

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

APPLICATION OF BLACK BEAR HYDRO PARTNERS, LLC
FOR CLASS IV RENEWABLE ENERGY SOURCE ELIGIBILITY
OF MEDWAY HYDROELECTRIC PROJECT (FERC No. 2666)

Pursuant to New Hampshire Admin. Code Puc 2500 Rules

March 31, 2010

1. ELIGIBILITY CLASS APPLIED FOR: I II III IV

2. Applicant's legal name: Black Bear Hydro Partners , LLC

3. Address: (1) Davenport Street

(2) PO Box 276

(3) Milford ME 04461
(City) (State) (Zip code)

4. Telephone number: 207-827-5364 or 207-461-3617

5. Facsimile number: 207-827-4102

6. Email address: shall@blackbearhydro.com

7. Facility name: Medway Hydroelectric Project (FERC No. 2666)

8. Facility location: (1) Route 116

(2) Medway ME 04460
(City) (State) (Zip code)

9. Latitude: 45° 36' 26.25" N Longitude: 68° 32' 42.89" W

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

(Name)

(Telephone Number)

11. The ISO-New England asset identification number, if applicable: 16525 or N/A

12. The GIS facility code, if applicable: MSS16525 Under 5MW – Medway 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.

Please see Supplemental Information Sheet.

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 (NFIDES),
- (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.

Please see Supplemental Information Sheet.

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.

Please see Supplemental Information Sheet.

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.

Please see Supplemental Information Sheet.

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.

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

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

Please see Supplemental Information Sheet.

28. This application and all future correspondence should be sent to:

Ms. Debra A. Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

29. Preparer's information:

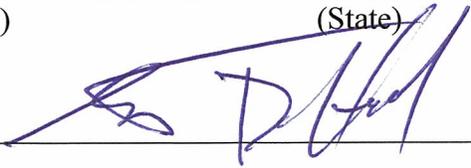
Name: Scott D. Hall

Title: Manager Environmental Services, Black Bear Hydro Partners, LLC

Address: (1) Davenport Street

(2) PO Box 276

(3) Milford ME 04461
(City) (State) (Zip code)

30. Preparer's signature:  3-31-10

**SUPPLEMENTAL INFORMATION IN SUPPORT OF
BLACK BEAR HYDRO PARTNERS, LLC'S APPLICATION FOR
CLASS IV RENEWABLE ENERGY SOURCE ELIGIBILITY
OF ITS MEDWAY HYDROELECTRIC PROJECT (FERC NO. 2666)**

Black Bear Hydro Partners, LLC ("Black Bear Hydro") submits the following information in response to the respective information requests contained in the completed application form (organized by number). In addition, Black Bear Hydro has included a general description of the Medway Hydroelectric Project and additional information in Section 27 in support of the Project's eligibility as a Class IV renewable energy source pursuant to New Hampshire R.S.A. 362- F:4(IV) and F:13 and Admin. Code Puc 2502.10.

Sections 1 through 12. – Please see Application Form.

Section 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 Medway Hydroelectric Project is a run-of-river hydroelectric generating facility located on the West Branch of the Penobscot River in Medway, Maine with a gross nameplate generating capacity of 3.44 MW. The Medway Project commenced initial commercial operations in 1923.

Sections 14 through 17. – Please see Application Form.

Section 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.

In compliance with the Federal Energy Regulatory Commission license for the Medway Hydroelectric Project (issued March 29, 1999), and associated Water Quality Certification (issued by the State of Maine on December 23, 1998), (both of which are attached to Section 20 of this Supplemental Information Sheet), both upstream and downstream diadromous fish passage facilities were constructed and are currently operated at the Medway Project. Please see the attached example photo, pertinent part of FERC order approving drawings that include passage facilities and condition compliance letter from the Maine Department of Environmental Protection (Attachment – Section 18).

Section 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.

Not applicable since the Medway Hydroelectric Project is located within ISO-New England.

Section 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.

Please see the attached Federal Energy Regulatory Commission license for the Medway Hydroelectric Project (issued March 29, 1999) which also contains the provisions of the Water Quality Certification (issued by the State of Maine on December 23, 1998) for the Medway Hydroelectric Project (Attachment – Section 20).

Section 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.

Please see attached the pertinent parts of the interconnection agreement with Bangor Hydro Electric Company for the Medway Hydroelectric Project (Attachment – Section 21).

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

The Medway Hydroelectric Project generating station is situated immediately adjacent to the local Bangor Hydro-Electric Company (“BHEC”) utility 46kv distribution substation. The Medway station is interconnected with the 46kv distribution bus by three 2.3kv to 46kv single-phase GSU transformers and a set of low/high side breakers and disconnects. Though the Medway station is directly interconnected to the 46kv distribution circuit, that 46kv circuit is connected to BHEC’s Chester substation by the 46kv Line 86. The Chester substation 46kv bus is connected to the Chester substation 115kv bus by a pair of 3-phase 115kv to 46kv step-down transformers and associated breakers. The Chester 115kv substation is a Pool Transmission Facility.

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

The Medway Hydroelectric Project currently qualifies as a Class II renewable energy source in the State of Maine. Pursuant to Maine’s Portfolio Requirement set forth in the Maine Public Utilities Commission Rules Chapter 311, Section 4, qualification as a Class II resource in Maine

does not require certification from the Maine Commission (unlike Class I new renewable resources which must be certified pursuant to Section 3(B)(4) of Chapter 311).

In addition, as provided in Section 12 of this application the Medway Hydroelectric Project's GIS facility code is MSS16525, Under5MW – Medway, and the GIS system confirms that the Medway Project is eligible for Maine Class II renewable energy credits (Attachment – Section 23).

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

The Medway Hydroelectric Project is a settlement only generator (asset identification number 16525) and its output is verified by the ISO New England.

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

Not applicable since the Medway Hydroelectric Project output is verified by the ISO-New England.

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

Please see attached affidavit of Scott D. Hall, Manager Environmental Services, Black Bear Hydro Partners, LLC, attesting to the accuracy of the contents of this application (Attachment – Section 26).

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

The Medway Project's license was transferred from Bangor Hydro-Electric Company to Penobscot Hydro, LLC, which later changed its name to PPL Maine, LLC ("PPL Maine") by Federal Energy Regulatory Commission order dated April 1, 1999 (87 FERC ¶62,001). The Medway Project license was subsequently transferred from PPL Maine to Black Bear Hydro Partners, LLC by FERC order dated September 17, 2009 (128 FERC ¶62,212).

Attachment – Section 18



Example of diadromous fish passage facilities at the Medway Hydroelectric Project.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PPL Maine LLC

Project No. 2666-023 and -025

ORDER MODIFYING AND APPROVING AMENDMENT OF LICENSE

(Issued April 18, 2005)

On June 25, 2004, PPL Maine LLC (licensee) filed an application to amend its license for the Medway Project No. 2666, located on the West Branch Penobscot River in Penobscot County, Maine.¹ On August 19, 2004, the licensee also filed a revised Exhibit F drawing showing the upstream fishway for American eels.² The proposed amendment includes increasing the normal reservoir impoundment by one foot, from 259.3 feet National Geodetic Vertical Datum (NGVD), to 260.3 feet NGVD by adding one foot of height to the existing flashboard system, which will result in an increase of approximately 2,303 megawatt hours (MWh) of additional generation annually. The licensee also proposes adding a new article to its license to mitigate for any potential habitat impacts associated with the increase in reservoir elevation. Granting these amendments is in the public interest because the amendments are components of a comprehensive settlement agreement which will contribute to the fishery restoration program in the Penobscot Basin and provide for the generation of significant amounts of electric power at the hydroelectric projects covered by the agreement. For the reasons stated below, I am granting the amendment application.

BACKGROUND

On June 25, 2004, the licensee filed the Lower Penobscot River Basin Comprehensive Settlement Accord (Comprehensive Settlement), which is composed of agreements entered into by the licensee, Bangor-Pacific Hydro, the Penobscot Indian Nation (PIN), the U.S. Department of the Interior (Interior) acting through its bureaus the U.S. Fish and Wildlife Service (FWS), the U.S. Bureau of Indian Affairs (BIA), and the National Park Service (NPS), the Maine agencies,³ the Conservation Interests,⁴ and the

¹ A new license was issued for the Medway Project on March 29, 1999. 86 FERC ¶ 62,242.

² The drawing was required in a letter dated July 13, 2004, from the Commission's New York Regional Office.

³ The Maine State Planning Office, the Maine Atlantic Salmon Commission, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Natural Resources.

⁴ American Rivers, Inc., the Atlantic Salmon Federation, the Maine Audubon Society, the Natural Resources Council of Maine, and Trout Unlimited.

Project No. 2666-023 and -025

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Penobscot River Restoration Trust (Trust) concerning the Veazie Project No. 2403, Milford Project No. 2534, Medway Project No. 2666, Orono Project No. 2710, Stillwater Project No. 2712, Howland Project No. 2721, Basin Mills Project No. 10981, Great Works Project No. 2312 and West Enfield Project No. 2600.

The Comprehensive Settlement includes the Lower Penobscot River Multiparty Settlement Agreement, dated June 2004 (MPA or Agreement). This filing does not request that the Commission approve the Comprehensive Settlement. Rather, the parties to the Comprehensive Settlement request that the Commission approve individual project amendment applications to implement the initial phase of the Comprehensive Settlement.

Section IV of the MPA requires the concurrent filing with the Commission of a number of requests and applications. These various requests and applications (Phase 1 Requests), if granted by the Commission without alteration or change that materially prejudices any party to the Agreement, will permit the parties to proceed to the subsequent phases of the MPA and thus realize the full public interest benefits contemplated by the MPA, including transfer and surrender of some licenses,⁵ and increased generating capacity at other projects. Once fully implemented, this will ultimately result in restoring access to more than 500 miles of fish habitat in the Penobscot River Basin for Atlantic salmon and other anadromous fish. The State of Maine would retain 90 percent of the hydropower generated on the Penobscot because the licensees would be able to increase generation at other dams.

The PIN Agreement sets out the mitigation measures that are to be implemented by the licensees to address certain impacts to PIN lands, resources, and interests from operation of the Milford Project and the West Enfield Project and, together with the June 2004 Lower Penobscot River Multiparty Settlement Agreement, to resolve the issues currently in dispute before the Commission that were raised in the requests for rehearing of the Commission's April 20, 1998 orders for the various projects in the Penobscot Basin.

PROPOSED MEDWAY AMENDMENT

The licensee requests that the Commission make the following changes to the project's license:

Paragraph (B)(1): Exhibit G – The following revised Exhibit G maps should be approved and made part of this license:

⁵ The Veazie and Great Works Projects would be decommissioned and their dams removed; Howland would be decommissioned and studied for potential dam removal.

the Medway Project. NOAA Fisheries did not reserve its section 18 authority to prescribe fishways in the license that was issued in 1999 and therefore cannot now reserve its authority. The provisions of Attachment A of the MPA do not call for the installation of any fishways at the Medford project. If NOAA Fisheries determines that fishways should be constructed at the Medway project, it can ask the Commission to use the reopener provisions of standard Article 15 to require the construction of fishways.

In its filing, the licensee submitted a revised Exhibit A reflecting proposed changes to the project features for the Medway hydroelectric Project. The changes are depicted in the following table 1:

Table 1

Description	License	Revised Exhibit A
Normal Water surface elevation, with flashboards (feet mean sea level)	259.3	260.3
Estimated Average Head (feet)	18.85	19.85
Reservoir Surface at full pond (acres)	98	101.5
Estimated Average Annual Generation (MWh)	28,064	30,367
Flashboards height (feet)	4.75	5.75

The revised Exhibit A conforms to the Commissions rules and regulations and is approved by this order. This order will revise the project description in the license to reflect the changes at the project.

In addition, the licensee submitted revised Exhibit F and G drawings showing the proposed revisions at the project. The revised drawings replace old F-1 and F-4 drawings, labeled FERC No. 2666-1009 and 2666-1004 in the license. The revised Exhibit F drawings conform to the Commission's rules and regulations and are approved by this order.

According to §§ 4.39 (a) and 4.41(h) of the Commission's regulations the licensee is required to provide project boundary data in a geo-referenced format. Each drawing must contain a minimum of three known reference points. The latitude and longitude coordinates, or state plane coordinates of each reference point must be shown. Our review of the exhibit G-1 through G-3 drawings found that they lack three reference points and surveyor stamp. Therefore, the licensee will be required by this order to file the drawings in compliance with the requirements of § 4.39 of the Commission's regulations.

The licensee's request to amend its license for the Medway Project, with the above modifications, is in the public interest and should, therefore, be approved.

The Director orders:

(A) The revised Exhibit A filed on June 25, 2004, conforms to the Commission's rules and regulations, and is approved and made a part of the license.

(B) Ordering paragraph (B)(2) of the license is revised as follows :

(2) Project works consisting of: (1) a 343-foot-long gravity dam, topped with 5.75 foot-high flashboards, with an impoundment elevation of 260.3 feet mean sea level (m.s.l.) with flashboards in place; (2) a 64-foot-long concrete gravity forebay wall; (3) a non-functioning upstream fishway; (4) a 101.5-acre impoundment at elevation 260.3 feet (normal impoundment level); (5) a 170-foot-long, 34-foot-wide, 71-foot-high brick powerhouse containing five generating units with a total installed capacity of 3.44 MW; (6) an approximate 144-foot-long, 3-kilovolt (kV) underground transmission line; and (7) appurtenant facilities.

(C) The following revised Exhibit F drawings, filed on June 25, 2004, and August 19, 2004 conform to the Commission's rules and regulations, and are approved and made a part of the license. The superseded exhibits are eliminated from the license.

EXHIBIT No.	FERC DRAWING No.	DRAWING TITLE	SUPERSEDED FERC DRAWING No.	DATE OF ORDER
F-1	2666-10110	General Site Plan and Dam Sections	2666-1009	08/19/2004
F-4	2666-10111	Powerhouse Plan	2666-1004	06/25/2004

(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 (e.g., P-2666-10110 and P-2666-10111) 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, and F-4), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card. See Figure 1.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

CONDITION COMPLIANCE

March 5, 2004

Scott D. Hall
Director of Environmental Services
PPL Maine LLC
PO Box 276
Milford, ME 04461

RE: Medway Hydro Project
SPECIAL CONDITION #4(B)
DEP #L-18893-33-G-C

Dear Mr. Hall:

The Bureau of Land and Water Quality has reviewed the information submitted by PPL Maine LLC ("PPL Maine") in accordance with Special Condition #4(B) of Department Order #L-18893-33-B-N dated December 23, 1998. This Order was issued pursuant to Section 401 of the Clean Water Act in conjunction with the relicensing of the Medway Hydro Project.

Condition 4 reads in pertinent parts as follows:

"4. EEL PASSAGE MONITORING

- A. The applicant shall, in consultation with appropriate state and federal fisheries agencies and the Penobscot Indian Nation, conduct monitoring to determine the effectiveness of the eel passage facilities required by Condition 3 of this certification.
- B. The applicant shall, no later than 60 days prior to the commencement of operation of the required eel passage facilities, submit an eel passage effectiveness monitoring plan, prepared in consultation with appropriate state and federal fisheries agencies and the Penobscot Indian Nation. This plan shall be reviewed by and must receive the approval of FERC and the DEP Bureau of Land and Water Quality prior to its implementation."

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-1507

By Order dated April 23, 1999, the Department approved the transfer of all permits, certifications, condition compliances and other approvals for Bangor Hydro-Electric's hydropower facilities, including the Medway Project, to PPL Maine.

By Condition Compliance Order #L-18893-33-D-N issued December 14, 1999, the DEP approved PPL Maine's plans for the design, installation and operation of temporary upstream eel passage facilities at the Medway Project, as well as plans for monitoring the effectiveness of these facilities. In accordance with this Order, permanent upstream eel passage facilities are to be operational at the Medway Project by May 15, 2004.

By Condition Compliance Order #L-18893-F-C issued September 18, 2003, the DEP approved PPL Maine's plans for the design, installation and operation of permanent upstream eel passage facilities at the Medway Project. In accordance with this Order, a plan to study the effectiveness of the approved permanent upstream eel passage facilities was due no later than 60 days prior to the May 15, 2004 commencement of fishway operation.

In response to Condition 4(B), by filing dated February 24, 2004, PPL Maine LLC has submitted a plan titled "American Eel Fishway Monitoring Plan" for the Medway Project, developed in consultation with the U.S. Fish and Wildlife Service, the Maine Department of Marine Resources, and the Penobscot Indian Nation. The proposed plan calls for trapping and counting all eels using the fishway. A sample of the eels using the fishway will be weighed, measured, tagged and released to assess fall-back. The plan also calls for two nights of observation by two staff during the upstream passage season (June 1 through August 1). Observations will be made of the abundance and behavior of eels in and around the fishway. A sample of eels will also be captured and examined for tags, which would be evidence of fall-back through the project forebay and powerhouse. PPL Maine proposed to evaluate the effectiveness of the fishway for two years and to then prepare a report in consultation with the resource agencies.

As a result of this review, the Department has found that the study plan as submitted satisfactorily addresses the requirements of Condition 4(B) with respect to the monitoring of the effectiveness of permanent upstream eel passage facilities.

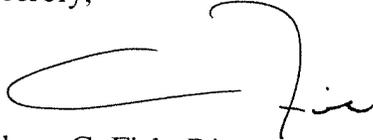
March 5, 2004

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Therefore, based on the above referenced review, the Department concludes that FPL Energy has complied with Condition 4(B) of Department Order #L-18893-33-B-N, to the extent described above.

If you have any further questions regarding this matter, please contact your DEP project manager, Dana Murch, at 207-287-7784.

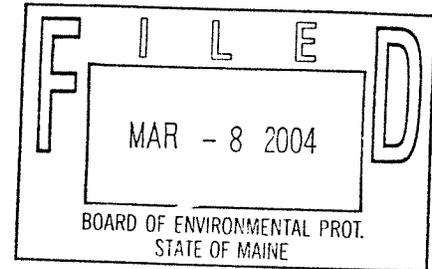
Sincerely,



Andrew C. Fisk, Director
Bureau of Land & Water Quality

Date of initial receipt of application: 02/25/2004

Date application accepted for processing: 03/01/2004



Date filed with Board of Environmental Protection: _____

VL-18893-33-G-C



ISSUE PROFILE

Appealing a Commissioner's Licensing Decision

issued: April 2003

contact: (207) 287-2811

SUMMARY

Two methods are available to an aggrieved person for appealing a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner -- in an administrative process before the Board of Environmental Protection ("Board") or a judicial process before Maine's Superior Court. This FACT SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, will assist aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

Maine Revised Statutes Annotated (M.R.S.A.) Title 38, section 341-D(4) and DEP Rule Chapter 2, section 24(B).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. An appeal filed after 30 calendar days will be dismissed.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable if followed by the original document within 5 working days. To be deemed received on a particular day, appeal documents must be received by 5:00p.m., as determined by received time stamp on the document or fax. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

An appeal must contain the following information:

1. *Evidence demonstrating that the appellant is an aggrieved person.* In order to bring an appeal, the appellant must demonstrate that the appellant may be particularly injured by the project.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* As part of the appeal, the Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *Supplemental evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Any proposed supplemental evidence must be filed with the appeal. Other specific requirements for supplemental evidence are found in DEP Rule Chapter 2, section 24(B).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If an applicant proceeds with a project pending the outcome of an appeal, the applicant runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The acknowledgement will set out a schedule for further filings and an anticipated date when the appeal will be presented to the Board. The notice of appeal, all materials accepted by the Board Chair as supplemental evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); DEP Rules Chapter 2, section 26; 5 M.R.S.A. § 11001; & Maine Rules of Civil Procedure 80C. Parties to the decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other aggrieved person must be filed within 40 days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this FACT SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

Attachment – Section 20

UNITED STATES OF AMERICA 86 ferc ¶ 62,242
FEDERAL ENERGY REGULATORY COMMISSION

Bangor Hydroelectric Company)

Project No. 2666-007

ORDER ISSUING NEW LICENSE
(Issued March 29, 1999)

On March 28, 1997, Bangor Hydro-Electric Company (Bangor Hydro) filed an application, pursuant to Sections 4(e) and 15 of the Federal Power Act (FPA),¹ for a new license authorizing the continued operation and maintenance of the 3.44-megawatt (MW) Medway Hydroelectric Project No. 2666 (Medway Project or project), located on the West Branch Penobscot River, in the town of Medway, Penobscot County, Maine.² The project does not occupy any federal lands. On November 19, 1998, Bangor Hydro filed for an amendment to its existing license to correct descriptions of project works³ and to change the project boundary.⁴

The original license for the Medway Project was issued on March 29, 1979 and expires on March 30, 1999.⁵ For the reasons discussed below, I will issue a new license to Bangor Hydro for the Medway Project.⁶

¹16 U.S.C. §§ 797(e) and 808.

²The West Branch Penobscot River is a navigable waterway of the United States (See 48 FERC ¶ 62,213 (1989) and 53 FERC ¶ 61,086 (1990)). Therefore, Section 23(b)(1) of the F.P.A., 16 U.S.C. § 817(1) requires the project to be licensed.

³Bangor Hydro requested that Ordering paragraph (B)(2)(6)(b) of the original license be corrected to indicate that the project actually contains four 2.3/26-kV transformers instead of three. The exhibit A approved by this order correctly gives the number of transformers and their step-up capacity. The new project description does not call out the transformers therefore no further action is needed on the amendment request to revise the project description.

⁴Bangor Hydro requested the removal of certain lands not needed for project purposes. See paragraph VIII. E. of this order for further discussion.

⁵The original license has an effective date of April 1, 1962.

⁶On December 7, 1998, Bangor Hydro filed a joint application
(continued...)

I. BACKGROUND

On June 17, 1997, the Federal Energy Regulatory Commission (Commission) issued a public notice soliciting motions to intervene in the proceeding by August 25, 1997.⁷ The Maine State Planning Office, the United States Department of the Interior (Interior), and the Penobscot Indian Nation (PIN) filed timely motions to intervene dated July 1, 1997, August 22, 1997, and August 22, 1997, respectively. All were automatically granted pursuant to the Commission's regulations.⁸

The Commission noticed the application for amendment to the license on December 29, 1998. Interior and the State of Maine filed motions to intervene by letters dated February 16, 1999. Interior expressed concern about the effects of removing lands from the project boundary that contain a boat launch and canoe portage and requested that the Commission retain jurisdiction to

⁶(...continued)
of transfer of license of seven of Bangor Hydro's projects, including Medway, to Penobscot Hydro, Inc., and amended its application on January 22, 1999, to identify the transferee as Penobscot Hydro, LLC. The Commission noticed the application for transfer on January 29, 1999 (64 Fed. Reg. 3655 (February 4, 1999)).

The request for transfer is being processed in a separate proceeding. Nonetheless, when a license is transferred, the new licensee steps into the shoes of the old licensee, and is subject to any and all requirements to which the old licensee was subject under the license and the Commission's orders thereunder. Section 8 of the FPA, 16 U.S.C. § 801, provides, in pertinent part:

[N]o voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the Commission; and any successor or assign of the rights of such licensee . . . shall be subject to all of the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assign were the original licensee hereunder .

⁷62 Fed. Reg. 35490-35491 (July 1, 1997).

⁸18 C.F.R. § 385.214 (1996).

the extent necessary to ensure the maintenance and development of the recreational facilities located on these lands.⁹

Commission staff issued a draft environmental assessment (DEA) for the project on October 28, 1998,¹⁰ in which they recommended that the project be licensed as proposed by Bangor Hydro with additional environmental conditions. Staff found that, with these conditions, licensing the project would not constitute a major federal action significantly affecting the quality of the human environment. Interior, PIN, and Maine Department of Environmental Protection (DEP)¹¹ filed comments on the DEA. Staff considered these comments in preparing the final environmental assessment (FEA), which was issued on March 12, 1999, and is incorporated by reference and made part of this order.

All comments and recommendations filed by the interested parties were considered in determining whether, and under what conditions, to issue this license.

II. PROJECT DESCRIPTION

The Medway Project consists of a 343-foot-long concrete gravity dam surmounted by flashboards, a 64-foot-long concrete gravity forebay wall, a 120-acre impoundment, a powerhouse containing five generating units with a total installed capacity of 3.44 MW, an approximate 144-foot-long underground transmission line, and appurtenant facilities. A more detailed description of the project works is in Ordering paragraph B(1).

Bangor Hydro would continue to operate the project in a run-of-river mode.

⁹By order issued August 7, 1995 (72 FERC ¶ 62,092), the Commission approved the recreation facilities pursuant to Article 35 of the license. The boat launch is not located on lands proposed for removal from the project boundary; a portion of the canoe portage is located on lands proposed for removal from the project boundary.

¹⁰63 Fed. Reg. 59297 (November 3, 1998).

¹¹DEP's comments consisted of a restatement of its water quality certificate conditions, which are attached as an appendix to and made part of this order.

III. APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA,¹² staff evaluated Bangor Hydro's record as a licensee with respect to the following: (A) consumption improvement program; (B) compliance history and ability to comply with the new 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 conclusion in each of these areas.

Here are staff's findings:

A. Consumption Improvement Program

Bangor Hydro's conservation programs¹³ demonstrate progress in implementing energy management measures for both residential and non-residential customers.

Bangor Hydro's conservation activities are regulated by the Maine Public Utilities Commission (MPUC) rules and by the Maine Energy Policy Act. MPUC allows utilities to implement conservation and load management programs without its express approval if they meet the criteria of its rules. MPUC prefers the Maine utilities initiate, design, and implement their own programs.

Bangor Hydro states that all the energy conservation programs implemented by it have complied with all applicable regulatory requirements.

We believe that Bangor Hydro's efforts have brought about significant improvements in electricity consumption efficiency and that Bangor Hydro has in place an adequate electricity consumption improvement program.

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

We have reviewed Bangor Hydro's compliance with the terms and conditions of the existing license. We find that Bangor Hydro's overall record of making timely filings and compliance with its license is satisfactory. We conclude that Bangor Hydro

¹²/ 16 U.S.C. §§ 803 and 808.

¹³/ See Exhibit H(a)-11 in Bangor Hydro's license application, March 1997 (Volume II).

has the ability to comply with the conditions of a new license and of orders issued thereunder.

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

We have reviewed Bangor Hydro's record of management, operation, and maintenance of the Medway Hydroelectric Project pursuant to project safety. The Medway Project is exempt from the Emergency Action Plan due to its classification as a low-hazard project pursuant to Commission regulations. We conclude that the dam and other project works are safe and that the licensee's record of managing, operating, and maintaining these facilities supports the decision to issue a license.

D. Ability to Provide Efficient and Reliable Service

Bangor Hydro has no plans to further increase capacity or generation at the project.

The project is automated. The automation system controls the five generating units and the vacant bay sluice gates as necessary to maintain headpond elevation. In 1995, a new station automation system was installed to upgrade control of the station generating equipment and improve station efficiency. Bangor hydro uses a computerized maintenance management system to enhance the performance of maintenance and minimize unscheduled outages resulting from equipment failure.

We reviewed the unscheduled outages at the Medway Project over the five-year period, 1991 to 1996. Many outages listed were regular maintenance activities which were ideally performed during river flows which were below the station's hydraulic capacity. The average annual energy production (1961 through 1996) for this project is 28,118,000 kWh.

We conclude that Bangor Hydro has operated the project in an efficient manner within the constraints of the existing license and can continue to provide efficient and reliable electric service in the future.

E. Need for Power

Bangor Hydro is a public utility serving about 100,000 residential, commercial, and industrial customers in an area of about 5,000 square miles in eastern Maine. Bangor Hydro has owned and operated the Medway Project since its purchase from Penobscot Power Company in 1931. In addition to the Medway Project, Bangor Hydro owns and operates six other hydroelectric facilities on the Penobscot, Stillwater, and Union Rivers. The project has helped meet customer's power requirements for nearly

76 years. The project accounts for 3.44 MW of Bangor Hydro's total hydroelectric resources of 31 MW. Bangor Hydro does not have enough generation to supply its system load and contracts for generation with neighboring utilities.

Bangor Hydro is a member of the New England Power Pool (NEPOOL). NEPOOL forecasts an average annual increase in peak capacity demand of 1.1 percent during the summer months and 1.2 percent during the winter months for the 1996 to 2005 planning period. During the same period, NEPOOL forecasts an annual decrease in planned capacity of 0.7 percent during the summer months and 0.3 percent during the winter months. NEPOOL shows the current reserve margin as 16.6 percent and this is expected to decrease to 5.1 percent by 2005. Without additional capacity, NEPOOL capacity will fall below the North American Electric Reliability Council's 15 percent recommended reserve margin by 2000. The electricity generated from the project would benefit the region by providing a portion of the needed regional power.

If relicensed, the project would continue to meet part of Bangor Hydro's needs and a small part of the region's needs. In addition, the project would continue to displace fossil-fueled electric power generation the regional utilities now use, and thereby conserve nonrenewable fossil fuels and reduce the emission of noxious byproducts caused by the combustion of fossil fuels.

F. Transmission Services

Bangor Hydro proposes no modifications to the transmission system. Removal of project generation, or license denial, would not require Bangor Hydro to construct new transmission lines or other facilities. Distributing energy from the project to the Medway area does, however, conserve an estimated 99,029 kWh per year in line losses that would result from importing energy equivalent to the project output from other parts of Bangor Hydro's transmission system.

We conclude that Bangor Hydro's transmission service is sufficient for the project and that no changes are necessary at this time.

G. Cost Effectiveness of Plans

Bangor Hydro has no plans for additional facilities or project modifications other than environmental enhancements. We conclude that the project, as presently configured and as operated according to this order consistent with environmental considerations, fully develops the economical hydropower potential of the site in a cost-effective manner.

H. Actions Affecting the Public

Environmental enhancement measures included in the license will generally improve environmental quality, particularly for aquatic and wildlife resources, and will have a beneficial affect on public use of project facilities for recreational purposes.

IV. WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act (CWA),¹⁴ the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has issued a water quality certification for the project or has waived certification by failing to act upon a request for certification within a reasonable time, not to exceed one year.

Bangor Hydro applied to the DEP for a water quality certificate for the Medway Project on March 14, 1997, and on February 23, 1998, simultaneously withdrew and refiled the pending application. The DEP granted certification on December 23, 1998.

The certification contains conditions requiring Bangor Hydro to: 1) maintain impoundment water level within 6 inches of full pond elevation when flashboards are in place, and within 6 inches of spillway crest elevation when flashboards are absent; 2) continue run-of-river operations except during approved maintenance activities, high flow periods, and operational emergencies beyond the licensee's control; 3) monitor run-of-river operations; 4) install, operate, and monitor upstream and downstream American eel passage facilities; and 5) monitor mercury and polychlorinated biphenyl (PCB) contamination in fish and sediments from the project impoundment and downstream areas.

The DEP also stipulates in the WQC that all variances from the plans and proposals contained in the application and supporting documentation must be reviewed and approved by the DEP, that Bangor Hydro must secure and comply with all federal, state, and local licenses, permits and other forms of approval required for project operation, and that the certification shall be effective concurrent with the effective date of the new hydropower license.

The WQC conditions are included in this license as Appendix A and are made part of this license.

¹⁴33 U.S.C. § 1341(a)(1).

V. THREATENED AND ENDANGERED SPECIES

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 designated critical habitat. Federally listed species that are known to occur in the project area include the threatened bald eagle and the endangered peregrine falcon.

In the DEA, staff concluded that issuing a new license with their recommended enhancement measures would not be likely to adversely impact the bald eagle and would not affect the peregrine falcon.¹⁶ FWS concurred and concluded no further consultation under Section 7 of the Endangered Species Act is required (letter from Michael Bartlett, Fish and Wildlife Service, Supervisor New England Field Office, Concord, New Hampshire, November 13, 1998).

VI. FISHWAY PRESCRIPTIONS

Section 18 of the FPA¹⁷ states that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as the Secretary of the Interior or the Secretary of Commerce, as appropriate, may prescribe.

Bangor Hydro proposes to build and operate upstream passage facilities and implement downstream passage measures for American eels. Bangor Hydro would also monitor the effectiveness of the passage facilities using video recorders. By letter of June 17, 1998, Interior generally agreed with the proposed eel passage measures,¹⁸ but declined to issue a fish passage prescription until post-licensing consultations are completed with the applicant over final design and monitoring of the proposed eel passage facilities. Interior also expressed the potential need to address anadromous salmon and other fish passage needs in the future, and requested the Commission to reserve Interior's prescription authority. Article 401 of this license reserves the

¹⁵16 U.S.C. § 1536(a).

¹⁶See Section V.C.5 of the FEA.

¹⁷16 U.S.C. § 811.

¹⁸PIN also generally agrees with the proposed measures, but feels that additional studies may be needed prior to developing final designs and that the proposed monitoring may not be adequate to document eel passage efficiencies.

Commission's authority to require fishways that the Secretary of Interior may prescribe in the future.

Staff agreed that installing, operating, and monitoring the facilities as proposed would benefit the eel fisheries, which have been declining in the basin in recent years. However, because the passage facilities would be new, staff recommended that Bangor Hydro prepare the final design and monitoring plans in consultation with FWS, PIN, DEP, and Maine Department of Inland Fish and Wildlife (MDIFW). Article 404 provides the agencies an opportunity to review the design plans and schedules for the fishways and provide comments and recommendations.¹⁹ Similarly, Article 405 provides for the development of a final monitoring plan in consultation with the above agencies to ensure that the passage facilities would be operating according to the intended designs.

VII. RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

A. Section 10(j) Recommendations of the Fish and Wildlife Agencies

Under the provisions of Section 10(j)(1) of the FPA,²⁰ the Commission is required to include license conditions, based upon recommendations of state and federal fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, for the protection of, mitigation of adverse impacts to, and enhancement of fish and wildlife resources 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.

¹⁹In their December 11, 1998, comments on the DEA, the PIN indicated that further studies may be needed to adequately design the eel passage facilities. The need and design of studies required to develop the final plans can be addressed during consultation and will be considered by the Commission when approving the plans.

²⁰16 U.S.C. § 803(j)(1).

By letter dated June 17, 1998, Interior made two recommendations pursuant to Section 10(j) of the FPA: ²¹ (1) operate the Medway Project in a run-of-river mode, whereby outflows from the project equal inflows to the impoundment on an instantaneous basis, and water level fluctuations above the dam are kept to a minimum (plus or minus one foot from full pond); and (2) prepare a plan, in consultation with FWS, U.S. Geological Survey (USGS), DEP, MDIFW, and PIN, to monitor flows and impoundment water levels at the Medway Project.

By letter dated October 28, 1998, staff made the preliminary determination that Interior's recommendation to limit impoundment fluctuations to within plus or minus one foot of full pond was inconsistent with the purposes and requirements of Part I of the FPA and other applicable law because this standard could not be maintained during periods of excessively high seasonal flows or periods immediately after flashboard failure. By letter dated December 10, 1998, Interior agreed with our recommendation to permit exceptions to this limit when the causes of the fluctuations are beyond the applicant's control. Interior also recommended that the flashboards be replaced as soon as safely possible.

Subsequent to the completion of the section 10(j) consultation with Interior, the MDEP issued the project water quality certification that required maintaining the project impoundment within 6 inches of full pond when the flashboards are in place and 6 inches of the spillway crest elevation when flashboards are not in place. ²² Staff recommended adopting the mandatory condition because the more restrictive condition would provide greater environmental benefits than Interior's recommendation. Article 402 requires run-of-river operation and reservoir fluctuation limits consistent with the states' water quality certificate. Article 403 requires Bangor Hydro to file a plan to monitor reservoir levels and flows to ensure compliance with the above operational limits. I conclude that all inconsistencies between Interior's recommendations and the FPA are resolved.

²¹Maine Department of Inland Fish and Wildlife did not submit Section 10(j) recommendations for the project.

²²The water quality certificate also provides for reasonable exceptions to these limits (see Appendix A) which are also included in license Article 402.

B. Section 10(a) Recommendations of the Fish and Wildlife Agencies

Section 10(a)(1) requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife, and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes.²³

Interior's recommendations regarding recreation monitoring are discussed in section VIII, C, below.

In its February 16, 1999, motion to intervene on the application for amendment of licenses, Interior requested that any license issued include an article that requires the licensee to serve, at the time of filing, the representatives identified in the motion a copy of any request the licensee may file for modification, amendment, or appeal of any recreational conditions, fish and wildlife related conditions, or any conditions affecting tribal rights and resources. In their answer to Interior's motion to intervene, Bangor Hydro objected to the request for a special Interior service requirement indicating it was inappropriate and contrary to Commission practice. Where a licensee proposes modifications to its project that entail a material change in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of property holders in a manner not contemplated by the license, the Commission will issue public notice and provide an opportunity for intervention.²⁴ It is neither necessary nor appropriate to require a licensee to serve copies of filings requesting non-material changes in the plan of project development or in the terms or conditions of the license.²⁵

²³16 U.S.C. § 803(a)(1).

²⁴See, e.g., Kings River Conservation District, 36 FERC ¶ 61,365 (1986).

²⁵Any person can monitor all filings at the Commission by accessing the Records Information Management System (RIMS) through the Commission's internet web site.

VIII. OTHER ISSUES

A. Indian Trust Responsibilities

Interior and PIN believe that the Commission has not adequately fulfilled its trust responsibilities to the PIN, a federally recognized tribe, because the environmental analysis did not explicitly discuss and analyze the effects of relicensing on the PIN's fishing rights.

As acknowledged in previous cases, the Commission is "subject to the United States' fiduciary responsibility towards Indian tribes, which, in essence, consists of acting in the interests of the tribes."²⁶ We, however, exercise this responsibility in the context of the FPA.²⁷

This trust responsibility is a legal matter that requires our consideration in administering various provisions of the FPA. It is not an environmental factor or effect that must be analyzed in an environmental assessment or impact statement. Because we acknowledge and discuss this trust responsibility in our published decision, we do not consider it necessary to also include a statement of this responsibility in our environmental documents. Rather, staff focused their environmental analysis on the particular environmental values and resources that PIN asked the Commission to consider in this licensing proceeding: resident fish populations, eel passage, and mercury contamination. This approach permits consideration of the effects of a proposed licensing action on those values and resources, while leaving for the Commission the ultimate decision of whether the environmental measures that the staff have analyzed and recommended are consistent with the Commission's trust responsibility.

NEPA requires us to examine the environmental effects of our licensing decisions. It does not require us to analyze and discuss the many legal and other considerations that may influence those decisions.²⁸ Accordingly, I reject the agencies' and tribe's assertion that the EA is inadequate because it fails to include a discussion of our trust responsibility to the tribe.

²⁶Minnesota Power & Light Co., 75 FERC 61,131 (1996).

²⁷City of Tacoma, Washington, 71 FERC 61,381 at pp. 61,492-93 (1995).

²⁸City of Tacoma, Washington 84 FERC 61,107 (1998)

The requirements to operate run-of-river and minimize reservoir fluctuations, to monitor flows and reservoir levels to ensure operational compliance, and to construct, operate and monitor eel passage facilities and measures at the Medway Project will protect aquatic and fishery resources important to PIN. Although staff did not recommend monitoring mercury levels,²⁹ PIN's concerns regarding elevated mercury levels in fish will largely be addressed by the state's water quality certificate requirement to monitor mercury contamination in fish and sediments from within and below the project.³⁰ Staff did not agree with the need for additional resident fish population and passage studies because the available data suggests that staff's recommended measures would adequately achieve and maintain the suitability of project waters as fish habitat.³¹ I concur. Accordingly, I find that this licensing decision is consistent with the Commission's trust responsibility.

B. Cultural Resources

Although there are no properties in the Medway Project area that are of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act,³² Article 406 is included in this license to protect any archeological or historic sites that may be discovered during project operation and maintenance.

²⁹Staff did not recommend the monitoring because they believe the elevated mercury levels to be a watershed phenomenon and not related to the run-of-river project operation.

³⁰Supra. at 12.

³¹See FEA at 21-22 and Appendix A to FEA at A-7, A-8, A-12, and A-13. Article 15 of Form L-3 provides Interior or MDIFW or PIN through these agencies, to request further site-specific consideration of white sucker and resident fish populations, should such a need be demonstrated in the future. Moreover, Interior has reserved its authority to prescribe fishway facilities should they find it appropriate.

³²By letter dated December 20, 1996, the Maine State Historic Preservation Officer concurred that there are no properties in the Medway Project area that are of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act.

C. Recreation Plan

The revised recreation plan, approved by the Commission on August 7, 1995,³³ is meeting existing recreational access needs.³⁴ The revised recreation plan is made part of this license (Article 407).

Interior recommended that Bangor Hydro continue to monitor public use at the project through the Commission's Form 80 process and that the review of the adequacy of recreational access measures at the project include periodic consultation with FWS, National Park Service (NPS), PIN, and appropriate state agencies. Although Form 80 information is available to anyone upon request, Article 408 requires Bangor Hydro to file copies of the Form 80 with FWS, NPS, PIN, and Maine Department of Conservation to advise the agencies of changing recreation demands at the project.

D. Use and Occupancy of Project Lands and Waters

Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Article 409 allows Bangor Hydro to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape plantings. Such uses must be consistent with the purpose of protecting and enhancing the scenic, recreational, and environmental values of the project.

E. Project Boundary

The November 19, 1998, application for amendment to the license proposed a number of changes to the current project boundary. One of the proposed changes would move the boundary (shown as courses 7-8 and 8-2 on the exhibit G drawings) so that it is essentially contiguous with the powerhouse and left bank of the West Branch Penobscot River. A canoe portage trail exists between the public boat ramp and a point approximately 350 feet downstream of the powerhouse, which is within the area affected by the above course changes. Approximately 130 feet of this portage trail is shown outside of the present project boundary. Nevertheless, a majority of the portage trail is within the confines of the present project boundary and sufficient area exists to locate the portage trail within that area should it be necessary.

³³72 FERC 62,093 (August 7, 1995).

³⁴See FEA, Section V. at 12.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bangor Hydro-Electric Company) Project No. 2666-007

ERRATA

(April 6, 1999)

ORDER ISSUING NEW LICENSE

(Issued March 29, 1999)

Milford dam was incorrectly identified in Section VIII, E, paragraph 2, line 8 of the Order Issuing New License for this project. Milford dam was also incorrectly identified in Ordering paragraph (D), line 3. Instead, both references should have identified Medway dam, which is the subject of that order.

David P. Boergers
Secretary

Interior in their filing requested that, with a new license or a transfer of license, the land and facilities necessary for recreation, including canoe portages, be subject to the Commission's jurisdiction. We agree, and believe that the project recreation facilities, including the canoe portage trail should remain in the project boundary. Therefore, Bangor must submit revised exhibit G drawings showing the canoe portage trail on the east end of the Milford Dam within the project boundary.

Also, at the right abutment of the spillway, the proposed boundary line does not include all of the spillway abutment structure. The licensee shall modify the project boundary so that all or any part of project facilities are included within the project boundary. The licensee shall resubmit revised exhibit G drawings, showing the modified project boundary, for approval.

F. Administrative Conditions

The Commission collects annual charges from licensees for the administration of the FPA. Article 201 provides for the collection of such funds. Article 202 requires the filing of aperture cards for project drawings. Article 203 requires the establishment and maintenance of an amortization reserve account. Article 501 requires Bangor Hydro to reimburse the owner of a storage reservoir or other headwater improvement project that directly benefits the licensee's project. The benefits will be assessed in accordance with Subpart B of the Commission's regulations. Once the design of the eel passage facilities is approved, Article 301 requires that final contract drawings and specifications be filed with the Commission.

IX. CONSISTENCY WITH COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA³⁵ requires the Commission to consider the extent to which a hydroelectric project is consistent with federal and state comprehensive plans for improving, developing, or conserving waterways affected by the project.³⁶ Under Section 10(a)(2)(A), federal and state agencies filed 10 comprehensive plans for Maine that address various resources in Maine. Of these, Commission staff identified and reviewed 4 plans relevant to this project.³⁷ No

³⁵16 U.S.C. § 803(a)(2)(A).

³⁶Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1997).

³⁷(1) Maine Atlantic Sea-Run Salmon Commission. 1984.
(continued...)

conflicts were found.

X. COMPREHENSIVE DEVELOPMENT

In determining whether a proposed hydroelectric power project will be best adapted to a comprehensive plan for developing a waterway for beneficial public uses, pursuant to Section 10(a)(1), the Commission considers a number of public interest factors, including the projected economic benefits of project power.

Under the Commission's current approach to evaluating the economics of hydropower projects, as articulated in Mead Corp.,³⁸ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power without incorporating forecasts concerning the effects of potential future inflation, escalation, or deflation. The 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 reasonable alternatives to project power. In making its decision, the Commission considers the project power benefits both with the applicant's proposed mitigation and enhancement measures and with the Commission's proposed modifications and additions to the applicant's proposal.

As proposed by Bangor Hydro, the project would produce an average of 28.11 gigawatt-hours (GWh) of energy annually at an annual cost of about \$883,000 or 31.4 mills per kilowatt-hour (mills/kWh). The current annual value of the project's power would be \$1,141,000 (40.6 mills/kWh). We base this value on the cost of alternative resources, which in this case is regional natural gas fuel cost and alternative capacity cost, including fixed operation and maintenance, using combined-cycle combustion turbine. To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current costs, the project as proposed by Bangor Hydro would cost about \$258,000 (9.2 mills/kWh) annually less than the current cost of

³⁷ (...continued)

Strategic plan for management of Atlantic salmon in the State of Maine. Augusta, Maine. July 1984. 52 pp. and appendices; (2) Maine Department of Conservation. 1982. Maine rivers study-final report. Augusta, Maine. May 1982. 181 pp; (3) Maine State Planning Office. 1987. State of Maine comprehensive rivers management plan. Augusta, Maine. May 1987; and (4) Maine State Planning Office. 1992. Maine comprehensive rivers management plan. Volume 4. Augusta, Maine. December 1992.

³⁸ 72 FERC ¶ 61,027 (1995).

alternative power. In this case, staff's recommendation is essentially the same as Bangor Hydro's proposal; the minor modifications ³⁹would not significantly affect the project's costs.

Sections 4(e) and 10(a)(1) of the FPA ⁴⁰ require the Commission, in acting on applications for license, to give equal consideration to developmental and environmental values. Any license issued shall be in the Commission's judgment best adapted to a comprehensive plan for improving or developing the waterways for beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

Based on the record in this proceeding, and for the reasons discussed herein, I conclude that the proposed project with our additional protection, mitigation, and enhancement measures will be best adapted to a comprehensive plan for developing the waterway for beneficial public uses. The 28.11 GWh of clean, domestic, and reliable energy that would be produced by the project would displace fossil-fueled electric generation, thereby conserving nonrenewable fossil fuels and avoiding the emission of additional noxious gases caused by the combustion of those fuels. The other environmental measures -- run-of-river operation, monitoring flows and reservoir elevations, constructing, operating and monitoring the effectiveness of eel passage facilities following consultation with the resource agencies and PIN, and providing the resource agencies and PIN copies of the Form 80 information -- would reduce adverse project effects and enhance the natural resources of the project area.

XI. LICENSE TERM AND ANNUAL CHARGES

³⁹Staff's recommend measures include: (1) continue run-of-river operation with a 6 inches from full pond elevation limit on reservoir fluctuation, except during high flows and operational emergencies; (2) development of a monitoring plan in consultation with the resource agencies to ensure compliance with the run-of-river operation; (3) preparation of final design and operating plans of the upstream and downstream eel passage facilities in consultation with the resource agencies and PIN; (4) preparation of a monitoring program in consultation with resource agencies and PIN to evaluate eel passage facility effectiveness; and (5) provision for providing a copy of the FERC Form 80 to FWS, NPS, PIN, and Maine Department of Conservation (DOC) to advise them of changing recreation demands at the project.

⁴⁰16 U.S.C. §§ 808(e).

Section 15 (e) of the FPA ⁴¹ specifies that any license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years from the date on which the license is issued. Commission policy is to grant 30-year license terms for projects with little or no redevelopment, new construction, or new environmental mitigation and enhancement requirements; 40-year terms for projects with a moderate amount thereof; and 50-year terms for projects with extensive amounts thereof.

The environmental mitigation and enhancement costs of the new license for the Medway Project warrant a term of 30 years, effective April 1, 1999.

Section 10(e) of the FPA ⁴² provides that the Commission shall assess licensees annual charges to reimburse the United States' costs of administering Part I of the FPA.

XII. SUMMARY OF FINDINGS

Background information, analysis of impacts upon the environment, and support for related license articles are contained in the FEA. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated and maintained in accordance with the requirements of this license.

The Commission orders:

(A) This license is issued to Bangor Hydro-Electric Company (licensee) for a period of 30 years, effective April 1, 1999, to construct, operate, and maintain the Medway Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and to the regulations the Commission issues under the provisions of the FPA.

⁴¹16 U.S.C. § 799.

⁴²16 U.S.C. § 803(e).

(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:

EXHIBITS	FERC NO.	TITLE	SUPERSEDES /DELETED
G-1	2666-1005	Detail Map, Reservoir (Amendment)	2666-1
G-2	2666-1006	Detail Map, Reservoir	2666-10
G-3	2666-1007	Detail Map, Reservoir (Amendment)	2666-11

(2) Project works consisting of : 1) a 343-foot-long, 33.7-foot-high concrete gravity dam (including flashboards), with an impoundment elevation of 259.3 feet mean sea level (msl) with flashboards in place; (2) a 64-foot-long concrete gravity forebay wall; (3) a non-functioning upstream fishway; (4) a 120-acre impoundment at elevation 259.3 feet (normal impoundment level); (5) a 170-foot-long, 34-foot-wide, 71-foot-high brick powerhouse containing five generating units with a total installed capacity of 3.44 MW; (6) an approximate 144-foot-long, 3-kilovolt (kv) underground transmission line; and (7) appurtenant facilities.

The project works generally described above are more specifically described in Exhibit A of the application and shown by Exhibit F as well as the application to amend the license:

EXHIBITS	FERC NO.	TITLE	SUPERSEDES /DELETED
F-1	2666-1001	General Plan and Dam Sections	2666-5
F-2	2666-1002	Main Floor Plan	2666-6
F-3	2666-1003	Powerhouse Plan and Sections	2666-7
F-4	2666-1004	Dam and Powerhouse Downstream Elevation Drawing (Addendum filed 5/19/97)	

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, 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) Exhibits A , F and G are approved and made part of the license.

(D) Within 90 days from the date of this order the licensee shall submit revised exhibit G drawings showing the limits of the project boundary on the east end of the Milford dam to include the canoe portage trail and on the right bank the revised project boundary to include all of the project structures in their entirety.

(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." The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, effective April 1, 1999:

For the purpose of reimbursing the United States for the cost of administering Part I of the FPA, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 3,440 kilowatts.

Article 202. Within 45 days of the date of issuance of this order, the licensee shall file three original sets of aperture cards of the approved drawings. All aperture cards should be reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on a Type D (3 1/4" x 7 3/8") aperture card.

Prior to microfilming, the FERC Drawing Number (2666-1001 through 2666-1006) shall be shown in the margin below the title block of the approved drawings. After mounting, the FERC Drawing Number should be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC exhibit (i.e., F-1), Drawing Title, and date of this order should be typed in the upper left corner of each aperture card. See Figure 1.

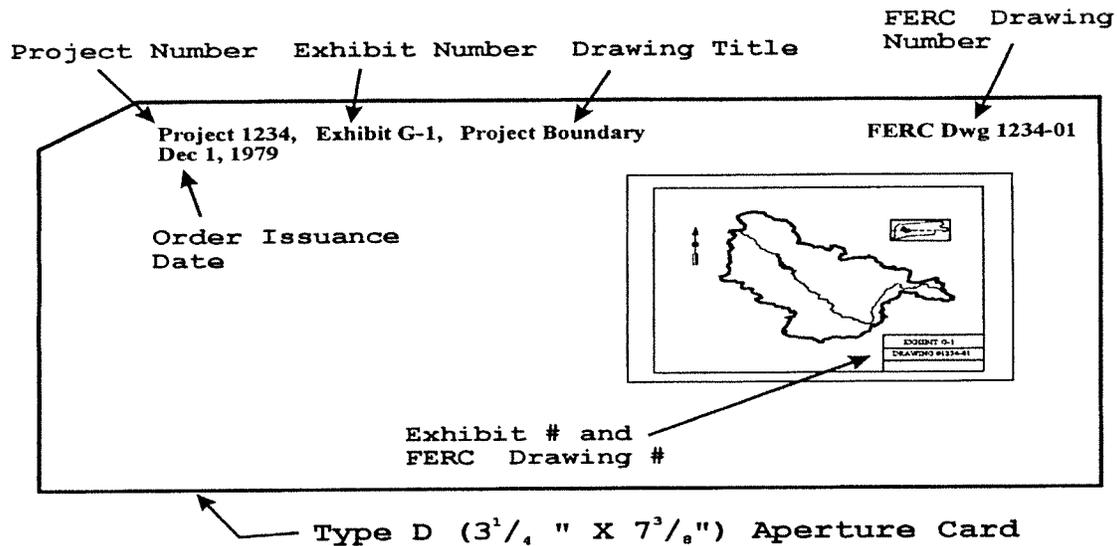


Figure 1. Sample Aperture Card Format

Two original sets of aperture cards should be filed with the Secretary of the Commission. The remaining set of aperture cards should be filed with the Commission's New York Regional Office.

Article 203. Pursuant to Section 10(d) of the FPA, 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 thirteen monthly balances of amounts properly includible 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 ten-year government bonds (reported as the Treasury Department's ten-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 301. The licensee shall, at least 60 days prior to the start of construction, submit one copy to the Commission's Regional Director 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 drawings and specifications, quality control and inspection program, and temporary emergency action plan (if necessary), along with an accompanying supporting design report for pertinent features of the project, such as water retention structures, powerhouse, fishways, and water conveyance structures. The supporting design report should be consistent with the Commission's Engineering Guidelines. The Commission may require changes in the plans and specifications to assure a safe and adequate project. If the licensee plans substantial changes to location, size, type, or purpose of water retention structures, powerhouse, or water conveyance structures, the plans and specifications must be accompanied by revised Exhibit F and G drawings, as necessary.

Article 401. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior under Section 18 of the Federal Power Act.

Article 402. The licensee shall operate the project in a run-of-river mode to protect aquatic life and water quality in the West Branch Penobscot River.

The licensee shall at all times act to minimize reservoir surface elevation fluctuation by maintaining project discharge so that, at any point in time, flows immediately downstream from the project dam approximate flows into the project reservoir. The licensee shall maintain an impoundment surface elevation within six inches (in) of 259.3 feet above mean sea level (msl) except during emergency, maintenance, and high or low flow events beyond the licensee's control, following flashboard failures. Following flashboard failures, the licensee shall maintain impoundment level within six in of the spillway crest, and shall replace the flashboards as soon as safely possible.

Run-of-river operations may also be modified for short periods upon mutual agreement between the licensee and the Maine Department of Environmental Protection (DEP).

The licensee shall notify the Commission as soon as possible, but no later than 10 days, after each incident resulting in a change in run-of-river conditions as specified above.

Article 403. Within six months of the issuance date of this license, the licensee shall file with the Commission, for approval, a plan to monitor flow and reservoir water level at the project.

The monitoring plan shall include a schedule for: (1) program implementation; (2) consulting with appropriate federal and state agencies concerning monitoring results; and (3) filing monitoring results, agency comments, and licensee's responses to agency comments with the Commission.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the U.S. Geological Survey, Maine Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife and the Penobscot Indian Nation (PIN).

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

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

Article 404. At least 90 days before starting land-clearing or land-disturbing at the project site, the licensee shall file, for Commission approval, detailed design drawings of the licensee's proposed upstream and downstream American eel passage facilities together with proposed construction and operation schedules for the facilities.

The licensee shall prepare the aforementioned drawings and schedules after consulting with the U.S. Fish and Wildlife Service, Maine Department of Environmental Protection (DEP) and Penobscot Indian Nation (PIN). The licensee shall include with the drawings and schedule documentation of consultation, copies

of comments and recommendations on the drawings and schedule after being prepared and provided to the agencies and PIN, and specific descriptions of how agency and PIN comments are accommodated by the licensee's facilities and plans. The licensee shall allow at least 30 days for agencies and PIN to comment and make recommendations before filing drawings and schedules with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to proposed facilities and schedules. Land-clearing and land-disturbing activities shall not begin until the licensee is notified by the Commission that the filing is approved. Upon Commission approval, the licensee shall implement the proposal, including changes required by the Commission.

Article 405. At least 90 days prior to starting land-clearing or land-disturbing at the project site, the licensee shall file with the Commission, for approval, a plan for post-construction studies to monitor effectiveness of the upstream and downstream American eel passage facilities.

The monitoring plan shall include schedules for: (1) implementing the plan; (2) consulting with appropriate federal and state agencies concerning monitoring results; and (3) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consulting with the U.S. Fish and Wildlife Service, Maine Department of Environmental Protection (DEP) and Penobscot Indian Nation (PIN). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and PIN, and specific descriptions of how agency and PIN comments are accommodated by the plan. The licensee shall allow at least 30 days for agencies and PIN to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Land-clearing and land-disturbing activities shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including changes required by the Commission.

If results of monitoring indicate that changes in project structures or operations, including alternative flow releases,

are necessary to protect fish resources, the Commission may direct the licensee to modify project structures or operations.

Article 406. The licensee, before starting any land-clearing or land-disturbing activities within the project boundaries, other than those specifically authorized in this license, including recreation developments at the project, shall consult with the State Historic Preservation Officer (SHPO).

If the licensee discovers previously unidentified archeological or historic properties during the course of constructing or developing project works or other facilities at the project, the Licensee shall stop all land-clearing and land-disturbing activities in the vicinity of the properties and consult with the SHPO.

In either instance, the licensee shall file for Commission approval a cultural resource management plan (plan) prepared by a qualified cultural resource specialist after having consulted with the SHPO, or a letter from SHPO stating a CRMP is not needed. The plan shall include the following items:

- (1) a description of each discovered property indicating whether it is listed on or eligible to be listed on the National Register of Historic Places;
- (2) a description of the potential effect on each discovered property;
- (3) proposed measures for avoiding or mitigating effects;
- (4) documentation of the nature and extent of consultation; and
- (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan.

The licensee shall not begin land-clearing or land-disturbing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a property discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 407. The revised recreation plan approved in Bangor Hydro-Electric Company, 72 FERC ¶ 62,093 (1995), which provides for a hand-carried boat launch on the north shore of the West Branch of the Penobscot River, a canoe portage and appurtenant

facilities, and warning/informational signs, is made part of this license.

Article 408. The licensee shall file copies of the Form 80 recreation report with the U.S. Fish and Wildlife Service, National Park Service, Penobscot Indian Nation, and Maine Department of Conservation at the same time it files the form with the Commission to inform these agencies of changing recreation needs at the project.

Article 409. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee 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 water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee 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 reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

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

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

- (1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.
- (2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved 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 will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

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

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

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

Article 501. If the Licensee's project was directly benefitted 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.

(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 that 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 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. Section 385.713. The filing of a request for rehearing does not operate

as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Carol L. Sampson
Director
Office of Hydropower Licensing

APPENDIX A

Water Quality Certification Conditions
for the Medway Hydroelectric Project
Issued December 23, 1998
by the State of Maine Department of Environmental Protection

THEREFORE, the Department GRANTS CERTIFICATION that there is a reasonable assurance that the continued operation of the MEDWAY HYDROELECTRIC PROJECT, as described above, will not violate applicable water quality standards, SUBJECT TO THE FOLLOWING CONDITIONS:

1. WATER LEVELS

- A. Except as temporarily modified by (1) approved maintenance activities, (2) inflows to the project area, (3) operating emergencies beyond the applicants' control, as defined below, and (4) agreement between the applicant and appropriate state and/or federal agencies water levels in the project impoundment shall be maintained within 6 inches of full pond elevation when flashboards are in place, and within 6 inches of spillway crest elevation when flashboards are not in place.
- B. Operating emergencies beyond the applicants' control include, but may not be limited to, equipment failure or other temporary abnormal operating condition, generating unit operation or interruption under power supply emergencies, and order from local, state, or federal law enforcement or public safety authorities.
- C. The applicant shall, in accordance with the schedule established in the new FERC licenses for the projects, submit plans for providing and monitoring the impoundment water levels required by Part A of this condition. These plans shall be reviewed by and must receive the approval of the DEP Bureau of Land and Water Quality.

2. MINIMUM FLOWS

- A. Except as temporarily modified by (1) approved maintenance activities, (2) inflows to the project area, (3) operating emergencies beyond the applicants' control, as defined below, (4) impoundment refilling after flashboard failure and replacement, and (5) agreement between the applicant and appropriate state and/or federal agencies, outflows from the project shall be approximately equal to inflows at all times.

- B. Operating emergencies beyond the applicants' control include, but may not be limited to, equipment failure or other temporary abnormal operating condition, generating unit operation or interruption under power supply emergencies, and order from local, state, or federal law enforcement or public safety authorities.
- C. The applicant shall, in accordance with the schedule established in the new FERC licenses for the projects, submit plans for providing and monitoring the minimum flows required by Part A of this condition. These plans shall be reviewed by and must receive the approval of the DEP Bureau of Land and Water Quality.

3. EEL PASSAGE FACILITIES

- A. The applicant shall, in accordance with the schedule established in the new FERC license for the project, install and operate upstream and downstream passage facilities to provide migratory passage for American eels.
- B. The applicant shall, in accordance with the schedule established in the new FERC license for the project, submit final design and operational plans for the upstream and downstream passage facilities for eels required in Part A of this condition. These plans shall be prepared in consultation with appropriate state and federal fisheries agencies and the Penobscot Indian Nation, and shall be reviewed by and must receive the approval of FERC and the DEP Bureau of Land and Water Quality prior to installation of the facilities.

4. EEL PASSAGE MONITORING

- A. The applicant shall, in consultation with appropriate state and federal fisheries agencies and the Penobscot Indian Nation, conduct monitoring to determine the effectiveness of the eel passage facilities required by Condition 3 of this certification.
- B. The applicant shall, no later than 60 days prior to the commencement of operation of the required eel passage facilities, submit an eel passage effectiveness monitoring plan, prepared in consultation with appropriate state and federal fisheries agencies and the Penobscot Indian Nation. This plan shall be reviewed by and must receive the approval of FERC and the DEP Bureau of Land and Water Quality prior to its implementation.

- C. The applicant shall, upon such schedule as contained in the monitoring plan, submit the results of the eel passage effectiveness monitoring plan and any recommendations for changes in the design and/or operation of the passage facilities to the DEP, PIN and all consulting agencies. The Department reserves the right, after notice to the applicant and the opportunity to request a public hearing, to require reasonable changes in the design and/or operation of the eel passage facilities as may be deemed necessary to adequately pass migrating eels through the project area.

5. FISH TISSUE SAMPLING AND ANALYSIS

- A. The applicant shall, in cooperation with the DEP and the Penobscot Indian Nation, collect and analyze (1) tissue samples from white suckers and smallmouth bass and (2) sediment samples which shall be collected from the Medway Dam impoundment, from the downstream Mattaceunk Dam impoundment, and from the Penobscot River below the Mattaceunk Dam. These samples shall be analyzed for levels of mercury and total PCBs.
- B. The applicant shall, in accordance with the schedule established in the new FERC license for the project, submit a plan for collecting and analyzing fish tissue and sediment samples as required by Part A of this condition. This plan, including a schedule for sample collection, shall be prepared in consultation with the DEP Division of Environmental Assessment and the Penobscot Indian Nation, and shall be reviewed by and must receive the approval of the DEP Bureau of Land and Water Quality.
- C. Based on the results of this and other available fish tissue analysis, the Department reserves the right, after notice to the applicant and the opportunity for a public hearing, to require such additional fish tissue collection and analysis as may be deemed necessary to determine whether the presence of the project dam is contributing to the issuance of any fish consumption advisory on the West Branch Penobscot River.

6. LIMITS OF APPROVAL

This approval is limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to review and approval of the Board or Department prior to implementation.

7. COMPLIANCE WITH ALL APPLICABLE LAWS

The applicant shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations conditions, agreements and orders required for the operation of the project.

8. EFFECTIVE DATE

This water quality certification shall be effective concurrent with the effective date of the new hydropower license issued for the Medway Hydroelectric Project by the Federal Energy Regulatory Commission.

INTERCONNECTION AGREEMENT

INTERCONNECTION AGREEMENT, dated as of [*], 1998 (this "Agreement"), by and between BANGOR HYDRO-ELECTRIC COMPANY (the "Seller"), a Maine corporation with a principal place of business located at 33 State Street, Bangor, Maine 04401, and PP&L GLOBAL, INC., (the "Buyer"), a Pennsylvania corporation with a principal place of business located at 11350 Random Hill Road, Suite 400, Fairfax, Virginia 22030.

WITNESSETH:

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement (the "APA") dated as of September 25, 1998 for the sale of, among other things, certain of Seller's generating assets;

WHEREAS, Seller intends to continue to operate its transmission and distribution business from its present locations;

WHEREAS, in the APA, Seller agreed to transfer to Buyer certain of the Purchased Assets, including certain designated real and personal properties, contracts, and licenses pertaining to Seller's generating assets and to retain certain designated real and personal properties, contracts and licenses;

WHEREAS, Buyer needs certain Interconnection Services from Seller for the generation units constituting Purchased Assets (the "Generation Units"), as provided in this Agreement;

WHEREAS, Buyer also wishes to obtain from Seller, and Seller wishes to provide to Buyer certain T&D Services over Seller's T&D System from Buyer's Generation Units, as provided in this Agreement;

WHEREAS, Seller needs access to parts of the Buyer's Purchased Assets, and Buyer needs access to parts of the Seller's retained assets; and

WHEREAS, the Parties have agreed in the APA to execute this mutually acceptable Interconnection Agreement in order to provide certain Interconnection Service and certain T&D Service to Buyer and to define the continuing responsibilities and obligations of the Parties with respect to the use of the other Party's property, assets and facilities;

NOW THEREFORE, in order to carry out the transactions contemplated by the Separation Document, the APA and this Agreement, and in consideration of the mutual representations, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Attachment – Section 21

**SCHEDULE A - INTERCONNECTION FACILITIES
AND ASSOCIATED EQUIPMENT DESCRIPTION**

I. UNIT LOCATION: Medway Station, System Diagram Sheet 2A (Annex I)

NET CAPACITY

5 Hydro-Electric Units 3.4 MW

POINT OF INTERCONNECTION

Connection point of load side of Buyer's transformer high side protective device to Seller's 46kV Bus in substation.

POINT OF RECEIPT

Same as point of connection.

II. UNIT LOCATION: Howland Station, System Diagram Sheet 4A (Annex I)

NET CAPACITY

3 Hydro-Electric Units 1.9 MW

POINT OF INTERCONNECTION

Connection point where BHE's Line 82 attaches to Howland Hydro's substation structure.

POINT(S) OF RECEIPT

Same as point of connection

III. UNIT LOCATION: Milford Station, System Diagram Sheet 8A (Annex I)

NET CAPACITY

6 Hydro-Electric Units 6.4 MW

POINT OF INTERCONNECTION

Connection point of load side of Buyer's transformer high side protective device to Seller's 46kV Bus in substation.

Attachment – Section 23

Unit ID	Plant - Unit	Account Holder	State	Name Plate		GIS Registration Date	ME Class I	ME Class II	ME CO2					
				Vintage	Capacity				Fuel Type	Netting	NH Class I	NH Class II	NH Class III	NH Class IV
MSS405	ELLSWRTH - ELLSWORTH HYDRO	Black Bear Hydro Partners, LLC	MAINE	1/1/1919	8.9	Hydroelectric/Hydropower	4/27/2002 0:01	No	Yes	No	No	No	No	No
MSS16296	GRAHAM - MILFORD HYDRO	Black Bear Hydro Partners, LLC	MAINE	1/1/1906	6.4	Hydroelectric/Hydropower	7/15/2009 16:40	No	Yes	No	No	No	No	No
MSS16525	UNDER5MW - MEDWAY	Black Bear Hydro Partners, LLC	MAINE	1/1/1923	3.44	Hydroelectric/Hydropower	7/15/2009 16:40	No	Yes	No	No	No	No	No
MSS14695	UNDER5MW - ORONO	Black Bear Hydro Partners, LLC	MAINE	1/1/2009	3.6	Hydroelectric/Hydropower	1/15/2009 18:52	Yes	No	No	Yes	No	No	No
MSS16523	UNDER5MW - STILLWATER	Black Bear Hydro Partners, LLC	MAINE	1/1/1932	1.95	Hydroelectric/Hydropower	7/15/2009 16:40	No	Yes	No	No	No	No	No

Attachment – Section 26

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

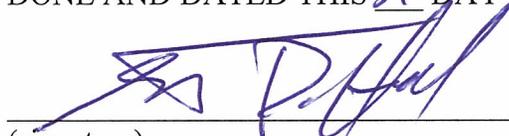
APPLICATION OF BLACK BEAR HYDRO PARTNERS, LLC
FOR CLASS IV RENEWABLE ENERGY SOURCE ELIGIBILITY
OF MEDWAY HYDROELECTRIC PROJECT (FERC No. 2666)

Pursuant to New Hampshire Admin. Code Puc 2500 Rules

Application Section 26. Owner Affidavit Attesting to Accuracy of the Contents of Black Bear Hydro Partners, LLC's Application for Class IV Renewable Energy Source Eligibility of Medway Hydroelectric Project (FERC No. 2666)

I certify under penalty of law that I have personally examined the information submitted in this Application and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true and accurate.

DONE AND DATED THIS 31 DAY OF MARCH, 2010.



(signature)

Scott D. Hall

(print or type name)

Mgr Env Svcs

(title of responsible official)

STATE OF MAINE
COUNTY OF Penobscot, ss.

Personally appeared the above-named Scott D Hall, Mgr Env Svcs of Black Bear Hydro Partners, LLC, and subscribed and made oath to the statements contained herein on this 31st day of March, 2010.



Name:
My Commission Expires:

NANCY L. BLANCHARD
Notary Public, Maine
My Commission Expires January 12, 2014