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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company)

Project No. 2491-003

ORDER ISSUING NEW LICENSE (MAJOR)

(Issued July 24, 1984)

Northern States Power Company ("Company" or "Licensee") filed on May 5, 1982, and amended on July 15, 1983, an application for a new license under Part I of the Federal Power Act (Act) to redevelop, operate and maintain the Jim Falls Project No. 2491: 1/ The project would be located on the Chippewa River, a navigable water of the United States, 2/ in Chippewa County, Wisconsin, and would include approximately 13.0 acres of government lands under the jurisdiction of the Bureau of Land Management.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. The State of Wisconsin, Department of Natural Resources ("DNR") filed for, and was granted intervention. Neither the agencies nor DNR objected to issuance of the license. The significant concerns of the agencies and DNR are discussed below.

History and Description of Project

A. Construction of the project was begun in 1910. The project was eventually acquired by the Chippewa Power Company, which completed construction of the power plant and final portions of the dam in 1922-23. The project was sold to Northern States Power in 1937.

1/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.313 of the Commission's regulations, 18 C.F.R. §375.313 (1984). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902 (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

2/ The Chippewa River has been found navigable at least downstream from its point of confluence with the Flambeau River. See, 8 F.P.C. 1776 (1949).

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On March 6, 1980, the Commission issued to Northern States Power Company a major license for the Jim Falls Project. On July 15, 1983, the Company asked the Commission to terminate its existing license and allow it to continue operation of the project pending Commission action on the new license application. The Commission granted the Company's request on September 26, 1983. ^{3/}

B. The existing project, as licensed, is a single development with a nominal head of 55 feet. It includes a 9,500-foot long diversion dam with spillway control structures, a reservoir and power canal with a total water surface area of about 890 acres, and a powerhouse containing three identical turbine-generator units, each with a rating of 4,800 kW at a 50-foot net head.

The proposed redeveloped project will also develop a nominal head of 55 feet. It will include: an 8,700-foot long dam utilizing some of the existing earth dikes; the existing spillway control structures; a new auxiliary spillway control structure; a slightly enlarged reservoir with a surface area of about 950 acres; and a new powerhouse containing three identical turbine-generator units, each with a rating of about 16,200 kilowatts, as a replacement for the existing powerhouse. An additional small turbine-generator unit with a rating of 600 kilowatts will be installed at the existing main spillway structure which provides a minimum flow release.

The existing project development has a dependable capacity rating of 11,400 kilowatts and a 30-year average annual energy production of 78,800,000 kilowatt-hours. Both are net output ratings. The proposed redeveloped project will have an estimated dependable capacity of about 48,000 kilowatts and an estimated average annual energy output of about 135,800,000 kilowatt-hours. A more detailed project description is contained in ordering paragraph (B) below.

Both the present development and future redevelopment bypass a section of the river channel which is about 4,500 feet long.

Public Lands

It has been determined, based on correspondence and telephone conversations with the Bureau of Land Management of the U.S. Department of the Interior, that there are within the proposed project boundary four Federally-owned parcels of land, approximately 13.0 acres, under the management of that agency. All are islands in the river channel. One of these island parcels, Willow Island, has been surveyed but is now inundated; the other three islands are unsurveyed parcels, but are not inundated. The parcels are listed in Exhibit G.

^{3/} See, Northern States Power Company, 24 FERC ¶ 61,345 (1983).

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Safety and Adequacy

The project structures have been designed to be safe with adequate safety factors for normal, earthquake and probable maximum flood (PMF) loading conditions.

The existing and proposed redevelopment is located on the Chippewa River just north-northeast of the small community of Jim Falls, Wisconsin where the river flows generally southwesterly. The right dike and 2,600 feet of the river dike will be at elevation 960.0 and 960.5 feet respectively, to serve as fuse plugs when the main spillway capacity is exceeded. The fuse plugs will pass flows up to and including the PMF without endangering the community of Jim Falls or life and property downstream. The spillway and fuse plug facilities are adequate.

Article 39 is included in the license requiring the Licensee to submit a copy of the final contract plans and specifications prior to start of construction. Article 41 requires the filing of as-built drawings subsequent to completion of construction.

It is concluded that the project, under the conditions of this license, will be safe and adequate.

Environmental Considerations

Minimum Flows

The DNR recommended that a minimum flow of 240 cubic feet per second (cfs) be maintained in the bypass reach of the Chippewa River, beginning with ice-out in the spring and ending October 31, for the protection of fisheries resources and recreational values. The DNR also recommended that a minimum flow of 20 cfs be maintained in the bypass reach from November 1 to ice-out in the spring. The Company has agreed to maintain both the 240 cfs and 20 cfs minimum flows as recommended by the DNR.

There is a need for minimum flows to enhance the water quality and aquatic resources in the bypass reach. The bypass reach supports a modest warmwater fishery and is an identified spawning area for lake sturgeon during the spring. Although no current requirement for a minimum flow from the dam into the bypass reach exists, there have been informal agreements between the Company and the DNR to provide water releases for fishing and spawning. Therefore, Article 42 requires the Licensee to maintain minimum flows of 240 cfs and 20 cfs as recommended by the DNR.

Fisheries

The DNR and U. S. Fish and Wildlife Service (FWS) have recommended that the Company participate in a program to enhance fish habitat above and below the existing main spillway as mitigation for the impact to fishery resources resulting from the Jim Falls redevelopment project. This program includes, but is not limited to, the following: (1) pre-drawdown and post-drawdown fish population studies in Old Abe Lake (project reservoir); (2) installation of fish habitat structures in Old Abe Lake; (3) modifications to the bypass reach to improve fish spawning and feeding areas; (4) maintenance of minimum flows in the bypass reach; (5) maintenance of water levels in Old Abe Lake within a 2-foot range during project operation; and (6) creation of a series of islands above the proposed powerhouse to improve fish habitat. Finally, the Environmental Protection Agency (EPA) recommended that the Company study the extent of injury and mortality to fish from turbine passage, and provide measures (i.e., fish diversion devices, fine mesh screens, fish stocking) to mitigate any observed impact.

The Company has agreed to include all of the above measures to enhance fisheries resources that have been recommended by the DNR and the FWS. The Company outlined these measures in the Report on Fish, Wildlife, and Botanical Resources (Exhibit E). However, the Company has stated that it did not anticipate any fish injury or mortality problems to occur with the proposed project's turbine operation.

The drawdown of Old Abe Lake during project construction would stress fish populations in the lake. The present operation of the Jim Falls Dam has reduced the quality of fish habitat in the bypass reach. The Company should participate in the program to enhance the fishery resources in the project area. The Company has expressed, in the Report on Fish, Wildlife, and Botanical Resources, a willingness to cooperate with the DNR to ensure implementation of the measures to enhance fisheries resources in the project area. The Company's Report on Fish, Wildlife and Botanical Resources, pages E84 through E100, is approved herein, and will ensure the Company's continued coordination with the DNR concerning the fishery program. However, since the Company did not provide a detailed schedule which indicates when implementation of the measures or construction of the facilities will be commenced and completed, it is required under Article 43 to file a plan and detailed schedule for implementation of the measures proposed in the Report on Fish, Wildlife, and Botanical Resources.

The DNR has stated that operation of the existing Jim Falls hydroelectric facilities has not resulted in significant turbine induced fish injury or mortality. The major cause of fish injury and mortality related to the operation of the Jim Falls Dam is associated with stranding of fish in the bypass reach due to fluctuations of

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flow from the dam. Articles 42 and 43 will protect and enhance the aquatic resources in the bypass reach. Further, if turbine related fish mortalities do occur, Article 15, included herein, requires the licensee to provide measures needed to minimize this impact.

Avian Habitat

The FWS recommended that some large trees in the area proposed for clearing be left standing to provide perch sites for birds in the project area. The Report on Fish, Wildlife, and Botanical Resources indicates that, if practical, considering needed water flows and boating safety, some large trees would be left in the cleared area to serve as perch trees for birds. The report also indicates that the Company, in cooperation with the DNR, would erect an eagle nesting platform adjacent to the Old Abe Lake impoundment to encourage eagle nesting in the project area. The development of avian habitat as described in the report would partially mitigate the loss of habitat resulting from the proposed forest clearing. Article 43 requires the filing of a plan for implementation of these measures.

Dissolved Oxygen Monitoring

The EPA commented that the Company should consider monitoring dissolved oxygen (DO) levels above and below the Jim Falls Dam to determine if project operation has any effect upon downstream DO levels. The DNR stated that no change in water quality would be expected from project operation. The Company stated that DO would not be adversely affected by the Jim Falls Project.

The proposed operation should not result in any significant changes to downstream water quality different from current operation of the dam. There is no evidence of DO degradation, or other water quality problems, associated with the present operation of the Jim Falls hydroelectric facilities. Implementation of minimum flows in the bypass reach, as required in Article 42, would improve the existing water quality in this section of the Chippewa River, and DO monitoring at the present time is not warranted.

Recreation

All agencies responded favorably to the Company's Report on Recreational Resources (Exhibit E). The Company's proposed recreational developments will adequately meet the needs for project-oriented recreation. Therefore, the Report on Recreational Resources, consisting of 23 pages of text (E104 through E125), Appendix E-5-2, and one drawing entitled "Recreational Development Map" (FERC No. 2491-36), is being approved herein.

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Other Environmental Considerations

The DNR issued a waiver of the need for a water quality certificate on April 30, 1981, pursuant to Section 401 of P.L. 92-500.

Construction activities in the rural area would temporarily increase traffic, noise, and air pollution levels. Construction activity along and within the lake and river bed would temporarily increase sediment and turbidity levels.

Drawdown of the reservoir during construction would temporarily stress existing fish populations and reduce available food supply. Wildlife habitat would be lost by clearing and inundation of 60 acres of land which includes two wetland areas totaling 21 acres. No Federally listed threatened or endangered species would be affected by the project.

Some minor erosion and sedimentation would result from land clearing operations and construction of the boat ramp. Turbidity levels would increase temporarily where fish habitat improvements, including channel deepening and installation of fish habitat structures, are made along the proposed shoreline fishing areas. Existing recreational facilities would be adversely impacted during construction by increased traffic. Water-oriented activities would be adversely affected by reservoir drawdown during construction.

The conditions of this license will ensure long-term protection of the project's environmental resources and values. No sites listed or eligible for listing on the National Register of Historic Places are within the project boundary, however, Article 44 is included in the license to protect cultural resources should archeological or historical discoveries be made.

On the basis of the record, and staff's independent analysis, it is concluded that issuance of a new license for the Jim Falls Project, as conditioned herein, will not constitute a major Federal action significantly affecting the quality of the human environment.

Economic Feasibility and Other Aspects of Comprehensive Development

Power generated by the project will be used by Northern States Power Company to serve its customers. The power plant will operate at a plant factor of 31.5% and utilize approximately 93% of the total available river flow. The project is economically feasible when compared to producing equivalent power from a coal-fueled steam electric plant.

The proposed project will have two powerhouses, one having three units of 16,200 kW each and the second having one unit of 600 kW.

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for a total capacity of 49,200 kW. The estimated average annual energy generation is 135.8 Gwh. ^{4/}

The project would make good use of the flow and fall of the Chippewa River, would not be in conflict with any planned or proposed development, and would be best adapted to the comprehensive development of the Chippewa River Basin for beneficial uses upon compliance with the terms and conditions of the license.

Federal Takeover

Section 14 of the Federal Power Act reserves to the United States the right to take over a non-publicly owned project upon expiration of the license, after paying the licensee's net investment in the project, to exceed the fair value of the property taken, plus any severance damages. No federal department or agency, state, or municipality has recommended takeover or redevelopment of the project by the United States or any other entity. The project is not in conflict with any project that has been authorized or is under study by the United States. There appears to be no reason why federal takeover of the project would better serve the public interest than would issuance of this license. Thus, federal takeover will not be recommended.

Term of License

The proposed project with its new powerplants, auxiliary spillway, dikes, and slightly enlarged reservoir, is considered an extensive project redevelopment. In accordance with the Commission's policy for relicensing involving extensive project redevelopment, ^{5/} the new license term is for a period of 50 years.

It is ordered that:

(A) This license is issued to the Northern States Power Company (Licensee) of Eau Claire, Wisconsin, under Part I of the Federal Power Act (Act); for a period effective the first day of

^{4/} The proposed project will utilize a renewable resource that will save the equivalent of approximately 223,000 barrels of oil or 62,900 tons of coal per year.

^{5/} The Montana Power Co., 56 F.P.C. 2008 (1976).

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the month in which this order is issued, and ending September 30, 2033, for the construction, operation and maintenance of the Jim Falls Project No. 2491, located in Chippewa County, Wisconsin, on the Chippewa River, a navigable water of the United States. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Jim Falls Project No. 2491, consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

<u>Exhibit</u>	<u>FERC No. 2491-</u>	<u>Showing</u>
G-1	34	Project Map
G-2	35	Project Map, Dam and Powerhouse Area

(2) Project works consisting of: (1) an 8,660-foot-long earthfill dam with concrete spillways consisting of a 214.6-foot-long main spillway flashboard section, a 358-foot-long main spillway gated section, and a 147-foot-long auxiliary spillway gated section; (2) a reservoir having a storage capacity of 11,400 acre-feet at normal pool elevation 953.2 feet NGVD; (3) a main powerhouse, with intake structure, containing 3 turbine-generator units rated at 16,200 kW each and a total installed capacity of 48,600 kW; (4) a minimum flow release powerhouse, with intake structure, containing one turbine-generator unit rated at 600 kW; (5) a main powerhouse tailrace returning flow to the river about 4,500 feet downstream from the main spillway; (6) a minimum flow release powerhouse tailrace returning flow to the river about 90 feet downstream from the main spillway; (7) 7.2-kV main and minimum flow release generator leads, a 0.75-mile-long 15-kV underground cable, and three 7.2/115-161-kV 15/28-MVA transformers connecting to existing lines; and (8) appurtenant facilities. The total project rated capacity is 49,200 kW.

The location, nature, and character of these project works are generally shown and described by the exhibit cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated and described as:

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Exhibit A

Table A-3, Titled: "Jim Falls Hydro Project Significant Data".

<u>Exhibit F</u>	<u>FERC No. 2491</u>	<u>Showing</u>
1	23	General Plan
2	24	Powerhouse Vicinity Plan
3	25	Powerhouse Roof Plan EL. 924
4	26	Powerhouse Transverse Section
5	27	Powerhouse Sections
6	28	Minimum Flow Unit Plan & Section
7	29	Main Spillway Plan & Elev.
8	30	Main Spillway Section
9	31	Auxiliary Spillway Plan & Elev.
10	32	Main Spillway Plan & Elev.
11	34	Main Spillway Sections

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A, F, and G designated in ordering paragraph (B) above, are approved and made a part of the license.

(D) The following reports in the Exhibit E, filed May 6, 1982, are approved and made a part of the license:

- (1) The Report on Fish, Wildlife and Botanical Resources, consisting of 17 pages of text (E84 through E100); and
- (2) The Report on Recreational Resources, consisting of 23 pages of text (E104 through E125), appendix E-5-2, and one drawing entitled "Recreational Development Map" (FERC No. 2491-36).

(E) This license is also subject to Articles 1 through 37 set forth in Form L-6 (revised October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States", attached to and made a part of this license. The license is also subject to the following articles:

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Article 38. The Licensee shall commence construction of project works within 2 years from the issuance date of the license and shall complete construction of the project within 4 years from the issuance date of the license.

Article 39. The Licensee shall provide the Commission's Regional Engineer and the Director, Office of Hydropower Licensing, one copy each of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, at least 60 days prior to start of construction. The Director, Office of Hydropower Licensing, may require changes in the plans and specifications to assure a safe and adequate project.

Article 40. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design.

At least 30 days prior to start of construction of the cofferdam, the Licensee shall provide to the Commission's Regional Engineer and Director, Office of Hydropower Licensing, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 41. The Licensee shall within 90 days of completion of construction file for approval by the Director, Office of Hydropower Licensing, revised Exhibits A, F, and G to describe and show the project as-built.

Article 42. The Licensee shall discharge from the Jim Falls Project, a continuous minimum flow measured in the bypass reach as follows: from the time of ice-out in the spring through October 31 -- 240 cubic feet per second (cfs), and November 1 through the time of ice-out in the spring -- 20 cfs, or inflow to the reservoir, whichever is less, for the protection and enhancement of aquatic resources in the Chippewa River. These flows may be temporarily modified, if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee and the Wisconsin Department of Natural Resources.

Article 43. The Licensee shall, after consultation with the Wisconsin Department of Natural Resources and the U. S. Fish and Wildlife Service, prepare a plan and a detailed schedule for implementation of the mitigative measures proposed in the Report on Fish, Wildlife, and Botanical Resources. Within 2 years from the date of issuance of this license, the Licensee shall file for Commission

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approval, with copies to the consulted agencies, the plan and schedule for implementation of the measures to be provided at the project for enhancement and protection of fish and wildlife resources. Agency comments on the plan and schedule shall be included in the filing.

Article 44. The Licensee shall, prior to the commencement of any construction at the project, consult with the Wisconsin State Historic Preservation Officer (SHPO) about the need for any cultural resource survey and salvage work. The Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historic resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historic work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 45. The Licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

- (a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 65,600 horsepower.
- (b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 13 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 46. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the

first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10 year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 47. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or

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

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

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support

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structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

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

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

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

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

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

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

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

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(F) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this license and its terms and conditions, it shall be signed by the Licensees and returned to the Commission within 60 days from the date this order is issued.

Quentin A. Edson
Director, Office of
Hydropower Licensing

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Project No. 2491-003

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Northern States Power Company this _____ day of _____, 19 ____, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 19 ____, a certified copy of the record of which is attached hereto.

By _____
President

Attest:

Secretary

(Executed in quadruplicate)

Form L-6
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE WATERS
AND LANDS OF THE UNITED STATES

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

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

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

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Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

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

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

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

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

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

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Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

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

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

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

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

Article 13. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 14. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

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

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

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the

project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

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

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

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

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber

so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 27. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 32. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 33. The Licensee shall make use of the Commission guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the trans-

mission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 14. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 15. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

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Article 16 The right of the licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 17. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

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