output to 400 kW, with a hydraulic capacity of 250 cfs; and Units 4 and 5, with nameplate ratings indicating a maximum capacity of 930 kW each, at 17.0 ft. of head, each with a hydraulic capacity of 560 cfs, for a total installed capacity of 2,260 kW and a total hydraulic capacity of 1,370 cfs. The project's authorized combined total installed capacity is 6,760 kW and its hydraulic capacity is 5,600 cfs.³

¹ 74 FERC ¶ 62,138 (March 15, 1996).

² 87 FERC ¶ 62,205 (May 21, 1999).

³ In its current amendment application, under Exhibit B, the licensee describes the existing hydraulic capacities as 400 cfs for Unit 3 and 930 cfs for each of Units 4 and 5. We believe this is an error because these numbers are rather the installed capacities of the subject units. However, if the licensee's intent is to change the hydraulic capacities currently authorized for those units, then it must file a separate amendment application.

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THE AMENDMENTS

1. Proposed Turbine and Generation Changes

Erie proposes to replace Unit 3 at the West development of the Oswego Falls Project by: (1) replacing the existing horizontal quadruplex-type Francis turbine unit with two new, vertical propeller units, each rated 600 kW at 16.7 feet (ft) net head and with a hydraulic capacity of 416 cfs; (2) replacing the existing horizontally-oriented Unit 3 generator with two, new vertically-oriented generators, each rated 550 kW; (3) modifying the existing intake flume floor and roof to accommodate the installation of the new units; (4) building a 24 ft wide by 38 ft long weather-proof enclosure over the new generators on the flume roof; (5) sealing the existing shaft penetration from the turbine flume to the generator room; and (5) providing miscellaneous electrical, control and protection equipment for the new units.

In its license amendment application, Erie included revised Exhibit A and two revised exhibits F-1 and F-2 drawings for the West development, which reflect general design of Unit 3 replacement.

2. Proposed Mitigation and Enhancement Measures

To mitigate for any incremental increase in fish entrainment that could result from the increase in hydraulic capacity at the project, the licensee proposes to accelerate the installation of upstream eel ladder facilities at its Oswego Falls Project and its Oswego River Project. The Oswego River Project, FERC No. 2474, is located downstream of the Oswego Falls Project and consists of the Varick, Minetto, and Fulton developments.

On February 19, 2004, the licensee filed an Offer of Settlement with the Commission regarding the licensing of the Oswego River Project and amendment of the Oswego Falls Project. The settlement included a schedule for implementation (2006-2012) and seasonal installation (June 15 through September 15) of upstream eel passage facilities at the two projects. The eel passage requirements were included in article 407 of the license for the Oswego River Project, issued on November 30, 2004,⁴ but were never included as a requirement in the Oswego Falls Project license.⁵ Nevertheless, the licensee, after consultation with the U.S. Fish and Wildlife Service (FWS), the New York State Department of Environmental Conservation (NYDEC), and New York Rivers United, has agreed to the following accelerated schedule for eel passage at the projects.

⁴ 109 FERC ¶ 62,141 (2004)

⁵ 74 FERC ¶ 62,138 (1996)

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Table 1

| Project No. | Development | Original Schedule | Accelerated Schedule |
|-------------|--------------|-------------------|----------------------|
| 2474 | Varick | 30-Dec-2006 | 30-Dec-2006 |
| 2474 | Minetto | 30-Dec-2008 | 30-Dec-2008 |
| 2474 | Fulton | 30-Dec-2010 | 30-Dec-2008 |
| 5984 | Oswego Falls | 30-Dec-2012 | 30-Dec-2008 |

AGENCY CONSULTATION

1. Water Quality Certification

On May 17, 2006, the licensee filed an application with the NYDEC for a Water Quality Certificate for the proposed turbine upgrades, pursuant to Section 401 of the Clean Water Act.⁶ The NYDEC issued its Section 401 certification on August 25, 2006 (Attachment A). Section 401(d) of the Clean Water Act provides that the state certification shall become a condition of the project license.

2. Threatened and Endangered Species

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973⁷ requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened or endangered species, or result in the destruction or adverse modification of their designated critical habitat.

Our review indicates that, except for occasional transient individuals, there are no known federally listed or proposed threatened or endangered species within the project area. Section 7 consultation under the ESA is, therefore, not required.⁸

⁶ 33 U.S.C. § 1341

⁷ 16 U.S.C. § 1536(a)

⁸ See letters from the U.S. Department of the Interior dated February 15, 1990, and June 14, 1999, to L. Cashell and T. DeWitt, Federal Energy Regulatory Commission, respectively.

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PUBLIC NOTICE

On April 17, 2006, the Commission issued a public notice of the application for the amendment and soliciting comments and motions to intervene. By letter dated April 27, 2006, the U.S. Department of the Interior (Interior) provided comments and recommended mitigative measures. On May 1, 2006, the NYDEC filed its petition for intervention. No comments or motion to intervene were filed in opposition to this amendment application.

Interior stated that it participated in consultation through the FWS and that it has no objections to the licensee's proposal. Interior further stated that the accelerated implementation of eel ladders at the Oswego River and Oswego Falls Projects as recommended by the FWS is adequate mitigation for the impacts to fish and wildlife resources that may accrue from the proposed increased hydraulic capacity at the Oswego Falls Project.

DISCUSSION AND CONCLUSIONS

1. Design Changes

Erie proposed rehabilitation of Unit 3 would change the West development's authorized installed capacities, as shown in the following Table 2.

Table 2

| Unit No. | Existing Capacity (kW) | | Proposed Capacity, (kW) | | | Limiting Capacity (kW) |
|--------------|------------------------|--------------|-------------------------|--------------|---------------|------------------------|
| | Turbine | Generator | Unit No. | Turbine (T) | Generator (G) | |
| --- | --- | --- | 3.1 | 600 | 550 | 550 (G) |
| 3 | 405 | 400 | 3.2 | 600 | 550 | 550 (G) |
| 4 | 937.5 | 930 | 4 | 937.5 | 930 | 930 (G) |
| 5 | 937.5 | 930 | 5 | 937.5 | 930 | 930 (G) |
| Total | 2,280 | 2,260 | Total | 3,075 | 2,960 | 2,960 |

The replacement of Unit 3 at the West development with the two units would increase the authorized installed capacity by 700 kW (2@550 kW – 400 kW) and the hydraulic capacity by 582 cfs (2@416 cfs – 250 cfs). This would result in an increase of the project's total authorized generating capacity from 6,760 kW (4,500 kW at the East development + 2,260 kW at the West development) to 7,460 kW, and its hydraulic

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capacity from 5,600 cfs to 6,182 cfs, or 10.39 %. The replacement will not affect project operations or normal maximum reservoir surface elevation and there will be no ground disturbing activity at the site.

2. Environmental Analysis

Replacement of Unit 3 with the two units in the West development will be completed in the dry. All required minimum and fish passage flows will be complied with during the construction period. As such, with the exception of minor short term increases in traffic from transporting of the new equipment and workers involved in the construction project, we do not envision any major effects on area fish, wildlife, recreational or historical and cultural resources during the construction period.

During operation of the new turbine/generator units, spillage at the dam will be reduced an estimated 9 days on average; however all required flows will continue to be passed and there will be no changes to the existing run-of-river operation or water level fluctuations. Adverse impacts to wildlife, recreational or historical and cultural resources during project operation are not expected.

Because of the increase in hydraulic capacity of the project, there is the potential for an incremental increase in fish entrainment. To mitigate this potential impact, the licensee will install eel passage facilities at this project and the downstream Oswego River Project on an accelerated schedule, as we are requiring in ordering paragraph (A) of this order. This mitigation has been deemed adequate by the resource agencies.

For the reasons stated above, we conclude that issuance of this order would not constitute a major federal action significantly affecting the quality of the human environment.

3. Summary

Our environmental analysis of the license amendment application did not identify any significant impacts that would result from the Commission's approval of the application to increase the authorized installed capacity.

This order approves the amendment to increase the Oswego Falls Project's installed generating capacity from 6,760 kW to 7,460 kW. This order also approves the revised schedule for eel passage installation at the Oswego River and Oswego Falls Projects. This order requires the licensee to notify the Commission, within 30 days from the start of construction, of the date of such commencement of construction. The date

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will be used to amend license article 201 concerning the assessment of annual charges.⁹ Furthermore, this order requires the licensee to submit revised as-built Exhibits A and F, as needed, to reflect the capacity changes approved in this order, 90 days after the replacement of Unit 3 have been completed.

The Director orders:

(A) The application to amend the license to increase the project's installed capacity, as filed March 15, 2006, and the proposed accelerated schedule for eel passage installation at the Oswego River (P-2474) and Oswego Falls Project (P-5984), as shown in Table 1 in this order, are approved as provided in this order.

(B) Ordering paragraph (B)(2) of the license is revised, in part, to read as follows:

Oswego West Development

... (e) four quadruplex-type turbine-generator units: Units 1 and 2, inoperable; Units 4 and 5, with nameplate ratings indicating a maximum capacity of 930 kW each, at 17.0 ft. of head, each with a hydraulic capacity of 560 cfs; and two new vertical propeller turbine units, Units 3.1 and 3.2, (replacing Unit 3), each rated 600 kW at 16.7 ft head with a hydraulic capacity of 416 cfs, connected to two vertically-oriented generators each rated 550 kVA with 1.0 power factor; ... (See Table 2).

(C) The Exhibit A and the following revised Exhibit F drawings for the Oswego Falls West development, filed on March 15, 2006, showing general design of Unit 3 replacement, which supercede old exhibits, are approved and made part of the license:

⁹See, 66 FERC ¶ 61,086, issued January 18, 1994. The order states that, "With respect to substantial changes in installed capacity that receive prior approval, the effective date for revised annual charges will be the date of the commencement of construction of the revised capacity."

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Table 3

| FERC Exhibit | FERC No. | Showing | Superseding |
|--------------|----------|--|-------------|
| F-1 | 5984-13 | Oswego Falls East Development; Location Plan, Plan and Sections | 5984-10 |
| F-2 | 5984-14 | Oswego Falls West Development; Plan and Sections | 5984-11 |

(D) Within 45 days of the date of issuance of this order, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (i.e., P-5984-13 and P-5984-14) 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, F-2), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card. See Fig. 1.

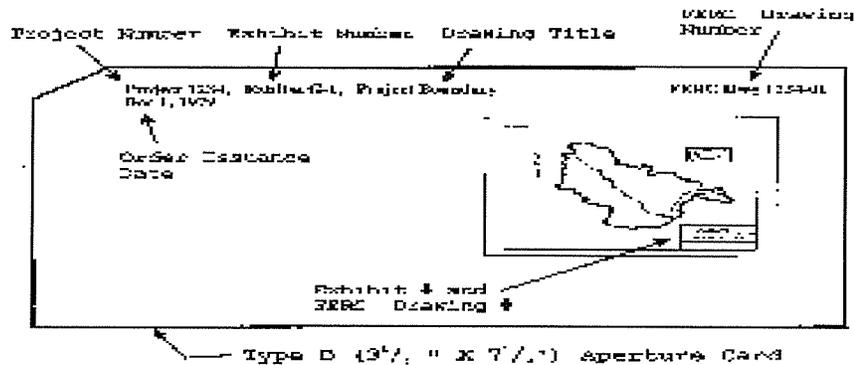


Figure 1 Sample Aperture Card Format

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

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Office. The drawings must be identified as **(CEII) material under 18 CFR 388.113(c)**. 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 order, and file extension in the following format [P-5984-13, F-1, Oswego Falls East Development; Location Plan, Plan and Sections, MM-DD-2006.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

(E) This order is subject to the conditions of the Water Quality Certificate that was issued on August 25, 2006, by the New York State Department of Environmental Conservation for the proposed turbine upgrades (Attachment A).

(F) The licensee shall commence construction of replacement of Unit 3 with two new units within two years from the issuance date of this order and shall complete construction within four years from the issuance date of this order.

(G) Within 30 days after the start of construction, the licensee shall notify the Commission of the date of such commencement of construction. The filing should include written documentation and photographs of all work performed since the start of construction. The date of commencement of construction will be used to amend license Article 201 for the assessment of annual charges.

(H) At least 60 days prior to the start of construction of replacement of Unit 3 with two new units, the licensee shall submit one copy of its plans and specifications design document to the Commission’s Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The licensee may not begin construction until the D2SI-New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

(I) Within 90 days of the completion of construction of replacement of Unit 3 with two new units, the licensee shall file with the Commission and the Division of dam Safety and Inspections – New York regional Office, photographs of the nameplates of the turbine and generator of the new units.

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(J) Within 90 days from completion of replacement of Unit 3, the licensee must submit revised as-built Exhibits A and F, as needed, to reflect the capacity changes approved in this order.

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

Mohamad Fayyad
Engineering Team Lead
Division of Hydropower Administration
and Compliance

Attachment A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Energy Division 7-3584 00867



PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

| | |
|---|--|
| Permit issued To: ERIE BOULEVARD HYDROPOWER, L.P. 225 GREENFIELD PKWY STE 207 LIVERPOOL, NY 13088 (315) 433-2792 | Facility: OSWEGO FALLS WEST DEVELOPMENT 249 RIVERSTON AVE FULTON, NY 13069 |
|---|--|

Facility Application Contact:
DAVID W. LULLIGAN
225 GREENFIELD PKWY STE 207
LIVERPOOL, NY 13088
(315) 433-2792

Facility Location: in FULTON in OSWEGO COUNTY
Facility Principal Reference Point: NY 13069: 385,102 NY 13069: 4795,850
Latitude: 43°18'56.8" Longitude: 76°25'00.5"

Project Description: Oswego River in the City of Fulton, Oswego County
Authorized Activity: To operate the Oswego Falls Hydro facility and to perform a maintenance upgrade to its existing 400 kW generating unit #3 at the West Side Development. The upgrade of unit #3 consists of: (1) replacing the unit's horizontal cast-iron Francis turbine unit with two new, vertical propeller units, each rated 800 horsepower (600 kW) at 16.1 feet net head; (2) replacing the unit's horizontal generator with two new vertical generators, each rated 550 kW; (3) retiring the existing 400 kW generating unit #3 in place in the powerhouse; and (4) modifying the existing massive flume floor to accommodate the installation of the new units. These upgrades increase capacity from 6,760 kW to 7,160 kW, or 3.8%, and turbine hydraulic discharge from 6,490 cfs to 6,923 cfs, or 6.6%.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act
Permit ID 7-3584-00067/00003
New Permit Effective Date: 8/23/2006 Expiration Date: No Exp. Date

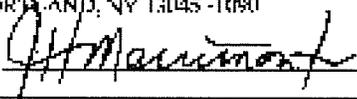
NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID: 7-3574-00067

Permit Administrator: JOHN H MERRIMAN, JR. Deputy Regional Permit Administrator
Address: NYSDEC REGION 7 CORTLAND SUB-OFFICE
1285 FISHER AVE
CORTLAND, NY 13045-1080

Authorized Signature



Date: 8/23/06

Distribution List

DAVID W CULLIGAN
WILLIAM G LITTLE
DAN BISHOP
MARK WOYTEHAL
JOSEPH M PIFERT
BUFFALO DISTRICT U S ARMY CORPS OF ENGINEERS

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS
WATER QUALITY CERTIFICATION SPECIFIC CONDITION
GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS
NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: WATER QUALITY CERTIFICATION

1. **EXPIRATION DATE** Coincident with the expiration date of the license issued by the Federal Energy Regulatory Commission (FERC) for FERC Project Number 5984.
2. **ADDITIONAL WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS.** The NYS Department of Environmental Conservation ("Department" or "NYS DEC") hereby certifies:
 - the Department has reviewed the certificate holder's "Non-Capacity License Amendment Application-Oswego Falls West Development", dated March, 2006 to amend the license for the Oswego Falls Project FERC No. 5984 and "Application for Section 401 Water Quality Certificate", dated May 17, 2006 (hereafter referred to as "the Application") and all other available pertinent information.
 - the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in NYCRR Parts 700-716.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 7-3584-00663

3. **EMERGENCIES** The following procedures shall apply to activities conducted at the Project in response to an emergency:

Prior to commencement of emergency activities, the NYS DEC must be notified and must determine whether to grant approval. If circumstances require that emergency activities be taken immediately such that prior notice to the NYS DEC is not possible, then the NYS DEC must be notified by the Certificate Holder(s) within 24 hours of commencement of the emergency activities. Notification must be by certified mail, telegram, or other written form of communication, including fax and electronic mail. This notification must be followed within 3 weeks by submission of the following information:

- (1) a description of the action;
- (2) location map and plan of the proposed action;
- (3) reasons why the situation is an emergency

All notifications, requests for emergency authorizations and information submitted in support of such requests shall be sent to the Regional Permit Administrator at the address listed above.

4. **PROJECT MAINTENANCE AND CONSTRUCTION**

Note: All matters pertaining to "Project Maintenance and Construction" shall be addressed to:

John H. Morrison, Jr.
Deputy Regional Permit Administrator
New York State Department of Environmental Conservation
1395 Fort Erie Avenue
Coram, NY 13043-1090

- (1) **Maintenance Dredging:** The certificate holder shall limit generation and disposal of suspended or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake/forebay areas of the Project.
- (2) **Sediment Analysis and Disposal:** The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department prior to sampling.
Prior to dredging or other excavation, the certificate holder must secure Department approval for all disposal locations for any sediments to be removed from the project waters.
- (3) **Erosion and Sediment Control:** The certificate holder shall ensure that the following erosion and sediment controls measures, at minimum, are adhered to during routine maintenance and construction that may result in sediments and/or contaminants entering the Oswego River.
 - a. Install in-stream work to reduce flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering the waters of the Oswego River.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 7-3594-00067

- b. Prohibit heavy construction equipment from operating below the mean high water level of the Oswego River until the work area is protected by a watertight structure and de-watered.
 - c. Minimize soil disturbance, grade so as to prevent or minimize erosion and provide temporary and permanent stabilization of all disturbed areas and stockpiles to minimize the potential for erosion and subsequent sedimentation within the Oswego River.
 - d. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the Project.
 - e. Install and maintain erosion control structures on the down slope of all disturbed areas to prevent eroded material from entering the Oswego River. Erosion control structures must be installed before commencing any activities involving soil disturbance and all erosion control structures must be maintained in a fully functional condition.
 - f. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of the Oswego River in the vicinity of the Project.
 - g. Ensure that all temporary fill and other materials placed in the waters of the Oswego River are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.
- (4.) Placement of structures: construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Oswego River. The design of all such structures must be approved by the Department prior to installation.
- (5.) Construction Drawdowns: Whenever construction and/or maintenance activities requires lowering the water level of the Project's impoundments below normal operating limits, the water level shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.
- (6.) River Flow: During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites as provided for in this certificate.
- (7.) Turbidity Monitoring: During maintenance or construction-related activities in or near the Oswego River, the certificate holder will monitor the turbidity of project waters at a point immediately upstream of the work area and at a point no more than 100 feet downstream from the work area. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the upstream locations, all related construction on the project will cease until the source of the turbidity is discovered and remediated such that turbidity is returned to a pre-construction condition.

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Facility DEC ID 7-3594-00067



(8.) **Notifications:** The Regional Permit Administrator must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

5. **Conformance With Plans:** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Kleinschmidt, Energy & Water Resource Consultants.

6. **Precautions Against Contamination of Waters:** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

7. **No Interference with Navigation:** There shall be no unreasonable interference with navigation by the work herein authorized.

8. **State Not Liable for Damage:** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

9. **State May Require Site Restoration:** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

10. **State May Order Removal or Alteration of Work:** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. **Water Quality Certification:** The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC: ID 7-39N-40067



- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
 - e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.
- f. **Permit Transfer:** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision, under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, liens, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

ATTACHMENT 4

November 2004 FERC Order on Offer of Settlement and Issuing New License

109 FEB 11 6 21 14 A.
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Erie Boulevard Hydropower, L.P.

Project No. 2474-004
New York

ORDER ON OFFER OF SETTLEMENT AND ISSUING NEW LICENSE

(November 30, 2004)

INTRODUCTION

1. On December 9, 1991, Niagara Mohawk Power Corporation (Niagara) filed an application for a new major license pursuant to sections 4(e) and 15 of the Federal Power Act (FPA)¹ to continue operation and maintenance of the 18.05-megawatt (MW) Oswego River Project No. 2474. The project is located on the Oswego River, a navigable waterway of the United States, in Oswego County, New York. The project does not occupy any federal lands. As discussed below, I am issuing a new license for the project.

2. This order also approves an Offer of Settlement filed by the licensee on behalf of itself and a number of signatories with respect to the relicensing of the Oswego River Project. As licensed, the Oswego River Project would continue to be a dependable source of electric energy, help conserve nonrenewable energy resources, reduce atmospheric pollution, and protect and enhance environmental, recreational and cultural resources at the project.

BACKGROUND

3. The original license for the project was issued on May 27, 1968.² The license expired on December 31, 1993, and since then, the project has operated under an annual license pending the disposition of the application for new license.³ In 1999, the Commission approved the transfer of the license from Niagara to Erie Boulevard Hydropower, L.P. (Eric).⁴

¹ 16 U.S.C. §§ 797(e) and 808, respectively.

² 39 FPC 872 (1968), as amended, 50 FPC 1027 (1973).

³ See FPA section 15(a)(1), 16 U.S.C. § 808(a)(1).

⁴ 88 FERC ¶ 62,082 (1999).

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4. Public notice of the license application was issued on February 9, 1993, setting April 12, 1993, as the deadline for filing motions to intervene. Timely motions to intervene were filed by John Leto Associates, U.S. Department of the Interior (Interior), New York State Department of Environmental Conservation (NYDEC), Adirondack Mountain Club, Trout Unlimited, City of Oswego, New York, and collectively, American Whitewater Affiliation, American Rivers, New York Rivers United, Natural Heritage Institute, Trout Unlimited, National Audubon Society, and Onondaga Audubon Society. Late motions to intervene were filed by the Town of Minetto, New York, and the City of Fulton, New York.⁵

5. The timely motions to intervene were automatically granted under 18 C.F.R. § 385.214(c)(1)(2004). The late motions to intervene for the Town of Minetto, New York, and the City of Fulton, New York were granted by notices issued December 2, 1993, and March 5, 1996, respectively.

6. The Commission issued a public notice on January 30, 1996, indicating the project was ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions. In response, comments were filed by Interior, New York Rivers United, Adirondack Mountain Club, and NYDEC.

7. On November 24, 1999, Commission staff made available for public comment a draft environmental assessment (DEA) that analyzed the impacts of relicensing the project. In letters filed January 10, January 21, January 31, and February 22, 2000, respectively, NYDEC, U.S. Fish and Wildlife Service (FWS), Eric and Adirondack Mountain Club, and the City of Oswego, New York commented on the DEA. NYDEC filed additional comments on January 31, 2000.

8. On December 6, 2001, Commission staff issued a final environmental assessment (FEA). All motions to intervene and comments have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

9. The project consists of three developments extending from the Fulton development at river mile (RM) 11.6 to the Varick development at RM 1.4.

⁵ Trout Unlimited, the New York Council of Trout Unlimited, and Interior also filed motions in opposition to the project. Subsequently, they became signatories to the Settlement.

10. The Fulton development consists of a 509-foot-long, 15-foot-high concrete dam, a 33-acre reservoir, a 1,850-foot-long bypassed reach, and a powerhouse containing two generating units with a combined installed capacity of 1.25 MW.
11. The Minetto development consists of a 500-foot-long, 22.5-foot-high concrete dam, a 350-acre reservoir, and a powerhouse containing five generating units with a combined installed capacity of 8.0 MW.
12. The Varick development consists of a 730-foot-long, 13-foot-high masonry gravity dam, a 32-acre reservoir, a 1,940-foot-long bypassed reach, and a powerhouse containing four generating units with a combined installed capacity of 8.8 MW.
13. Erie operates the Oswego River Project's developments as store-and-release facilities. The developments use locks and dams owned by the New York State Canal Corporation (Canal Corporation) a subsidiary of the New York State Thruway Authority (NYSTA). NYSTA regulates the river to control flooding and to provide adequate water levels during the navigation season (generally May 1 to December 1) to operate the lock and dam system. The project is described in greater detail in ordering paragraph (B)(2).
14. Erie proposes to change project operations to a modified run-of-river (ROR) mode which would include limiting reservoir fluctuations and releasing minimum downstream flows according to the Settlement as discussed below. Erie does not propose any new construction or additional capacity at the project.

OFFER OF SETTLEMENT

15. On February 19, 2004, Erie filed an Offer of Settlement (Settlement) and an explanatory statement that includes provisions to protect and enhance fish and wildlife, and recreation resources.⁶
16. This section discusses the provisions of the Settlement Offer, including the environmental effects of the Settlement Offer's conditions (contained in section 3 of the Offer of Settlement). With the exception of the low-level flow diversion structures along a portion of the western side of the bypassed reach of the Varick powerhouse, the provisions of the Settlement were assessed in staff's 2001 FEA.

⁶ In addition to Erie, the Settlement was signed by the following parties: Adirondack Mountain Club, Izaak Walton League, New York Rivers United, NYDEC, New York State Conservation Council, Trout Unlimited, Interior, FWS, and the National Park Service.

A. Section 1.0 Introduction

17. Section 1 sets forth the purpose and effect of the Settlement.

B. Section 2.0 General Agreement of the Parties

18. Section 2 describes the general agreement of the parties, including a 40-year license term and the withdrawal of measures proposed in the license application.

19. Section 2.2 of the Settlement states that the parties' intent is that the provisions of section 3 of the Settlement be included as numbered license articles. Because the water quality certificate (WQC) for this project incorporates the settlement by reference, this order does not include numbered articles for every Settlement provision. These articles do not purport to, and indeed cannot, alter or override the WQC, but rather are meant to be complementary.⁷

C. Section 3.0 Measures Which the Licensee Will Undertake With Respect to License Conditions and Other Non-License Provisions of the Settlement

20. Section 3 includes the measures which Erie intends to undertake with respect to operating and maintaining the Oswego River Project once a new license is issued. Specifically, section 3 includes the following provisions:

Mode of Operation

21. Section 3.1 states that Erie will operate the Oswego River Project in a modified ROR mode within 18 months of license issuance and acceptance. Section 3.1.2 limits year-round impoundment fluctuations at the Fulton and Minetto developments to 0.5-feet and to 1.0-feet at the Varick development. In the FEA, staff recommended that Erie operate the project in a strict ROR mode, primarily citing the benefits to littoral zone aquatic habitat in the reservoir compared to the previous license which allowed peaking operation. However, the minor impoundment fluctuations allowed by the modified ROR mode will provide nearly the same level of protection to littoral zone habitat as strict ROR while allowing Erie some operational flexibility to buffer some of the effects of upstream projects. Allowing the Varick impoundment to fluctuate up to 1.0 foot, will also provide greater safety for anglers fishing below the development by not exposing them to the rapid fluctuations which can occur in project inflows. The impoundment fluctuation limits will benefit the aquatic community while allowing Erie the economic benefits of

⁷ See Avista Corporation. 93 FERC ¶ 61,116 at p. 61,327 (2000).

some minor peaking capacity. These economic benefits should help recoup the cost of other environmental measures included in the settlement. Articles 403 and 404 require this operating mode.

Base- Flow Releases

22. Section 3.2 states that Erie will release base flows during the walleye spawning season and during the remainder of the year below the powerhouse when generating or over the spillway during non-generation periods at the Fulton development. The base flows, required by Article 404, are similar to the flows recommended in the FEA, and will protect aquatic habitat in the tailrace below the Fulton powerhouse, in the Fulton bypassed reach, and the portion of the Oswego River downstream of the Fulton development.

Bypassed Reach Flows

23. Section 3.3 states that Erie will seasonally release a range of bypassed reach flows at the Fulton and Varick developments. These flows are similar to the flows recommended in the FEA. These bypassed reach flows, required in Article 405, will increase the amount of aquatic habitat in the Fulton and Varick bypassed reaches.

Low-level Flow Diversion Structure at Varick Development

24. Section 3.4 provides for Erie to install low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the Varick powerhouse. The diversion structures are designed to allow Erie to divert approximately 70 percent of the upper bypassed reach flow to the lower bypassed reach during certain periods. The structures, required by Article 406, will enhance fish and wildlife habitat and improve aesthetics in the bypassed reach. To minimize the effects of installing the structures, Article 401 requires Erie to file an Erosion and Sediment Control Plan at least 90 days prior to commencing activities which would adversely affect water quality, *i.e.*, installing diversion structures or constructing recreation facilities.

Fish Protection, Passage, and Movement

25. Section 3.5 states that Erie will release year-round "fish friendly" flows⁸ through an existing sluice gate adjacent to the Fulton powerhouse, through an existing unused bay within the Minetto powerhouse, and through a location adjacent to the newly installed

⁸ "Fish friendly" is a flow that is released in a manner that is not expected to injure fish through contact with hard or rough surfaces.

trashrack overlays at the Varick development. An upstream eel conveyance system is to be installed seasonally from June 15 through September 15, and 1.0-inch, clear-spaced trashrack overlays or 1.5-inch diameter perforated plates are to be placed seasonally from May 1 through November 30 at the Fulton, Minetto, and Varick developments for fish protection. The fish protection measures and fish friendly flow releases (Article 407) will provide riverine and migratory species with routes to freely move downstream and provide seasonal protection from turbine entrainment without the expense of constructing new downstream passage facilities which the FEA found unnecessary.

Flow and Water Level Monitoring

26. Section 3.6 provides for Erie to develop a stream flow and water-level monitoring plan, including gages and equipment to document compliance with project impoundment level fluctuations and minimum flow release requirements. This plan will allow documentation of compliance with the required mode of project operation, and is required by Article 401 and the WQC.

Public Access

27. Section 3.7 provides for Erie to continue allowing public access to all lands within the project boundary including the impoundments, bypassed reaches, and adjacent lands associated with each development. A recreation plan for the project, required by Article 409, is discussed separately below.

28. As noted, the signatories to the Settlement request that the Commission incorporate the provisions in section 3.0 of the Settlement, without material modifications, as license conditions in a new license for the project. I conclude that with minor modifications pursuant to this order, the Settlement Offer is fair and reasonable and is in the public interest. As so modified, I accept the Settlement Offer, as incorporated in Articles 403 through 409. I explain the exceptions to the Settlement next.

Exceptions to the Offer of Settlement

Oswego Falls Project

29. Section 3.0 of the Settlement also includes provisions for operating and maintaining the upstream Oswego Falls Project.⁹ This requirement is beyond the scope of this license and must be properly considered in the context of the Project 5984 license.¹⁰

⁹ The Oswego Falls Project No. 5984, located upstream of the Oswego River Project, was relicensed to Niagara in March 1996, see 74 FERC ¶ 62,138 (1996).

Canoe Portage Facility at Minetto Development

30. Section 3.7.1 describes a canoe portage facility around Minetto dam. Erie would construct the facility and appropriate portage trail signage on the west side of the Oswego River downstream of the Minetto development on land owned by the NYSTA. The signatories to the Settlement request that this item not be included as a condition of the license. At the Varick and Fulton developments, adequate passage for canoeists is available through the existing locks.

31. The issue of providing a canoe portage facility at the Minetto development was assessed in the FEA which concluded that there is a need for canoe portage. The lock is located in the center of the river and can be difficult to enter for canoeists because of strong currents on both sides of the upstream entrance to the lock. However, upon further review, we conclude that the conditions affecting canoe passage at the Minetto development are a result of the lock's location which is not a situation created by the Oswego Project. Therefore, as requested by the parties, this license does not include the canoe portage put-in facility at the Minetto development.

WATER QUALITY CERTIFICATION

32. Under Section 401(a)(1) of the Clean Water Act (CWA),¹¹ the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency either has issued a water quality certification (WQC) for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the state certification shall become a condition of any federal license or permit that is issued.¹² Only a reviewing court can revise or delete these conditions.¹³

33. On December 4, 1991, Niagara submitted a request for WQC to NYDEC. On November 19, 1992, NYDEC denied without prejudice Niagara's request for WQC. On

¹⁰ Erie filed, on February 18, 2004, an application to amend the Oswego Falls Project license which was approved by the Commission on June 9, 2004, see 107 FERC ¶ 62,221 (2004).

¹¹ 33 U.S.C. § 1341(a)(1).

¹² 33 U.S.C. § 1341(d).

¹³ See *American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

January 3, 1994, NYDEC issued a draft WQC, and on May 6, 1994, Niagara appealed the draft WQC. A subsequent legal proceeding led to settlement talks culminating in the filed Settlement. On October 4, 2004, NYDEC issued a WQC for the Oswego River Project. The conditions of the WQC are set forth in Appendix A of this order, and are incorporated in the license by ordering paragraph D. Condition 11 of the WQC states that the certificate includes and incorporates the Settlement. The WQC includes requirements for minimum flows, limiting impoundment fluctuations, fish passage facilities, flow and water level monitoring, and recreation. For the WQC conditions, Article 401 requires the licensee to file plans for Commission approval.

SECTION 18 FISHWAY PRESCRIPTIONS

34. Section 18 of the FPA¹⁴ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as the Secretaries of the U.S. Departments of Commerce or of the Interior may prescribe.

35. In a letter dated March 26, 1996, Interior prescribed downstream fish passage at the three project developments. This prescription was later revised in a February 27, 2001, Interior filing. Subsequent to the Settlement, in a letter filed March 4, 2004, Interior states that the fish passage, protective measures, and the implementation schedule identified in section 3.5 of the Settlement, supercede the measures incorporated in their February 27, 2001, modified prescriptions.

36. Section 2.9 of the Settlement notes that the license for the Oswego River Project should include the standard article reserving Interior's authority to prescribe fish passage facilities at the project. Consistent with the Commission's policy, Article 402 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Oswego River Project.

THREATENED AND ENDANGERED SPECIES

37. Section 7(a) of the Endangered Species Act of 1973 (ESA)¹⁵ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

¹⁴ 16 U.S.C. § 811.

¹⁵ 16 U.S.C. § 1536(a).

38. In the FEA (Section V.C.4), staff noted the FWS finding that no federally listed or proposed threatened and endangered species are known to occur in the project area. By letter filed June 14, 1999, the FWS stated that no further consultation pursuant to section 7 of the ESA was necessary for this project.¹⁶

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

39. Section 10(j) of the FPA¹⁷ requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,¹⁸ to "adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat)" affected by the project. If the Commission believes that any such recommendations may be inconsistent with the purpose and requirements of Part I of the FPA, or other applicable law, section 10(j)(2) of the FPA requires the Commission and the agencies to attempt to resolve such inconsistencies, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

40. In letters filed March 29, 1996, and April 2, 1996, Interior and NYDEC, respectively, submitted recommendations pursuant to section 10(j) of the FPA. Since NYDEC is also a signatory to the Settlement, we consider its earlier section 10(j) recommendations superseded by the provisions of the Settlement.¹⁹ By letter filed March 8, 2004, Interior states that its previously filed 10(j) recommendations are superseded by the Settlement provisions. The recommendations of the fish and wildlife agencies for the Oswego River Project, as now reflected in the Settlement Offer, are included in the license.

¹⁶ Letter from David A. Stilwell, Acting Field Supervisor, FWS, Cortland, New York.

¹⁷ 16 U.S.C. § 803(j)(1).

¹⁸ 16 U.S.C. § 661 *et. seq.*

¹⁹ Letter from David A. Stilwell, Field Supervisor, FWS, Cortland, NY.

OTHER ISSUES

Administrative Conditions

41. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of such funds.
42. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings.
43. The Commission requires that for new major licenses, licensees must set up and maintain an amortization reserve account upon license issuance. Article 203 requires the establishment of the account.
44. Some projects directly benefit from headwater improvements that were constructed by other licenses, the United States, or permittees. Article 204 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

Commission Approval of Construction Plans

45. Erie proposes to construct and maintain low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the Varick powerhouse. Articles 301 through 304 require the licensee to submit plans of the construction activities for Commission approval prior to the start of construction. Article 305 requires the licensee to file revised Exhibit F and G drawings showing the project as built.

Recreation Plan

46. In the FEA, staff recommended that Erie update their recreation plan filed with the Commission on December 14, 1993. The plan includes a description of the existing recreation facilities and use at the project. In addition, the existing plan includes Erie's proposal for constructing recreation facilities that have since been withdrawn according to section 2.14.1 of the Settlement.²⁰ The comprehensive recreation plan should be updated to be consistent with the Settlement and describe existing recreation facilities and management practices. Article 409 requires the revised plan. However, I note that the

²⁰ Section 2.14.1 of the Settlement are license application proposals that have been withdrawn and superseded by the Settlement including project operation, minimum flow releases, fish passage facilities, and recreation facilities.

Commission has reserved authority to require Erie or any successor to provide additional recreation facilities and access to project lands and waters for recreational purposes, should circumstances warrant.²¹

Historic Properties

47. On July 19, 1996, the New York State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission executed a Programmatic Agreement (PA) for managing historic properties that may be affected by the relicensing of the Oswego River Project.²² Article 410 requires Erie to implement the PA, including the Cultural Resources Management Plan (CRMP) for the project. The PA satisfies the Commission's responsibilities under Section 106 of the National Historic Preservation Act.²³

Use and Occupancy of Project Lands and Waters

48. Requiring a licensee to obtain prior Commission approval for every use or occupancy of the project land would be unduly burdensome. Therefore, Article 411 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

COMPREHENSIVE PLANS

49. Section 10(a)(2)(A) of the FPA²⁴ requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving,

²¹ Standard Article 17 of Form L-3 is the reservation of authority for recreational facilities. 54 FPC at p. 1822. The standard form articles are incorporated into the license in ordering paragraph (E).

²² Programmatic Agreement Among the New York State Preservation Officer, the Advisory Council on Historic Preservation, and the Federal Energy Regulatory Commission For Managing Historic Properties That May Be Affected By A License Issuing To Niagara Mohawk Power Company For The Operation Of The Oswego River Project In Oswego County, New York (FERC No. 2474).

²³ 16 U.S.C. § 470s.

²⁴ 16 U.S.C. § 803(a)(2)(A).

developing, or conserving waterways affected by the project.²⁵ Under Section 10(a)(2)(A), federal and state agencies filed 43 plans that address various resources in New York. Of these, the Commission staff identified and reviewed seven plans relevant to this project.²⁶ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

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

A. Conservation Efforts

51. Erie has developed an extensive Demand Side Management Program (DSMP). Erie's goal with respect to DSMP is to encourage efficient use of energy resources. The energy-efficiency programs are basically conservation programs and include measures ranging from water heater wraps to high efficiency lighting and equipment. Erie also has innovative rate options which include time-of-use rates, real-time pricing, and voluntary interruptible and curtailable rate programs.

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

²⁶ (1) National Park Service, National Rivers Inventory, 1982; (2) Fish and Wildlife Service, Canada Wildlife Service, North American Waterfowl Management Plan: A Strategy for Cooperation, 1986; (3) Fish and Wildlife Service, Fisheries USA: The Recreational Fisheries Policy of the U.S. Fish and Wildlife Service, undated; (4) C. Lowie, E. Kozuchowski, and E.A. Poole, Fisheries Enhancement Plan for the Oswego River, A Tributary to Lake Ontario, Administrative Report No. 94-03, 1994; (5) New York State Department of Environmental Conservation, New York State Wild, Scenic, and Recreational River System Act, 1985; (6) New York State Department of Environmental Conservation, Regulation for Administration and Management of the Wild, Scenic, and Recreational River System in New York Excepting the Adirondack Park, 1986; and (7) New York State Parks, Recreation, and Historic Preservation, State Comprehensive Outdoor Recreation Plan, 1983.

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

52. Erie's conservation and load management programs show that it has made an effort to conserve electricity and reduce peak hour demands. The staff concludes that Erie has made a satisfactory effort to comply with section 10(a)(2)(C) of the FPA.

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

53. Staff has reviewed Erie's compliance with the terms and conditions of the existing license. Staff finds that Erie's overall record of making timely filings and compliance with its license is satisfactory. The staff concludes that Erie has or can acquire the resources and expertise necessary to carry out its plans and comply with all articles and terms and conditions of a new license.

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

54. The staff reviewed Erie's management, operation, and maintenance of the project, including all applicable safety requirements such as warning signs and boat barriers. The project lock and dams are currently owned and operated by the Canal Corporation. Erie has filed Emergency Action Plans for the Oswego River Project designed to provide early warning to persons located upstream and downstream who may be affected by a project emergency. Staff concludes that the project works are safe and that Erie's plans to manage, operate, and maintain the project safely are adequate for future operations and would pose no threat to public safety if operated according to the regulations governing hydroelectric licenses.

D. Ability to Provide Efficient and Reliable Electric Service

55. The staff reviewed Erie's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Erie has been operating the project in an efficient manner within the constraints of the existing license, and staff concludes that it would continue to provide efficient and reliable electric service in the future.

E. Need for Power

56. The Oswego River Project has historically generated 74,200 MWh of electricity annually. This electricity from a non-polluting renewable source currently helps meet a growing demand. Without the Oswego River Project, Erie would have to either: (1) purchase power; (2) install additional fossil-fuel generators; or (3) purchase other hydroelectric facilities. Staff concludes that there is a need for power generated by the project.

F. Transmission Services

57. Erie proposes no new transmission facilities at the project, and the project as proposed to be licensed would not affect the existing regional transmission grid.

G. Cost-Effectiveness of Plans

58. Erie is not proposing, nor does this order approve, any new generating capacity at the Oswego River Project. Erie is proposing a number of measures for the enhancement of natural resources and recreational opportunities. Staff concludes that Erie's plans for implementing these measures, as well as its continued operation of the project, will likely be achieved in a cost-effective manner.

H. Actions Affecting the Public

59. The Oswego River Project generates electricity that is used to serve the needs of the public. Erie pays taxes annually to local and state governments, and the project provides employment opportunities and attracts those interested in various forms of available recreation. Staff concludes that implementing the various environmental and recreational enhancement measures approved in the license will benefit the public.

PROJECT ECONOMICS

60. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power.

61. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,²⁸ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

62. If licensed in accordance with the Settlement as proposed by Erie, the WQC conditions, and other requirements adopted herein, the project would produce an average of about 72,500 MWh of energy annually at an annual cost of about \$839,040 or 11.57

²⁸ 72 FERC ¶ 61,027 (1995).

mills/kWh. The annual value of the project's power would be about \$2,956,790 or 40.78 mills/kWh.²⁹ Thus, the project's power would cost about \$2,117,750 or 29.21 mills/kWh less than currently available alternative power.

63. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

64. Ancillary services are now mostly priced at rates that recover only the cost of providing the electric service at issue, which do not resemble the prices that would occur in competitive markets. As competitive markets for ancillary services develop, the ability of hydro projects to provide ancillary services to the system will increase the benefits of the project.

COMPREHENSIVE DEVELOPMENT

65. Sections 4(e) and 10(a)(1) of the FPA,³⁰ respectively, require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

66. Based on my independent review and evaluation of the Oswego River Project, recommendations from staff, the resource agencies, and other stakeholders, and the no-action alternative, as documented in the FEA, I have selected the Oswego River Project, with the WQC conditions and the Settlement provisions, as the preferred alternative.

²⁹ The value of power was estimated from the New York Independent System Operator web site at <http://nyiso.com>.

³⁰ 16 U.S.C. §§ 797(e) and 803(a)(1).

67. I selected this alternative because: (1) issuance of a new license would serve to maintain a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures would protect and enhance fish and wildlife resources, water quality, recreational resources, and historic properties; and (3) the 18.05 MW of electric energy generated from renewable resource would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

68. Section 15(e) of the FPA,³¹ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.

69. The Settlement (section 2.1) contains a provision that the term of the new license should be 40 years from the effective date of the license. This license authorizes a moderate amount of new environmental mitigation measures relative to the size of the project. Therefore, I will specify a 40-year term from the effective date of the license for the Oswego River Project.

SUMMARY OF FINDINGS

70. The FEA for the Oswego River Project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of this license.

71. Based on the review and evaluation of the project, as proposed by the applicant including the Settlement provisions and the WQC conditions, I conclude that the continued operation and maintenance of the project in the manner required by the license would protect and enhance fish and wildlife resources, water quality, recreation, aesthetic, and historic resources. The electricity generated from this renewable water power resource would be beneficial because it would continue to offset the use of fossil-fueled generating stations, thereby conserving non-renewable resources and reducing atmospheric pollution. I conclude that the Oswego River Project, with the conditions set

³¹ 16 U.S.C. § 808(e).

forth below, will be best adapted to the comprehensive development of the Oswego River for beneficial public uses.

The Director orders:

(A) This license is issued to Erie Boulevard Hydropower, L.P. (licensee) for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Oswego River Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) 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 6, 1991:

| <u>Exhibit G Drawings</u> | <u>FERC No. 2474-</u> | <u>Showing</u> |
|---------------------------|-----------------------|--|
| Sheet No. 1 | 1001 | Varick Development Project Boundary and Location Area |
| Sheet No. 2 | 1002 | Minetto Development Project Boundary and Location Area |
| Sheet No. 3 | 1003 | Minetto Development Project Boundary and Location Area |
| Sheet No. 4 | 1004 | Minetto Development Project Boundary and Location Area |
| Sheet No. 5 | 1005 | Minetto Development Project Boundary and Location Area |
| Sheet No. 6 | 1006 | Fulton Development Project Boundary and Location Area |

(2) Project works consisting of the following three developments:

The Fulton Development consisting of: (1) a 509-foot-long, 15-foot-high concrete buttress dam topped with 6-inch-high flashboards, and consisting of (a) a 35-foot-high, 41-foot-long, 14-foot-wide concrete intake structure with three steel gates; (b) a 10-foot-long, 40-foot-wide, 11-foot-deep forebay; and (c) trashracks with 3/8-inch steel bars with 2.5-inch openings; (2) a 33-acre reservoir with a normal pool elevation of 334.5 feet msl;

(3) a powerhouse containing two generating units with a combined installed capacity of 1.25MW; and (4) appurtenant facilities.

The Minetto Development consisting of: (1) a 500-foot-long, 22.5-foot-high concrete gravity dam topped with 10-inch-high flashboards, and consisting of (a) a 40-foot-high, 190-foot-long, 40-foot-wide concrete intake structure with nine steel gates; (b) a 100-foot-long, 200-foot-wide, 25-foot-deep forebay; and (c) trashracks with 0.5-inch steel bars with 2.5-inch openings; (2) a 350-acre reservoir with a normal pool elevation of 307.8 feet msl; (3) a powerhouse containing five generating units with a combined installed capacity of 8.0 MW; and (4) appurtenant facilities.

The Varick Development consisting of: (1) a 730-foot-long, 13-foot-high masonry gravity dam topped with a series of stepped flashboards ranging from 10-inches-high to 36-inches-high, and consisting of (a) a 189-foot-high, 26-foot-long, 28-foot-wide intake structure with 24 steel gates and an unused minimum flow gate; (b) a 950-foot-long, 150-foot-wide, 18-foot-deep forebay; and (c) trashracks with 3/8-inch steel bars with 4.0-inch openings; (2) a 32-acre reservoir with a normal pool elevation of 270.0 feet msl; (3) a powerhouse containing four generating units with a combined installed capacity of 8.8 MW; and (4) appurtenant facilities.

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

Exhibit A: Pages A-1 through A-14 filed on December 6, 1991.

Exhibit F: The following sections of Exhibit F filed on December 6, 1991:

| <u>Exhibit F Drawings</u> | <u>FERC No. 2474-</u> | <u>Showing</u> |
|---------------------------|-----------------------|--|
| Sheet No. 1 | 1007 | Fulton Location Plan |
| Sheet No. 2 | 1008 | Fulton Intake and Powerhouse Plan and Section |
| Sheet No. 3 | 1009 | Minetto Plans and Sections |
| Sheet No. 4 | 1010 | Varick Plan and Sections |
| Sheet No. 5 | 1011 | Varick West Side Linear Park Extension Site Plan |
| Sheet No. 6 | 1012 | Varick West Side Linear Park Extension Sections |

(3) 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.

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

(D) This license is subject to the conditions submitted by the NYDEC pursuant to section 401 of the CWA, as those conditions are set forth in Appendix A to this order.

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

Article 201. Administrative Annual Charges. The licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued for the purposes of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 18,050 kilowatts.

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

a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-2474-1001 through P-2474-1012) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

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

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

Office. The drawings must be identified as (CEII) material under 18 CFR § 388.113(c). 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 [e.g., P-2474-1001, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
 FILE TYPE - Tagged Image File Format, (TIFF) CCITT Group 4
 RESOLUTION - 300 dpi desired, (200 dpi min)
 DRAWING SIZE FORMAT - 24" X 36" (min), 28" X 40" (max)
 FILE SIZE - less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points, arranged in a triangular format. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing. Each Exhibit G drawing must be stamped by a Registered Land Surveyor.

c) The licensee shall file three separate sets of the project boundary vector 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 license, and file extension [e.g., P-2474, boundary vector data, MM-DD-YYYY.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. A single electronic boundary data file is preferred and must 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 be accompanied by 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 license, and file extension [e.g., P-2474, project boundary metadata, MM-DD-YYYY.TXT].

Article 203. Amortization Reserve. Pursuant to Section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one-half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment.

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

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

Article 204. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

Article 301. Contract Plans and Specifications. At least 60 days before starting construction, the licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the final contract plans and specifications. The plans and specifications should include a blasting plan, if applicable. The Commission may require changes to the plans and specifications to assure construction is performed in a safe and environmentally sound manner. Construction may not commence until authorized by the D2SI-NYRO Regional Engineer.

Article 302. Quality Control and Inspection Program. At least 60 days before starting construction, the licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include a sediment and erosion control plan.

Article 303. Cofferdam and Deep excavation Plan. Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations. At least 30 days before starting construction of the cofferdams, the Licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 304. Temporary Emergency Action Plan. At least 60 days before starting construction, the licensee shall submit one copy to the Commission's D2SI-NYRO Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in case failure of a cofferdam, any large sediment control structure, or any other water retaining structure that could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 305. As-Built Drawings. Within 3 months of completing the construction of the low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the Varick powerhouse, the licensee shall file, for Commission approval, revised Exhibit F and G drawings, as applicable, showing the project as built. The licensee shall submit six copies to the Commission, one copy to the New York Regional Engineer, and one copy to the Director, Office of Energy Projects.

Article 401. Commission Approval and Reporting.

(a) Requirement to File Plans for Commission Approval

The New York State Department of Environmental Conservation (NYDEC) Water Quality Certificate (WQC) conditions (Appendix A) and the Settlement provisions require the licensee to operate the project with specific requirements, develop plans, and implement programs and report the results of monitoring studies without prior Commission approval. The plans listed below do not include prior Commission approval, but now shall also be submitted to the Commission for approval.

| WQC Condition No. (Appendix A) | Settlement Section No. | Plan Name | Due Date |
|--------------------------------|------------------------|---|--------------------------------------|
| | 3.6 | Stream flow and Water Level Monitoring Plan | Within 15 months of license issuance |
| 19 and 20 | | Sediment Analysis and Disposal, and Erosion and Sediment Control Plan | 90 days prior to commencing work |
| 21 | | Cofferdam Plan | 90 days prior to commencing work |

For each plan, the licensee shall submit to the Commission documentation of its consultation with the NYDEC and the U.S. Fish and Wildlife Service, copies of comments and recommendations made in connection with the plan or report, and a description of how the plan or report accommodates the comments or recommendations. 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 any plan or report. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plans or changes in project operations or facilities, including any changes required by the Commission.

Article 402. Reservation of Authority-Fishways. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for construction, operation, and maintenance of, such fish passage facilities as may be prescribed by the Secretary of the Interior under section 18 of the FPA.

Article 403. Mode of Operation. Within eighteen months of license issuance, the licensee shall operate the Oswego River Project in Modified Run-of-River (MROR) mode as described in Section 3.1.2 of the Settlement with the following impoundment fluctuation limits in the Fulton, Minetto, and Varick developments as shown below and specified in Table 3-1 of the Settlement.

Normal impoundment fluctuations shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limits shall be measured in the downward direction from the permanent crest of each dam or from the top of the flashboards (when in place). Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of same are not considered as a utilization of the normal impoundment

-fluctuation.

Oswego River Hydroelectric Projects Normal Impoundment Fluctuations

| Development | Permanent Crest of Dam (feet, USGS) | Flashboards | Normal Impoundment Fluctuations | |
|-------------|-------------------------------------|-------------|---|--|
| Fulton | 334.0 | 6" | 0.5 foot (year-round) measured in a downward direction from the permanent crest of the dam or the top of the flashboards when in place. | |
| Minetto | 307.0 | 10" | | |
| Varick | 267.5 | 30"* | 1.0-foot (year-round) measured in a downward direction from the permanent crest of the dam or the top of flashboards when in place. | |
| | | 32"* | | |
| | | 34"* | | |
| | | 36"* | | |
| | 268.5 | 269.0 | 10"* | |

*The Varick dam is currently fitted with a system of stepped flashboards with a maximum height of 36 inches from permanent crest elevation of the dam and may be adjusted as needed by the licensee. The current system is designed to fail at approximately 15 inches of overtopping. Under normal operating conditions, the water level is maintained at 30 inches above crest (Elev. 270.0).

Order Correcting Crest Elevation (Issued 1/26/07)

These impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the licensee, including security, and for short periods upon mutual agreement between the licensee and the New York State Department of Environmental Conservation. If the limitations are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days after each such incident.

Article 404. Base-flows. Within eighteen months of license issuance, the licensee shall release the base-flows shown below and specified in Table 3-2 of the Settlement. The base-flow(s) as described in Table 3-2 shall be maintained in the river immediately downstream of the development's powerhouses. No base-flow is provided at the Minetto Development due to the back watering effect created by the dam at Lock # 6. The base flow at the Varick Development is provided for via the bypass flow as described in Table 3-3 of the Settlement.

These base-flow requirements may be curtailed or suspended if required by operating emergencies beyond the control of the licensee, including security, and for limited periods upon mutual agreement between the licensee and the New York State Department of Environmental Conservation. If the flows are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days

after each such incident.

Oswego River Base-Flow Schedule

| Site | Flow Magnitude | Location | Season | | Implementation Schedule |
|--------|---|--|---|---|--|
| | | | From | To | |
| Fulton | 800-cfs or inflow‡ (whichever is less) for walleye spawning | Below powerhouse when generating or over the spillway during non-generation periods. | The beginning of Walleye spawning season which begins when water temperature ≥ 4° C for 4 consecutive days after March 15 th of each year. | The end of Walleye spawning season which ends 30 days after the water temperature ≥ 10° C for 4 consecutive days. | Within 18 months of license issuance and acceptance. |
| | 300-cfs or inflow‡ (whichever is less) | | At the end of the Walleye spawning season. | To cease at the beginning of Walleye spawning season. | |

‡ Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.

Article 405. Bypass Flows. Within eighteen months of license issuance, the licensee shall release the bypass flows as shown below and specified in Table 3-3 of the Settlement.

Oswego River Bypass flow Schedule

| Site | Flow Magnitude | Location | Season | Timing of Implementation |
|--------|---|--|---|---|
| Fulton | 75-cfs (65-86) fish friendly flow | Release from the sluice gate adjacent to the Fulton powerhouse | Year-round | Within 18 months of license issuance and acceptance |
| Varick | 800-cfs (782-818) or inflow‡, whichever is less* | Existing sluice gate(s) adjacent to the State head gate | All of Walleye spawning season (see Article 404 for Conventions & Definitions Section). | |
| | 400-cfs (389-410) or inflow‡, whichever is less* | | End of Walleye spawning season through May 31 | |
| | 200-cfs (192-207) or inflow‡, whichever is less* | | June 1 through September 15 | |
| | 400-cfs (389-410) or inflow‡, whichever is less*† | | September 16 through the beginning of Walleye spawning season | |

* Note: Throughout the entire year the first 200 cfs released at the Varick development will be made fish friendly as described in Section 3.5, see footnote 8.

† The Parties agree that the licensee and the resource agencies will reevaluate this seasonal flow as requested by the licensee at a minimum of 5 years after license issuance with the intention of determining if implementing decreased bypass flows will meet agency management objectives.

‡ Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.

Article 406. Low-level Flow Diversion Structures. Within eighteen months of license issuance, the licensee shall install low-level flow diversion structures along a portion of the western side of the bypassed reach near the tailrace of the Varick powerhouse. The licensee shall consult with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service prior to the design and installation of these low-level flow diversion structures.

These structures shall be field located just upstream of the existing tailrace training wall. The licensee shall construct these low level flow diversion structures with minimal height and length to avoid any unnecessary impact to the river or fish. These modifications will attempt to divert approximately 70 percent of the upper bypassed reach flow, during the 200 cfs bypass flow release period from June 1 through September 16, to the lower bypassed reach.

Article 407. Fish Protection, Passage, and Movement. The licensee shall implement the fish-protection, passage, and movement measures as shown below and specified in Table 3-4 and 3-5 of the Settlement. The licensee shall provide the following measures and structures to facilitate fish movement.

Oswego River Hydroelectric Projects Fish Movement

| Development | Downstream Movement Routes | | Upstream Eel Conveyance System | |
|-------------|---|---|---|---|
| | Location | Implementation Schedule | Upstream Eel Conveyance System | Implementation Schedule |
| Fulton | 75-cfs fish friendly release through the existing sluice gate adjacent to the Fulton powerhouse | Within 18 months of license issuance and acceptance | An upstream eel conveyance system will be field located in consultation with the USFWS, the NTSDEC and the Canal Corp. Each conveyance system will be installed seasonally from June 15 through September 15. | Within six (6) years of license issuance and acceptance |
| Minetto | 25-cfs fish passage release through an existing unused bay within the Minetto powerhouse | | | Within four (4) years of license issuance and acceptance. |
| Varick | 200-cfs fish friendly release through a location adjacent to the newly installed trashrack overlays | | | Within two (2) years of license issuance and acceptance. |

Oswego River Hydroelectric Projects Fish Protection Measures

| Development | Protection Measures | Implementation Schedule | Location | Seasonality |
|-------------|--|---|--|---|
| Fulton | Seasonal overlays in the form of 1" clear-spaced trashracks or 1.5" diameter perforated plates | Within 2 years of license issuance and acceptance for the Oswego River Project. | At the same location as the existing trashracks | To be placed seasonally from May 1 or when flows permit safe installation through November 30 or when the water temperature reaches 7 degrees C or less (whichever is sooner) |
| Minetto | | Within 4 years of license issuance and acceptance for the Oswego River Project. | | |
| Varick | | Within 6 years of license issuance and acceptance for the Oswego River Project. | To be located at the "State Head Gates" adjacent to the dam. | |

At the Fulton Development, the licensee shall install protective measures within two (2) years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7°C or less (whichever is sooner) as shown in the above table and described in Table 3-5 of the Settlement. The licensee shall provide a year-round 75-cfs minimum "fish friendly" flow release located at a sluice gate adjacent to the powerhouse, and shall install an upstream eel conveyance system at the Fulton Development to be placed seasonally from June 15 through September 15 within six years of license issuance as described in Table 3-4 of the Settlement.

At the Minetto Development, the licensee shall install protective measures within four years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7°C or less (whichever is sooner) as shown in the above table and described in Table 3-5 of the Settlement. The licensee shall provide a year-round 25-cfs minimum "fish friendly" flow release located within one of the existing unused bays at the Minetto powerhouse, and install an upstream eel conveyance system at the Minetto development to be placed seasonally from June 15 through September 15 within four

years of license issuance as shown in the above table and described in Table 3-4 of the Settlement.

At the Varick Development, the licensee shall install protective measures within six years of license issuance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7° C or less (whichever is sooner) as shown in the table above and described in Table 3-5 of the Settlement. This measure will be located at the "State Head Gate" structure adjacent to the dam. The licensee shall provide a year-round 200-cfs minimum "fish friendly" flow release located at the Varick dam. The licensee shall also install an upstream eel conveyance system at the Varick development to be placed seasonally from June 15 through September 15 within two years of license issuance as shown in the above table and described in Table 3-4 of the Settlement.

The licensee may curtail or suspend the requirements of this commitment if required by operating emergencies beyond the control of the licensee, including security, and for limited periods upon mutual agreement between the Licensee, the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation. If the requirements of this commitment are so modified, the licensee shall notify the Commission as soon as possible, but no later than ten (10) business days after each such incident.

Article 408. Design Drawings. No less than 90 days prior to the installation, construction, or modification of any structures required by Articles 407 and 408, the licensee shall submit, for Commission approval, design drawings for the proposed activity.

The design drawings shall be prepared in consultation with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service. The licensee shall include with the drawings documentation of agency consultation, copies of comments and recommendations on the completed drawings after they have been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the drawings. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the drawings with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the drawings. The activity shall not be implemented until the licensee is notified by the Commission that the drawings are approved. Upon Commission approval, the licensee shall implement the requirements of Articles 406 and 407, including any changes required by the

Commission.

Article 409. Revised Recreation Management Plan. Within one year of license issuance, the licensee shall file, for Commission approval, a revision of the recreation plan that was filed with the Commission on December 14, 1993, which has been prepared in consultation with the New York State Canal Corporation (NYSCC), the New York State Department of Environmental Conservation (NYDEC), and the U.S. Department of the Interior, National Park Service (NPS). The plan shall include, at a minimum: (a) a description, including site plans, of the licensee's recreation facilities located at the Oswego River Project; (b) a schedule of the days and times the recreational facilities will be open and available for public use; and (c) a description of the licensee's plans to allow public access to all lands within the Commission project boundary associated with each development covered by this license, with the exception of those lands and facilities specifically related to hydroelectric generation where public safety or site security would be a concern. Lands and facilities where public access will be precluded may include, but are not necessarily limited to, dams, dikes, gates, intake structures, water conveyance structures, powerhouses, substations, transmission lines, and certain access roads leading to such facilities.

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

The Commission reserves the right to require changes to the plan. No ground-disturbing or land-clearing activities for expanding and improving recreation facilities shall begin until the licensee is notified by the Commission that the plan is approved. Upon approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Historic Properties. Within one year of license issuance, the licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission and the New York State Historic Preservation Officer For Managing Historic Properties That May Be Affected By A License Issuing To Erie Boulevard Hydropower, L.P For The Operation Of The Oswego River Project In Oswego County, New York (FERC No. 2472) executed on July 19, 1996, including but not limited to the Cultural Resources Management Plan (CRMP) for the project. In the event that the Programmatic Agreement 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 Programmatic Agreement is terminated prior to Commission approval of the CRMP, the licensee shall obtain approval before engaging in any ground-disturbing or land-clearing activities or taking any other action that may affect any historic properties within the project's area of potential effect.

Article 411. 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 are consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time 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 enhancements.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment

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 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 impoundment. 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 approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary 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 and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is 5 acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must 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 paragraphs (c) or (d) of this article:

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

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

(3) The instrument of conveyance must include 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 shall occur in a manner that shall 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 shall 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.

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

(G) This order is issued under authority delegated to the Director and is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing of this order shall constitute acceptance of this license.


J. Mark Robinson
Director
Office of Energy Projects

APPENDIX A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATION UNDER SECTION 401 OF THE
FEDERAL CLEAN WATER ACT

On October 4, 2004, the New York State Department of Environmental Conservation granted water quality certification under section 401 of the Clean Water Act to Eric Boulevard Hydropower, L.P. for the Oswego River Project with the following conditions:

1. **Conformance With Plans.** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agency as part of the permit application. Such approved plans were prepared by (See Natural Resources Permit Condition 11).
2. **State May Order Removal or Alteration of Work.** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.
3. **State Not Liable for Damage.** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
4. **Permittee Responsible For Other Approvals.** Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or local government which may be required.

5. **Precautions Against Contamination of Waters.** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

6. **No Interference With Navigation.** There shall be no unreasonable interference with navigation by the work herein authorized.

7. **State May Require Site Restoration.** If upon the expiration of revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

8. **Water Quality Certification.** The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306, and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

9. **Notification Requirements for Emergencies.** The following procedures conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Permittee must notify NYDEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the NYDEC is not possible, then the NYDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

- a. a description of the action;
- b. location map and plan of the proposed action;
- c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition 10.

10. **Department Contacts.** Except as otherwise specified, all contacts with the Department concerning this certificate shall be addressed to the following:

NYDEC - Region 7 Headquarters
Regional Permit Administrator
Division of Environmental Permits
615 Erie Boulevard
West Syracuse, NY 13204-2400

11. **Offer of Settlement.** This certificate includes and incorporates the Oswego River "Offer of Settlement" (Settlement) dated November 2003 and submitted to the Federal Energy Regulatory on February 19, 2004.

OPERATIONS

12. **Base Flows.** The certificate holder shall maintain instream flow in accordance with the settlement, in particular, Section 3.2.

13. **Impoundment Fluctuations.** The reservoirs at the Fulton, Minetto and Varick Developments as well as the reservoir at Oswego Falls (Project reservoirs) shall be operated in accordance with the Settlement, in Particular, Section 3.1.2. Alternative impoundment operating plans must be reviewed and approved by NYDEC prior to being implemented. Emergencies shall be dealt with in accordance with special condition 9 of this certificate.

14. **Bypass Flows.** The certificate holder shall maintain bypass flows in accordance with the Settlement, in particular, Section 3.3.

15. **Flow Monitoring.** The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement, in particular, Section 3.6.

16. **Fish Protection/Passage.** Fish protection passage and movement provisions shall be provided in accordance with the Settlement, in particular, Section 3.5.

17. **Public Access.** Public access and recreational opportunities shall be provided in conformance with the Settlement, in particular, Section 3.7.

CONSTRUCTION REQUIREMENTS

18. **Maintenance Dredging.** The certificate holder shall curtail generation and install stoplogs or otherwise shut off flow through the turbines prior to commencing any maintenance dredging activities in the intake/forebay area.

19. **Sediment Analysis and Disposal.** The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants.

Sampling and testing shall be accomplished according to a protocol submitted to and approved the Department beforehand. Approval from the Department shall include all disposal locations for any sediments to be removed from the project waters.

20. Erosion & Sediment Control. Prior to commencing activities which could adversely affect water quality, the certificate holder must receive Department approval of an Erosion and Sediment Control Plan. This plan must be submitted at least 90 days before the intended date for commencing work. All work shall conform to the goals below.

At minimum, the certificate holder must accomplish the following objectives:

- a. isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities;
- b. Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered, except where an emergency response requires immediate action;
- c. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the waterbody;
- d. Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion sedimentation potential;
- e. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project;
- f. Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance;
- g. Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site;
- h. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

21. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river. The design and installation of cofferdams, temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the river must be approved by the Department prior to installation.

22. Construction Drawdowns. Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.

23. Maintenance of River Flow. During all periods of construction, flows immediately downstream of work sites shall be maintained in accordance with condition 12 of this permit.

24. Turbidity Monitoring During Construction. During construction related activities, the certificate holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source turbidity. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

25. Notification of DEC of construction activities. The NYS DEC contact referenced in Special Condition 10 must be notified in writing at least two weeks prior to commencing any work performed under the authority of this certificate.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by the Department. The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or

facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations. Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers. The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
 NYDEC REGION 7 HEADQUARTERS
 615 ERIE BOULEVARD WEST
 SYRACUSE, NY 13204-2400

4. Submission of Renewal Application. The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department. The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer. Permits are transferable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification. The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, and damages, to the extent attributable to the permittee's acts or omissions in connection with, or operation and maintenance of, the facilities authorized by the permit whether in compliance or not in conditions with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit. The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittees agent with respect the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits. The permittee is responsible for obtaining any other permits, approvals, lands, easements and right-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights. This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

ATTACHMENT 5

Settlement Offer

RELIANT ENERGY

LIVERPOOL, NY

OSWEGO RIVER
OFFER OF SETTLEMENT
IN CONNECTION WITH THE NEW LICENSE APPLICATION
FOR THE
OSWEGO RIVER PROJECT (FERC NO. 2474)
FULTON DEVELOPMENT
MINETTO DEVELOPMENT
VARICK DEVELOPMENT

IN CONNECTION WITH AN AMENDMENT OF
LICENSE FOR THE
OSWEGO FALLS PROJECT (FERC NO. 5984)

NOVEMBER 2003

Prepared by:

Kleinschmidt

Energy & Water Resource Consultants

RELIANT ENERGY
LIVERPOOL, NY

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OSWEGO RIVER
OFFER OF SETTLEMENT

OSWEGO RIVER PROJECT (FERC NO. 2474)
FULTON DEVELOPMENT
MINETTO DEVELOPMENT
VARICK DEVELOPMENT

OSWEGO FALLS PROJECT (FERC NO. 5984)

1.0 INTRODUCTION

The Agreement and The Parties

This agreement (the Settlement Offer) dated as of April 7, 2003, is made and entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC) (18 C.F.R. § 385.602) by and among the following entities who shall, except as otherwise noted, be referred hereafter to as a Party and collectively as "Parties":

- Adirondack Mountain Club (ADK)
- Erie Boulevard Hydropower, L.P. (Erie) acting through its General Partner, Reliant Energy (Reliant)
- Izaak Walton League
- New York Rivers United (NYRU)
- New York State Conservation Council (NYSCC)
- New York State Department of Environmental Conservation (NYSDEC)
- Trout Unlimited (TU)
- U.S. Department of the Interior (DOI), U.S. Fish and Wildlife Service (USFWS)
- U.S. Department of the Interior (DOI), National Park Service (NPS)

401 WATER QUALITY CERTIFICATION OFFER

This Settlement Offer shall become effective when it has been executed by the above-referenced Parties and shall remain in effect, in accordance with its terms, throughout the terms of the respective licenses for the Oswego River Project and the Oswego Falls Project including any annual licenses.

1.2 Agreements to Be Incorporated As License Conditions

The agreements in the Settlement Offer are a comprehensive, integrated, and indivisible set of measures intended to address non-power and power values relating to the licensing of the Oswego River Project and to the previously issued license for the Oswego Falls Project. The Parties agree that each term of this Settlement Offer is in consideration and support of every other term and that it is essential that the FERC, except where expressly noted to the contrary in this Offer of Settlement, incorporate as license conditions in the new license, each of the commitments which the Licensee has agreed to undertake in Section 3.0 of this Settlement Offer. "License conditions" are intended to mean numbered articles of the license.

1.3 Purpose, Goals and Geographic Scope

The purpose of this Settlement Offer is to document the agreements that have been reached as the result of comprehensive discussions among the Parties with regard to the referenced hydroelectric developments with a pending license application before the FERC and a pending application for a 401 Water Quality Certification (401 WQC) before the NYSDEC for the Oswego River Project exclusively.

The goal of the Settlement Offer is to provide for the continued operation of the subject projects with appropriate long-term environmental and recreational protection and mitigation measures that will meet diverse objectives for maintaining a balance of non-power and power values in the Oswego River.

The geographic scope of the Agreement includes the Oswego River from immediately below the Phoenix Hydroelectric Development (FERC No. 4113) to the mouth of the Oswego River at its entrance to Lake Ontario.

The Parties, having given careful and equal consideration to non-power and power values, provide in this Settlement Offer the terms and conditions for the resolution of operational, fisheries, wildlife, water quality, and recreational issues raised by and analyzed by the Parties as they are applicable to the issuance of a license and 401 WQC for the subject project.

1.4 Project Decommissioning

This Settlement Offer does not include any provisions relating to decommissioning or dam removal of the subject project in whole or part. With or without amendment of this Settlement Offer, any Party may seek such further relief from the FERC regarding such decommissioning as the FERC may order, recognizing that no Party to this Settlement Offer has, or is advocating decommissioning of any project facilities at this time, nor does evidence currently exist which would suggest the need to advocate for decommissioning during the term of the license. If and when the subject project is decommissioned or retired during the term of any new license, the disposition of any enhancements associated with said project pursuant to this Settlement Offer will be determined in decommissioning proceedings at that time.

1.5 Successors and Assigns

The Settlement Offer shall be binding on the Parties and on their successors and assigns.

1.6 Parties To Support Regulatory Approvals

The Parties agree to support the issuance of a license and 401 WQC that is consistent with the terms of this Settlement Offer. This support shall include reasonable efforts to expedite the National Environmental Policy Act (NEPA) process to be

... they, or their regulatory approvals that may be needed to implement provisions of the Settlement Offer. For those issues addressed herein, the Parties agree not to propose or otherwise communicate to the FERC or to any other federal or state resource agency with jurisdiction directly related to the relicensing process any comments, certification, or license conditions other than those consistent with the terms of this Settlement Offer. However, this Settlement Offer shall not be interpreted to restrict any Party's participation or comments in future relicensing of the subject developments.

1.7 Agency Appropriations

Nothing in this Settlement Offer shall be construed as obligating any federal, state, or local government to expend in any fiscal year any sum in excess of appropriations made by Congress to state or local legislatures or administratively allocated for the purpose of this Settlement Offer for the fiscal year or to involve the DOI, USFWS, or NPS in any contract or obligation for the future expenditure of money in excess of such appropriations or allocations.

1.8 Establishes No Precedents

The Parties have entered into the negotiations and discussions leading to this Settlement Offer with the explicit understanding that all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or entity that took part in such discussions and negotiations, and are not to be otherwise used in any manner in connection with these or any other proceedings. The Parties understand and agree that this Settlement Offer establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in future relicensing proceedings and that none of the Parties to this Settlement Offer will cite this Offer or its approval by the FERC, or the NYSDEC, as establishing any principles or precedents except with respect to the matters to which the Parties have herein agreed.

The Parties agree that the following conventions and definitions should have the meanings so noted throughout this Settlement Offer.

Base Flow: The required minimum instantaneous instream flow, measured in cfs, to be continuously released into the river channel below the powerhouse, including, where applicable, dam leakage where an accurate measurement exists, and bypass flows.

Bypass Flow: The instream flow intentionally and continuously released into a bypass reach.

Bypass Reach: The portion of original riverbed fully or partially dewatered as a result of the diversion of water.

Elevation: Vertical distance, measured in feet, above mean sea level using USGS datum.

Execution of the Offer of Settlement: For purposes of this Settlement Offer "Execution of the Offer of Settlement" means the date on which the Licensee files the final signed version of the Settlement Offer with the FERC.

Impoundment Fluctuation: Defined within this agreement as a specific range of impoundment elevations associated with normal project operation, as measured in the downward direction from a specific reference point.

Left/Right Bank: The left or right riverbank as seen looking downstream.

License Issuance and Acceptance: For purposes of this Settlement Offer, "License Issuance and Acceptance" means that the FERC issues a final license consistent with the terms of the Settlement Offer relative to the particular enhancement being considered.

Licensee: Erie Boulevard Hydropower, L.P., and limited partner of Reliant Energy.

Normal Operation: The daily operation of the Oswego River Project and the Oswego Falls Project that may involve utilization of allowable impoundment fluctuations as needed to produce energy.

Thalweg Depth: The deepest part of the river channel in a cross-section of the river profile.

2.0 *GENERAL AGREEMENTS OF THE PARTIES*

2.1 License Term

The Parties agree, based upon and in consideration of the Settlement Offer provisions identified in Section 2.2, that the license for the Oswego River Project should be for a term of 40 years from the date of license issuance, and agree to join in a request for rehearing if a license is issued for less than 40 years from the date of license issuance.

2.2 Enforceability and Withdrawal Rights

The Parties agree that it is their intent, and this Settlement Offer is based upon, and in consideration of their expectation that Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6 will be included in any license issued as numbered license articles and that the Commission will enforce these provisions. If, in making its licensing decision, the Commission determines that any of the sections identified herein are not within its jurisdiction to enforce, it will so expressly and clearly notify the Parties in the licensing order. If the Commission does not so expressly identify any of the provisions of the sections identified herein, then the Parties will, in reliance thereon, proceed as though each of the sections identified herein are enforceable by the FERC.

In the event that the FERC should, contrary to the integrated and indivisible nature of this Settlement Offer described herein in Section 1.2, issue a new license that omits or reduces any of the commitments identified in Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 which the Licensee has agreed to undertake as part of this Settlement Offer and in the event that the new license is not thereafter satisfactorily modified as the result of the filing of a request for rehearing as provided in Section 2.5, and in the event any Party thereafter determines that its interests will be materially and adversely affected by the change or changes so made by the FERC, it may after first providing written notice of its intention to do so to the other Parties together with a written explanation of its reasons for doing so, withdraw from this Settlement Offer and thereafter the Settlement Offer shall have no force and effect and the Parties shall in any subsequent administrative and

judicial proceedings take the position that the basis upon which the Commission's public interest determination was made in connection with the issuance of the new license and the new license should have no force and effect and should be considered null and void.

2.3 Water-Quality Certification — Withdrawal Rights

The Parties agree that they will support the issuance by the NYSDEC of a Section 401-WQC that is consistent with the provisions of this Settlement Offer for the Oswego River Project. If the NYSDEC should issue a 401-WQC certification for the project that is materially inconsistent with the provisions of this Settlement Offer, any Party can withdraw from this Settlement Offer by providing written notice of its intention to do so to the other Parties within 60 days from the date of issuance of any such certification or, in the event any Party seeks judicial or agency review, 60 days from the date of the denial of such review. The NYSDEC will distribute to the Parties copies of the 401 -WQC that is issued.

2.4 New York State Canal Corporation Permits

The Parties understand that certain modifications to structures and/or lands under the jurisdiction of the New York State Canal Corporation (Canal Corp) will be necessary for the Licensee to complete the settlement measures described in Sections 3.1, 3.3, 3.4, 3.5 and 3.7 of this Settlement Offer and that the Canal Corp must issue appropriate Canal Work Permits to the Licensee, pursuant to the Canal Work Permit Application form shown in Appendix A, before the Licensee can proceed with such modifications. The Licensee agrees to apply for the requisite permits in a timely manner so as to not impact the implementation schedules identified in Tables 3-1, 3-2, 3-3, 3-4, and 3-5. The Canal Corp agrees to cooperate in issuing the requisite permits and to not unreasonably withhold issuance of the requisite permits to proceed with the modifications and subsequent operations of the settlement measures pertaining to those modifications.

The Parties understand that the execution and implementation of this Settlement Offer is not intended to give the FERC jurisdiction over the Canal Corp's canal and lock operations in the vicinity of the Oswego River Project and the Oswego Falls Project.

The issuance of such permits to the Licensee to proceed with implementation of the settlement measures described in Sections 3.1, 3.3, 3.4, 3.5, and 3.7 will be without prejudice to any issue regarding the acquisition of any property rights that the Licensee may need to obtain from the Canal Corp pursuant to FERC Standard License Article 5.

2.5 Rehearings

The Parties agree that none of them will file a request for rehearing of any new license unless the license contains conditions which are materially inconsistent with the terms of this Settlement Offer, which omits as license conditions terms of the Settlement Offer which the Parties have agreed should be included as license conditions, or if the FERC determines that it will not enforce any of the provisions of the Settlement Offer that the Parties have agreed should become enforceable conditions of the new license, as expressly identified in Section 2.2. In the event that any Party decides to file a request for rehearing in accordance with the terms of this provision, it will provide written notice of its intention to do so to the other Parties at the earliest practicable time and thereafter the other Parties will join in the rehearing request or file an appropriate and supportive rehearing request of their own. Thereafter, if any Party, following the issuance of a FERC Order on Rehearing, elects to file a petition for judicial review with respect to the matters covered by this provision, the other Parties will not oppose such a petition.

2.6 Reopeners

The Parties agree that, except as provided herein, this Settlement Offer is not intended to limit or restrict the ability of any Party to petition the FERC pursuant to any reopener condition contained in the new license, including any exercise by the Secretary of DOI relating to the Secretary's fishway prescription authority under § 18 of the FPA. No such petition, including the exercise of § 18 authority, may be filed which would, if

granted, be materially inconsistent with this Settlement Offer, or cause other portions of the Settlement Offer to be reopened, unless the Party who files the petition has substantial evidence that a change in circumstances has occurred including any material change made by the Commission to the terms of this Settlement Offer which provides good cause for the filing of the petition. Before any Party files such a petition with the FERC, it shall provide at least 60 days written notice of its intention to do so to all other Parties and, promptly following the giving of notice, has consulted with the other Parties regarding the need for and the purpose of the petition. In the event such a petition is filed, the filing Party shall include with its filing documentation of its consultation with the other Parties and a summary of their recommendations and its response to those recommendations. The filing Party shall also serve a copy of its petition on all the other Parties.

2.7 License Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of the Licensee to seek amendments of any new license. The Licensee may only seek a license amendment which would be materially inconsistent with the provisions of this Settlement Offer if it has substantial evidence that a change in circumstances has occurred which provides good cause for the filing of the amendment and has provided the Parties at least 60 days written notice of its intention to do so and, promptly following the giving of notice, has consulted with the Parties regarding the need for and the purpose of the amendment. For other license amendments which just relate to the license terms set forth in this Settlement Offer, the Licensee shall provide all Parties at least 30 days notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the amendment and defer the filing for another 30 days. In any application for an amendment which relates to any of the terms and conditions of this Settlement Offer, the Licensee shall document its consultation, summarize the positions and recommendations of the Parties, and provide its response to those positions and recommendations. The Licensee shall serve a copy of any application for amendment upon the Parties at the time of the filing. The Licensee will not oppose an intervention request filed in a timely manner by any Party in an amendment proceeding involving the license.

2.8 Oswego Falls License Amendment

Within ninety (90) days of the execution of this Offer of Settlement the Licensee agrees to prepare and file with the FERC an application to amend the existing Oswego Falls Project license (FERC Project No. 5984) which incorporates the proposed changes in the existing Oswego Falls License conditions affected by Subsections 3.1.2, 3.1.3, 3.3, and 3.5 of this agreement. The Parties agree that the discussions and meetings which have been held in connection with the negotiation of this Settlement Offer have afforded sufficient pre-filing consultation in connection with the aforementioned amendments of the license for the Oswego Falls Project and the Parties agree to support those amendment requests by the Licensee.

2.9 Fish Passage and Section 18

The Parties agree that fish passage measures as described in Section 3.5 will be implemented, but the new FERC license for the Oswego River Project should include the standard license article reserving the ability of the FERC to require fish passage in the future and should include the full reservation of the Secretary of the Interior's § 18 authority, by reserving the Secretary's authority to prescribe the construction, operation, and maintenance of such fishways as deemed necessary. The existing § 18 prescription submitted for the Oswego River Project will be modified to be consistent with this Settlement Offer.

2.10 Settlement Offer Amendments

The Parties agree that, except as provided herein, nothing in this Settlement Offer is intended to limit or restrict the ability of any Party to seek an amendment to this Settlement Offer during the effective period of the license with respect to matters not addressed in the license. Any Party seeking such an amendment may do so upon presenting substantial evidence that a material change in circumstances has occurred that provides good cause for seeking the amendment. Any such amendment proposal shall not be materially inconsistent with any license articles or the obligations of the Licensee

pursuant to the license. Any Party proposing such an amendment to this Settlement Offer shall provide all Parties with at least 30 days written notice of the proposed amendment and, if requested to do so by any Party, shall consult with the Parties regarding the proposed amendment for at least another 30 days. No amendment will be effective if any Party objects to the amendment. Any Party that abstains may not object to and will be bound by any amendment in which all other Parties concur. After such notice and consultation, if all Parties either concur with or do not object to the proposed amendment, the Party making the proposal shall secure signed agreements to the amendment from all Parties who concur with the proposal. The Licensee will file the amendment with the FERC for informational purposes.

2.11 Compliance With the National Historic Preservation Act

The Licensee agrees to develop a Cultural Resources Management Plan, as needed, in consultation with the New York State Office of Parks, Recreation and Historic Preservation, and Federally-recognized Indian tribes.

2.12 Compliance With the Endangered Species Act

Consultation with the NYSDEC and the USFWS has established that, except for some transient individuals, there are no federally- or state-listed threatened or endangered species in the area of the Oswego River Projects at this time.

2.13 Fulton Unit Addition

The Parties agree to cooperate with the Licensee in any future amendment the Licensee may pursue in installing any additional generating unit(s) to the Fulton Development of the Oswego River Project (FERC No. 2474) during the term of any new license provided such an amendment is consistent with the terms and conditions of this Settlement Offer and includes the installation of seasonal 1-inch clear-spaced trashrack overlays or seasonal 1.5-inch diameter punchplates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when

the temperature of the river decreases to 7° C or less (whichever is sooner) as a fish protection measure.

2.14 License Application Proposals Withdrawn

The Parties agree that all license application proposals preceding this Settlement Offer are withdrawn and superceded by those specified in this Offer of Settlement. The withdrawn proposals include:

2.14.1 Proposals Withdrawn

- Operate all three developments in ROR mode with the impoundment water level at or near the top of flashboards or dam crest, as superceded by Section 3.1;
- Release a minimum flow of 475-cfs to the upper Varick development bypassed reach during the walleye spawning season, 300-cfs during the fall upstream salmonid migration period; and 200-cfs for the remainder of the year, as superceded by Section 3.3;
- Release a minimum flow of 200-cfs to the lower Varick development bypassed reach during the walleye spawning season, 150-cfs during the fall upstream migration period, and 75-cfs for the remainder of the year, as superceded by Section 3.3;
- Install low-cost, 1-inch, clear-spaced trashrack fish protection systems with downstream passage at all three developments by 2010(contingent on finalizing Atlantic salmon restoration goals), as superceded by Section 3.5;
- Conduct downstream fish passage effectiveness studies for installed passage facilities at all three developments, as superceded by Section 3.5

- Provide upstream passage for Atlantic salmon by constructing an interim trap and truck facility at the Varick development, as superceded by Section 2.8;
- Implement aesthetic improvements at all three developments;
- Provide pedestrian and angler access to the Canal Lock No. 3 island downstream of the Fulton development by establishing a woodchip trail and installing fences and signs;
- Assist NYSTA(Canal Corp) in improving shoreline fishing at the Canal Lock No. 2 island, upstream of the Fulton development;
- Assist with the city of Fulton's Granby Trail from the Granby Project to the Oswego Falls Project ;
- Assist with the development of the city of Oswego's planned Varick Impoundment Trail

3.0 MEASURES WHICH THE LICENSEE WILL UNDERTAKE WITH RESPECT TO LICENSE CONDITIONS AND OTHER NON-LICENSE PROVISIONS OF SETTLEMENT

3.1 Operations

3.1.1 Mode of Operation

Within eighteen (18) months of license issuance and acceptance, the Licensee will begin to operate the Oswego River Project in a Modified Run-of-River (MROR) mode. The Licensee will also continue to operate the Oswego Falls Project in the same MROR mode according to the existing license for the Oswego Falls Project, which is consistent with Sections 3.1.1 and 3.1.2 of this Settlement Offer. This MROR mode more closely matches the outflow from the projects with the inflow to the projects by limiting the impoundment fluctuations as described in Section 3.1.2 below while allowing a minimum buffer to compensate for changes in inflow to the project.

This MROR mode may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for short periods upon mutual agreement between the Licensee and the NYSDEC. If the MROR mode is so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.1.2 Impoundment Fluctuations

Within eighteen (18) months of license issuance and acceptance, the Licensee shall limit impoundment fluctuations in the Fulton, Minetto, and Varick developments as specified in Table 3-1. The Licensee will also limit impoundment fluctuations at the Oswego Falls Project to 0.5 feet as described in FERC's "Order Modifying and Approving Run-Of-River Monitoring Plan" for the Oswego Falls Project and specified in Table 3-1.

Normal impoundment fluctuations shall be defined as the maximum drawdown limit associated with the operating range necessary to achieve normal operation. The normal impoundment fluctuation limit shall be measured in the downward direction from the permanent crest of each dam or from the top of the flashboards (when in place). Water surface elevations higher than the elevation from which any downward fluctuation is measured are considered outside of the normal impoundment fluctuation zone, and variations of same are not considered as a utilization of the normal impoundment fluctuation.

| Development | Permanent Crest of Dam (feet, USGS) | Flashboards | Normal Impoundment Fluctuation |
|--------------------|--|--------------------|---|
| Oswego Falls | 351.8 | 18" | 0.5 feet (year-round) measured in a downward direction from the permanent crest of dam or the top of flashboards when in place. |
| Fulton | 334.0 | 6" | |
| Minetto | 307.0 | 10" | |
| Varick | 267.5 | 30"* | 1.0-foot (year-round) measured in a downward direction from the permanent crest of dam or the top of flashboards when in place. |
| | | 32"* | |
| | | 34"* | |
| | | 36"* | |
| | 268.5 | 10"* | |

* The Varick dam is currently fitted with a system of stepped flashboards with a maximum height of 36" from permanent crest elevation of the dam and may be adjusted as needed by the Licensee. The current system is designed to fail at approximately 15" of overtopping. Under normal operating conditions, the water level is maintained at 30" above crest (Elev. 270.0).

These impoundment fluctuation limitations may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for short periods upon mutual agreement between the Licensee and the NYSDEC. If the limitations are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.1.3 Pneumatic Flashboards

The Licensee will install partial pneumatic flashboards as described in the Oswego Falls "Order Issuing License", on the sections of the spillway from near the non-overflow section to the first taintor gate (Taintor Gate No. 6) support wall of the Oswego Falls Dam to facilitate pond level control. As the pneumatic flashboards were required in the license for the Oswego Falls Project, no license amendment is necessary for the implementation of this protective measure. Installation of the pneumatic flashboards will be completed by December 31, 2003.

3.1.4 Justification

The Party's agreement to operate the Oswego River Projects in a MROR mode significantly reduces the normal daily impoundment fluctuations associated with normal project operations. Review of pertinent historical USGS stream flow data indicates river flow periodically exceeds the total hydraulic capacity of each development's turbines. Furthermore, impoundment fluctuations are currently limited during the navigation season (approximately mid-May through November) as required by the Canal Corp. As such, normal daily impoundment fluctuations due to hydropower operations are limited to those periods when river flow is less than the hydraulic capacity (including any base flows or bypass flows) of each development and/or during the navigation season.

The normal daily impoundment fluctuations coalesced with the MROR operation agreed upon for the Oswego Falls Project and the Fulton and Minetto developments allows for a subtle buffer needed to approximate outflow in response to the dynamics of river inflow. This creates a smoothing effect to the flow regime while at the same time decreases the amount of area impacted by the impoundment fluctuations as described in Table 3-1.

The MROR operations and the normal daily impoundment fluctuations for the Varick development will provide this same buffering capacity as well as providing an additional safety buffer for recreational users of the river. The impoundment fluctuation at the Varick Development as described in Table 3-1 is greater than for the other developments of the Oswego River Project due to the small size and steep-sided slopes of the impoundment and surrounding shoreline. This operating regime will also enhance the existing shallow water littoral zone and adjacent wetland habitat by decreasing the amount of impacted area.

At each of the Oswego River developments, the normal daily impoundment fluctuations and MROR operations described above will reduce the size of the fluctuation zone, potentially resulting in improved primary production. This improvement in primary production should result in improved benthic invertebrate production and improvements to fish diet, growth, and reproduction.

3.2 Base-flows

Within eighteen (18) months of license issuance and acceptance, the Licensee shall begin to release the base-flow as specified in Table 3-2. The base-flow(s) as described in Table 3-2 shall be maintained in the river immediately downstream of the development's powerhouse. No base-flow is provided at the Minetto Development due to the back watering effect created by the dam at Lock # 6. The base flow at the Varick Development is provided for via the bypass flow as described in Table 3-3.

These base-flow requirements may be curtailed or suspended if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon mutual agreement between the Licensee and the NYSDEC. If the flows are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

| Site | Flow Magnitude | Location | Season | | Implementation Schedule |
|--------|---|---|---|---|--|
| | | | From | To | |
| Fulton | 800-cfs or inflow† (whichever is less) for walleye spawning | Below powerhouse through generation or over the spillway during non-generation periods. | The beginning of Walleye spawning season which begins when water temperature $\geq 4^{\circ}\text{C}$ for 4 consecutive days after March 15 th of each year. | The end of Walleye spawning season which ends 30 days after the water temperature $\geq 10^{\circ}\text{C}$ for 4 consecutive days. | Within 18 months of license issuance and acceptance. |
| | 300-cfs or inflow† (whichever is less) | | At the end of the walleye spawning season. | To cease at the beginning of walleye spawning season. | |

† Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.

3.2.1 Justification

The agreed upon base-flows below the Fulton development as described above in Table 3-2 will be maintained for the protection of: fish habitat, benthic invertebrate production, sustained riparian wetland vegetation, walleye spawning, fishing opportunities, and water quality considerations. These base flows for the Fulton development will increase the amount of wetted area in the tailrace below the Fulton powerhouse, in the bypass reach, and that portion of the Oswego River downstream of the Fulton Development.

The base-flow below the Fulton development during the walleye-spawning season creates over 9,000 ft.² of relatively high-quality walleye spawning habitat. In addition, this flow provides at least 90% of the Weighted Usable Area (WUA) for the invertebrate Hydropsychid species and results in a high proportion of the bypass reach providing high quality habitat for certain life stages of this species.

The base-flow below the Fulton development during that portion of the year not covered by the walleye spawning season offers approximately 90% of the maximum possible WUA for juvenile longnose-dace, an important forage species.

In addition, it provides riverine habitat for other forage fish, several life stages of sport fish, and benthic invertebrates.

The provision of these base flows for the Fulton development as evident by multiple site visits will allow the upper bypass reach to be backwatered by discharge from the turbines. This backwatering effect, in combination with a 75-cfs fish friendly flow for downstream fish movement (as described in Section 3.3 below), substantially increases the amount of available wetted area in the upper bypass reach and creates habitat for resident and migratory fish species while providing enhanced fishing opportunities.

3.3 Bypass Flows

Within eighteen (18) months of license issuance and acceptance, the Licensee shall begin to release the bypass flows as specified in Table 3-3.

These bypass flows are considered to be nominal flows. That is, it is recognized that the actual release at any given time may be slightly above or slightly below the agreed-upon value. The degree to which a flow will be greater than or less than the nominal value indicated is a function of impoundment surface elevation as a result of normal daily impoundment fluctuations (see Section 3.1) as shown in parenthesis in Table 3-3. The Licensee shall derive appropriate structural designs for the provision of the bypass flows at the Oswego River and Oswego Falls projects.

The Parties have agreed upon the bypass flows for the Varick development as described in Table 3-3 with the understanding that these flows will achieve agency management goals when coupled with the addition of low-level flow diversion structures to the lower bypass reach as described in Section 3.4 below. The Parties further agree that at a minimum of (5) five years after license issuance and acceptance, at the request of the Licensee, that the Licensee and the resource agencies will reevaluate the 400-cfs seasonal flow from September 16 through the beginning of walleye spawning season in

an attempt to decrease this bypass flow while continuing to meet the agencies management objectives.

| Site | Flow Magnitude | | Location | Season | Timing of Implementation |
|--------------|--|---|--|--|---|
| Oswego Falls | 236-cfs or inflow,† whichever is less | 70-cfs (61-79) fish friendly flow | release at the east-side sluice gate | Year-round | Within 6 months of FERC's approval of an amendment to the Oswego Falls License |
| | | 166-cfs (164- 168) fish friendly flow | through tainter gate 6 | | |
| Fulton | 75-cfs (65-86) fish friendly flow | | Release from the sluice gate adjacent to the Fulton powerhouse | | |
| Varick | 800-cfs (782-818) or inflow‡, whichever is less* | | Existing sluice gate(s) adjacent to the State head gate | Walleye spawning season (see Conventions & Definitions Section). | Within 18 months of license issuance and acceptance |
| | 400-cfs (389-410) or inflow‡, whichever is less* | | | End of walleye spawning season through May 31 | |
| | 200-cfs (192-207) or inflow‡, whichever is less* | | | June 1 through September 15 | |
| | 400-cfs (389-410) or inflow‡, whichever is less*† | | | September 16 through the beginning of walleye spawning season | |

* Note: Throughout the entire year the first 200-cfs released at the Varick development will be made fish friendly as described in Section 3.5.

† The Parties agree that the Licensee and the resource agencies will reevaluate this seasonal flow if so requested by the Licensee at a minimum of 5 years after license issuance and acceptance with the intention of determining if implementing decreased bypass flows will meet agency management objectives.

‡ Inflow is approximately equal to the gross river inflow less the flow volume used for canal lockage operations.

3.3.1 Justification

The Parties have carefully reviewed alternative flows to the bypass reaches of the Oswego River and Oswego Falls projects. The bypass flows agreed upon by the Parties result in an increase in wetted area in the Oswego Falls, Fulton, and Varick bypass reaches. The agreed upon bypass flows, including low-level flow diversion devices, will maintain and increase aquatic habitat for many species and life stages of forage, pan, and game fish and benthic invertebrates which are an important source of forage for many aquatic species. These flows will also benefit wildlife (raccoon, waterfowl, wading birds) and associated riparian vegetation. Bypass flows allocated to the Varick development

will also provide large salmonids, walleye, and other species that migrate into the bypass reach from Lake Ontario with sufficient depth for movement, added protection from predation and excessive illegal harvest, and will enhance opportunities for fishing, including safe recreational ingress and egress to the bypass reach.

The agreed upon bypass flow releases to the Oswego Falls Project will result in an increase of wetted area in the bypass reach immediately downstream of the dam. Riffle areas will provide habitat for various life stages of smallmouth bass, riffle dwelling species, darters, and aquatic insects and spawning habitat for white sucker and walleye.

The agreed upon bypass flow at the Fulton development will wet the upper portion of the bypass reach immediately downstream of the Fulton Dam. Additional flow to the lower portion of this reach will be provided by the base flow through the Fulton Powerhouse (see Table 3.2). The bypass and base flows will increase wetted area and habitat for aquatic organisms similar to that described for the Oswego Falls bypass reach. In addition, higher spring base flow in the lower portion of the reach will provide habitat for walleye spawning.

The agreed upon bypass flows at the Varick development will increase habitat for juvenile, adult and spawning life stages of riffle dwelling species and white sucker, walleye spawning, and juvenile and spawning smallmouth bass. The bypass flow will enhance the use of riffle habitats by larger game fish and will provide thalweg depths that allow larger adult fish species to traverse the bypass reach relatively unimpeded, thus decreasing stranding or harassment of fish by illegal fishing practices. The bypass flow will afford the fishing public ample opportunity to harvest fish legally and promote safe recreational ingress and egress to and from the bypassed reach via access to Linear Park.

3.4 Low-level Flow Diversion Structures

Within eighteen (18) months of license issuance and acceptance the Licensee will install low-level flow diversion structures along a portion of the western side of the bypass reach near the tailrace of the Varick powerhouse. The Licensee agrees to consult with the NYSDEC and the USFWS prior to the design and installation of these low-level flow diversion structures.

These structures will be field located just upstream of the existing tailrace training wall. The licensee will construct these low level flow diversion structures with minimal height and length to avoid any unnecessary impact to the river or fish. These modifications will attempt to divert approximately 70% of the upper bypass reach flow, during the 200-cfs bypass flow release period from June 1 through September 16, to the lower bypass reach. Minor reductions agreed upon by the Parties for the bypass flows released into the bypass reach of the Varick development are in consideration of the implementation of these low-level flow diversion structures.

3.4.1 Justification

These modifications will augment the agreed upon bypass flows by providing increased levels of habitat for invertebrates; spawning for riffle dwelling species, walleye, white sucker, and smallmouth bass; juvenile habitat for longnose dace, white sucker and smallmouth bass; and adult habitat for longnose dace and white sucker. The low-level flow diversion structures will provide adult salmonids migrating upstream to the powerhouse a location to ascend the bypass reach in order to reach areas for sport harvest, increase the prevention of illegal harvesting of large adult fish by providing relatively deep and fast moving water, and assist in providing additional flows to the east side of the bypass reach to maintain waterfowl habitat and to improve the aesthetics of the bypassed reach.

3.5 Fish Protection, Passage, and Movement

The Licensee shall implement the fish-protection, passage, and movement measures as specified in Table 3-4 and 3-5. The Licensee shall be required to provide the following measures and structures to facilitate fish movement at the respective Oswego River Projects.

| Table 3-4: Oswego River Hydroelectric Projects Fish Movement | | | | |
|---|---|---|---|---|
| Development | Downstream Movement Routes | | Upstream Eel Conveyance System | |
| | Location | Implementation Schedule | Upstream Eel Conveyance System | Implementation Schedule |
| Oswego Falls | 70-cfs fish friendly release from an existing sluice gate adjacent to the east side powerhouse, 166-cfs through a tainter gate near the west side powerhouse. | Within 18 months of license issuance and acceptance | An upstream eel conveyance system will be field located in consultation with the USFWS, the NYSDEC and the Canal Corp. Each conveyance system will be installed seasonally from June 15 through September 15. | Within two (2) years of the scheduled Fulton upstream eel ramp installation |
| Fulton | 75-cfs fish friendly release through the existing sluice gate adjacent to the Fulton powerhouse | | | Within six (6) years of license issuance and acceptance |
| Minetto | 25-cfs fish passage release through an existing unused bay within the Minetto powerhouse | | | Within four (4) years of license issuance and acceptance. |
| Varick | 200-cfs fish friendly release through a location adjacent to the newly installed trashrack overlays | | | Within two (2) years of license issuance and acceptance. |

At the Oswego Falls Project, the Licensee shall be required to install protective measures within two (2) years of the execution of this "Offer of Settlement". Should the FERC fail to approve the amendment to the Oswego Falls license (as described in Section 2.7) within eighteen (18) months of this execution, the Licensee shall be required to install protective measures within one (1) year of FERC's approval of this amendment(whichever is later). These protective measures include 1.0-inch clear-spaced

trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7° C or less (whichever is sooner) as described in Table 3-5. Within six (6) months of the Commission's approval of the amendment to the Oswego Falls license, the Licensee shall provide a year-round 70-cfs minimum "fish friendly" flow release located at a sluice gate adjacent to the east-side powerhouse and a 166-cfs "fish friendly" release through taintor gate six (6). The Licensee shall also install an upstream eel conveyance system at the Oswego Falls Project to be placed seasonally from June 15 through September 15 within two (2) years of the scheduled installation date for an upstream eel conveyance system at the Fulton development as described in Table 3-4.

| Development | Protection Measure | Implementation Schedule | Location | Seasonality |
|---------------------|--|---|--|---|
| Oswego Falls | Seasonal overlays in the form of 1" clear-spaced trashracks or 1.5" diameter perforated plates | Within 2 years of execution of this "Offer of Settlement" or within 1 year of FERC's approval of the amendment for the Oswego Falls Project (whichever is later). | At the same location as the existing trashracks | To be placed seasonally from May 1 or when flows permit safe installation through November 30 or when the water temperature reaches 7 degrees C or less (whichever is sooner) |
| Fulton | | Within 2 years of license issuance and acceptance for the Oswego River Project. | | |
| Minetto | | Within 4 years of license issuance and acceptance for the Oswego River Project | | |
| Varick | | Within 6 years of license issuance and acceptance for the Oswego River Project. | To be located at the "State Head Gates" adjacent to the dam. | |

At the Fulton Development, the Licensee shall be required to install protective measures within two (2) years of license issuance and acceptance that includes 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7° C or less (whichever is

sooner) as described in Table 3-5. The Licensee shall provide a year-round 75-cfs minimum “fish friendly” flow release located at a sluice gate adjacent to the powerhouse, and shall install an upstream eel conveyance system at the Fulton Development to be placed seasonally from June 15 through September 15 within six (6) years of license issuance and acceptance as described in Table 3-4.

At the Minetto Development, the Licensee shall be required to install protective measures within four (4) years of license issuance and acceptance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7° C or less (whichever is sooner) as described in Table 3-5. The Licensee shall provide a year-round 25-cfs minimum “fish friendly” flow release located within one of the existing unused bays at the Minetto powerhouse, and install an upstream eel conveyance system at the Minetto development to be placed seasonally from June 15 through September 15 within four (4) years of license issuance and acceptance as described in Table 3-4.

At the Varick Development, the Licensee shall be required to install protective measures within six (6) years of license issuance and acceptance that include 1.0-inch clear-spaced trashrack overlays or 1.5-inch diameter perforated plates to be placed seasonally from May 1 or when flows permit safe installation (whichever is later) through November 30 or when the temperature of the river decreases to 7° C or less (whichever is sooner) as described in Table 3-5. This measure will be located at the “State Head Gate” structure adjacent to the dam. The Licensee shall provide a year-round 200-cfs minimum “fish friendly” flow release located at the Varick dam. The Licensee shall also install an upstream eel conveyance system at the Varick development to be placed seasonally from June 15 through September 15 within two (2) years of license issuance and acceptance as described in Table 3-4.

The Licensee shall not be required to test the effectiveness of any, or all, components of existing and future protection or passage measures and/or structures, make

qualitative or quantitative determinations of fish entrainment and/or mortality, or provide compensation for any fish entrainment and/or mortality.

The Licensee shall not be required to increase the level of protection and passage as agreed to by this Settlement Offer for the term of the license, unless prescribed by the Secretary of the U.S. Department of the Interior under Section 18 of the Federal Power Act (see Section 2.7).

The Licensee may curtail or suspend the requirements of this commitment if required by operating emergencies beyond the control of the Licensee, including security, and for limited periods upon mutual agreement between the Licensee, the USFWS, and the NYSDEC. If the requirements of this commitment are so modified, the Licensee shall notify the FERC as soon as possible, but no later than ten (10) business days after each such incident.

3.5.1 Justification

The fish protection measures and fish friendly minimum flow release structures agreed upon by the parties and described above will provide riverine and migratory species with additional routes to freely move downstream and seasonal protection from turbine entrainment. Fish movement currently is accomplished through turbine generation, canal lockages during the navigation season, and flow over the spillway. The protection measures and movement flows will both physically deter larger fish and behaviorally deter smaller fish from entering the turbine intakes while simultaneously enhancing downstream fish friendly movement by providing an escape route adjacent to the turbine intakes near each of the Oswego River Projects. The upstream eel conveyance systems will aid in the upstream migration of American eels to enable them to utilize additional habitat.

3.6 Flow and Water Level Monitoring

The Licensee shall develop a stream-flow and water-level monitoring plan in consultation with the NYSDEC and the USFWS within fifteen (15) months of the FERC's license issuance and acceptance. The monitoring plan shall include all gages and/or equipment to:

- Measure the base-flow releases at the Fulton development of the Oswego River Project at appropriate locations.
- Measure the bypass flow releases at the Fulton and Varick developments of the Oswego River Project at the appropriate locations.
- Measure headpond and tailwater elevations as needed.
- Provide an appropriate means of on-site visual verification of water levels.
- At the Oswego Falls Project, perform monitoring as outlined in the Oswego Falls "Order Modifying and Approving Run-of-River Monitoring Plan".

All gaging and ancillary equipment required by the monitoring plan, including headpond and tailwater gages, shall be made operational and fully calibrated within eighteen (18) months of license issuance and acceptance.

The monitoring plan will contain provisions for the installation of binary staff gages at selected locations to permit on-site visual verification of headpond, tailwater, and/or bypass reach water levels to the nearest 0.1-foot. Binary staff gages will be visible to the general public. Access to staff gages shall be provided to the NYSDEC, the USFWS, and/or their authorized representatives.

The Licensee shall keep accurate and sufficient records of the impoundment elevations and all project flows to the satisfaction of the NYSDEC and shall provide such data in a format and at intervals as required by the NYSDEC. All records will be made available for inspection at the Licensee's principal business office in New York State within five (5) business days or will be provided in written form within 30 days of the

Licensee's receipt of a written request for such records by the NYSDEC. Furthermore, the Licensee will provide to the NYSDEC a seven-day-per-week contact person to provide immediate verification of monitored flows and responses to questions about abnormal or emergency conditions.

The Licensee shall keep accurate and sufficient records of any uncontrollable station outage that may cause a reduction in the required baseflow at or below the Fulton powerhouse and bypass flow at or below the Fulton and Varick dams. The Licensee will consult with the NYSDEC to include a plan for reporting these types of incidents within the stream flow and water level monitoring plan.

3.7 Recreation

The recreational opportunities provided by this Settlement Offer supplement the existing recreational opportunities on the Oswego River which provide public access to, and use of, the impoundments, bypass reaches, and adjacent lands associated with the Fulton, Minetto, and Varick developments.

The Licensee shall allow public access to all lands within the FERC project boundary associated with each development covered by this Settlement Offer, with the exception of those lands and facilities specifically related to hydroelectric generation where public safety or site security would be a concern. Lands and facilities where public access will be precluded may include, but are not necessarily limited to, dams, dikes, gates, intake structures, water conveyance structures, powerhouses, substations, transmission lines, and certain access roads leading to such facilities.

3.7.1 Recreation Enhancements (NOT TO BE INCLUDED IN THE LICENSE)

Within eighteen (18) months of license issuance and acceptance, the Licensee shall implement the recreation enhancement commitments specified below.

- (a) Canoe Portage around Minetto Dam. Canoe navigation around the dams and hydro facilities at each development will continue to be primarily provided through the adjacent canal lock facilities. At the Minetto Development alternative canoe portage accommodations have been requested for use during high flow periods when canoe navigation can be difficult due to river currents near the upstream entrance to the lock. Alternative canoe portage will be accommodated as follows: upstream canoe take-out is available at the existing public boat launch on the west side of the Oswego River upstream of the Minetto Bridge; the portage trail will be situated between the western edge of the Oswego River and Route 48; and the downstream canoe put-in access will be located on Canal Corp owned land downstream of the powerhouse. (See attached Figure 1 showing these facilities). Within eighteen (18) months of license issuance and acceptance the Licensee will construct a canoe portage put-in facility and appropriate portage trail signage on the west side of the Oswego River downstream of the Minetto Development on land owned by the Canal Corp. Prior to constructing these facilities, the Licensee will consult with the Canal Corp concerning final design and location. The Canal Corp agrees to dedicate the use of its land in question for the development and maintenance of these canoe portage facilities by the Licensee.
- (b) Dispute Resolution: In the event that a dispute arises relative to the canoe portage enhancement at Minetto Development specified in this Section 3.7.2, signatories agree to engage in good faith negotiations for a period of at least 90 days, if necessary, in an effort to resolve the dispute, with said negotiations to be initiated by the aggrieved party. A minimum of two meetings, scheduled and organized by the objecting party, shall be held to attempt to

resolve the dispute during the 90-day period, if necessary. In the event that resolution cannot be reached within the 90-day negotiating period, any signatory may seek relief in an alternate forum with jurisdiction and authority to address recreational enhancement commitments not included in the license.

J:\826-001\91-15\Oswego RIVER OFFER OF SETTLEMENT.doc

Organization: Adirondack Mountain Club

By: Betty Lou Bailey
Betty Lou Bailey

Title: Chairman, Canoe Route Subcommittee
Conservation Committee

Date: June 13, 2003

OSWEGO RIVER OFFER OF SETTLEMENT

Organization: Erie Boulevard Hydropower, L.P
Acting through its General Partner,
Reliant Energy

Note: Erie's execution of this Offer of Settlement is premised on the Canal Corp.'s October 20, 2003 letter (filed with the FERC on November 11, 2003) advising that it does not object to the obligations imposed on Erie by this Offer of Settlement which provides reasonable assurances that the Canal Corp will cooperate in issuing requisite Canal Work Permits consistent with Section 2.4 of this Offer of Settlement.

By: David J. Youlen
David J. Youlen

Title: Managing Director, Hydro Generation

Date: 1/29/04

OSWEGO RIVER OFFER OF SETTLEMENT

Organization: Izaak Walton League

By: Leslie G. Monostory
Leslie Monostory

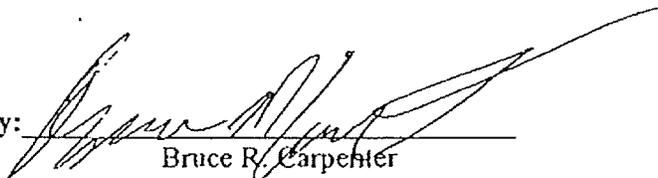
Title: Vice President, CNY Chapter

Date: April 14, 2003

OSWEGO RIVER OFFER OF SETTLEMENT

Organization: New York Rivers United

By:



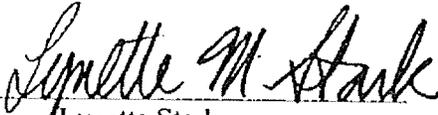
Bruce R. Carpenter

Title: Executive Director

Date: 4/10/03

OSWEGO RIVER OFFER OF SETTLEMENT

Organization: New York State Department of Environmental
Conservation

By: 
Lynette Stark

Title: Deputy Commissioner

Date: 4/29/03

Organization: New York State Conservation Council

By: Howard Cushing Jr.
Howard Cushing Jr.

Title: President

Date: 8/26/03

Organization: Trout Unlimited

By: Thomas R. Matias
Thomas R. Matias

Title: Counsel to the Committee on Hydro Relicensing
New York State Council, Trout Unlimited

Date: 4/17/03

Organization: United States Department of the Interior
U. S. Fish and Wildlife Service

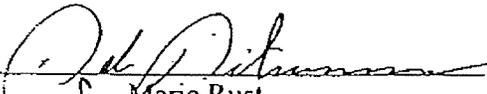
By: 

Dr. Mamie Parker

Title: Regional Director

Date: 4-18-03

Organization: U. S. Department of the Interior,
National Park Service

By: 
for Marie Rust

Title: Regional Director, Northeast Region

Date: 4/29/03



John L. Buono
Chairman

**New York State Thruway Authority
New York State Canal Corporation**

200 Southern Blvd., P.O. Box 189, Albany, NY 12201-0189

www.thruway.state.ny.us



Michael R. Flischer
Executive Director
TELEPHONE 1-800-253-6744

FILED
OCT 11 11 51 AM '03
NEW YORK STATE
CANAL CORPORATION

October 20, 2003

Mr. Jerry L. Sabattis
Hydro License Coordinator
Reliant Energy
225 Greenfield Parkway, Suite 201
Liverpool, New York 13088

Re: Oswego River Settlement Agreement
FERC License Nos. 2474 and 5984

Dear Mr. Sabattis:

This is to inform you that the New York State Canal Corporation does not object to the terms and conditions imposed upon the licensee under the above described FERC licenses, as described in the Oswego River Offer of Settlement and Appendices. Also, the Canal Corporation will not oppose nor object to the NYSDEC 401 Water Quality Certification. On the advice of counsel, the Canal Corporation will not be a signatory to the Settlement Agreement.

As stated in our letter dated October 10, 2003 to Mr. Jeffrey M. Auser, P. E., (copy enclosed), we will be directly negotiating with Reliant for the hydropower easements and operating & maintenance agreements which are necessary at the Licensed sites.

Sincerely,

Lawrence J. Frame, P.E.
Deputy Director



Gerald C. Goldstein
Assistant General Counsel

July 8, 2003

Mr. Jerry Sabattis
Hydro Licensing Coordinator
Reliant Energy
225 Greenfield Parkway, Suite 201
Liverpool, NY 13088

Subject: Erle Boulevard Hydropower
Oswego River Project Settlement Offer
FERC Project No. 2474

Dear Mr. Sabattis:

The Power Authority has received the final settlement offer dated April 2003 for the Oswego River Project. As a party to these proceedings and though not opposed to the Project, the Power Authority has not executed the final settlement agreement.

The Authority's interest in these proceedings is focused principally on the School Street Project, located on the Mohawk River, downstream from two of the Authority's projects.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Gerald C. Goldstein'.

Cc: Hon. Kevin J. Casutto
W. Little, NYSDEC
J. Osinski, NYPA
J. Suloway, NYPA

APPENDIX A
NEW YORK CANAL CORPORATION WORK PERMIT APPLICATION



NEW YORK STATE CANAL CORPORATION

INSTRUCTIONS TO APPLICANTS FOR COMMERCIAL CANAL WORK PERMITS

An applicant requesting a Canal Work Permit must complete those forms and/or follow the instructions, which have been checked below or otherwise provide the following information.

- Canal Work Permit Application.
- Proof of Liability Insurance Coverage:
- Certificate of Insurance for Occupancy Permits (FORM TA-951333).
The Canal Corporation requires liability insurance coverage in the amount of \$2,000,000 on all commercial permits. Please submit proof of this amount of insurance coverage with your permit application form. Please have your insurance company complete the enclosed form and return it to us along with your permit application.

- New York State Thruway Authority/Canal Corporation Statement of Self-Insurance form to be filled out if Self-Insured.

The New York State Canal Corporation reserves the right to specify the amount of insurance coverage required on all permits that it issues.

- Seed to the Property adjacent to New York State Canal Lands to be permitted.

- Maps, plans and specifications pertaining to the proposed work.

Please provide ___ ___ sets of plans and specifications.

- Permit Fee:

A non-refundable application fee of \$ 25.00 must be submitted by check or money order.

An additional charge of \$250 per day shall be imposed for any approved work on the Canal system requiring an onsite inspection by Corporation staff of one-half day or more.

Checks or money orders must be made out to the New York State Canal Corporation and submitted with your application form to:

NEW YORK STATE CANAL CORPORATION
ATTENTION: CREDITS & COLLECTIONS
P.O. BOX 22058
ALBANY, NEW YORK 12201-2058

- Appendix C - State Environmental Quality Review - Short Environmental Assessment Form Part I-Project Information. Please fill out and return with your Canal Work Permit application.

NO WORK PURSUANT THIS APPLICATION SHALL COMMENCE UNTIL A CANAL WORK PERMIT IS ISSUED BY THE NEW YORK STATE CANAL CORPORATION.



New York State Canal Corporation
CANAL PERMIT APPLICATION

FOR CANAL USE ONLY
Please enclose non-refundable fee of
\$25.00
 WORK PERMIT
 LEASE

| | | |
|------|-------------------|-------------------|
| NAME | WORK PHONE NUMBER | HOME PHONE NUMBER |
|------|-------------------|-------------------|

ADDRESS

| | | |
|-------------------|-------|----------|
| TOWN/VILLAGE/CITY | STATE | ZIP CODE |
|-------------------|-------|----------|

| | |
|--|-----------------------------------|
| USE AND OCCUPANCY PERMIT NO. (if pre-existing) | CANAL PLATE NO. (if pre-existing) |
|--|-----------------------------------|

PERMISSION REQUESTED TO:

DURATION OF WORK (if applicable) FROM _____ THROUGH _____

DESCRIPTION OF CANAL PROPERTY (including existing structures and map or sketch showing adjacent owners, streets, etc.)

LOCATION OF CANAL PROPERTY

| | |
|-----------------------|------|
| APPLICANT'S SIGNATURE | DATE |
|-----------------------|------|

| | |
|---|------|
| SECOND APPLICANT'S SIGNATURE (if joint application) | DATE |
|---|------|

APPLICANT WAIVES THEIR RIGHT TO DENY A CREDIT HISTORY CHECK.

FOR OFFICIAL USE ONLY

| | |
|---------------|-----------------------|
| PARCEL NUMBER | TAX MAP PARCEL NUMBER |
|---------------|-----------------------|

| | |
|----------------|---------------------|
| CPM/BLM NUMBER | CENTER LINE STATION |
|----------------|---------------------|

APPROVAL RECOMMENDED: _____
Division Canal Permit Engineer Date _____

DIVISION APPROVAL: _____
Division Canal Maintenance Engineer Date _____

COMMENTS: _____

**CERTIFICATE OF INSURANCE
FOR OCCUPANCY PERMITS**



(NAME OF INSURANCE COMPANY)

| | |
|---|---|
| NAME OF INSURED: ADDITIONAL INSURED: People of the State of New York New York State Canal Corporation New York State Thruway Authority | AGENCY NAME & ADDRESS: PERMIT NO.: DATE OF CERTIFICATE: |
|---|---|

| TYPE OF INSURANCE | MINIMUM LIMITS OF LIABILITY REQUIRED | | | |
|---------------------------------|--------------------------------------|---------------------------------------|---------------------------|-----------|
| | BODILY INJURY LIABILITY | | PROPERTY DAMAGE LIABILITY | |
| | Each Occurrence | Aggregate | Each Occurrence | Aggregate |
| Comprehensive General Liability | | | | |
| OR | | Combined Single Limit of \$ 2 000,000 | | |

The subscribing insurance company, licensed to do business in the State of New York, certifies that insurance of the kinds and types and for the limits of liability herein stated, has been procured by and furnished on behalf of the insured and is in full force and effect for the period listed below. The insurance company further agrees to furnish the New York State Canal Corporation a complete copy of the policy upon request.

| KIND OF INSURANCE | POLICY NUMBER | EFFECTIVE DATE | EXPIRATION DATE | LIMITS OF LIABILITY (in thousands) | |
|---------------------------------|---------------|----------------|-----------------|------------------------------------|-----------|
| | | | | Each Occurrence | Aggregate |
| Comprehensive General Liability | | | | B.I. | |
| Excess Liability | | | | P.D. | |

The policy described above contains the following endorsement(s):

- An endorsement naming, the 'People of the State of New York, the New York State Canal Corporation and the New York State Thruway Authority' as additional insureds and covering the liability of the Permittee, the People of the State of New York, the Canal Corporation, the Authority and their officers, employees and agents, with respect to all acts or omissions under the permit whether or not authorized thereby, including any entry upon or use of Canal Corporation lands, as well as the maintenance of any facility by the permittee or anyone acting in its behalf, and including omissions and supervisory acts of the Canal Corporation, the Authority, their officers, employees or agents.
- An endorsement with the following description of policy coverage:
 "The naming of the People of the State of New York, the New York State Canal Corporation, and the New York State Thruway Authority as additional insureds does not exclude the liability of the permittee, and does not exclude the liability of any one acting by, through or for the permittee, for damages to the property or facilities of the New York State Canal Corporation or the New York State Thruway Authority."
- An endorsement providing for 30 days advance notice before cancellation or material change of coverage provided will be mailed to the New York State Canal Corporation, P.O. Box 22058, Albany, New York 12201-2058.

NAME OF
INSURANCE COMPANY _____

BY _____

CORPORATE TITLE _____

* Signature must be that of an officer or an authorized individual employed by the insurance company. An agent's signature is not acceptable. This signature also warrants that the certificate fairly describes the coverage of the policy and that there are not material or substantial limitations to either the limits of coverage or the object to be covered.

STATE OF _____

CITY OR
COUNTY OF _____

} ss:

On this _____ day of _____, 19____, before me personally came

_____, to me known, who being duly sworn, did
depose and say that he/she resides in _____, that he/she is the

_____ of the _____
the corporation described in and which executed the foregoing instrument; that he/she knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary Public)

PROJECT ID. NUMBER

817.20

SEQR

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project sponsor)

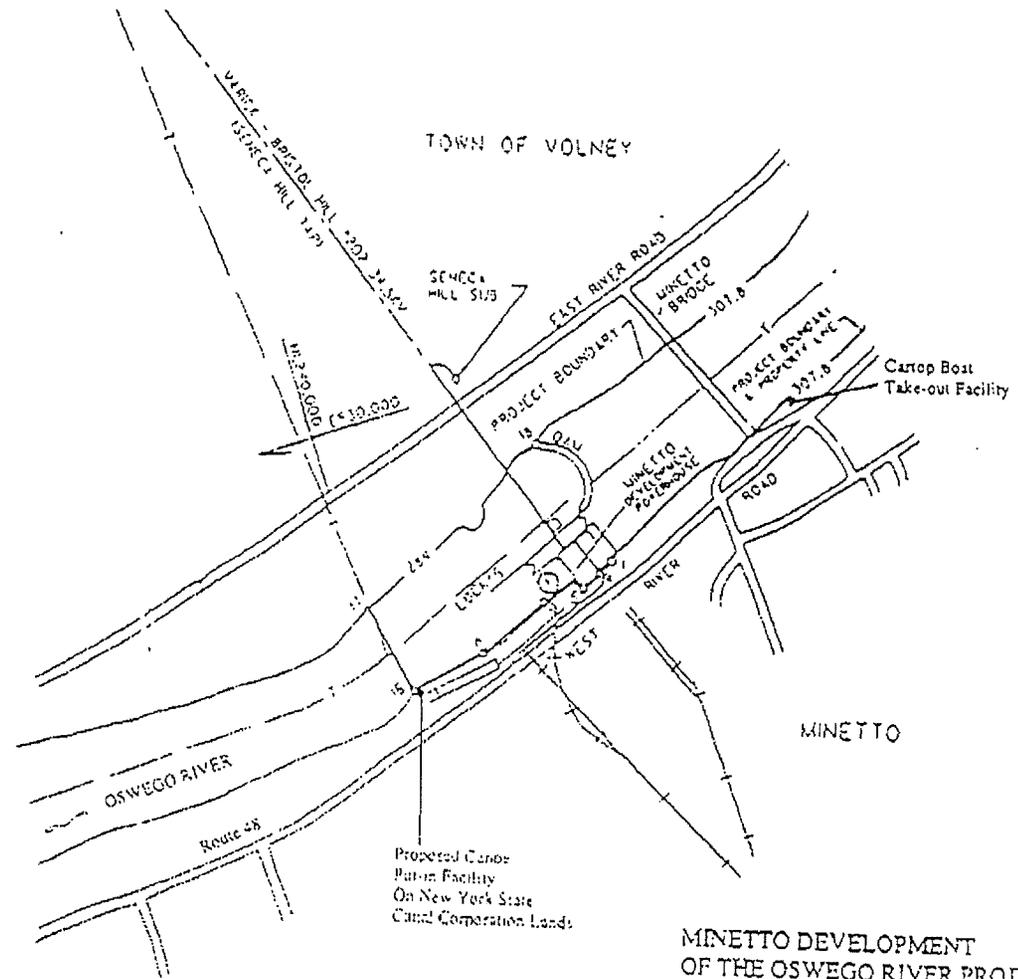
| | |
|---|-----------------|
| 1. APPLICANT/SPONSOR | 2. PROJECT NAME |
| 3. PROJECT LOCATION Municipality _____ County _____ | |
| 4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) | |
| 5. IS PROPOSED ACTION: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration | |
| 6. DESCRIBE PROJECT BRIEFLY: | |
| 7. AMOUNT OF LAND AFFECTED: Totaly _____ acres Utilizably _____ acres | |
| 8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly: | |
| 9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open space <input type="checkbox"/> Other | |
| 10. DOES ACTION INVOLVE A PERMIT APPROVAL OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency(s) and permit(s)/approval | |
| 11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit(s)/approval | |
| 12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE | |
| Project sponsor name _____ | Date: _____ |
| Signature: _____ | |

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

FIGURE 1
MINETTO CANOE PORTAGE FACILITIES

TOWN OF SCRIBA



MINNETTO DEVELOPMENT
OF THE OSWEGO RIVER PROJECT

FIGURE 1