

ICE HOUSE PARTNERS, INC.

c/o William P. Short III

44 West 62nd Street

P.O. Box 237173

New York, New York 10023-7173

(917) 206-0001; (201) 970-3707

w.shortiii@verizon.net

NHPUC 22JUL'13PM12:16

July 17, 2013

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

Re: Application of Ice House Partners, Inc. Project for Certification as a New
 Hampshire Class I Energy Source

Dear Ms. Howland

Attached please find an application for certification by the New Hampshire Public Utilities Commission (the "Commission") of the Ice House Partners, Inc. Project (the "Project" or the "Facility") of Ice House Partners, Inc. ("Ice House Partners") as a New Hampshire Class I Renewable Energy Source (the "Application").

For purposes of responding to inquiries regarding the Application, persons should contact the following:

Primary Contact

William P. Short III
 Consultant
 44 West 62nd Street
 P.O. Box 237173
 New York, New York 10023-7173
 (917) 206-0001 (Office)
 (201) 970-3707 (Cell)
w.shortiii@verizon.net

Secondary Contact

Liisa Grady Marino
 Vice President
 Ice House Partners, Inc.
 323 West Main Street
 Ayer, Massachusetts 01432
 (978) 772-3303 (Office)
 (978) 772-3441 (Fax)
liisa@gradyresearch.com

The Ice House Partners, Inc. Project (FERC No. P-12769-000) is a 0.280 MW exempt from licensing, run-of-river hydro-electric project. A FERC exemption from licensing was

issued March 31, 2008. The Project has been in continuous compliance with its requirements for exemption from licensing since 2008.

Ice House Partners is a Massachusetts corporation with its principal place of business is at 323 West Main Street, Ayer, Massachusetts 01432.

In early March 2012, Ice House Partners commenced operations after a sixty-year absence. Daily generation data for the month of May 2012 is available upon request.¹ Additional daily generation data for subsequent months is available for review provided an appropriate protective order is issued by the Commission.² Since the Facility only re-entered service in March 2012, there are no generation records or any generation for the period of 1986 through 2005. Similarly, there are no generation records or any generation for the period of 2006 through February 2012.

The Ice House dam was built in the 1790s. In 1907, an electrical powerhouse was installed at the dam that operated trolley cars until the 1920s, and subsequently, ice-making machinery.³ During the 1970s, the powerhouse was destroyed by fire. In 2007, Ice House Partners formally proposed to the Federal Energy Regulatory Commission (“FERC”) to operate two turbine generating units located in the rebuilt powerhouse at the Project. Because the Project is located on a commerce clause waterway,⁴ it affected interstate commerce through its connection to an interstate power grid and involved post-1935 construction; accordingly, it was required to be licensed or exempted from licensing by the FERC pursuant to FPA section 23(b)(1).

The Project is located on the Nashua River at 323 West Main Street in the Town of Ayer in Middlesex County, Massachusetts. The Ice House Project uses the pre-1998⁵ 190-foot-long, 12-foot-high Ice House dam and spillway topped with existing 24-inch-high weir boards⁶ that impound a 137-acre reservoir.⁷ The Project includes a pre-1998 headgate structure, equipped with four 8-foot-high, 10-foot-wide gates, leading to a pre-1998 50-foot-wide, 109-foot-long power canal. The restored powerhouse, which contains two new turbine generating units with a total installed capacity of 280 kilowatts,⁸ is located in the canal about 75 feet downstream of the headgate. Water used for generation is discharged from the powerhouse into a pre-1998 50-foot-wide, 400-foot-long tailrace (measured from the headgate to the tailrace outlet). Project power is

¹ Daily generation data for March and April 2012, the first months of operation, were not available from National Grid.

² The Applicant has already marked its NEPOOL GIS account to “Reveal Output To Regulators;” consequently, monthly generation records are already available to Staff.

³ It appears that from the records that the dam ceased hydro-electric generation sometime in the 1940s with the widespread use of refrigerators as opposed to ice boxes.

⁴ The Nashua River is a tributary to the Merrimack River, a navigable waterway.

⁵ The Project was acquired by the current owner in 1999.

⁶ The weir boards are new but their height is same as the flashboards used prior to 1998.

⁷ Of which the Project occupies 133 acres of federal lands administered by the U.S. Fish and Wildlife Service as part of the Oxbow National Wildlife Refuge.

⁸ The turbine-generator sets are totally new machines, having been installed in 2002. The old machines had already been removed. While the turbine-generator sets were installed in 2002, they were not placed in commercial operation until March 8, 2012.

transmitted through a new 480-volt, 100-foot-long underground transmission cable.⁹ The Nashua River reach that is bypassed by operating the Project (measured from the dam to the tailrace outlet) is about 300 feet long. The pre-1998 dam, headgate structure, and powerhouse building have been restored.

Upon your review of our Application, if you have any questions or comments, please do not hesitate to contact either Liisa Grady Marino or myself.

Sincerely yours,

William P. Short III

attachments

cc: Liisa Grady Marino (e-mail only)
John K. Grady (e-mail only)

⁹ All pre-1998 electrical equipment was replaced.

LIST OF ATTACHMENTS

Application for Certification of the Ice House Partners, Inc. Project, dated July 17, 2013

Copy of Major Regulatory Approvals Required by Federal, Commonwealth of Massachusetts and Local Authorities

Interconnection Service Agreement Between Massachusetts Electric Company And Ice House Partners, Inc.

Statement of RPS Qualifications from Massachusetts Department of Energy Resources, Rhode Island Public Utilities Commission and Maine Public Utilities Commission for Ice House Partners, Inc.

Photographs of the Facility –

Pre-Construction (circa 1999)

Construction

Post Construction

(2)

Ayer MA _01432
(City) (State) (Zip code)

9. Latitude: 42 Degrees 33 Minutes 8 Seconds North Longitude: Degrees 37 Minutes 9 Seconds West

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: MSS #14932 or N/A:

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

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

14. If Class I certification is sought for a generation facility that uses biomass, the applicant shall submit:

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

15. If Class I certification is sought for the incremental new production of electricity by a generation facility that uses biomass, methane or hydroelectric technologies to produce energy, the applicant shall:

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

16. If Class I certification is sought for repowered Class III or Class IV sources, the applicant shall:

- (a) demonstrate that it has made new capital investments for the purpose of restoring unusable generation capacity or adding to the existing capacity, in light of the NHDES environmental permitting requirements or otherwise, and

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

- 25. A description of how the facility's output is reported to the GIS if not verified by ISO-New England.
- 26. An affidavit by the owner attesting to the accuracy of the contents of the application.
- 27. Such other information as the applicant wishes to provide to assist in classification of the generating facility.

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 S. Fruit St, Suite 10
Concord, NH 03301-2429

29. Preparer's information:

Name: William P. Short III

Title: Consultant

Address: (1) P.O. Box 237173

(2) _____

(3) _____

New York

(City)

NY

(State)

10023

(Zip code)

30. Preparer's signature:

William P. Short III

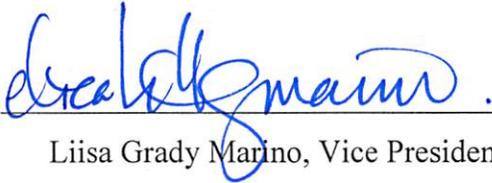
7/17/13

AFFIDAVIT

I hereby certify, under pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and based upon my inquiry of those individuals responsible for obtaining the information. I believe that the information is true, accurate and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including both fines and punishment. My signature below certifies all information submitted on this application form.

Signature of Authorized Representative

Of the Owner:



Liisa Grady Marino, Vice President

7-16-2013
Date

Attachment A

- I. The name and address of the Contacts for the Applicant, Ice House Partners, Inc. (“Ice House”) -

Primary Contact:

Ice House Partners, Inc.
c/o William P. Short III
Consultant
P.O. Box 237173
New York, New York 10023-7173
Tel: (917) 206-0001
Cell: (201) 870-3707
w.shortiii@verizon.net

Secondary Contact:

Ice House Partners, Inc.
c/o Liisa Grady Marino
Vice President
323 West Main Street
Ayer, Massachusetts 01432
Tel: (978) 772-3303, x-108
Fax: (978) 772-3441
liisa@gradyresearch.com

- II. The ISO New England Inc. asset identification number –

Ice House’s electrical output that is sold to Littleton Electric Light and Water Departments (“Littleton”) is verified by Massachusetts Electric Company¹ and is reported under MSS ID #14925 to ISO New England, Inc. ISO-NE, in turn, reports monthly this generation to the APX, Inc., the operator of the NEPOOL Generation Information System. Ice House has marked its NEPOOL GIS account to “Reveal Output To Regulators.”

- III. Description of the Facility, including fuel type, gross nameplate capacity and the initial commercial operation date –

Ice House owns an operating 280 (gross), 280 (net) KW rated hydro-electric generator (the “Facility”) located in Ayer, Massachusetts at 323 West Main Street. The Facility generates electrical energy using hydro energy. The electrical energy is sold to Littleton. The Facility is interconnected to Massachusetts Electric Company’s distribution line located along 323 West Main Street and then along Front Street in Shirley, Massachusetts. The Facility commenced operations on or about March 8, 2012.

Additional technical details of the Facility may be found in Attachment 1 to the Facility’s Interconnection Agreement.

¹ The official name of Massachusetts Electric Company is Massachusetts Electric Company d/b/a/ National Grid.

IV. Copy of regulatory approvals required by local, state and federal authorities –

Attached, as Attachment B, is a copy of the Facility's major regulatory approvals required by local, state and federal authorities.

V. Copy the Facility's Interconnection Agreement –

Attached, as Attachment C, is a copy of the Facility's interconnection agreement with Massachusetts Electric Company.

VI. Description of the Facility's Interconnection with ISO New England –

The Facility is interconnected to Massachusetts Electric Company's local distribution system that runs along West Main Street in Ayer, Massachusetts. Power is stepped up to 13.8 KV and delivered to Massachusetts Electric Company's distribution line that runs along West Main Street in Ayer, Massachusetts and then along Front Street in Shirley, Massachusetts.

Additional technical details of the Facility's Interconnection may be found in Attachment 1 to the Facility's Interconnection Agreement.

VII. Other state renewable portfolio standard certification –

Ice House has received a Statement of Qualification from the Massachusetts Department of Energy Resources certifying the hydro-electric generator as a Massachusetts Class I Renewable Generation Unit. Ice House has received similar treatment from the Rhode Island Public Utilities Commission as a Rhode Island New Renewable Energy Resource. Ice House has received similar treatment from the Maine Public Utilities Commission as a Maine Class I Renewable Resource. Ice House has a pending application in front of the Connecticut Public Utilities Regulatory Authority to certify the hydro-electric generator as a Connecticut Class I Source.

VIII. Verification of the Facility's output by the ISO New England –

The Facility's electrical output that is sold to Littleton is verified by Massachusetts Electric Company and is reported under MSS ID #14925 to ISO New England, Inc. ISO New England, Inc., in turn, reports this information to APX, Inc., the operator of the NEPOOL Generation Information System. Ice House has marked its NEPOOL GIS account to "Reveal Output To Regulators."

Attachment B

Copy of

Major Regulatory Approvals

Required by

Federal, Commonwealth of Massachusetts and Local Authorities

For

Ice House Partners, Inc.

UNITED STATES OF AMERICA 122 FERC ¶ 62,262
FEDERAL ENERGY REGULATORY COMMISSION

Ice House Partners, Inc.

Project No. 12769-000

ORDER GRANTING EXEMPTION FROM LICENSING
(5 MW OR LESS)

(March 31, 2008)

INTRODUCTION

1. On January 22, 2007, Ice House Partners, Inc. (Ice House Partners) filed an application to exempt its proposed 280-kilowatt (kW) Ice House Power Project (Ice House Project) from the requirements of Part I of the Federal Power Act (FPA).¹ The project would be located on the Nashua River, in the Town of Ayer, Middlesex County, Massachusetts.² The project would occupy 133 acres of federal lands administered by the U.S. Fish and Wildlife Service as part of the Oxbow National Wildlife Refuge.³ As discussed below, I am issuing an exemption from licensing for the project.

¹ The Commission is authorized to exempt from the licensing requirements of Part I of the FPA small hydroelectric projects with an installed capacity of 5 megawatts or less that use for the generation of electricity either an existing dam (*i.e.*, one in existence on or before July 22, 2005) or a "natural water feature" without the need for any dam or impoundment. *See* sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2000) as amended by section 246 of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 679.

² The Nashua River is a tributary to the Merrimack River, a navigable waterway. The Ice House dam was built in the 1790s. In 1907, an electrical powerhouse was installed at the dam that operated trolley cars until the 1920s, and subsequently, ice-making machinery. In the 1970s, the powerhouse was destroyed by fire. Ice House Partners proposes to operate two turbine generating units located in the rebuilt powerhouse at the project. Because the project would be located on a commerce clause waterway, would affect interstate commerce through its connection to an interstate power grid, and would involve post-1935 construction, it is required to be licensed or exempted from licensing by the Commission pursuant to FPA section 23(b)(1). *Ice House Partners, Inc.*, 114 FERC ¶ 62,238 (2006).

³ Pursuant to 18 C.F.R. § 4.31(c)(2) (2007), an applicant for an exemption is required to have sufficient rights in any non-federal land required for the project prior to filing its application. On March 13, 2007, in response to an additional information

(Continued)

BACKGROUND

2. On April 27, 2007, the Commission issued a notice accepting the exemption application for filing and soliciting motions to intervene and protests. The notice established June 26, 2007, as the deadline for filing motions to intervene.⁴ On February 28, 2007, the Massachusetts Division of Fish and Wildlife (Massachusetts DFW) filed a motion to intervene. Massachusetts DFW does not oppose issuance of the exemption from licensing. Comments were filed by Massachusetts DFW, the Massachusetts Department of Environmental Protection, and the Massachusetts Historical Commission.

3. The Commission issued a notice on August 14, 2007, indicating the application was ready for environmental analysis, and soliciting comments, recommendations, terms and conditions, and prescriptions.⁵ In response, timely recommendations and terms and conditions were filed by the U.S. Department of the Interior (Interior) and the Massachusetts DFW.

4. An Environmental Assessment (EA) was prepared by Commission staff and issued on December 13, 2007. The EA contains background information, analysis of impacts, and support for related exemption articles. I conclude, based on the record of the proceeding, including the EA, that granting an exemption for the Ice House Project would not constitute a major federal action significantly affecting the quality of the human environment.

5. The Massachusetts DFW and the U.S. Fish and Wildlife Service (FWS) filed comments on the EA. The motion to intervene, comments, recommendations, and terms and conditions have been fully considered in determining whether, and under what conditions, to issue this exemption.

PROJECT DESCRIPTION

6. The Ice House Project would use the existing 190-foot-long, 12-foot-high Ice House dam and spillway topped with existing 24-inch-high flashboards that impound a

request, Ice House Partners provided documentation that it had the property rights for the non-federal lands necessary to develop the project. Under standard Article 5 of this exemption, Ice House Partners has one year from issuance of this exemption to obtain the right to occupy the federal lands included in this exemption. Article 19 requires Ice House Partners to document that it has obtained these rights.

⁴ 72 *Fed. Reg.* 25,299 (May 4, 2007).

⁵ 72 *Fed. Reg.* 46,625 (August 21, 2007).

137-acre reservoir. The project would include an existing headgate structure, equipped with four 8-foot-high, 10-foot-wide gates, leading to an existing 50-foot-wide, 109-foot-long power canal. The restored powerhouse, which contains two existing turbine generating units with a total installed capacity of 280 kilowatts, is located in the canal about 75 feet downstream of the headgate. Water used for generation would be discharged from the powerhouse into an existing 50-foot-wide, 400-foot-long tailrace (measured from the headgate to the tailrace outlet). Project power would be transmitted through an existing 480-volt, 100-foot-long underground transmission cable. The Nashua River reach that would be bypassed by operating the project (measured from the dam to the tailrace outlet) is about 300 feet long. The existing dam, headgate structure, and powerhouse have already been restored.

7. The proposed exhibit G drawing does not show or enclose within the project boundary, the dam, reservoir (up to the height of the existing flashboards), headgate structure, power canal, powerhouse, tailrace, or transmission line. Therefore, Article 13 requires Ice House Partners to file revised exhibit G drawings enclosing the above project facilities to conform to sections 4.39 and 4.41 of the Commission's regulations.

8. Ice House Partners would operate the project in a run-of-river mode, and maintain a 1 million gallon per day flow⁶ (mgd) in the bypassed reach year-round via a notch that would be cut in the flashboards.

9. The project would be equipped with a real-time water level recording device to match turbine discharge with river inflow. When flow in the Nashua River is equal to or less than the hydraulic capacity of one turbine unit (160 cfs), no units would operate, and all inflow would spill over the flashboards. When flow exceeds 160 cfs, one turbine unit would begin generating and the excess would be spilled over the flashboards until such inflow exceeds an additional 160 cfs or 320 cfs (the hydraulic capacity of two units), at which time the second turbine unit would begin generating, with all flows over 320 cfs spilled over the flashboards.

SECTION 30(c) CONDITIONS

10. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),⁷ exemptions for projects of less than 5 megawatts (MW) must include the mandatory fish

⁶ One mgd is equal to about 1.55 cfs.

⁷ 16 U.S.C. § 2705(b) (2000).

and wildlife conditions as set out in section 30(c) of the FPA.⁸ Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources.⁹

11. Interior, by letter filed October 10, 2007, and Massachusetts DFW by letter filed October 11, 2007, provided nearly identical section 30(c) conditions that require: operating the project in a run-of-river mode; installing, operating, and maintaining upstream and downstream fish passage facilities when notified by the agencies in the future; notifying agencies when project operation commences; allowing agencies to inspect the project; reserving the right to modify the section 30(c) terms and conditions; including the terms and conditions in any conveyance of the project by lease or sale; and developing plans for maintaining and monitoring run-of-river operation and spillway flows.

12. Additional Massachusetts DFW conditions require: providing the proposed 1 mgd flow in the bypassed reach year-round on an interim basis; passing 90 percent of inflow downstream during impoundment refilling after maintenance drawdowns; installing, operating, and maintaining upstream and downstream American eel passage facilities by the time the project is operational; developing plans for sediment removal and vegetation management; and conducting a bypassed-reach flow evaluation to determine a permanent minimum flow. The section 30(c) conditions are set forth in Appendices A and B of this order and are incorporated into the exemption by ordering paragraph A. Article 18 clarifies that the required interim minimum flow for the bypassed reach is to be provided on a continuous basis.

THREATENED AND ENDANGERED SPECIES

13. Section 7 of the Endangered Species Act¹⁰ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. In a letter dated November 3, 2006, included with the exemption application, the FWS indicated that no federally listed threatened or endangered species

⁸ 16 U.S.C. § 823a(c) (2000). Section 30(c) applies to conduit exemptions, but PURPA section 405 made that section a requirement for 5 MW exemptions as well.

⁹ These conditions are submitted by the agencies in response to the notice that the application is ready for environmental analysis or included in the exhibit E of the exemption application.

¹⁰ 16 U.S.C. § 1536(a) (2000).

or critical habitat are known to occur in the project area. Because no listed species are present on the project area, issuing an exemption from licensing for the project would not affect federally listed threatened or endangered species or critical habitat. No further consultation under section 7 is required.

NATIONAL HISTORIC PRESERVATION ACT

14. Under section 106 of the National Historic Preservation Act (NHPA)¹¹ and its implementing regulations,¹² federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

15. The West Main Street Ice House Industrial Area, including the project's power canal, dam, and powerhouse, and an adjacent office building are potentially eligible for listing in the National Register of Historic Places for their association with the events and activities surrounding the development of the town's economy. The EA found that proposed project operation is not likely to have an effect on the identified historic resources because the proposed project would not involve new construction or modifications to the existing facilities. However, future actions involving any necessary project maintenance or construction may impact the eligibility of the industrial complex. The EA noted that a memorandum of agreement (MOA) with the SHPO would ensure that any future modifications or new construction do not adversely affect known and potential historic properties, as well as any as-yet unidentified archaeological resources.

16. On March 11, 2008, the Commission executed a MOA with the Massachusetts State Historic Preservation Officer.¹³ Ice House Partners concurred on February 20, 2008. The MOA requires the exemptee to prepare and implement a Historic Properties Management Plan (HPMP) for the term of any exemption from licensing issued for this project. Execution of the MOA demonstrates the Commission's compliance with section 106 of NHPA. Article 16 requires the exemptee to implement the MOA and to file its HPMP with the Commission within one year of the exemption issuance.

¹¹ 16 U.S.C. § 470 (2000) *et seq.*

¹² 36 C.F.R. Part 800 (2007).

¹³ See letter executing MOA issued March 21, 2008.

COMMENTS ON THE EA

17. On January 11 and 16, 2008, respectively, the Massachusetts DFW and the FWS filed comments on the EA.

A. Vegetation Management

18. Massachusetts DFW's original section 30(c) condition 11 required Ice House Partners to obtain the agency's approval before commencing any routine vegetation management. The condition required such approval no later than three months prior to the commencement of project operation. The EA did not recommend this measure, concluding that because of the small size of the project and its location in a developed area, the need for vegetation management appears to be negligible.

19. In its comments on the EA, Massachusetts DFW agrees that the relevant timing for review and approval of vegetation management is prior to implementation of vegetation management, rather than prior to commencement of project operation. I am modifying condition 11 in appendix B to require the agency's approval no later than three months prior to implementing any vegetation management measures.

B. Fish Passage Plans and Schedules

20. Ice House Partners proposes to provide fish passage facilities when requested by the FWS and Massachusetts DFW. The Massachusetts DFW 30(c) condition 8 and Interior 30(c) condition 4 would require that Ice House Partners be responsible for constructing, operating, maintaining, and evaluating upstream and downstream anadromous fish passage facilities at the project when requested by the Massachusetts DFW or the FWS.

21. While the Massachusetts DFW does not note the need for the construction of anadromous fish passage facilities at this time, its condition 10 would require that Ice House Partners file, for approval by the Massachusetts DFW and the FWS, plans and schedules for the operation, maintenance, monitoring, and evaluation of the fishways required in condition 8 no later than three months prior to the commencement of project operation.

22. The EA notes that no anadromous fish are currently found in the project area and upstream and downstream passage facilities are not yet in place at the next downstream dam. The EA therefore found that, while a provision for fish passage facilities, if needed in the future, seems reasonable, the filing of plans and schedules for such facilities prior to commencement of project operation was unnecessary until such anadromous fish can reach the project and a fishway has been prescribed.

23. In its comments on the EA, FWS concurred with staff's conclusion that plans and schedules for fishways for anadromous fish are not needed at this time, since the need for passage has not yet been triggered. Massachusetts DFW, however, did not comment on staff's fish passage recommendation, so the Massachusetts DFW condition remains unchanged, and Ice House Partners must submit a fishway plan and schedule prior to commencement of project operation. Article 14 requires the exemptee to file the required fish passage plans and schedules for Commission approval.

C. Eel Passage

24. Ice House Partners proposes to provide eel passage when requested by the FWS and Massachusetts DFW. Massachusetts DFW's condition 9 requires that Ice House Partners provide upstream and downstream passage for American eels at the project, with the eelways to be operational concurrent with the commencement of project operation.

25. The EA found that, while providing passage facilities would enhance and protect American eel populations by providing access to upstream tributary habitat and safe downstream passage, construction of such facilities does not appear to be needed until eel passage facilities have been constructed at the downstream Pepperell Paper Mill Project, the next downstream dam on the Nashua River (located 11.5 miles downstream of the Ice House Project). The EA noted that evaluating the effectiveness of such facilities now, as recommended by the Massachusetts DFW, would be problematic without the presence of American eels whose movement upstream to the project dam appears to currently be blocked.

26. In its comments on the EA, Massachusetts DFW reiterated the immediate need for eel passage facilities at the project, noting that sampling it conducted in 2003 documented the occurrence of American eel in tributaries of the Nashua River, both in the Squannacook River upstream of the Pepperell Paper Mill Project, as well as in the Catacoonmug Brook upstream of the Ice House Project. Massachusetts DFW also noted that the Pepperell Paper Mill Project has been found by the Commission to be required to be licensed or exempted,¹⁴ and an application for an exemption from licensing is being prepared. Massachusetts DFW further states that it will be requiring eel passage at the Pepperell Paper Mill Project as a condition of its exemption.

27. The FWS, in comments on the EA, stated that the existence of American eels both immediately upstream and downstream of the project clearly demonstrates the need for these facilities at this time.

¹⁴ *Swift River Hydro Operations Company*, 116 FERC ¶ 62,140 (2006).

28. Based on the information provided by Massachusetts DFW, American eel are currently found in the Nashua River Basin, both upstream and downstream of the Ice House Project and passage facilities at the next downstream dam are likely to be provided in the near future. Therefore, providing passage for eel at the Ice House Project concurrent with project operation seems reasonable. Article 14 requires the exemptee to file the required eel passage designs with the Commission for approval.

OTHER ISSUES

A. Administrative Conditions

29. The Commission collects annual charges from exemptees for the administration of its hydropower program.¹⁵ Under the regulations currently in effect, projects, with authorized installed capacity of 1,500 kW or less, like this project, are not assessed an annual charge.

30. Article 11 requires the exemptee to start rehabilitation of the facilities within two years of the date of this exemption issuance and complete rehabilitation within four years of issuance of this exemption.

B. Exhibit F and G Drawings

31. The Commission requires exemptees to file sets of approved project drawings (exhibits F) on microfilm and in electronic file format.

32. The four exhibit F drawings filed on July 27, 2007, are approved and made part of this exemption. Article 12 requires the filing of the approved exhibit F drawings in aperture card and electronic file format.

33. The revised exhibit G drawing filed on July 27, 2007, does not show or enclose within the project boundary, the dam, reservoir (up to the height of the existing flashboards), headgate structure, power canal, powerhouse, tailrace, or transmission line. Further, the exhibit G drawing does not show three known reference points, as required by section 4.107(d) OR 4.41(h) of our regulations. Therefore, the exhibit G drawing is not approved and is not made part of the exemption order. Article 13 requires the refiling of an exhibit G drawing that encloses all project facilities, and conforms to sections 4.39 and 4.41 of the Commission's regulations, 18 C.F.R. §§ 4.39 and 4.41 (2007).

¹⁵ See 18 C.F.R. § 11.1 (2007).

C. Consultation on Resource Plans

34. The section 30(c) conditions (Appendices A and B of this order) require that plans be prepared for: monitoring run-of-river operation and spillway flows; constructing, operating, maintaining and evaluating fishway and eel passage facilities; sediment removal (if necessary); and conducting a bypassed reach flow evaluation. However, the conditions do not require the plans to be filed with the Commission for approval. Therefore, Article 14 requires the filing of each plan with the Commission for approval.

D. Public Access

35. In addition to the section 30(c) conditions, Interior and Massachusetts DFW recommended providing access to project waters and lands to allow for public use of fish and wildlife resources where consistent with maintaining public safety and protecting project civil works. Article 15 requires the exemptee to allow year-round recreational access, and inform the public of the availability of recreational opportunities at the project, such as posting signs at major points of access.

E. Project Safety

36. Ensuring the safety of all jurisdictional dams is an important public interest function of the Commission. A dam failure could result in loss of life or property damage, and could also result in significant negative environmental effects. In the interest of ensuring the safety of this project, I am including Article 17, which requires the exemptee to comply with Part 12 of the Commission's regulations, which govern the safety of water power projects and project works.¹⁶

The Director orders:

(A) The Ice House Power Project is exempted from Part I of the FPA, subject to conditions submitted by the U.S. Department of the Interior and Massachusetts Division of Fisheries and Wildlife, under section 30(c) of the FPA, as those conditions are set forth in Appendices A and B to this order, and the articles specified below.

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in those lands, described in the project description and the project boundary discussion of this order.

¹⁶ 18 C.F.R. Part 12 (2007). To the extent that special Article 17 conflicts with standard Article 8 (contained in the attached E-2), the provisions of the special article govern.

<u>Exhibit G Drawing</u>	<u>FERC No. 12769-</u>	<u>Description</u>
G-1	1	Identification Map

(2) The following project works: (1) the existing 190-foot-long, 12-foot-high Ice House dam and spillway topped with existing 24-inch-high flashboards impounding; (2) an existing 137-acre, 965-acre-foot reservoir with a normal full pond elevation of 216.45 feet National Geodetic Vertical Datum; (3) an existing headgate structure equipped with four 8-foot-high, 10-foot-wide gates of which two are operational and two are stationary leading to; (4) an existing 50-foot-wide, 109-foot-long power canal connected to; (5) a restored powerhouse containing two Kaplan turbine generating units with a total installed capacity of 280 kilowatts discharging flow to; (6) an existing 50-foot-wide, 400-foot-long tailrace; (7) an existing 480-volt, 100-foot-long underground transmission cable; and (8) appurtenant facilities.

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

Exhibit A: Sections 1 and 2 on pages 1 through 7, filed on July 27, 2007.

Exhibit F: The following exhibit F drawings filed on July 27, 2007:

<u>Exhibit F Drawing</u>	<u>FERC No. 12769-</u>	<u>Description</u>
F-1	2	Flow Schematic
F-2	3	Head Gate Views
F-3	4	Powerhouse Top View
F-4	5	Powerhouse Layout Side View

(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) The exhibits A and F described above are approved and made part of the exemption. The exhibit G filed on July 27, 2007, is not approved.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled Standard Terms and Conditions of Exemption from Licensing (attached), and the following additional articles:

Article 10. *Administrative Annual Charges*. The exemptee shall pay the United States annual charges, effective the first day of the month in which the

exemption is issued, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of the Commission's hydropower program. The authorized installed capacity for that purpose is 280 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed annual charges.

Article 11. Start of Construction. The exemptee shall commence rehabilitation of the project works within two years from the issuance date of the exemption and shall complete rehabilitation of the project within four years from the issuance date of the exemption.

Article 12. Exhibit Drawings. Within 45 days of the issuance date of this exemption, the exemptee shall file the approved exhibit drawings in aperture card and electronic file format.

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

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

(b) The exemptee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office. Exhibit F drawings must be identified as critical energy infrastructure information (CEII) material under 18 C.F.R. § 388.113(c). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this exemption, and file extension in the following format [P-12769-1, F-1, Project Description, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

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

Article 13. Exhibit G Drawing. Within 90 days of the issuance date of this exemption, the exemptee shall file, for Commission approval, revised exhibit G drawings enclosing within the project boundary all principal project works necessary for operation and maintenance of the project, including the dam, reservoir (up to the height of the existing flashboards), headgate structure, power canal, powerhouse, tailrace, and transmission line. The Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission’s regulations.

Article 14. Commission Approval and Reporting.

(a) Requirement to File Plans for Commission Approval

Various measures in the U.S. Department of the Interior (Interior) and Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW) conditions issued pursuant to section 30(c) of the Federal Power Act (Appendices A and B) require the exemptee to prepare plans in consultation with state and federal agencies to implement specific measures without prior Commission review and approval. Each such plan shall also be submitted to the Commission for approval. The exemptee shall not implement these plans unless notified by the Commission that the plans are approved. The plans are listed below.

<u>30(c) Condition No.</u>		Plan Name	Date Due to Commission
Interior	Mass DFW		
3	2	Run-of-river maintenance and monitoring plan	Within 6 months of exemption issuance
	4	Bypassed reach flow study plan/results	Within 1 year of exemption issuance
	6	Bypassed reach flow maintenance and monitoring plan	Within 1 year and 6 months of exemption issuance
	7	Sediment removal plan	Within 6 months of exemption issuance
	9	Eel passage design	Within 6 months of exemption issuance
4	8 and 10	Fishway operation, maintenance, monitoring and evaluation plan	Within 6 months of exemption issuance

(b) Requirement to File Notification with the Commission

The exemptee shall also file with the Commission notification of the following activities.

<u>30(c) Condition No.</u>		Exemption Requirement	Date Due to Commission
Interior	Mass DFW		
1	1	Notification of temporary run-of-river operation modification	Within 10 days of each occurrence
	3	Notification of temporary refill procedure modification	Within 10 days of each occurrence
5	12	Notification when the project commences operation	Within 30 days of commencement of project operation
7	4,5,14	Notification if additional terms and conditions are imposed	Within 30 days of receipt of conditions

The exemptee shall include documentation of agency approval with its filing to the Commission. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval the plan becomes a requirement of the exemption from licensing, and the exemptee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission. In addition, Interior condition 7, and Massachusetts DFW conditions 4, 5, and 14 contemplate unspecified long-term changes to project operations or facilities for the purpose of mitigating environmental impacts. These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the exemption.

Article 15. Recreation Access. The exemptee shall allow public access to the project for outdoor recreational purposes. The exemptee shall make reasonable efforts to inform the public of the availability of recreational opportunities at the project. Such efforts shall include the posting of signs at major points of access to the project. The Commission reserves the right to require the exemptee to allow public recreational uses of any project property. The exemptee may reserve from public access such portions of the project as may be necessary for the protection of life, health, and property.

Article 16. Memorandum of Agreement and Historic Properties Management Plan. The exemptee shall implement the “Memorandum of Agreement Among the

Federal Energy Regulatory Commission and the Massachusetts State Historic Preservation Officer for Managing Historic Properties that May be Affected by Issuing an Exemption from Licensing for the Ice House Power Project in Middlesex County, Massachusetts (FERC No. 12769),” executed on March 11, 2008, and including but not limited to the historic properties management plan (HPMP) for the project. Pursuant to the requirements of this Memorandum of Agreement (MOA), the exemptee shall file, for Commission approval, an HPMP within one year of the issuance date of this exemption. The Commission reserves the authority to require changes to the HPMP at any time during the term of this order. If the MOA is terminated prior to Commission approval of the HPMP, the exemptee shall obtain approval from the Commission and the Massachusetts State Historic Preservation Officer, before engaging in any ground-disturbing activities or taking any other action that may affect any historic properties within the project’s area of potential effects.

Article 17. This project is subject to Part 12 of the Commission’s regulations, 18 C.F.R. Part 12 (2007) (as they may be amended from time to time). For the purposes of applying these provisions of Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 18. *Minimum Bypassed Reach Flow.* Until such time as a permanent flow is established, the exemptee shall release a continuous 1 million gallon per day (1 mgd) flow, or its equivalent in cubic feet per second, into the project bypassed reach, in accordance with Massachusetts Division of Fish and Wildlife (Massachusetts DFW) section 30(c) condition No. 5, for the protection of aquatic habitat and water quality in the Nashua River. The minimum bypassed reach flow release may be temporarily modified if required by operating emergencies beyond the control of the exemptee, and for short periods upon mutual agreement between the exemptee, Massachusetts DFW, and the U.S. Department of the Interior. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

(E) The exemptee 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.

(F) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or of any other date specified in this order, except as specifically ordered by the Commission. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Article 19. *Right to Occupy Federal Lands.* Within one year of the issuance date of this exemption, the exemptee shall file documentation with the Commission showing it has obtained the right to occupy any federal lands necessary for the construction, operation, and maintenance of the project.

J. Mark Robinson
Director
Office of Energy Projects

Form E-2

FEDERAL ENERGY REGULATORY COMMISSION

Section 4.106 - Standard Terms and Conditions of Exemption from Licensing

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

Article 3. The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

Article 8. Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 C.F.R. § 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. Part 12, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 C.F.R. Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 9. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

APPENDIX A

Mandatory section 30(c) conditions filed by the U.S. Department of the Interior on October 10, 2007.

1. The Exemptee shall operate the project in a run-of-river mode, whereby inflow to the project will equal outflow from the project and water levels above the dam are not drawn down for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the U.S. Fish and Wildlife Service, and the Massachusetts Division of Fisheries and Wildlife.
2. The Exemptee shall discharge a minimum flow over the project spillway. The flow shall be determined after additional consultation with the Massachusetts Division of Fisheries and Wildlife and the U.S. Fish and Wildlife Service. A series of demonstration flows may be needed for the agencies to establish the required flow.
3. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval by the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation and spillway flows at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation and spillway flows, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Massachusetts Division of Fisheries and Wildlife.
4. The Exemptee shall be responsible for constructing, operating, maintaining, and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Massachusetts Division of Fisheries and Wildlife that such fishways are needed. The fishways shall be constructed and operational in accordance with the schedule identified by the agencies. Any fishways prescribed by the aforementioned agencies shall be designed in consultation with, and the designs shall require approval by, the U.S. Fish and Wildlife Service.
5. The Exemptee shall notify the U.S. Fish and Wildlife Service in writing when the project commences operation. A set of as-built drawings shall be furnished with the notification. Such notice shall be sent within thirty (30) days of start-up to Supervisor, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.

6. The Exemptee shall allow the U.S. Fish and Wildlife Service to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.

7. The U.S. Fish and Wildlife Service is reserving the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the U.S. Fish and Wildlife Service.

8. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance - by lease, sale or otherwise - of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

APPENDIX B

Mandatory section 30(c) conditions filed by the Massachusetts Division of Fisheries and Wildlife on October 11, 2007, as amended by Commission staff (changes in bold).

1. The Exemptee shall operate the project in a run-of-river mode, whereby inflow to the project will equal outflow from the project on an instantaneous basis and water levels above the dam are not drawn down for the purpose of generating power. Instantaneous run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the Massachusetts Division of Fisheries and Wildlife (Division), and the U.S. Fish and Wildlife Service.
2. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval by the Division, and the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for inspection by the Division, the Federal Energy Regulatory Commission, and the U.S. Fish and Wildlife Service.
3. The Exemptee shall implement a refill procedure whereby, during impoundment refilling after drawdowns for maintenance (including flashboard repair/replacement) or emergency purposes, 90 percent of inflow is passed downstream and the headpond is refilled on the remaining 10 percent of inflow to the project. This refill procedure may be modified on a case-by-case basis with the prior approval of both the Division and the U.S. Fish and Wildlife Service.
4. The first field season following commencement of project operation, the Exemptee shall conduct a flow study to determine a suitable bypass discharge sufficient to maintain water quality and habitat in the bypass reach. The study plan shall be developed in consultation with the Division and the U.S. Fish and Wildlife Service, and shall require approval by the Division and the U.S. Fish and Wildlife Service prior to implementation. Based on study results, the Division and the U.S. Fish and Wildlife Service, may mandate a continuous minimum bypass flow for the project.
5. Until a permanent bypass flow has been mandated by the U.S. Fish and Wildlife Service, the Exemptee shall provide an interim conservation flow of 1 mgd (as suggested by the exemptee) at the dam to protect habitat in the bypass reach. This flow shall be released upon commencement of project operation, and shall continue until the agencies notify the Exemptee of a permanent bypass flow requirement (to be determined via

condition 4 above). The specific location and mechanism of flow release shall be determined in consultation with the Division and the U.S. Fish and Wildlife Service, and shall require the approval by the Division and the U.S. Fish and Wildlife Service prior to the project commencing operation.

6. The Exemptee shall, within three (3) months of receiving notification of a permanent bypass flow requirement by the agencies, prepare and file for review and approval by the Division, and the U.S. Fish and Wildlife Service a plan for maintaining and monitoring the bypass discharge. The plan shall include a description of the mechanisms and structures that will be used to provide the flow, the level of automatic operation, the methods to be used for recording data on bypass flow, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Division.

7. The Exemptee shall, if necessary, within ninety (90) days of exemption issuance, develop a Sediment Removal Plan in consultation with the U.S. Fish and Wildlife Service, the Division, and the Massachusetts Department of Environmental Protection. The purpose of the plan is to develop a protocol for the periodic removal of accumulated sediment from the project that minimizes impacts to aquatic resources. The project shall not commence operation until the Division and the U.S. Fish and Wildlife Service has approved the Plan.

8. The Exemptee shall be responsible for constructing, operating, maintaining, and evaluating upstream and downstream anadromous fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Division. The fishway(s) shall be designed in consultation with, and the designs shall require approval by, the U.S. Fish and Wildlife Service and the Division.

9. The Exemptee shall be responsible for constructing, operating, maintaining, and evaluating upstream and downstream passage for American eels. The fishways shall be designed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Division prior to the start of fishway construction. The eelways shall be operational concurrent with the commencement of project operation.

10. No later than three (3) months prior to commencement of project operation, the Exemptee shall file for approval by the U.S. Fish and Wildlife Service and the Division, plans and schedules for the operation, maintenance and monitoring, and evaluation of the fishways specified in conditions 8 and 9. All plans related to fish passage require approval from the U.S. Fish and Wildlife Service and the Division prior to implementation by the Exemptee.

11. No later than three (3) months prior to **[implementing vegetation management]**, the Exemptee shall file for approval by the Division for the routine vegetation management associated with the project.

12. The Exemptee shall notify the Division and the U.S. Fish and Wildlife Service in writing when the project commences operation. A set of as-built drawings shall be furnished with the notification. Such notice shall be sent within 30 days of start-up to Anadromous Fish Project Leader, MADFW Field HQ, 1 Rabbit Hill Road, Westborough MA, 01581.

13. The Exemptee shall allow the Division to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.

14. The Division is reserving the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the Division.

15. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance -- by lease, sale or otherwise -- of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
408 Atlantic Avenue – Room 142
Boston, Massachusetts 02210-3334

October 10, 2007

9043.1
ER 07/679

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

RE: COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, AND PRESCRIPTIONS

Application Ready for Environmental Analysis
Ice House Power Project, FERC No. 12769-000
Nashua River, Ayer, Middlesex County, Massachusetts

Dear Secretary Bose:

This is in response to the Commission's Notice of Application Ready for Environmental Analysis and Soliciting Comments, Terms and Conditions, Recommendations and Prescriptions, dated August 14, 2007, for the Ice House Power Project, located on the Nashua River in Middlesex County, Massachusetts. These comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act, as amended; the National Environmental Policy Act, as amended; and the Federal Power Act, as amended.

CONSULTATION

The U.S. Department of the Interior (Department), through its Bureaus, has participated in pre-filing consultation for the subject project. The Department, through the U.S. Fish and Wildlife Service (Service), has submitted written comments on the draft application by letter dated January 3, 2006. This letter is part of the Commission's record of these proceedings.

FISH AND WILDLIFE RESOURCES

The Nashua River supports warmwater fishery resources, including white sucker, fallfish, largemouth bass and blacknose dace. Presently, there are no anadromous fish in the Nashua River upstream of the next downstream East Pepperell Dam. However, the federal and state restoration plans for anadromous fish in the Merrimack River may lead to fish passage by

American shad and/or river herring into the section of the river. If that occurs, passage facilities could be needed at Ice House Dam. There is also great interest in increasing access by American eels to upstream habitats throughout their range. Passage for eels at the project may also be needed in the future.

IMPACTS AND MITIGATION

Project Operation

The applicant proposes to operate the project in a run-of-river mode, with inflow equal to outflow on an instantaneous basis. Maintaining natural flow through the project will protect the existing habitat which benefits riparian wildlife and instream aquatic species. Accordingly, we support the applicant's proposal, and provide herein a condition to require this mode of operation.

Bypass Flows

Under the proposed project configuration, there will a 300-foot-long bypass reach which is largely bedrock. Back-flow from the turbines wets this area under no-spill conditions but under this condition, there would be limited circulation.

No studies of bypass flow needs were undertaken despite the issue being raised in pre-filing consultation by the Massachusetts Division of Fisheries and Wildlife (MDFW). In its Additional Information filing to FERC dated July 24, 2007, the applicant proposes the release of a flow of approximately 1 million gallons per day to the spill pool via a notch in the flashboards. The adequacy of this flow for aquatic resource protection has not been determined.

Therefore, the exemptee should consult further and conduct a flow release test to establish an appropriate flow. The flow determined adequate by the Service and MDFW shall become the required flow release.

Project Operations

The applicant has proposed to operate run-of-river, with inflow equal to outflow. We support run-of-river operation, as it would result in stable habitat, benefiting the riverine assemblage in the free-flowing section of river downstream of the project dam. However, the ability of maintaining run-of-river operation with the project turbine sizing and manual adjustments is uncertain. A plan to monitor and maintain records of project operations will be needed to verify that the project is adequately minimizing fluctuations in downstream flows and impoundment levels.

Monitoring Plan

The applicant will be required to develop a formal plan that details the equipment, systems, etc., that will monitor and record the information needed to verify compliance with run-of-river operation.

Diadromous Fish Passage

Fishery resource agencies are actively involved in diadromous restoration efforts within the watershed. These efforts are based on management goals contained in the following published fishery plans:

1. Interstate Fishery Management Plan for American Eel. April 2000. Atlantic States Marine Fisheries Commission.
2. Fishery Management Plan for the American Shad and River Herring. 1985 (amended in 1998). Atlantic States Marine Fisheries Commission.
3. Strategic plan and Status Review – Anadromous Fish Restoration Program – Merrimack River. 1997. Technical Committee for Anadromous Fishery Management of the Merrimack River Basin.

These plans call for improved fish passage and other measures to enhance populations of migratory fish. Accomplishing the stated fishery management goals requires installation of fish passage facilities at dams along the Merrimack River and selected tributaries.

Although it appears that passage measures for diadromous fish will not be needed in the near term at the project, it is possible that fishways will be required in the future. Therefore, we provide herein a condition that requires the Exemptee to design, construct, operate, maintain, and evaluate fish passage facilities when notified by the Service and/or MDFW.

Agency Notification

As-built drawings should be provided to the Service so that we may verify that the project was constructed as proposed. We provide herein a condition that requires the exemptee to furnish the Service with a copy of as-built designs. We also provide herein a condition that requires the exemptee to notify the Service in writing when the project commences operation.

TERMS AND CONDITIONS

Hydropower projects are dynamic and operate for long periods in a changing regulatory and natural environment. Licenses and exemptions must remain flexible and open to adaptation to ensure that measures to protect fish and wildlife remain adequate and effective. Thus, our terms and conditions incorporate a reservation of authority to retain for the Service sufficient discretionary involvement with respect to project construction, operation, maintenance and modification under the requested exemption, or any amendments thereto, to carry out its responsibilities for the conservation, protection, and development of fish and wildlife resources, including the conservation of interjurisdictional migratory species during the life of the project.

Under Section 30(c) of the Federal Power Act (16 U.S.C. § 823a), state and federal fish and wildlife agencies have the opportunity to prescribe terms and conditions for exemptions to prevent loss of, or damage to fish and wildlife resources, and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act. Consistent with our responsibilities, we have determined that the following terms and conditions, to be included in their entirety, shall apply to any exemption which the Federal Energy Regulatory Commission issues for the Ice House Power Project.

1. The Exemptee shall operate the project in a run-of-river mode, whereby inflow to the project will equal outflow from the project and water levels above the dam are not drawn down for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the U.S. Fish and Wildlife Service, and the Massachusetts Division of Fisheries and Wildlife.

2. The Exemptee shall discharge a minimum flow over the project spillway. The flow shall be determined after additional consultation with the Massachusetts Division of Fisheries and Wildlife and the U.S. Fish and Wildlife Service. A series of demonstration flows may be needed for the agencies to establish the required flow.
3. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval by the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation and spillway flows at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods to be used for recording data on run-of-river operation and spillway flows, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Massachusetts Division of Fisheries and Wildlife.
4. The Exemptee shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Massachusetts Division of Fisheries and Wildlife that such fishways are needed. The fishways shall be constructed and operational in accordance with the schedule identified by the agencies. Any fishways prescribed by the aforementioned agencies shall be designed in consultation with, and the designs shall require approval by, the U.S. Fish and Wildlife Service.
5. The Exemptee shall notify the U.S. Fish and Wildlife Service in writing when the project commences operation. A set of as-built drawings shall be furnished with the notification. Such notice shall be sent within 30 days of start-up to Supervisor, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.
6. The Exemptee shall allow the U.S. Fish and Wildlife Service to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.
7. The U.S. Fish and Wildlife Service is reserving the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the U.S. Fish and Wildlife Service.
8. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance—by lease, sale or otherwise—of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

These conditions are required with the understanding that the Commission likely will want to retain concurrent approval authority over some or all of the plans and actions described above, and the above conditions should not be read as preventing this.

RECOMMENDATIONS

The Department recommends that the exemptee permit access to the project area wherever possible to allow for public utilization of fish and wildlife resources, taking into consideration any necessary restrictions to maintain public safety and protect project civil works.

Thank you for the opportunity to review and comment on this project. Please contact me at (617) 223-8565 if I can be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew L. Raddant", is displayed on a light blue rectangular background.

Andrew L. Raddant
Regional Environmental Officer

Submission Contents

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ORIGINAL



United States Department of the Interior



FISH AND WILDLIFE SERVICE
New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301-5087

REF: ER 07/1097
FERC No. 12769-000
Ice House Partners, Inc.
Comments on Environmental Assessment

January 10, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

FILED
OFFICE OF THE
SECRETARY
2008 JAN 16 P 2:46
FEDERAL ENERGY REGULATORY COMMISSION

Dear Secretary Bose:

This is in response to the Commission's Notice of Availability of Environmental Assessment (EA), dated December 13, 2007, and the attached Environmental Assessment for Small Hydroelectric Project for the Ice House Power Project, located on the Nashua River in Middlesex County, Massachusetts.

We have reviewed the EA. While we concur with most of the findings in the EA, we do not concur with the Commission's determinations that two of the terms and conditions submitted by the Massachusetts Division of Fisheries and Wildlife (MDFW), by letter dated October 12, 2007, are premature and unnecessary at this time. We have the following comments:

Eel Passage Construction

In the EA, the Commission states that since the Pepperell Dam downstream from the project is not fitted with an eelway, eels cannot reach the project dam or river reaches upstream from the Ice House Dam. Therefore, the Commission concludes that eel passage measures are premature at this time. This conclusion is incorrect, based on the fact that American eels have been found during MDFW fish surveys in the project area both upstream of the Pepperell Paper Project in the Squannacook River, and upstream of the Ice House Project in Catacoonmug Brook.

The existence of eels upstream and immediately downstream of the project clearly demonstrates the need for these facilities at this time.

Fish Passage Plans and Schedules

The Commission also disputes the need for filing of plans and schedules for fishway operation, maintenance, monitoring and evaluations at this time, since fishways are not needed now. We concur that plans and schedules for fishways for anadromous fish are in fact not needed at this time, since passage construction has not yet been triggered. However, plans and schedules for eel passage facilities are needed upon project completion, since upstream and downstream eel fishways are needed now, as discussed above.

We recommend that the Commission determinations discussed above be modified in a revised EA or in the order issuing the Exemption from Licensing.

We thank you for this opportunity to comment. If you have any questions on the above comments or need additional information, please contact John Warner at (603) 223-2541, extension 15.

Sincerely yours,



William J. Neidermyer
Assistant Supervisor, Federal Activities
New England Field Office

cc: Service List
FWS-Great Meadows NWR
OEPC, Shawn Alam
Reading File
ES: JWarner:1-10-08:603-223-2541



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

October 11, 2007

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

RE: Project Location: 323 West Main Street
Project Description: Ice House Power Project
FERC No. P-12769-000
NHESP Tracking No. 06-19106

COMMENTS, RECOMMENDATIONS, TERMS, AND CONDITIONS

Dear Secretary Salas,

The Massachusetts Division of Fisheries and Wildlife (the "Division") is the agency responsible for the protection and management of the fish and wildlife resources of the Commonwealth of Massachusetts. The Natural Heritage and Endangered Species Program (NHESP) of the Division is additionally responsible for the regulatory protection of imperiled species and their habitats as codified under the Massachusetts Endangered Species Act (M.G.L. c.131A). As such we monitor operations at hydroelectric projects within the Commonwealth. The Division has the following comments in response to the NOTICE OF APPLICATION READY FOR ENVIRONMENTAL ANALYSIS, AND SOLICITING COMMENTS, TERMS AND CONDITIONS, RECOMMENDATIONS, AND PRESCRIPTIONS, dated August 14, 2007 for the Ice House Power Project FERC No P-12769-000 located on the Nashua River, in Ayer, Massachusetts.

PROJECT PROPOSAL

The Division understands that the applicant, Ice House Partners, Inc. (IHP) proposes to redevelop hydropower at the Ice House Dam, located on the Nashua River in Ayer, Massachusetts. The Ice House Power Project would consist of the existing facilities:

- (1) the 300-foot-long, 10-foot-high Ice House Dam consisting of a 210-foot-long spillway topped with flashboards;
- (2) a 137-acre reservoir with a normal full pond elevation of 215 feet National Geodetic Vertical Datum;
- (3) a 50-foot-wide, 600-foot-long power canal;
- (4) a restored powerhouse containing two generating units with a total installed capacity of 270 kilowatts; and
- (5) appurtenant facilities.

The project would have an average annual generation of 2,500 megawatt-hours and IHP proposes that the project will be operated strictly as a run-of-river facility.

www.masswildlife.org

Division of Fisheries and Wildlife

Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish & Game

MASSACHUSETTS FISH AND WILDLIFE RESOURCES

The Nashua River supports fish and aquatic resources, including a number of resident fish species and state-protected mussels, aquatic invertebrates, plants, birds and herptiles (see attached NHESP letter dated 8/27/07 for complete list).. Restoration of anadromous fish populations is ongoing in the Nashua River basin by the Division and U.S. Fish and Wildlife Service.

PROJECT IMPACTS

Run-of-river Operation

The applicant proposes to operate the project in a true run-of-river mode, with inflow equal to outflow on an instantaneous basis. Maintaining natural flow through the project will protect the existing habitat which benefits fish and wildlife species. Downstream habitats will also benefit from run-of-river operation. The resulting stable flow regime will support the riverine assemblage in the free-flowing sections of river below the project.

Bypass Flows

Operation of the proposed project will result in a 300 foot bypass reach (the section of river between the dam and the project tailrace). Presently, all inflow passes over the dam into this area. IHP contends that even when the turbines are operating this area remains wetted.

Water Quality

Operation of the project will redirect flow from the dam to the tailrace. This reduction of flow in the bypass reach could affect water quality in the bypass reach.

RECOMMENDATIONS, TERMS, AND CONDITIONS

Hydropower projects are dynamic and operate for long periods in a changing regulatory and natural environment. Licenses and exemptions must remain flexible and open to adaptation to ensure that measures to protect fish and wildlife remain adequate and effective. Thus, our terms and conditions incorporate a reservation of authority to retain for the Massachusetts Division of Fisheries and Wildlife sufficient discretionary involvement with respect to project construction, operation, maintenance and modification under the requested exemption, or any amendments thereto, to carry out its responsibilities for the conservation, management, and maintenance of fish and wildlife resources, during the life of the project.

Under Section 30(c) of the Federal Power Act (16 USC§823a), state and federal fish and wildlife agencies have the opportunity to prescribe terms and conditions for exemptions to prevent loss of, or damage to fish and wildlife resources, and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act.

Consistent with our responsibilities, we have determined that the following terms and conditions, to be included in their entirety, shall apply to any exemption which the Federal Energy Regulatory Commission issues for Ice House Project.

1. The Exemptee shall operate the project in a run-of-river mode, whereby inflow to the project will equal outflow from the project on an instantaneous basis and water levels above the dam are not drawn down for the purpose of generating power. Instantaneous run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the Exemptee, or for short periods upon mutual agreement between the Exemptee, the Massachusetts Division of Fisheries and Wildlife, and the U.S. Fish and Wildlife Service.
2. The Exemptee shall, within three (3) months of the date of issuance of an exemption from licensing, prepare and file for approval by the Division, and the U.S. Fish and Wildlife Service, a plan for maintaining and monitoring run-of-river operation at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of automatic operation, the methods to be used for recording data on run-of-river operation, an implementation schedule, and a plan for maintaining the data for inspection by the Division, the Federal Energy Regulatory Commission, and the U.S. Fish and Wildlife Service.
3. The Exemptee shall implement a refill procedure whereby, during impoundment refilling after drawdowns for maintenance (including flashboard repair/replacement) or emergency purposes, 90% of inflow is passed downstream and the headpond is refilled on the remaining 10% of inflow to the project. This refill procedure may be modified on a case-by-case basis with the prior approval of both the Division and the U.S. Fish and Wildlife Service.

4. The first field season following commencement of project operation, the Exemptee shall conduct a flow study to determine a suitable bypass discharge sufficient to maintain water quality and habitat in the bypass reach. The study plan shall be developed in consultation with the Division and the U.S. Fish and Wildlife Service, and shall require approval by the Division and the U.S. Fish and Wildlife Service prior to implementation. Based on study results, the Division and the U.S. Fish and Wildlife Service, may mandate a continuous minimum bypass flow for the project.
5. Until a permanent bypass flow has been mandated by the U.S. Fish and Wildlife Service, the Exemptee shall provide an interim conservation flow of 1 mgd (as suggested by the exemptee) at the dam to protect habitat in the bypass reach. This flow shall be released upon commencement of project operation, and shall continue until the agencies notify the Exemptee of a permanent bypass flow requirement (to be determined via Condition 4 above). The specific location and mechanism of flow release shall be determined in consultation with the Division and the U.S. Fish and Wildlife Service, and shall require the approval by the Division and the U.S. Fish and Wildlife Service prior to the project commencing operation.
6. The Exemptee shall, within three (3) months of receiving notification of a permanent bypass flow requirement by the agencies, prepare and file for review and approval by the Division, and the U.S. Fish and Wildlife Service a plan for maintaining and monitoring the bypass discharge. The plan shall include a description of the mechanisms and structures that will be used to provide the flow, the level of automatic operation, the methods to be used for recording data on bypass flow, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Division.
7. The Exemptee shall if necessary, within ninety (90) days of exemption issuance, develop a Sediment Removal Plan in consultation with the U.S. Fish and Wildlife Service, the Division, and the Massachusetts Department of Environmental Protection. The purpose of the plan is to develop a protocol for the periodic removal of accumulated sediment from the project that minimizes impacts to aquatic resources. The project shall not commence operation until the Division and U.S. Fish and Wildlife Service has approved the Plan.
8. The Exemptee shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream anadromous fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Division. The fishway(s) shall be designed in consultation with, and the designs shall require approval by, the U.S. Fish and Wildlife Service and the Division.
9. The Exemptee shall be responsible for constructing, operating, maintaining, and evaluating upstream and downstream passage for American eels. The fishways shall be designed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Division prior to the start of fishway construction. The eelways shall be operational concurrent with the commencement of project operation.
10. No later than three (3) months prior to the commencement of project operation, the Exemptee shall file for approval by the U.S. Fish and Wildlife Service and the Division, plans and schedules for the operation, maintenance and monitoring, and evaluation of the fishways specified in Conditions 8 and 9. All plans related to fish passage measures require approval from the U.S. Fish and Wildlife Service and the Division prior to implementation by the Exemptee.
11. No later than three (3) months prior to the commencement of the project operation, the Exemptee shall file for approval by the Division for the routine vegetation management associated with the project.
12. The Exemptee shall notify the Division and the U.S. Fish and Wildlife Service in writing when the project commences operation. A set of as-built drawings shall be furnished with the notification. Such notice shall be sent within 30 days of start-up to Anadromous Fish Project Leader, MADFW Field HQ, 1 Rabbit Hill Road, Westborough, MA, 01581.
13. The Exemptee shall allow the Division to inspect the project area at any time while the project operates under an exemption from licensing to monitor compliance with their terms and conditions.
14. The Division is reserving the right to add to and alter terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. The Exemptee shall, within thirty (30) days of receipt, file with the Federal Energy Regulatory Commission any additional terms and conditions imposed by the Division.
15. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance -- by lease, sale or otherwise -- of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.

These conditions are required with the understanding that the Commission likely will want to retain concurrent approval authority over some or all of the plans and actions described above, and the above conditions should not be read as preventing this.

RECOMMENDATIONS

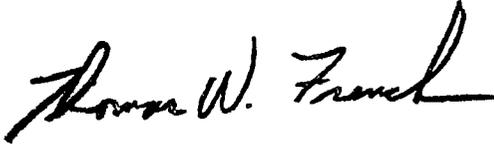
The Division recommends that the Exemptee permit access to the project area wherever possible to allow for public utilization of fish and wildlife resources, taking into consideration any necessary restrictions to maintain public safety, and protect project civil works.

MA DIVISION OF FISHERIES AND WILDLIFE CONTACTS

- *Non-state-listed species* - Caleb Slater, Anadromous Fish Project Leader, at 508-389-6331 (caleb.slater@state.ma.us).
- *State-listed species* - Misty-Anne R. Marold, Endangered Species Review Biologist, at 508-389-6356 (misty-anne.marold@state.ma.us).

Thank you for providing the Division the opportunity to comment on the proposed project.

Sincerely,



Thomas W. French, Ph.D.
Assistant Director



Caleb Slater, Ph.D.
Anadromous Fish Project Leader

CC: Bob Kubit, MADEP
Melissa Grader, USFWS

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MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

January 8, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

RE: Project Location: 323 West Main Street
Project Description: Ice House Power Project
FERC No. P-12769-000
NHESP Tracking No. 06-19106

COMMENTS

Dear Secretary Bose:

The Massachusetts Division of Fisheries and Wildlife (Division) is the agency responsible for the protection and management of the fish and wildlife resources of the Commonwealth. The Natural Heritage and Endangered Species Program (NHESP) of the Division is additionally responsible for the regulatory protection of imperiled species and their habitats as codified under the Massachusetts Endangered Species Act (M.G.L. c.131A). As such we monitor operations at hydroelectric projects within the Commonwealth. The Division has the following comments in response to the ENVIRONMENTAL ASSESSMENT FOR SMALL HYDROELECTRIC PROJECT EXEMPTION (EA), dated December 13, 2007 for the Ice House Power Project FERC No P-12769-000 located on the Nashua River, in Ayer, Massachusetts.

PROPOSAL

The Division understands that the applicant, Ice House Partners, Inc. (IHP) proposes to redevelop hydropower at the Ice House Dam, located on the Nashua River in Ayer, Massachusetts. The Ice House Power Project would consist of the existing facilities:

- (1) the 300-foot-long, 10-foot-high Ice House Dam consisting of a 210-foot-long spillway topped with flashboards;
- (2) a 137-acre reservoir with a normal full pond elevation of 215 feet National Geodetic Vertical Datum;
- (3) a 50-foot-wide, 600-foot-long power canal;
- (4) a restored powerhouse containing two generating units with a total installed capacity of 270 kilowatts; and
- (5) appurtenant facilities.

The project would have an average annual generation of 2,500 megawatt-hours.

IHP propose that the project will be operated strictly run-of-river, will maintain 1 mgd (1.55 cfs) to the bypass reach, will provide fish passage when requested by the USFWS, and will provide designated canoe portage locations with signage and access for fisherman.

www.masswildlife.org

Division of Fisheries and Wildlife

Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fisheries, Wildlife & Environmental Law Enforcement

COMMENTS

In a letter dated October 12, 2007 the Division submitted TERMS AND CONDITIONS for the Ice House Project. In the EA FERC staff accepted all of the Division's TERMS AND CONDITIONS except for the requirements for submission of a vegetation management plan and the requirement to immediately build upstream eelways.

The Division agrees that the relevant timing of filing for review and approval of the vegetation management is prior to implementation of the vegetation management, rather than prior to operation of the facility. Review and approval of the vegetation management plan by the Division is required of Ice House Partners pursuant to the Massachusetts Endangered Species Act Regulations (321 CMR 10.18) for this site. The area around the dam is habitat for a two state-listed turtles (*Emydoidea blandingii* and *Glyptemys insculpta*). Individuals of these species are at risk of being directly harmed or killed by mechanical tools (eg, mowers, and brush-hogs). The Division works closely with dam operators and utility right-of-way managers to ensure that routine management minimizes and avoids harm to state-listed species, as required by the Massachusetts Endangered Species Act Regulations.

FERC staff cite the fact another dam exists downstream of the Ice House Project as their rationale for not requiring eel passage at the Project. The Division feels that eel passage is required immediately because:

- 1) Eels have been found in fish surveys in the project area- both upstream of the Pepperell Paper Project (Squannacook River) and upstream of the Ice House Project (Catacoonmug Brook).
- 2) The Pepperell Paper Hydroelectric Project has recently been ruled as jurisdictional by FERC and is in the process of filing for a FERC Exemption. The Division will require eel passage at the Pepperell Paper Project in this new Exemption. Therefore allowing The Ice House Project to wait for eel passage at The Pepperell Paper Project will just delay the inevitable a year or two at the most.
- 3) FERC staff have accepted the condition that fish passage will be required at the Ice House Project when requested by the Division. The Division's letter of October 12 requiring upstream eel passage should serve as our request, and the requirement for upstream eel passage should be part of the Exemption.

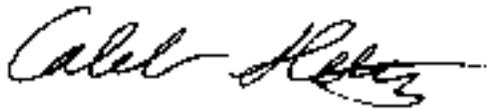
Thank you for this opportunity to comment.

MA DIVISION OF FISHERIES AND WILDLIFE CONTACTS

- *Non-state-listed species* - Caleb Slater, Anadromous Fish Project Leader, at 508-389-6331 (caleb.slater@state.ma.us).
- *State-listed species* - Misty-Anne R. Marold, Endangered Species Review Biologist, at 508-389-6356 (misty-anne.marold@state.ma.us).

Thank you for providing the Division the opportunity to comment on the proposed project.

Sincerely,



Thomas W. French, Ph.D.
Assistant Director

Caleb Slater, Ph.D.
Anadromous Fish Project Leader

cc: Bob Kubit, MADEP
Melissa Grader, USFWS

Submission Contents

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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Watershed Management, 627 Main Street 2nd Floor, Worcester, MA 01608

DEVAL PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN BOWLES
Secretary

ARLEEN O'DONNELL
Commissioner

ORIGINAL

Liisa Dowd
Ice House Partners, Inc.
323 West Main Street
Ayer MA 01432

March 26, 2007

Re: Ice House Partners Inc. FERC Exemption Application, #12769
Request for 401 Water Quality Certification Waiver

FILED
OFFICE OF THE
SECRETARY
2007 APR - 9 P 4: 12

Dear Ms. Dowd,

The Massachusetts Department of Environmental Protection (the Department) is in receipt of your March 21, 2007 letter requesting a waiver of the requirement for State 401 Water Quality Certification for this project.

After consultation with the Massachusetts Division of Fisheries and Wildlife, it is the opinion of the Department that the requirement for State 401 Water Quality Certification for this project be waived. This decision is based primarily upon the location of the project and the inclusion of needed water quality based conditions in the FERC exemption.

Please note the Department is waiving the requirement to obtain a 401 for this project only and retains the option to require a 401 for any other exemption application.

If you have any questions, please call me at 508/767-2854.

Sincerely,

Robert Kubit, P.E.
Environmental Engineer

Cc: Caleb Slater, MADFW
Maryann Dipinto/CERO/DEP
Ann Miles, FERC

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.
<http://www.state.ma.us/dep> • Phone (508) 792-7470 • Fax (508) 791-4131

Attachment C

Interconnection Service Agreement

Between

Massachusetts Electric Company

And

Ice House Partners, Inc.

Dated

October 14, 2011

STANDARDS FOR INTERCONNECTING DISTRIBUTED GENERATION

Exhibit F – Interconnection Service Agreement

1. **Parties.** This Interconnection Service Agreement (“Agreement”), dated as of 10/14/2011 (“Effective Date”) is for application “MA-1755” and entered into, by and between Massachusetts Electric Company, a Massachusetts Corporation with a principal place of business at 40 Sylvan Rd, Waltham, MA 02451 (hereinafter referred to as the “Company”), and Ice House Partners Inc a(n) S-corporation with a principal place of business at 323 West Main Street, Ayer, MA 01432 (“Interconnecting Customer”). (The Company and Interconnecting Customer are collectively referred to as the “Parties”). Terms used herein without definition shall have the meanings set forth in Section 1.2 of the Interconnection Tariff which is hereby incorporated by reference.

2. **Basic Understandings.** This Agreement provides for parallel operation of an Interconnecting Customer’s Facility with the Company EPS to be installed and operated by the Interconnecting Customer at 323, West Main Street, Ayer, MA 01432 with account number 90408-68003. A description of the Facility is located in Attachment 1. If the Interconnecting Customer is not the Customer, an Agreement between the Company and the Company’s Retail Customer, attached as Exhibit G to the Interconnection Tariff, must be signed and included as an Attachment to this Agreement.

The Interconnecting Customer has the right to operate its Facility in parallel with the Company EPS immediately upon successful completion of the protective relays testing as witnessed by the Company and receipt of written notice from the Company that interconnection with the Company EPS is authorized (“Authorization Date”).

3. **Term.** This Agreement shall become effective as of the Effective Date. The Agreement shall continue in full force and effect until terminated pursuant to Section 4 of this Agreement.

4. **Termination.**

4.1 This Agreement may be terminated under the following conditions.

4.1.1 The Parties agree in writing to terminate the Agreement.

4.1.2 The Interconnecting Customer may terminate this agreement at any time by providing sixty (60) days written notice to Company.

4.1.3 The Company may terminate this Agreement upon the occurrence of an Event of Default by the Interconnecting Customer as provided in Section 18 of this Agreement.

4.1.4 The Company may terminate this Agreement if the Interconnecting Customer either: (1) fails to energize the Facility within 12 months of the Authorization Date; or, (2) permanently abandons the Facility. Failure to operate the Facility for any consecutive 12 month period after the Authorization Date shall constitute permanent abandonment unless otherwise agreed to in writing between the Parties.

4.1.5 The Company, upon 30 days notice, may terminate this Agreement if there are any changes in Department regulations or state law that have a material adverse effect on the Company’s ability to perform its obligations under the terms of this Agreement.

4.2 **Survival of Obligations.** The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of termination. Sections 5, 10, 12, 13, and 25 as it relates to disputes pending or for wrongful termination of this Agreement shall survive the termination of this Agreement.

4.3 **Related Agreements.** Any agreement attached to and incorporated into this Agreement shall terminate concurrently with this Agreement unless the Parties have agreed otherwise in writing.

5. **General Payment Terms.** The Interconnecting Customer shall be responsible for the System Modification costs and payment terms identified in Attachment 3 of this Agreement and any approved cost increases pursuant to the terms of the Interconnection Tariff. If the system modifications exceed \$25,000, Attachment 4 will include a payment and construction schedule for both parties.

5.1 **Cost or Fee Adjustment Procedures.** The Company will, in writing, advise the Interconnecting Customer in advance of any cost increase for work to be performed up to a total amount of increase of 10% only. All costs that exceed the 10% increase cap will be borne solely by the Company. Any such changes to the Company’s costs for the work shall be subject to the Interconnecting Customer’s consent. The Interconnecting Customer shall, within thirty (30) days of the Company’s notice of increase, authorize such

STANDARDS FOR INTERCONNECTING DISTRIBUTED GENERATION

increase and make payment in the amount up to the 10% increase cap, or the Company will suspend the work and the corresponding agreement will terminate.

- 5.2 Final Accounting.** Upon request by the Interconnecting Customer, the Company within ninety (90) business days after completion of the construction and installation of the System Modifications described in an attached exhibit to the Interconnection Service Agreement, shall provide Interconnecting Customer with a final accounting report of any difference between (a) Interconnecting Customer's cost responsibility under the Interconnection Service Agreement for the actual cost of such System Modifications, and (b) Interconnecting Customer's previous aggregate payments to the Company for such System Modifications. To the extent that Interconnecting Customer's cost responsibility in the Interconnection Service Agreement exceeds Interconnecting Customer's previous aggregate payments, the Company shall invoice Interconnecting Customer and Interconnecting Customer shall make payment to the Company within 45 days. To the extent that Interconnecting Customer's previous aggregate payments exceed Interconnecting Customer's cost responsibility under this agreement, the Company shall refund to Interconnecting Customer an amount equal to the difference within forty five (45) days of the provision of such final accounting report.

6. Operating Requirements

- 6.1 General Operating Requirements.** Interconnecting Customer shall operate and maintain the Facility in accordance with the applicable manufacturer's recommended maintenance schedule, in compliance with all aspects of the Company's Interconnection Tariff. The Interconnecting Customer will continue to comply with all applicable laws and requirements after interconnection has occurred. In the event the Company has reason to believe that the Interconnecting Customer's installation may be the source of problems on the Company EPS, the Company has the right to install monitoring equipment at a mutually agreed upon location to determine the source of the problems. If the Facility is determined to be the source of the problems, the Company may require disconnection as outlined in Section 7.0 of the Interconnection Tariff. The cost of this testing will be borne by the Company unless the Company demonstrates that the problem or problems are caused by the Facility or if the test was performed at the request of the Interconnecting Customer.
- 6.2 No Adverse Effects; Non-interference.** Company shall notify Interconnecting Customer if there is evidence that the operation of the Facility could cause disruption or deterioration of service to other Customers served from the same Company EPS or if operation of the Facility could cause damage to Company EPS or Affected Systems. The deterioration of service could be, but is not limited to, harmonic injection in excess of IEEE Standard 1547-2003, as well as voltage fluctuations caused by large step changes in loading at the Facility. Each Party will notify the other of any emergency or hazardous condition or occurrence with its equipment or facilities which could affect safe operation of the other Party's equipment or facilities. Each Party shall use reasonable efforts to provide the other Party with advance notice of such conditions.

The Company will operate the EPS in such a manner so as to not unreasonably interfere with the operation of the Facility. The Interconnecting Customer will protect itself from normal disturbances propagating through the Company EPS, and such normal disturbances shall not constitute unreasonable interference unless the Company has deviated from Good Utility Practice. Examples of such disturbances could be, but are not limited to, single-phasing events, voltage sags from remote faults on the Company EPS, and outages on the Company EPS. If the Interconnecting Customer demonstrates that the Company EPS is adversely affecting the operation of the Facility and if the adverse effect is a result of a Company deviation from Good Utility Practice, the Company shall take appropriate action to eliminate the adverse effect.

- 6.3 Safe Operations and Maintenance.** Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for, the facility or facilities that it now or hereafter may own unless otherwise specified in this Agreement. Each Party shall be responsible for the maintenance, repair and condition of its respective lines and appurtenances on their respective side of the PCC. The Company and the Interconnecting Customer shall each provide equipment on its respective side of the PCC that adequately protects the Company's EPS, personnel, and other persons from damage and injury.
- 6.4 Access.** The Company shall have access to the disconnect switch of the Facility at all times.
- 6.4.1 Company and Interconnecting Customer Representatives.** Each Party shall provide and update as necessary the telephone number that can be used at all times to allow either Party to report an emergency.

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- 6.4.2 Company Right to Access Company-Owned Facilities and Equipment.** If necessary for the purposes of the Interconnection Tariff and in the manner it describes, the Interconnecting Customer shall allow the Company access to the Company's equipment and the Company's facilities located on the Interconnecting Customer's or Customer's premises. To the extent that the Interconnecting Customer does not own all or any part of the property on which the Company is required to locate its equipment or facilities to serve the Interconnecting Customer under the Interconnection Tariff, the Interconnecting Customer shall secure and provide in favor of the Company the necessary rights to obtain access to such equipment or facilities, including easements if the circumstances so require.
- 6.4.3 Right to Review Information.** The Company shall have the right to review and obtain copies of Interconnecting Customer's operations and maintenance records, logs, or other information such as, unit availability, maintenance outages, circuit breaker operation requiring manual reset, relay targets and unusual events pertaining to Interconnecting Customer's Facility or its interconnection with the Company EPS. This information will be treated as customer-confidential and only used for the purposes of meeting the requirements of Section 4.2.4 in the Interconnection Tariff.

7. Disconnection

7.1 Temporary Disconnection

- 7.1.1 Emergency Conditions.** Company shall have the right to immediately and temporarily disconnect the Facility without prior notification in cases where, in the reasonable judgment of Company, continuance of such service to Interconnecting Customer is imminently likely to (i) endanger persons or damage property or (ii) cause a material adverse effect on the integrity or security of, or damage to, Company EPS or to the electric systems of others to which the Company EPS is directly connected. Company shall notify Interconnecting Customer promptly of the emergency condition. Interconnecting Customer shall notify Company promptly when it becomes aware of an emergency condition that affects the Facility that may reasonably be expected to affect the Company EPS. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, or the expected effect on the operation of both Parties' facilities and operations, its anticipated duration and the necessary corrective action.
- 7.1.2 Routine Maintenance, Construction and Repair.** Company shall have the right to disconnect the Facility from the Company EPS when necessary for routine maintenance, construction and repairs on the Company EPS. The Company shall provide the Interconnecting Customer with a minimum of seven calendar days planned outage notification consistent with the Company's planned outage notification protocols. If the Interconnecting Customer requests disconnection by the Company at the PCC, the Interconnecting Customer will provide a minimum of seven days notice to the Company. Any additional notification requirements will be specified by mutual agreement in the Interconnection Service Agreement. Company shall make an effort to schedule such curtailment or temporary disconnection with Interconnecting Customer.
- 7.1.3 Forced Outages.** During any forced outage, Company shall have the right to suspend interconnection service to effect immediate repairs on the Company EPS; provided, however, Company shall use reasonable efforts to provide the Interconnecting Customer with prior notice. Where circumstances do not permit such prior notice to Interconnecting Customer, Company may interrupt Interconnection Service and disconnect the Facility from the Company EPS without such notice.
- 7.1.4 Non-Emergency Adverse Operating Effects.** The Company may disconnect the Facility if the Facility is having an adverse operating effect on the Company EPS or other customers that is not an emergency, and the Interconnecting Customer fails to correct such adverse operating effect after written notice has been provided and a maximum of 45 days to correct such adverse operating effect has elapsed.
- 7.1.5 Modification of the Facility.** Company shall notify Interconnecting Customer if there is evidence of a material modification to the Facility and shall have the right to immediately suspend interconnection service in cases where such material modification has been implemented without prior written authorization from the Company.
- 7.1.6 Re-connection.** Any curtailment, reduction or disconnection shall continue only for so long as reasonably necessary. The Interconnecting Customer and the Company shall cooperate with each other to restore the Facility and the Company EPS, respectively, to their normal operating state as

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soon as reasonably practicable following the cessation or remedy of the event that led to the temporary disconnection.

7.2 Permanent Disconnection.

7.3 The Customer. The Interconnecting Customer has the right to permanently disconnect at any time with 30 days written notice to the Company.

7.4 The Company. The Company may permanently disconnect the Facility upon termination of the Interconnection Service Agreement in accordance with the terms thereof.

- 8. Metering.** Metering of the output from the Facility shall be conducted pursuant to the terms of the Interconnection Tariff.
- 9. Assignment.** Except as provided herein, Interconnecting Customer shall not voluntarily assign its rights or obligations, in whole or in part, under this Agreement without Company's written consent. Any assignment Interconnecting Customer purports to make without Company's written consent shall not be valid. Company shall not unreasonably withhold or delay its consent to Interconnecting Customer's assignment of this Agreement. Notwithstanding the above, Company's consent will not be required for any assignment made by Interconnecting Customer to an Affiliate or as collateral security in connection with a financing transaction. In all events, the Interconnecting Customer will not be relieved of its obligations under this Agreement unless, and until the assignee assumes in writing all obligations of this Agreement and notifies the Company of such assumption.
- 10. Confidentiality.** Company shall maintain confidentiality of all Interconnecting Customer confidential and proprietary information except as otherwise required by applicable laws and regulations, the Interconnection Tariff, or as approved by the Interconnecting Customer in the Simplified or Expedited/Standard Application form or otherwise.

11. Insurance Requirements.

11.1 General Liability.

- 11.1.(a) In connection with Interconnecting Customer's performance of its duties and obligations under the Interconnection Service Agreement, Interconnecting Customer shall maintain, during the term of the agreement, general liability insurance with a combined single limit of not less than:
- i. Five million dollars (\$5,000,000) for each occurrence and in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than five (5) MW.
 - ii. Two million dollars (\$2,000,000) for each occurrence and five million dollars (\$5,000,000) in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than one (1) MW and less than or equal to five (5) MW;
 - iii. One million dollars (\$1,000,000) for each occurrence and in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than one hundred (100) kW and less than or equal to one (1) MW;
 - iv. Five hundred thousand dollars (\$500,000) for each occurrence and in the aggregate if the Gross Nameplate Rating of Interconnecting Customer's Facility is greater than ten (10) kW and less than or equal to one hundred (100) kW, except as provided below in subsection 11.1(b).
- 11.1.(b) Class 1 Net Metering (facilities less than or equal to sixty (60). However, the Company recommends that the Interconnecting Customer obtain adequate insurance to cover potential liabilities.
- 11.1.(c) Any combination of General Liability and Umbrella/Excess Liability policy limits can be used to satisfy the limit requirements stated above.
- 11.1.(d) The general liability insurance required to be purchased in this Section 11 may be purchased for the direct benefit of the Company and shall respond to third party claims asserted against the Company (hereinafter known as "Owners Protective Liability"). Should this option be chosen, the requirement of Section 11.2(a) will not apply but the Owners Protective Liability policy will be purchased for the direct benefit of the Company and the Company will be designated as the primary and "Named Insured" under the policy.



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- 11.1.(e) The insurance hereunder is intended to provide coverage for the Company solely with respect to claims made by third parties against the Company.
- 11.1.(f) In the event the Commonwealth of Massachusetts, or any other governmental subdivision thereof subject to the claims limits of the Massachusetts Tort Claims Act, G.L. c. 258 (hereinafter referred to as the "Governmental Entity") is the Interconnecting Customer, any insurance maintained by the Governmental Entity shall contain an endorsement that strictly prohibits the applicable insurance company from interposing the claims limits of G.L. c. 258 as a defense in either the adjustment of any claim, or in the defense of any lawsuit directly asserted against the insurer by the Company. Nothing herein is intended to constitute a waiver or indication of intent to waive the protections of G.L. c. 258 by the Governmental Entity.
- 11.1.(g) Notwithstanding the requirements of section 11.1(a) through (f), insurance for certain Governmental Entity facilities may be provided as set forth in section 11.1(g)(i) and (ii) below. Nothing herein changes the provision in subsection 11.1(a)(iv) that exempts Class I Net Metering facilities (less than or equal to 60 kW) from the requirement to obtain insurance. In addition, nothing shall prevent the Governmental Entity from obtaining insurance consistent with the provisions of subsection 11.1(a) through (f), if it is able and chooses to do so.
- i. For solar photovoltaic (PV) facilities with a Gross Nameplate Rating in excess of 60 kW up to 500 kW, the Governmental Entity is not required to obtain liability insurance. Any liability costs borne by the Company associated with a third-party claim for damages in excess of the claims limit of the Massachusetts Tort Claims Act, M.G.L. c. 258, and market-based premium-related costs, if any, borne by the Company associated with insurance for such third-party claims shall be recovered annually on a reconciling basis in Company rates in a manner that shall be reviewed and approved by the Department.
 - ii. For (a) PV facilities with a Gross Nameplate Rating in excess of 500 kW up to 5 MW, (b) wind facilities with a Gross Nameplate Rating in excess of 60 kW up to 5 MW, and (c) highly efficient combined heat and power facilities with a Gross Nameplate Rating of in excess of 60 kW up to 5 MW, the Governmental Entity is not required to obtain liability insurance, subject to the requirements of the following paragraph.

The Company shall either self-insure for any risk associated with possible third-party claims for damages in excess of the Massachusetts Tort Claims Act limit, or obtain liability insurance for such third-party claims, and the Company is authorized to charge and collect from the Governmental Entity its pro-rata allocable share of the cost of so doing, plus all reasonable administrative costs. The coverage and cost may vary with the size and type of facility, and may change (increase or decrease) over time, based on insurance market conditions, and such cost shall be added to, and paid for as part of the Governmental Entity's electric bill.

- 11.2 Insurer Requirements and Endorsements.** All required insurance shall be carried by reputable insurers qualified to underwrite insurance in MA having a Best Rating of "A-". In addition, all insurance shall, (a) include Company as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that Company shall not incur liability to the insurance carrier for payment of premium for such insurance; and (c) provide for thirty (30) calendar days' written notice to Company prior to cancellation, termination, or material change of such insurance; provided that to the extent the Interconnecting Customer is satisfying the requirements of subpart (d) of this paragraph by means of a presently existing insurance policy, the Interconnecting Customer shall only be required to make good faith efforts to satisfy that requirement and will assume the responsibility for notifying the Company as required above.

If the requirement of clause (a) in the paragraph above prevents Interconnecting Customer from obtaining the insurance required without added cost or due to written refusal by the insurance carrier, then upon Interconnecting Customer's written Notice to Company, the requirements of clause (a) shall be waived.

- 11.3 Evidence of Insurance.** Evidence of the insurance required shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by Interconnecting Customer.



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The Interconnecting Customer is responsible for providing the Company with evidence of insurance in compliance with the Interconnection Tariff on an annual basis.

Prior to the Company commencing work on System Modifications and annually thereafter, the Interconnecting Customer shall have its insurer furnish to the Company certificates of insurance evidencing the insurance coverage required above. The Interconnecting Customer shall notify and send to the Company a certificate of insurance for any policy written on a "claims-made" basis. The Interconnecting Customer will maintain extended reporting coverage for three years on all policies written on a "claims-made" basis.

In the event that an Owners Protective Liability policy is provided, the original policy shall be provided to the Company.

11.4 Self Insurance. If Interconnecting Customer has a self-insurance program established in accordance with commercially acceptable risk management practices. Interconnecting Customer may comply with the following in lieu of the above requirements as reasonably approved by the Company:

- Interconnecting Customer shall provide to Company, at least thirty (30) calendar days prior to the Date of Initial Operation, evidence of such program to self-insure to a level of coverage equivalent to that required.
- If Interconnecting Customer ceases to self-insure to the standards required hereunder, or if Interconnecting Customer is unable to provide continuing evidence of Interconnecting Customer's financial ability to self-insure, Interconnecting Customer agrees to promptly obtain the coverage required under Section 11.1.

This section shall not allow any Governmental Entity to self-insure where the existence of a limitation on damages payable by a Government Entity imposed by the Massachusetts Tort Claims Act, G.L. c. 258, or similar law, could effectively limit recovery (by virtue of a cap on recovery) to an amount lower than that required in Section 11.1(a).

11.5 All insurance certificates, statements of self insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

National Grid
Attn: Risk Management
300 Erie Blvd West
Syracuse, NY 13202

- 12. Indemnification.** Except as the Commonwealth is precluded from pledging credit by Section 1 of Article 62 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and except as the Commonwealth's cities and towns are precluded by Section 7 of Article 2 of the Amendments to the Massachusetts Constitution from pledging their credit without prior legislative authority, Interconnecting Customer and Company shall each indemnify, defend and hold the other, its directors, officers, employees and agents (including, but not limited to, Affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury (including death) or property damages to unaffiliated third parties that arise out of or are in any manner connected with the performance of this Agreement by that Party except to the extent that such injury or damages to unaffiliated third parties may be attributable to the negligence or willful misconduct of the Party seeking indemnification.
- 13. Limitation of Liability.** Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including court costs and reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage or liability actually incurred. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever.
- 14. Amendments and Modifications.** No amendment or modification of this Agreement shall be binding unless in writing and duly executed by both Parties.
- 15. Permits and Approvals.** Interconnecting Customer shall obtain all environmental and other permits lawfully required by governmental authorities for the construction and operation of the Facility. Prior to the construction of System Modifications the interconnecting customer will notify the Company that it has initiated the permitting process. Prior to the commercial operation of the Facility the Customer will notify the Company that

STANDARDS FOR INTERCONNECTING DISTRIBUTED GENERATION

it has obtained all permits necessary. Upon request the Interconnecting Customer shall provide copies of one or more of the necessary permits to the Company.

16. Force Majeure. For purposes of this Agreement, "Force Majeure Event" means any event:

- a. that is beyond the reasonable control of the affected Party; and
- b. that the affected Party is unable to prevent or provide against by exercising commercially reasonable efforts, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war or terrorism, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lighting, storms, and other natural calamities; explosions or fire; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Party in writing, and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible. In no event will the unavailability or inability to obtain funds constitute a Force Majeure Event..

17. Notices

17.1 Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given on the date actually delivered in person or five (5) business days after being sent by certified mail, e-mail, or any nationally-recognized delivery service with proof of delivery, postage prepaid, to the person specified below:

If to Company: National Grid
ATT: Distributed Generation
40 Sylvan Rd
Waltham, MA 02451
e-mail: Distributed.Generation@us.ngrid.com

If to Interconnecting Customer: Ice House Partners Inc
ATT: John K Grady, P.E.
323 West Main Street
Ayer, MA 01432
e-mail: jkg@gradyresearch.com
Phone: 978-772-3303x103
FAX: 978-772-3441

17.2 A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with Section 16.1.

17.3 The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's Notice to the other.

18. Default and Remedies

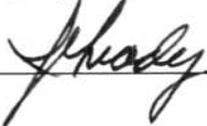
18.1 Defaults. Any one of the following shall constitute "An Event of Default."

- i. One of the Parties shall fail to pay any undisputed bill for charges incurred under this Agreement or other amounts which one Party owes the other Party as and when due, any such failure shall continue for a period of thirty (30) days after written notice of nonpayment from the affected Party to the defaulting Party, or
- ii. One of the Parties fails to comply with any other provision of this Agreement or breaches any representation or warranty in any material respect and fails to cure or remedy that default or breach within sixty (60) days after notice and written demand by the affected Party to cure the same or such longer period reasonably required to cure (not to exceed an additional 90 days unless

STANDARDS FOR INTERCONNECTING DISTRIBUTED GENERATION

otherwise mutually agreed upon), provided that the defaulting Party diligently continues to cure until such failure is fully cured.

- 18.2 **Remedies.** Upon the occurrence of an Event of Default, the affected Party may at its option, in addition to any remedies available under any other provision herein, do any, or any combination, as appropriate, of the following:
 - a. Continue to perform and enforce this Agreement;
 - b. Recover damages from the defaulting Party except as limited by this Agreement;
 - c. By written notice to the defaulting Party terminate this Agreement;
 - d. Pursue any other remedies it may have under this Agreement or under applicable law or in equity.
- 19. **Entire Agreement.** This Agreement, including any attachments or appendices, is entered into pursuant to the Interconnection Tariff. Together the Agreement and the Interconnection Tariff represent the entire understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement or in the Company's Interconnection Tariff.
- 20. **Supersedence.** In the event of a conflict between this Agreement, the Interconnection Tariff, or the terms of any other tariff, Exhibit or Attachment incorporated by reference, the terms of the Interconnection Tariff, as the same may be amended from time to time, shall control. In the event that the Company files a revised tariff related to interconnection for Department approval after the effective date of this Agreement, the Company shall, not later than the date of such filing, notify the signatories of this Agreement and provide them a copy of said filing.
- 21. **Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the Commonwealth of Massachusetts without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.
- 22. **Non-waiver.** None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.
- 23. **Counterparts.** This Agreement may be signed in counterparts.
- 24. **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties hereto. Nothing in the Agreement shall be construed to create any rights in or duty to, or standard of care with respect to, or any liability to, any person not a party to this Agreement.
- 25. **Dispute Resolution.** Unless otherwise agreed by the Parties, all disputes arising under this Agreement shall be resolved pursuant to the Dispute Resolution Process set forth in the Interconnection Tariff.
- 26. **Severability.** If any clause, provision, or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section, shall not affect any of the remaining provisions herein.
- 27. **Signatures.** IN WITNESS WHEREOF, the Parties hereto have caused two (2) originals of this Agreement to be executed under seal by their duly authorized representatives.

Ice House Partners Inc
Name: JOHN K GRADY PE
Title: OWNER/CEO
Date: 11/2/2011
Signature: 

Massachusetts Electric Company
Name: Alex Kuriakose
Title: Sr. Engineer
Date: 11/02/23011
Signature: 

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The following attachments would be developed and included as appropriate for each specific Interconnection Service Agreement:

Attachment 1: Description of Facilities, including demarcation of Point of Common Coupling

Description of National Grid's EPS:

The area is normally served by National Grid's 13.8/7.97kV Y grounded radial circuit; the Feeder# 201W1 out of Ayer 201 substation. The Substation is supplied by 115KV and has 2-16.8MVA substation transformers. The proposed site is 13,100 feet away from the Ayer Substation. The proposed interconnection point is a existing service and the facility will be served by a secondary meter service.

- The manual demand reading taken of the 201W1 circuit has varied between 6 MVA and 9.2 MVA in the last year
- There is 300 kVA existing generation interconnected.
- There is a Line Recloser on the line
 - Pole# 36- Groton-Harvard Road – 3Phase, 560Amps – Normally closed – 15kV loop ground
- There are 2 Capacitors with total of 1800kVAr
 - 1 fixed Capacitors
 - Pole# 48 – Littleton Road – 600kVAr
 - 1 Switched control capacitors
 - Pole# 56 – Groton-Harvard Road – 1200kVAr

Description of the customer electrical system:

The three-phase 232 kW Hydro generating system consist of two non-UL listed Marathon Electric 432PDL1266 116kW, 3 phase, and 480V propeller turbines, proposed to be located inside hydro power house on Tail Race Canal. The output from each generator connects to a 600A/ 600V switch followed by a 400A fast fuse located inside the power house. This then connects to a 600A, 480/277V main copper bus into main service panel located in the electric room of main building. The output from main service panel then connects to a existing 3 phase, 480/277V Y-grounded -13.8kV Y, 300 kVA pad mount step up transformer located on Pad# 74-1 within the premise. The output of the HV side of the transformer then connects to National Grid's Electric Power System (EPS) through a riser on Pole # 54 W Main Street.

Each synchronous generator is individually protected by 400A CB and a 400A mechanical Cutler Hammer generator contactor controlled by two Basler BE1-11g protective relays running on 24VDC battery power. Three 200/5 CT's provide individual phase currents to the Basler relay system along with an open delta 480V/120 PT's. Transfer switch is used to operate one of the generators as a backup for the facility in off grid condition.

Basler BE1-11 Generator Protection active elements: 27, 59, 81O/U, 50, 32, 40

The point of common coupling is the secondary side of the pad mount transformer. This system will export power beyond the PCC onto national Grid's Electric Power System (EPS).

Attachment 2: Description of System Modifications

A permanent plaque or directory shall be installed at the revenue meter and at the PCC with a warning about the generator(s) installed. If the utility external disconnect switch is not adjacent to the meter, a permanent plaque shall be provided at the meter locating the switch. Per section 6.4 of this agreement the (external) utility disconnect switch, shall be clearly labeled and accessible by National Grid personal at all times. All plaque as described in NEC 705.10 , 705.12 (7), 690.56, 692.4 and 705.70 shall be installed when applicable.

Once all documentation has been received, National Grid will issue a request for a bi-directional meter.

Attachment 3: Costs of System Modifications and Payment Terms

No system modification costs.

Attachment 4: Special Operating Requirements, if any

AI#90408-68003- MA-1755

Initials: 

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All meters must be clearly labeled so as to be able to differentiate between the customer owned production meter and National Grid's utility revenue meter. The utility disconnect switch shall clearly read "Utility Disconnect Switch" so it is clear which of the multiple disconnects is the utility disconnect switch.

A PSTN phone line to National Grid's revenue meter location should be provided. The phone line must be capable of direct inward dial without human intervention or interference from other devices such as fax machines, etc. The customer shall provide a RJ-11 jack (female) with standard telephone connections near the meter. National Grid's meter will have an RJ-11 connector (male) and National Grid will connect the meter's connector with the customer's jack. If the meter is located outside a liquid tight flexible conduit with end bushing and lock nut shall be provided. The conduit shall line up with the bottom or side knock out of the meter socket and have three feet of telephone wire coiled at it's end. National Grid will connect the conduit to the meter socket and the telephone wire to the modem in the meter.

The required utility disconnect switch located outside, following section 6.4, shall be accessible to Company personnel at all times and shall be capable of being opened for isolation if switching is required. The switch shall be gang operated, have a visible break when open, be rated to interrupt the maximum generator output and be capable of being locked open, tagged and grounded on the Company side by Company personnel. The visible break requirement can be met by opening the enclosure to observe the contact separation. The Company shall have the right to open this disconnect switch in accordance with the Interconnection Tariff. The switch has to be installed at the DR output on the current carrying lines. Shunt mechanisms are not permitted.

National Grid will schedule a witness test upon receiving a completed certificate of completion, final relay settings and testing plan. National grid set one visit per interconnection application. If more are required there will be an additional fee for each visit.

All the requirements and information requested in screening memo dated 10/03/2011 must be submitted.

Attachment 5: Agreement between the Company and the Company's Retail Customer

If the retail customer is not the owner and/or operator of the distributed generation facility include Exhibit G of the Interconnection Tariff signed by the Company's retail customer where DG installation and interconnection will be placed.

Attachment D

Statement of RPS Qualifications

from

Massachusetts Department of Energy Resources

Rhode Island Public Utilities Commission

Maine Public Utilities Commission

for

Ice House Partners, Inc.



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENERGY RESOURCES
100 CAMBRIDGE ST., SUITE 1020
BOSTON, MA 02114
Telephone: 617-626-7300
Facsimile: 617-727-0030

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Richard K. Sullivan, Jr.
Secretary

Mark D. Sylvia
Commissioner

June 26, 2012

William P. Short III
Consultant
323 West Main Street
Ayer, MA 01432

**RE: RPS Class I Eligibility Decision
Ice House Partners Hydro (HY-1241-12)
0.28 MW in Ayer, MA**

Dear Mr. Short,

On behalf of the Department of Energy Resources (the Department), I am pleased to inform you that the Statement of Qualification Application for the referenced Generation Unit pursuant to the Massachusetts Renewable Energy Portfolio Standard (RPS) Class I Regulations is hereby approved. The Department finds that the Generation Unit meets the requirements for eligibility as an RPS Class I Renewable Generation Unit pursuant to 225 CMR 14.05, including the Unit's certification by the Low Impact Hydropower Institute (LIHI) on October 22, 2009.

Each Massachusetts Renewable Generation Unit is assigned a unique Massachusetts RPS Identification Number (MA RPS ID#), which must be included in all correspondence with the Department. Your Unit's MA RPS Class I ID# is **HY-1241-12**.

Please note that the Unit's continued certification by LIHI is a condition of continued RPS Class I qualification under 225 CMR 14.05(1)(a)6.d, and you are obligated to notify the Department of any change in that status within thirty days of such change. Note, in particular, that the RPS qualification is contingent on compliance with the conditions listed in the Unit's October 22, 2009, LIHI certification. Accordingly, the entire electrical energy output of the Unit for any month during any portion of which the Unit is under suspension or revocation of its LIHI certification due to the state of its compliance with those conditions, shall not qualify as RPS Class I Renewable Generation, and the Department will instruct the NEPOOL GIS Administrator to not encode the Unit's certificates for such months as RPS Class I Renewable Generation qualified.

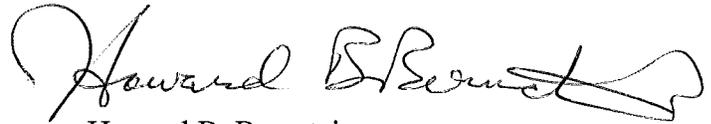
The Department calls your attention to the Capacity Commitment provisions in 225 CMR 14.05(1)(e)1. Specifically, the amount of generation capacity whose electrical energy output is claimed as RPS Class I Renewable Generation may not be committed to any Control Area other than the ISO-NE Control Area.

The Department also wishes to remind you of the notification requirements for changes in eligibility status contained in 225 CMR 14.06(3) and for changes in capacity, contact information, and identity of the Owner or Operator contained in 225 CMR 14.06(6). The Owner or Operator of the Generation Unit shall submit notification of such changes to the Department no later than five days following the end of the month during which such changes were implemented.

Finally, the Department wishes to remind you to be cognizant of the Operating Rules and the reporting requirements of the NEPOOL GIS, which may be amended from time to time, and compliance with which may affect the RPS qualification of your Generation Unit's GIS certificates.

If you have any questions or concerns about the Statement of Qualification or any aspect of the RPS program, please contact me at the Department's address, (617) 626-7355, or howard.bernstein@state.ma.us.

Sincerely,

A handwritten signature in black ink that reads "Howard B. Bernstein". The signature is fluid and cursive, with a large initial "H" and a long, sweeping tail.

Howard B. Bernstein
RPS Program Manager

Encl: Statement of Qualification

Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES

STATEMENT OF QUALIFICATION

Pursuant to the Renewable Energy Portfolio Standard – Class I
225 CMR 14.00

This Statement of Qualification, provided by the Massachusetts Department of Energy Resources (DOER or the Department), signifies that the Generation Unit identified below, as described in a Statement of Qualification Application dated April 30, 2012 (SQA ID # 11198), meets the requirements for eligibility as an RPS Class I Renewable Generation Unit, pursuant to the Renewable Energy Portfolio Standard – Class I, 225 CMR 14.05. Therefore, this Generation Unit is duly qualified as an RPS Class I Renewable Generation Unit.

Generation Unit Name, Capacity,
and Location:

Ice House Partners Hydro
0.28 MW
Ayer, MA

Authorized Representative's Name
and Address:

William P. Short III
Consultant
323 West Main Street
Ayer, MA 01432

This RPS Class I Renewable Generation Unit is assigned a unique Massachusetts RPS Identification Number, listed below. Please include the ID number on all correspondence with DOER.

MA RPS Class I ID #: HY-1241-12

This Unit's RPS Effective Date is: **March 8, 2012**

This Unit's NEPOOL GIS Generation Unit Asset Identification Number is:

MSS14925

Qualification of this Generation Unit as an RPS Class I Renewable Generation Unit is subject to all applicable provisions in 225 CMR 14.00, including but not limited to the following.

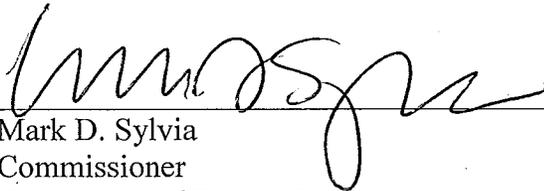
Pursuant to 225 CMR 14.05(1)(a)6.d, the RPS Class I qualification of the Unit is contingent on the Unit remaining certified by the Low Impact Hydropower Institute (LIHI). This provision includes compliance with the conditions listed in the Unit's October 22, 2009, LIHI certification, which was effective August 6, 2009. Accordingly, the entire electrical energy output of the Unit for any month during any portion of which the Unit is under suspension or revocation of its LIHI certification due to the state of its compliance with those conditions, shall not qualify as RPS Class I Renewable Generation, and the Department will instruct the NEPOOL GIS Administrator to not encode the Unit's certificates for such months as RPS Class I Renewable Generation qualified. The Unit Owner or Operator shall inform DOER within 30 calendar days of its notification by LIHI of any suspension or revocation of the Unit's LIHI, as well as of any restoration of such certification, any denial of an application to renew its LIHI certification, or any decision to not apply for such renewal.

Pursuant to 225 CMR 14.05(1)(e)1, the amount of the generation capacity of the Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area.

Pursuant to 225 CMR 14.06(5) and (6), the Unit's Owner or Operator is obligated to notify DOER of any changes in the characteristics of the Unit that could affect its eligibility status, as well as any changes in the Unit's ownership, generation capacity, or contact information.

Pursuant to 225 CMR 14.11, DOER may conduct site visits, as well as audits and inspections of documents related to the Unit's compliance with 225 CMR 14.00, including the provisions of this Statement of Qualification.

DOER may suspend or revoke this Statement of Qualification if the Owner or Operator fails to comply with 225 CMR 14.00, including the provisions of this Statement of Qualification.



Mark D. Sylvia
Commissioner
Department of Energy Resources

Date: **June 26, 2012**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: APPLICATION FOR STANDARD CERTIFICATION DOCKET NO. 4365
AS ELIGIBLE RENEWABLE ENERGY RESOURCE
FILED BY ICE HOUSE PARTNERS, INC – NEW GENERATION

ORDER

WHEREAS, Effective January 1, 2006, the Rhode Island Public Utilities Commission ("Commission") adopted Rules and Regulations Governing the Implementation of a Renewable Energy Standard (RES Regulations) including requirements for applicants seeking certification as an Eligible Renewable Energy Resource under the RES Regulations¹ pursuant to the Renewable Energy Act, Section 39-26-1 et. seq. of the General Laws of Rhode Island; and

WHEREAS, On October 22, 2012, Ice House Partners, Inc ("Company", Authorized Representative: William P. Short III, Consultant) filed with the Commission an application seeking certification for its Ice House Partners, Inc Generation Unit, a 0.28MW Small Hydro energy Generation Unit located in Ayer, MA, as an eligible NEW Renewable Energy Resource under the State of Rhode Island RES Regulations; and

WHEREAS, Pursuant to Section 6.0 and other relevant Sections of the RES Regulations, a thirty (30) day period for public comment was provided during which time no such comments were received, and

¹ State of Rhode Island and Providence Plantations Public Utilities Commission Rules and Regulations Governing the Implementation of a Renewable Energy Standard – Date of Public Notice: September 23, 2005, Date of Public Hearing: October 12, 2005, Effective Date: January 1, 2006.

WHEREAS, On January 08, 2013, January 09, 2013, and January 11, 2013, supplemental and clarifying information was provided to Commission Staff and their application review consultant in response to the application review consultant's January 08, 2013 request for said information, and

WHEREAS, Said supplemental and clarifying information included: a completed Appendix C, an altered RES application, and photos and articles supporting the commercial operation date, and

WHEREAS, After examination, the Commission is of the opinion that the application, including said supplemental information is proper, reasonable and in compliance with the RES Regulations, and hereby grants the Company certification as an eligible renewable energy resource pursuant to the Renewable Energy Act, Section 39-26-1 et. seq. of the General Laws of Rhode Island; and

WHEREAS, The Commission's determination in this docket is based on the information submitted by the Company, and the Commission may reverse its ruling or revoke the Applicant's certification if any material information provided by the Applicant proves to be false or misleading.

Accordingly, it is

(20947) ORDERED:

1) That the Ice House Partners, LLC Generation Unit, meets the requirements for eligibility as a New, Small Hydro Renewable Energy Resource with its 0.28 MW, Grid-Connected Generation Unit having a Commercial Operation Date of March 09, 2012 and located within the NEPOOL control area in Ayer, MA.

2) That the Generation Unit's NEPOOL-GIS Identification Number is MSS14925.

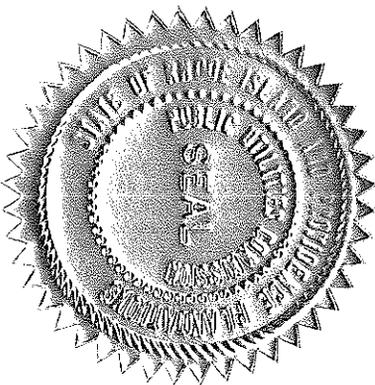
3) That the Company's Generation Unit as identified above is hereby assigned unique certification number RI-4365-N13.

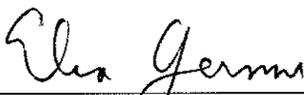
4) That, although the Commission will rely upon the NEPOOL GIS for verification of production of energy from the Company's Generation Unit certified as eligible in this Order, the Company will provide information and access as necessary to the Commission, or persons acting at its behest, to conduct audits or site visits to assist in verification of continued eligibility for and compliance with RI RES Certification at any time at the Commission's discretion.

5) That the Company shall notify the Commission in the event of a change in the facility's eligibility status.

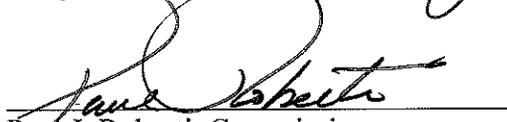
DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON
JANUARY 31, 2013 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN
ORDER ISSUED JANUARY 31, 2013.

PUBLIC UTILITIES COMMISSION




Elia Germani, Chairman


Mary E. Bray, Commissioner


Paul J. Roberti, Commissioner

February 5, 2013

ICE HOUSE PARTNERS, INC.
Request for Certification for RPS Eligibility

ORDER GRANTING NEW
RENEWABLE RESOURCE
CERTIFICATION

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

The Ice House Partners, Inc. (“Ice House”) 280 kW Hydroelectric Project located in Ayer, Massachusetts is certified as a Class I new renewable resource that is eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission’s rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

During its 2007 session, the Legislature enacted an Act To Stimulate Demand for Renewable Energy (Act). P.L. 2007, ch. 403 (codified at 35-A M.R.S.A. § 3210(3-A)). The Act added a mandate that specified percentages of electricity that supply Maine’s consumers come from “new” renewable resources.¹ Generally, new renewable resources are renewable facilities that have an in-service date, resumed operation or were refurbished after September 1, 2005. The percentage requirement starts at one percent in 2008 and increases in annual one percent increments to ten percent in 2017, unless the Commission suspends the requirement pursuant to the provisions of the Act.

As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the “new” renewable resource requirement. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2007-391 (Oct. 22, 2007). The implementing rules designated the “new” renewable resource

¹ Maine’s electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.

requirement as “Class I”² and incorporated the resource type, capacity limit and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

- fuel cells;
- tidal power;
- solar arrays and installations;
- wind power installations;
- geothermal installations;
- hydroelectric generators that meet all state and federal fish passage requirement; or
- biomass generators, including generators fueled by landfill gas.

In addition, except for wind power installations, the generating resource must not have a nameplate capacity that exceeds 100 MW. Finally, the resource must satisfy one of four vintage requirements. These are:

- 1) renewable capacity with an in-service date after September 1, 2005;
- 2) renewable capacity that has been added to an existing facility after September 1, 2005;
- 3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA and has resumed operation or has been recognized by the ISO-NE or NMISA after September 1, 2005; or
- 4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

The implementing rules (Chapter 311, § 3(B)(4)) establish a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis.³ The rule contains the information that must be included in a petition for certification and specifies that the Commission shall provide an opportunity for public comment if a petitioner seeks certification under

² The “new” renewable resource requirement was designated as Class I because the requirement is similar to portfolio requirements in other New England states that are referred to as “Class I.” Maine’s pre-existing “eligible” resource portfolio requirement is designated as Class II.

³ In the *Order Adopting Rule* at 6, the Commission noted that a request for certification can be made at any time so that a ruling can be obtained before a capital investment is made in a generation facility.

vintage categories 2, 3 and 4. Finally, the rule specifies that the Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

B. Petition for Certification

On December 13, 2012, Ice House Partners, Inc. ("Ice House") filed a petition to certify its 280 kW Ice House Partners Project ("Facility") located in Ayer, Massachusetts as a Class I New Renewable Resource under the resumed operations provision of the Commission's renewable portfolio rules. Ch. 311, § 3(B)(3)(c). The petition states the Facility ceased operations in the 1940s and the powerhouse was destroyed by fire in the 1970s. The petition states the Facility resumed operations in March 2012 and that the Facility meets all state and federal fish passage requirements. Ice House provided numerous documents in support of its Petition, including the 2008 Order from the Federal Energy Regulatory Commission Granting Exemption from Licensing (FERC Order), a 2009 Certification from the Low Impact Hydropower Institute (LIHI), and an approval of the Facility as a Class I Renewable Generation Unit by the Massachusetts Department of Energy Resources.

An opportunity for comment was issued on December 17, 2012, and no comments were received.

III. DECISION

The Commission has delegated to the Director of the Electric and Gas Division the authority to certify generation facilities as Class I new renewable resources pursuant to Chapter 311, § 3(B) of the Commission rules. *Delegation Order*, Docket No. 2008-184 (April 23, 2008). Based on the information provided by Ice House, I conclude that the Facility satisfies the resource type, capacity limit and vintage requirements of the rule. The total Ice House generating station capacity does not exceed 100 MW and the Facility satisfies the restart vintage category set forth in Chapter 311, § 3(B)(3)(c) because it ceased operations for at least two consecutive years prior to September 1, 2005 and subsequently resumed commercial operations after September 1, 2005.

Further, the Facility is a hydroelectric generator that meets all state and federal fish passage requirements. It is apparent from the supplied documentation that upstream and downstream fish passage other than eel passage is not required at this time. Ice House has demonstrated that it has complied with the upstream and downstream eel passage requirements contained in the FERC Order by installing eel passage at the Facility prior to the commencement of operations.

Accordingly, the Facility is hereby certified as a Class I New Renewable Resource eligible to satisfy Maine's New Renewable Resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission rules.

Ice House, or the Facility's successive owner, shall provide timely notice to the Commission of any material change in the character or operation of the Facility, including the status of and compliance with fish passage requirements or certification by LIHI, from that described in the Petition filed in this proceeding.

BY ORDER OF THE DIRECTOR OF THE ELECTRIC AND GAS
UTILITY INDUSTRIES

A handwritten signature in cursive script that reads "Faith Huntington".

Faith Huntington

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within 20 days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Pre-Construction Photographs

For

Ice House Partners Project





Construction Photographs

For

Ice House Partners Project



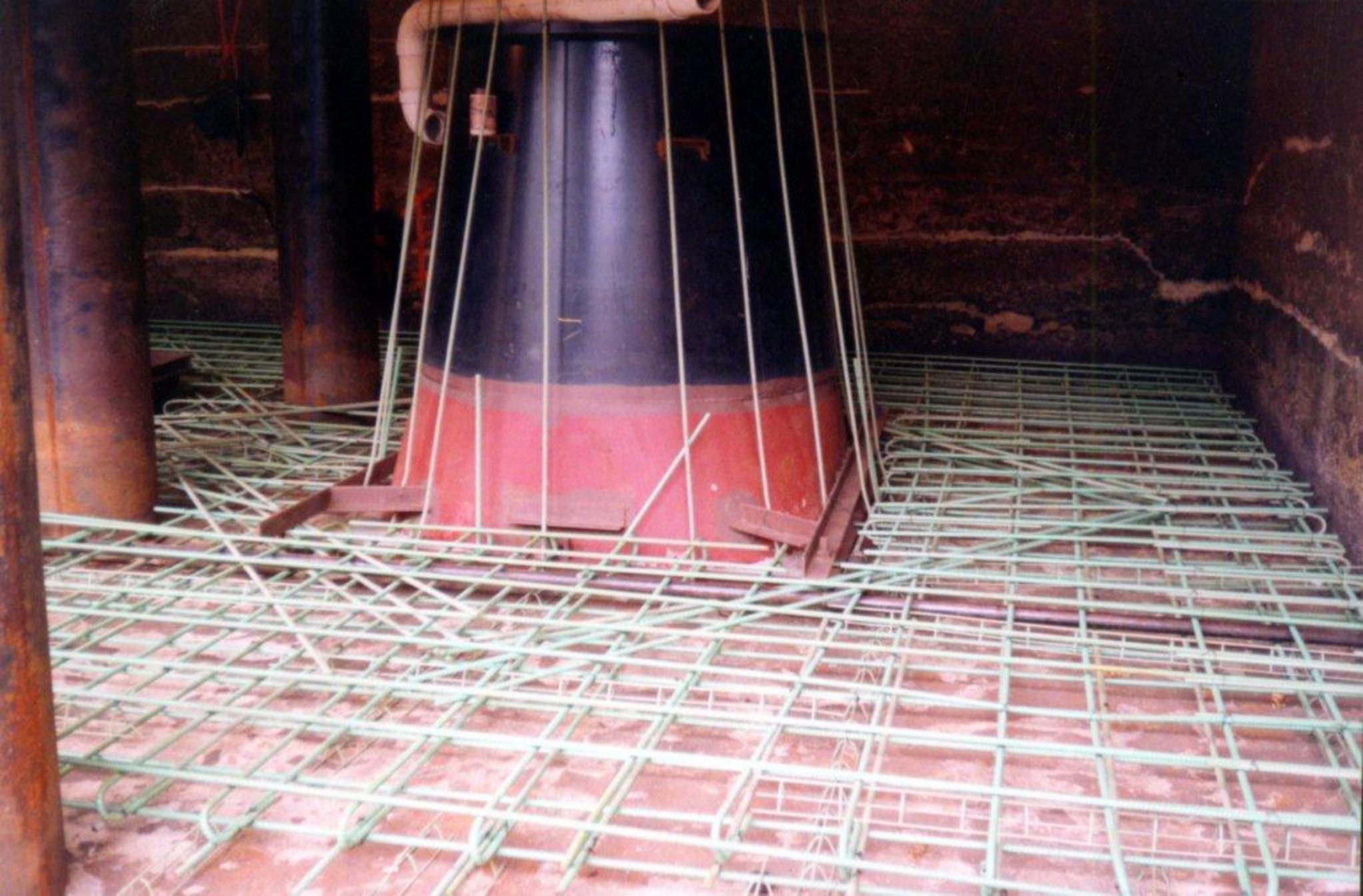














Post Construction Photographs

For

Ice House Partners Project







