

172 FERC ¶ 62,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Hydropower Company, LLC

Project No. 14633-001

ORDER GRANTING EXEMPTION FROM LICENSING
(10 MW OR LESS)

(Issued September 24, 2020)

1. On October 1, 2018, New England Hydropower Company, LLC (NEHC) filed an application to exempt its proposed 420-kilowatt (kW) Albion Dam Hydroelectric Project No. 14633 (Albion Project or project)¹ from the requirements of Part I of the Federal Power Act (FPA).² The project will be located on the Blackstone River, near the towns of Cumberland and Lincoln, Providence County, Rhode Island.³ The project will not occupy federal land. As discussed below, this order issues an exemption from licensing for the project.

BACKGROUND

¹ NEHC revised certain parts of the exemption application on May 9, 2019 and May 21, 2019 in response to Commission staff additional information requests.

² The Commission is authorized to exempt from the licensing requirements of Part I of the FPA, small hydroelectric projects with an installed capacity of 10 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 (2018), *amended by* the Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 127 Stat. 493 (2013) (amending, *inter alia*, section 405 to define “small hydroelectric power projects” as having an installed capacity that does not exceed 10 megawatts).

³ The Blackstone River is a navigable waterway of the United States. *Robert J. Heavey*, 75 FERC ¶ 62,108 (1996). Therefore, the project is required to be licensed (or exempted from licensing) by the Commission pursuant to section 23(b)(1) of the FPA. *See* 16 U.S.C. § 817 (2018).

Project No. 14633-001

- 2 -

2. The Commission issued a public notice of the application filing, which was published in the *Federal Register* on October 17, 2018.⁴

3. On April 10, 2019, the Commission issued a public notice accepting the application for filing, soliciting motions to intervene and protests, and setting June 9, 2019, as the deadline for filing motions to intervene and protests.⁵ No motions to intervene or protests were filed.

4. On June 11, 2019, the Commission issued a public notice indicating that the application was ready for environmental analysis, and setting August 10, 2019, as the deadline for filing comments, recommendations, and terms and conditions.⁶ Rhode Island Department of Environmental Management (Rhode Island DEM) filed comments on August 2, 2019, and the U.S. Department of Interior (Interior) submitted comments, recommendations, and terms and conditions on August 7, 2019.

5. Commission staff prepared an Environmental Assessment (EA), which was issued on January 28, 2020.⁷ The EA analyzes the effects of the proposed project and alternatives to it. The EA contains background information, an analysis of project impacts, and support for the requirements of this exemption from licensing. No comments were filed on the EA. Based on the record of the proceeding, including the EA, granting an exemption from licensing for the Albion Project would not constitute a major federal action significantly affecting the quality of the human environment. The comments, recommendations, and conditions have been fully considered in determining whether, and under what conditions, to issue this exemption.

PROJECT DESCRIPTION

6. The project will use the water power potential of an existing 266-foot-long, 8.7-foot-high concrete gravity dam, known as the Albion Dam, with an ogee spillway and a crest elevation of 86.7 feet North American Vertical Datum of 1988 (NAVD88). The dam creates an impoundment with a surface area of 18 acres and a storage capacity of 235 acre-feet at an elevation of 87.0 feet NAVD88.

7. To install the hydropower facilities, a 51-foot-long, 45.75-foot-wide intake canal will be excavated to divert water from the impoundment. From the intake canal, water

⁴ 83 Fed. Reg. 52,436 (2018).

⁵ 84 Fed. Reg. 15,611 (2019).

⁶ 84 Fed. Reg. 28,031 (2019).

⁷ 85 Fed. Reg. 5,950 (2020).

will pass through two new 14-foot-wide, 10.4-foot-high hydraulically-powered sluice gates that will each be equipped with a 15-foot-wide, 9.7-foot-high steel trashrack with 9-inch clear-bar spacing. Water will be conveyed to the powerhouse through two 30-foot-long, 15-foot-wide, 9.7-foot-high concrete penstocks. A new 50-foot-long, 24-foot-wide, 18-foot-high concrete powerhouse will contain two 210-kW Archimedes Screw Turbine generating units (ASTs), for a total installed capacity of 420 kW. Water will be discharged from the powerhouse to the Blackstone River through a new 50-foot-long concrete tailrace. Power will be transmitted over a 500-foot-long, above-ground transmission line from the powerhouse to the local distribution system at an existing utility pole that is owned by the Narragansett Electric Company.⁸

8. The proposed project boundary encloses 22.8 acres, including all the proposed project facilities described above. The project will bypass approximately 100 feet of the Blackstone River.

A. Proposed Operation

9. NEHC proposes to operate the project in a run-of-river mode, such that outflow approximates inflow at all times, and water levels in the impoundment are not drawn down for electric generation. NEHC proposes to maintain run-of-river operation using water-level sensors to remotely monitor the impoundment and downstream reach, and an automatic controller to operate the turbines and sluice gates.

10. NEHC proposes to maintain an interim conservation flow release of 100 cubic feet per second (cfs), or inflow (if less), from the impoundment to the bypassed reach via spill. NEHC proposes to develop a bypassed reach flow study plan that includes provisions for conducting a study after the project commences operation to determine whether the 100-cfs conservation flow is sufficient to protect aquatic resources in the bypassed reach, or if a higher flow is warranted.

11. The minimum and maximum hydraulic capacities of the project will be 30 and 611 cfs, respectively. At flows less than 130 cfs (the minimum operating capacity of the project plus the proposed 100-cfs conservation flow), the project will not operate, and all flow will be passed over the dam. At flows between 130 cfs and 711 cfs, the project will operate and the 100-cfs conservation flow will be passed over the dam. At flows greater than 711 cfs, the project will operate at its maximum hydraulic capacity and all remaining flow will pass over the dam. The average annual generation will be approximately 2,034 megawatt-hours.

B. Proposed Environmental Measures

⁸ A more detailed project description is contained in ordering paragraph (B)(2).

12. In addition to the measures described above, NEHC proposes to:

- (1) (a) install a rubber bumper on the leading edge of the turbine screws to minimize/avoid injury to fish; (b) remove sharp edges and pinch points on the ASTs to minimize/avoid injury to fish; (c) construct the outlet works to minimize obstructions, including smoothing the concrete channel to allow uniform passage around the turbines and through the tailrace; and (d) construct the end of the tailrace to disperse the water at the point of discharge to the Blackstone River to reduce the potential for false attraction of upstream migrating fish at the tailrace;
- (2) install a trashrack with clear bar spacing of no less than 9 inches to allow resident and migratory fish to use the ASTs for downstream passage when the project is operating;
- (3) limit in-water construction to periods of low flow (July 1 to September 30), to the extent possible, to reduce the effects of construction activities on fish spawning;
- (4) develop an operation compliance monitoring plan for maintaining and monitoring run-of-river operation and minimum flow releases;
- (5) implement an impoundment refill procedure following drawdowns for maintenance or emergency purposes, whereby 90 percent of inflow is passed downstream and the impoundment is refilled by the remaining 10 percent of inflow to the project;
- (6) implement best management practices (BMPs) for minimizing impacts to water quality associated with soil erosion and sedimentation during project construction;
- (7) conduct water quality monitoring during the low-flow season (July 1 – October 31) for 3 years after the project commences operation to verify that project operation does not adversely affect water temperature or dissolved oxygen levels in the Blackstone River;
- (8) provide upstream passage for anadromous fish within 3 years of notification by the U.S. Fish and Wildlife Service (FWS) or the Rhode Island DEM that a fishway is needed;
- (9) develop an upstream fish passage facilities effectiveness study plan within 3 years of notification by FWS and Rhode Island DEM that upstream fish passage facilities are needed;
- (10) conduct an upstream eel passage facility siting survey during the first passage season after the project commences operation, and construct an eel passage facility within 3 years of commencing operation;

Project No. 14633-001

- 5 -

- (11) conduct a study to determine the effects of the ASTs on fish during the first downstream fish passage season after the project commences operation, and develop protective measures at the project if the study indicates that the project does not provide safe, timely, and effective downstream fish passage;
- (12) develop a plan that describes the operation and maintenance of fish passage facilities within 6 months of the facilities commencing operation;
- (13) (a) conduct a pre-construction freshwater mussel survey to identify the location of any mussels in the project area; and (b) if the survey indicates the construction activities would affect mussels, then develop and implement a freshwater mussel monitoring and relocation protocol that includes measures for monitoring specific locations in the Blackstone River during construction and relocating exposed mussels to wetted areas;
- (14) develop an invasive plant species monitoring and control plan that includes provisions for identifying and mapping existing invasive plant species within the project boundary, monitoring the area periodically for invasive plant species, and initiating an early detection, rapid response protocol for infestations;
- (15) restrict tree cutting between April 1 and October 31 during project construction to protect the northern long-eared bat;
- (16) construct a parking lot to accommodate six cars to provide recreational access at the project;
- (17) install a floating safety boom across the intake channel that includes signage to warn boaters of the turbines;
- (18) implement the following measures to minimize the effect of the project on known historic properties that are eligible for or listed on the National Register: (a) install interpretive signage; (b) design the project (including the powerhouse, concrete retaining walls, and riprap) in a manner that minimizes the visual impacts of the project on the historical setting; and (c) prior to construction, provide a record of the Albion Dam in the Rhode Island Historic Resources Archive (including photographs and a written narrative of the Albion Dam).

WATER QUALITY CERTIFICATION

13. On June 5, 2020, the Rhode Island DEM issued a water quality certification (certification) for the Albion Project. The certification includes 29 conditions that are contained in Appendix B of this order and made conditions of the exemption by ordering paragraph (A).

FPA SECTION 30(c) CONDITIONS

14. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),⁹ 10-megawatt exemptions are subject to the requirements of section 30(c) of the FPA,¹⁰ which provides, among other things, that the Commission “shall include in any such exemption . . . such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State [fish and wildlife] agency each determine are appropriate to prevent loss of, or damage to, [fish and wildlife] resources” 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 (section 30(c) conditions).¹¹

15. On August 7, 2019, Interior filed 19 section 30(c) conditions that require the exemptee to:¹²

- (1) operate the project in an instantaneous run-of-river mode;
- (2) release an interim conservation flow of 100 cfs, or inflow (if less) to the bypassed reach as uniform spill over the project dam until NEHC completes the bypassed reach flow study described in condition number 3 below;
- (3) develop a bypassed reach flow study plan that includes provisions for conducting a study after the project commences operation to determine whether the 100-cfs interim conservation flow is sufficient to protect aquatic resources in the bypassed reach, or if a higher flow is warranted;
- (4) develop a plan for maintaining and monitoring run-of-river operation and minimum flow releases at the project;
- (5) install a trashrack with clear bar spacing of no less than 9 inches;
- (6) conduct water quality monitoring for up to 3 years, beginning in the first low-flow season after the project commences operation;

⁹ 16 U.S.C. § 2705(b) (2018).

¹⁰ *Id.* § 823a(c).

¹¹ 18 C.F.R. § 4.106 (2020).

¹² As described above, NEHC proposes to implement most of the section 30(c) conditions filed by Interior (items 1 – 14), except for the conditions that are procedural or administrative in nature (15 – 18). *See supra* PP 9 – 12.

- (7) (a) conduct a pre-construction survey of freshwater mussels in the project area to determine if any mussel beds could be affected by construction of the project; and (b) if the mussel survey documents mussels residing in the Blackstone River that would be impacted by construction, then develop a mussel monitoring and relocation protocol to monitor specific locations with the Blackstone River during construction and relocate any exposed mussels in the locations to areas that will remain wetted during construction;
- (8) (a) provide FWS and the Rhode Island DEM with data showing results of previous studies that assessed the effects of ASTs on fish injury and mortality; (b) if the FWS or Rhode Island DEM deem the previously-collected AST injury/mortality data to be insufficient, then conduct a site-specific study in consultation with FWS and Rhode Island DEM to assess injury and mortality associated with turbine passage; and (c) if the results of the AST injury/mortality assessment(s) indicate that the ASTs do not provide safe passage, then implement protective measures in consultation with FWS and Rhode Island DEM;
- (9) (a) develop a plan for conducting a survey during the first migration season after the project commences operation to assess where juvenile American eels are attempting to move upstream past the project; and (b) based on the results of the upstream eel survey, develop a plan for installing upstream eel passage facilities within 3 years after the project commences operation;
- (10) provide upstream passage for anadromous fish within 3 years after receiving notification from FWS or Rhode Island DEM that fishways are needed;
- (11) develop a plan to study the effectiveness of upstream fish passage facilities within 3 years after receiving notification from FWS or Rhode Island DEM that upstream anadromous fish passage facilities are needed;
- (12) develop a plan that describes the operation and maintenance of fish passage facilities within 6 months of the facilities commencing operation;
- (13) develop an invasive species monitoring and control plan that includes provisions for identifying, monitoring, and controlling the spread of invasive species in the project area;¹³

¹³ For purposes of administering compliance with the terms of this exemption, we interpret “project area” to mean project lands (*i.e.*, lands enclosed within the project boundary as delineated by the approved Exhibit G).

- (14) implement an impoundment refill procedure following drawdowns for maintenance or emergency purposes where no more than 10 percent of inflow is stored and 90 percent of inflow is released downstream of the dam;
- (15) notify FWS and Rhode Island DEM when the project commences operation and provide a set of as-built drawings;
- (16) allow FWS and Rhode Island DEM to inspect the project during operation to monitor compliance with the terms and conditions of the exemption;
- (17) file with the Commission any additional or altered conditions required by the FWS; and
- (18) incorporate in any conveyance (by lease, sale, or otherwise) of the project, the terms and conditions of the exemption.

16. The section 30(c) conditions are set forth in Appendix A of this order and are incorporated into the exemption by ordering paragraph (A).

THREATENED AND ENDANGERED SPECIES

17. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)¹⁴ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of their designated critical habitat. Based on the U.S. Fish and Wildlife Service's (FWS) Information for Planning and Consultation (IPaC) website, the northern long-eared bat (*Myotis septentrionalis*) has the potential to occur in the project vicinity.¹⁵

18. FWS finalized an ESA section 4(d) rule for the northern long-eared bat in January 2016.¹⁶ The ESA section 4(d) rule focuses on minimizing the effects of disturbances on known northern long-eared bat hibernacula and the effects of tree removal on roosting northern long-eared bats, including maternity colonies, located within the zone associated

¹⁴ 16 U.S.C. § 1536(a) (2018).

¹⁵ See Interior's official list of threatened and endangered species, accessed by staff using the IPaC database (<https://ecos.fws.gov/ipac/>) on August 6, 2020, and placed in the record for Docket No. P-14633-001 on August 6, 2020.

¹⁶ FWS, 2016. Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat. 81 Fed. Reg. 9, 1900-1922 (January 14, 2016). Section 4(d) of the ESA directs FWS to issue regulations deemed "necessary and advisable to provide for the conservation of threatened species." 16 U.S.C. § 1533(d) (2012).

with the spread of white-nose syndrome. In the FWS's January 5, 2016 Programmatic Biological Opinion for the section 4(d) rule (Programmatic BO),¹⁷ FWS found that incidental take of the northern long-eared bat is not prohibited unless the action: (1) affects a northern long-eared bat hibernaculum or could alter the entrance or the environment of a hibernaculum; (2) includes the removal of a known, occupied maternity roost tree or any trees within 150 feet of a known, occupied maternity roost tree during the pup season (June 1 – July 31);¹⁸ or (3) includes the removal of any trees within 0.25 mile of a northern long-eared bat hibernaculum at any time of year. In addition, removal of hazardous trees for the protection of human life and property is not prohibited under the section 4(d) rule.

19. The project is located within the white-nose syndrome buffer zone for the northern long-eared bat.¹⁹ No hibernacula are known to occur at or near the project. In the EA,²⁰ Commission staff determined that although there is no documentation of northern long-eared bat at the project, the bat has been documented approximately 1.5 miles south of the project and is likely present in the project area. Mature forest in the immediate vicinity of the project could provide suitable habitat for northern long-eared bat summer roosting and foraging activities. Any northern long-eared bats that are present at the project could be adversely affected by construction of project facilities (e.g., construction of the powerhouse, intake channel and tailrace, transmission line, access road, and parking lot), and by project maintenance activities that require tree removal (e.g., vegetation maintenance in the transmission line right-of-way).

20. Avoiding the removal of trees at the project from June 1 through July 31 would ensure that prohibited take of northern long-eared bats under the Programmatic Biological Opinion does not occur. Therefore, Article 29 requires that NEHC avoids

¹⁷ FWS, 2016. *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions*. U.S. Fish and Wildlife Service, Midwest Regional Office. Available at <https://www.fws.gov/midwest/endangered/mammals/nleb/pdf/BOnlebFinal4d.pdf>.

¹⁸ FWS's Programmatic Biological Opinion states that northern long-eared bats roost in cavities, underneath bark, crevices, or hollows of both live and dead trees and/or snags with a diameter of 3 inches or greater at breast height. See FWS's Programmatic Biological Opinion at pp. 11 and 18. Diameter "at breast height" refers to the tree diameter as measured about 4 to 4.5 feet above the ground.

¹⁹ The white-nose syndrome buffer zone encompasses counties within 150 miles of a U.S. county or Canadian district in which white-nose syndrome or the fungus that causes white-nose syndrome is known to have infected bat hibernacula.

²⁰ EA at 74 - 75.

cutting trees within the project boundary from June 1 through July 31, unless a tree poses an immediate threat to human life or property.

21. On January 30, 2020, FWS issued a letter concluding that any take that may occur as a result of issuing an exemption for this project is not prohibited under the ESA Section 4(d) rule.²¹ Based on the FWS's letter, our responsibilities under section 7(a)(2) with respect to the northern long-eared bat are fulfilled through FWS's 2016 Programmatic Biological Opinion.

NATIONAL HISTORIC PRESERVATION ACT

22. Under section 106 of the National Historic Preservation Act²² and its implementing regulations,²³ 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 Office (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

23. The project boundary includes the Albion Dam, which is a contributing resource to the National Register-eligible Albion Historic District. In the EA, Commission staff concluded that developing and implementing an HPMP with the following measures would protect historic properties in the project's area of potential effects from adverse project effects: (1) NEHC's proposed measures (*i.e.*, documenting the Albion Dam, installing interpretive signage, and designing the project to minimize the visual impacts on the historical setting); (2) in the event any unidentified cultural resources are discovered during construction, NEHC would stop all land-clearing and land-disturbing activities in the vicinity of the resource, and consult with the SHPO to determine the need for any cultural resource studies or measures; and (3) prior to implementing any project modifications not specifically authorized by the exemption, NEHC would consult with

²¹ See Interior's January 30, 2020 letter accessed by Commission staff using the IPaC database (<https://ecos.fws.gov/ipac/>), and placed in the record for Docket No. P-14633-001 on January 30, 2020.

²² Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108 (2018).

²³ 36 C.F.R. Part 800 (2019).

the SHPO and determine the effects of the activities and the need for any cultural resource studies or measures.²⁴

24. To satisfy these responsibilities for exemption actions in Rhode Island, the Commission executed a Programmatic Agreement (PA) with the Rhode Island SHPO on August 11, 2020,²⁵ and invited NEHC to concur with the stipulations of the PA. NEHC concurred. The PA requires NEHC to prepare and implement an Historic Properties Management Plan (HPMP) for the term of any exemption issued for this project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 31 requires the exemptee to implement the PA and to file the HPMP with the Commission within six months of exemption issuance.

RECOMMENDATIONS AND OTHER MEASURES

A. Soil and Sediment Test and Disposal Plan

25. NEHC proposes to reuse soil that is excavated during construction, and to dispose of any material that is contaminated with hazardous substances. In the EA, Commission staff concluded that soil and sediment disturbed during project construction has the potential to release contaminants into the environment, and that a soil and sediment test and disposal plan with protection measures would reduce the potential for hazardous materials to enter the Blackstone River during project construction and operation.²⁶ Staff also recommended a soil and sediment test and disposal plan that includes the following: (1) methods to be employed in testing disturbed soil and sediments during construction; (2) mitigation measures proposed to minimize inputs of contaminated soil and sediment into the water column during construction and other sediment-disturbing activities; and (3) an implementation schedule. Implementing such a plan would help ensure that soil and sediment disturbed by the project is handled and disposed of properly, and would serve to reduce the impact of contaminated materials to aquatic resources during in-water construction and land-disturbing activities. Article 27 requires the plan.

B. Fish Protection Measures

26. NEHC proposes to use flow through the ASTs as the primary route for downstream fish passage and to design the turbines to reduce the effects on downstream migrating fish that pass through the turbines. Specifically, NEHC would: (1) install a

²⁴ See EA at 75-76.

²⁵ See Commission's August 11, 2020 letter of *Transmittal of Executed Programmatic Agreement*.

²⁶ EA at 74.

rubber bumper on the leading edge of the turbine screws to minimize/avoid injury to fish; (2) remove sharp edges and pinch points on the ASTs to minimize/avoid injury to fish; and (3) construct the outlet works to minimize obstructions, including smoothing the concrete channel to allow uniform passage around the turbines and through the tailrace. In the EA, Commission staff concluded that installing the proposed ASTs at the Albion Project and implementing NEHC's proposed measures would provide a downstream passage route that would minimize injury to migrating fish and eels.²⁷ Article 28 requires the exemptee to construct the project with these design features.

27. To reduce the potential for false attraction of upstream migrating fish and eels at the tailrace, NEHC proposes to construct the tailrace to "fan water at the turbine discharge." In the EA, staff concluded that dispersing the turbine discharge as proposed by NEHC would reduce the likelihood of false attraction flows for upstream migrating fish and eels.²⁸ Article 28 requires the exemptee to design the tailrace so that it disperses water at the point of discharge to the Blackstone River.

C. Recreation Access

28. To provide access to fishing in the Blackstone River, NEHC proposes to construct a parking lot that would accommodate six vehicles. In its August 7, 2019 letter, Interior recommended that NEHC allow access to the project for public recreation. In the EA, Commission staff concluded that the proposed parking lot would improve recreational use and access to the eastern bank of the Blackstone River for fishing.²⁹ Article 30 requires the exemptee to install the parking lot and install signage at the parking lot indicating where fishing is permitted at the project.

ADMINISTRATIVE PROVISIONS

29. All projects exempted from licensing under Part I of the FPA are subject to standard terms and conditions. These terms and conditions are included as standard Articles 1 through 9. Special Articles 10 through 26 which provide for administration of the exemption from licensing and dam safety, are also included in this exemption.

²⁷ EA at 47.

²⁸ EA at 45 - 46.

²⁹ EA at 63.

A. Annual Charges

30. The Commission collects annual charges from exemptees for the administration of its hydropower program.³⁰ However, as explained in Article 10, under the regulations currently in effect, projects with an authorized installed capacity of 1,500 kW or less, like this project, are not currently assessed an annual charge.

B. Exhibit A

31. Exhibit A is a description of the project. Exhibit A, pages A-1 through A-3, and A-5 through A-8, filed on May 9, 2019, is approved in ordering paragraph (C). Page A-4 of Exhibit A is not approved because it does not contain the transmission line capacity. Article 11 requires the exemptee to file a revised Exhibit A in its entirety for approval by the Commission, including a revised page A-4 that includes the transmission line capacity.

C. Start of Construction

32. Standard Article 3 provides that the Commission may revoke the exemption if actual construction of the project's generating facilities has not begun within two years or has not been completed within four years from the date this exemption is granted. Additionally, Article 12 is included in this exemption and states that the exemptee must commence construction of the project works within two years from the issuance date of the exemption and complete construction of the project within four years from the issuance date of the exemption.³¹

D. Exhibit F and G Drawings

33. NEHC revised the Exhibit F drawings on May 9, 2019, and revised the Exhibit G drawing on February 26, 2019. These Exhibit F and Exhibit G drawings conform to the Commission's rules and regulations, and are approved and made part of this exemption in ordering paragraph (C).³² The Commission requires exemptees to file sets of approved

³⁰ 18 C.F.R. § 11.1(b)(2) (2020).

³¹ The deadlines in Standard Article 3 (contained in the attached Form E-2) refer to the project's generating facilities. The deadlines in special Article 12 apply to on-the-ground construction of other project facilities.

³² Although NEHC refiled its Exhibit G drawing on May 9, 2019, the May 9 drawing did not conform to the specifications for maps and drawings required by section 4.39 of the Commission's regulations. The February 26, 2019 drawing complies with the Commission's regulations and includes the same project boundary information as the May 9 drawing. Therefore, we are approving the Exhibit G filed on February 26, 2019,

Project No. 14633-001

- 14 -

project drawings in electronic file format following the issuance of the exemption. Article 13 provides for the filing of these drawings.

34. Where new construction or modifications to the project are involved, the Commission requires exemptees to file revised exhibits of project features as built. Article 14 provides for the filing of these exhibits.

E. Project Safety

35. In the interest of ensuring the safety of this project, Article 15 is included in this exemption and requires the exemptee to comply with Part 12 (Safety of Water Power Projects and Project Works) of the Commission's regulations, which governs the safety of water power projects and project works.³³

36. Article 16 requires the exemptee to file the results of a Hazard Potential Classification and Inflow Design Flood (IDF) Study that includes: (1) an incremental hazard evaluation to determine the effects on downstream structures in the event of a dam failure; (2) a determination of the project's IDF; and (3) an assessment of the adequacy of the project's spillway capacity to safely pass the IDF. The study will confirm the appropriate hazard potential classification and IDF of the project to determine the required level of engineering review and applicable design criteria for the project's water impounding structures.

F. Operation and Maintenance

37. Ensuring that the exempted project is operated and maintained as required by this exemption is an important public interest function of the Commission. Therefore, Article 17 is included in this exemption and states that if the exemptee causes or allows essential project property to be removed or destroyed, or to become unfit for use, without adequate replacement, the Commission will deem it the exemptee's intent to surrender the exemption.

G. Exemptee Liability

38. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for "damages occasioned to the property of others by the construction,

and not the drawing filed on May 9, 2019.

³³ 18 C.F.R. Part 12 (2020). Article 15 is broader than Standard Article 8 (contained in the attached Form E-2), which essentially is subsumed in Article 15.

maintenance, or operation of the project works”³⁴ To clarify that exemptees are similarly liable, Article 18 is included in this exemption and states that the exemptee is liable for damages to the property of others.

H. Conservation and Development of Fish and Wildlife Resources

39. Changes in environmental conditions or identification of previously unknown project effects on fish and wildlife resources may warrant changes to project requirements to protect fish and wildlife. Therefore, Article 19 provides that the Commission may on its own motion, or on the recommendation of the federal or state fish and wildlife agencies, require the exemptee to modify project structures or operation or construct, maintain, and operate facilities for the conservation and development of fish and wildlife resources.

I. Project Financing

40. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 20 requires the exemptee to file, for Commission approval, documentation of project financing for the construction, operation, and maintenance of the project at least 90 days before starting project construction.

J. Property Rights

41. Pursuant to 18 C.F.R. § 4.31(c)(2)(ii), an applicant for an exemption is required to demonstrate that, at the time it files its exemption application, it has sufficient rights to any non-federal land and facilities required for the construction and operation of the project. NEHC’s application, as supplemented, contains documentation that it has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, Article 21 is included in this exemption and reserves the Commission’s authority to terminate the exemption if, in the future, the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

K. Review of Final Plans and Specifications

42. To ensure the exemptee is constructing and operating a safe and adequate project, Articles 22 through 25 require the exemptee to provide the Commission’s Division of Dam Safety and Inspections (D2SI) – New York Regional Office, for its review and approval: contract plans and specifications; cofferdam and deep excavation construction

³⁴ 16 U.S.C. § 803(c) (2018).

drawings, as appropriate; a public safety plan;³⁵ and project modifications resulting from environmental requirements.

43. In the EA, Commission staff concluded that NEHC's proposal to use BMPs to minimize erosion and sedimentation associated with project construction lacks detail regarding the actual measures that would be used to control erosion, revegetate the area, and monitor for compliance.³⁶ Commission staff recommended developing an erosion and sediment control plan that includes a detailed description of the site-specific BMPs to be implemented to control erosion and sedimentation in construction areas. Article 22 requires this measure.

44. The exemptee may not begin any construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized, in writing, the start of construction.

L. Commission Approval of Resource Plans, Notification, and Filing of Reports and Amendments

45. In Appendices A and B, there are section 30(c) and certification conditions that either: do not require the exemptee to file plans with the Commission for approval; do not require the exemptee to file reports with the Commission; require notice to Interior, but not the Commission, of emergencies and other activities; or contemplate unspecified long-term changes to project operation or facilities without prior Commission approval. Therefore, Article 26 requires the exemptee to: (1) file plans with the Commission for approval; (2) file reports with the Commission; (3) notify the Commission of planned and unplanned deviations from the exemption requirements; and (4) file amendment applications, as appropriate.

The Director orders:

(A) Effective the date this order is issued, the Albion Dam Hydroelectric Project is exempted from Part I of the Federal Power Act (FPA), subject to the conditions submitted by the U.S. Department of the Interior under section 30(c) of the FPA as those conditions are set forth in Appendix A of this order, the Rhode Island Department of Environmental Management's water quality certification conditions in Appendix B, and the articles specified below.

³⁵ The public safety plan must include a description of the safety boom and signage that will be used to alert boaters of the project intake and egress site.

³⁶ EA at 73 – 74.

Project No. 14633-001

- 17 -

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in those lands, enclosed by the project boundary shown by Exhibit G filed February 26, 2019.

Exhibit G Drawing	FERC Drawing No. P-14633-	Drawing Title	Filename Drawing Title³⁷
Sheet 1	3	Proposed Project Boundary Map	Project Boundary Map

(2) The following project works: (1) an existing 266-foot-long, 8.7-foot-high concrete gravity dam, known as the Albion Dam, with an ogee spillway and a crest elevation of 86.7 feet North American Vertical Datum of 1988 (NAVD88); (2) an existing 18-acre impoundment with a storage capacity of 235 acre-feet at an elevation of 87.0 feet NAVD88; (3) a new 51-foot-long, 45.75-foot-wide intake canal; (4) two new 14-foot-wide, 10.4-foot-high hydraulically-powered sluice gates, each equipped with a 15-foot-wide, 9.7-foot-high steel trashrack with 9-inch clear-bar spacing; (5) two new 30-foot-long, 15-foot-wide, 9.7-foot-high concrete penstocks; (6) a new 50-foot-long, 24-foot-wide, 18-foot-high concrete powerhouse containing two 210-kW Archimedes Screw Turbine generating units, for a total installed capacity of 420 kW; (7) a new 50-foot-long concrete tailrace; (8) a new step-up transformer and 500-foot-long, above-ground transmission line connecting the powerhouse to the local distribution system at an existing utility pole owned by the Narragansett Electric Company; (9) a new approximately 350-foot-long access road; and (10) appurtenant facilities.

(3) The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A: Pages A-1 through A-3, and A-5 through A-8 filed on May 9, 2019.

Exhibit F: The following Exhibit F drawings filed on May 9, 2019:

Exhibit F Drawing	FERC Drawing No. P-14633-	Drawing Title	Filename Drawing Title³⁸
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³⁷ This exact drawing title must be used in the filename when filing the electronic file format drawing required in Article 13. Commission staff shortened the drawing title due to filename character limits. There is no need to modify the title as it appears on the drawing.

³⁸ These exact drawing titles must be used in the filename when filing the electronic file format drawings required in Article 13. Commission staff shortened the

Sheet 1	1	Proposed Overall Site Plan, Profile & Sections	Plan of Structures
Sheet 2	2	Proposed Powerhouse Plan View & Sections	Plan of Powerhouse

(4) 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 F and G, as described above, are approved and made part of the exemption.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled, "Standard Terms and Conditions of Exemption from Licensing," as reproduced at the end of this order, and the following additional articles:

Article 10. Administrative Annual Charges. The exemptee must pay the United States annual charges, effective as of the start of project construction, 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 420 kilowatts. Under the regulations currently in effect, projects with authorized installed capacities of less than or equal to 1,500 kilowatts will not be assessed an annual charge.

Article 11. Exhibit A. Within 45 days of the effective date of this exemption, the exemptee must file a revised Exhibit A in its entirety for approval by the Commission, including a revised page A-4 that includes the transmission line capacity.

Article 12. Start of Construction. The Commission may terminate this exemption if the actual construction of any project works has not begun within two years or has not been completed within four years from the issuance date of this exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

Article 13. Exhibit F and G Drawings. Within 45 days of the date of issuance of this order, as directed below, the exemptee must file the approved exhibit drawings and

drawing titles due to filename character limits. There is no need to modify the titles as they appear on the drawings.

Project No. 14633-001

- 19 -

geographic information system (GIS) data in electronic file format.

(a) The exemptee must prepare digital images of the approved exhibit drawings in electronic format. Prior to preparing each digital image, the exemptee must add the FERC Project-Drawing Number (*i.e.*, P-14633-1 through P-14633-3) in the margin below the title block of the corresponding approved drawing. The exemptee must separate the Exhibit F drawings from the other project exhibits, and **label and file them as Critical Energy Infrastructure Information (CEII) material under 18 CFR § 388.113** (The submission should consist of: 1) a public portion consisting of a cover letter, the Exhibit G drawings, and GIS data; and 2) a CEII portion containing only the Exhibit F drawings). Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit Number, Filename Title, date of this order, and file extension in the following format [P-14633-1, F-1, Plan of Structures, MM-DD-YYYY.TIFF].

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (*i.e.*, latitude and longitude coordinates or state plane coordinates), arranged in a triangular format for GIS georeferencing the project boundary drawing to the polygon data. The exemptee must identify the spatial reference for the drawing (*i.e.*, map projection, map datum, and units of measurement) on the drawing and label each reference point. In addition, a registered land surveyor must stamp each project boundary drawing. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY:	black & white raster file
FILE TYPE:	Tagged Image File Format, (TIFF) CCITT Group 4 (also known as T.6 coding scheme)
RESOLUTION:	300 dots per inch (dpi) desired, (200 dpi minimum)
DRAWING SIZE:	22" x 34" (minimum), 24" x 36" (maximum)
FILE SIZE:	less than 1 megabyte desired

(b) Project boundary GIS data must be in a georeferenced electronic file format (such as ArcGIS shapefiles, GeoMedia files, MapInfo files, or a similar GIS format). The filing must include both polygon data and all reference points shown on the individual project boundary drawings. Each project development must have an electronic boundary polygon data file(s). Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The georeferenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) must include: FERC Project Number, data description, date of this order, and file extension in the following format [P-14633, boundary polygon or point data, MM-DD-YYYY.SHP]. The filing must include a separate text file describing the spatial reference for the georeferenced data: map projection used (*i.e.*, UTM, State Plane, Decimal Degrees, *etc.*),

Project No. 14633-001

- 20 -

the map datum (*i.e.*, North American 27, North American 83, *etc.*), and the units of measurement (*i.e.*, feet, meters, miles, *etc.*). The text file name must include: FERC Project Number, data description, date of this order, and file extension in the following format [P-14633, project boundary metadata, MM-DD-YYYY.TXT].

Article 14. *As-built Exhibits.* Within 90 days of completion of construction of the facilities authorized by this exemption, the exemptee must file, for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

Article 15. *Part 12 Requirements.* This project is subject to Part 12 of the Commission's regulations, 18 C.F.R. Part 12 (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 16. *Hazard Potential Classification and Inflow Design Flood Study.* Within six months of the issuance date of this order and at least 60 days prior to the start of any construction, the exemptee must file a Hazard Potential Classification and Inflow Design Flood (IDF) Study with the Secretary of the Commission, preferably through eFiling. The exemptee must also submit two hard copies of the study to the Commission's Division of Dam Safety and Inspections-New York Regional Engineer. The study must be performed in accordance with Chapters 1 and 2 of the Commission's Engineering Guidelines. The study must include: (1) an incremental hazard evaluation to determine the effects on downstream structures in the event of a dam failure; (2) a determination of the project's IDF; and (3) an assessment of the adequacy of the project's spillway capacity.

Article 17. *Operation and Maintenance.* The Commission may determine that the exemptee has impliedly surrendered this exemption if essential project property is removed or destroyed or becomes unfit for use, without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if the exemptee refuses or neglects to comply with the terms of the exemption and the orders of the Commission.

Article 18. *Liability.* This exemption is subject to the provisions of section 10(c) of the Federal Power Act, 16 U.S.C. § 803(c) (2018). That section provides that the exemptee must be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under this exemption; and in no event shall the United States be liable therefore.

Project No. 14633-001

- 21 -

Article 19. Conservation and Development of Fish and Wildlife Resources. The exemptee must, 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 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, the Secretary of Commerce, 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 20. Documentation of Project Financing. At least 90 days before starting construction, the exemptee must file with the Commission, for approval, the exemptee's documentation for the project financing. The documentation must show that the exemptee has acquired the funds, or commitment for funds, necessary to construct, operate, and maintain the project in accordance with this order. The documentation must include, at a minimum, financial statements, including a balance sheet, income statement, and a statement of actual or estimated cash flows which provide evidence that the exemptee has sufficient assets, credit, and projected revenues to cover project construction, operation, and maintenance expenses, and any other estimated project liabilities and expenses.

The financial statements must be prepared in accordance with generally accepted accounting principles and signed by an independent certified public accountant. The exemptee must not commence project construction until the filing is approved.

Article 21. Property Rights. The Commission reserves the right to require the exemptee to obtain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may terminate this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

Article 22. Contract Plans and Specifications. At least 60 days prior to the start of any construction, the exemptee must file final design documents with the Secretary of the Commission, preferably through eFiling. The exemptee must also submit two hard copies of the documents to the Division of Dam Safety and Inspections (D2SI)-New York Regional Engineer. The design documents must include: final plans and specifications, supporting design report, Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The exemptee may not begin construction until the D2SI-New York Regional Engineer has reviewed and commented on the documents, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

The Soil Erosion and Sediment Control Plan must include: a detailed description

of the site-specific best management practices to be implemented to control erosion and sedimentation in construction areas; an implementation schedule; and any monitoring or maintenance programs.

Article 23. Cofferdam and Deep Excavation Construction Drawings. Should construction require cofferdams or deep excavations, the exemptee must: (1) have a Professional Engineer who is independent from the construction contractor, review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction; and (2) ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the exemptee must file the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval with the Secretary of the Commission, preferably through eFiling. The exemptee must also submit two hard copies of the documents to the Commission's Division of Dam Safety and Inspections-New York Regional Engineer.

Article 24. Public Safety Plan. Within 60 days from the issuance of the exemption, the exemptee must file a Public Safety Plan with the Secretary of the Commission, preferably through eFiling. The exemptee must also submit two hard copies of the document to the Commission's Division of Dam Safety and Inspections-New York Regional Engineer. The plan must include a description of all safety devices and signage needed to warn the public of fluctuations in flow from the project or otherwise protect the public in the use of project lands and waters. The plan must also include a map showing the location of all public safety measures. For guidance on preparing public safety plans the exemptee can review the *Guidelines for Public Safety at Hydropower Projects* on the FERC website.

Article 25. Project Modification Resulting from Environmental Requirements. If environmental requirements under this exemption require modification that may affect the project works or operations, the exemptee must consult with the Commission's Division of Dam Safety and Inspections–New York Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 26. Commission Approval, Reporting, Notification, and Filing of Amendments.

(a) *Requirement to File Plans for Commission Approval*

Various measures in the U.S. Department of the Interior's (Interior) conditions issued pursuant to section 30(c) of the Federal Power Act and the Rhode Island Department of Environmental Management's (Rhode Island DEM) water quality certification conditions issued pursuant to section 401 of the Clean Water Act as set forth

Project No. 14633-001

- 23 -

in Appendices A and B of this exemption, require the exemptee to prepare plans, but do not require all plans to be submitted to the Commission for approval or specify a date for filing. The following plans must also be submitted to the Commission for approval by the deadlines specified below:

Interior 30(c) Condition No.	Rhode Island DEM Certification Condition No.	Plan Name	Date Due
3	12	Bypassed Reach Flow Study Plan	Within 6 months of exemption issuance
4	13	Operation Maintenance and Monitoring Plan	Within 1 year of exemption issuance
6	15	Water Quality Monitoring Plan	Within 1 year of exemption issuance
7.A	16.A	Mussel Survey Plan	Within 3 months of exemption issuance
7.B	16.B	Mussel Bed Monitoring and Relocation Plan	Within 1 year of exemption issuance
8	17	AST Injury and Mortality Study Plan	Within 6 months of exemption issuance
9	18	Juvenile American Eel Survey Plan	Within 6 months of exemption issuance
9	18	American Eel Upstream Passage Plan	Within 2 years of exemption issuance
12	21	Fish Passage Facility Operation and Maintenance Plan	Within 2 years of exemption issuance
13	-	Invasive Species Monitoring and Control Plan	Within 1 year of exemption issuance

With each plan filed with the Commission, the exemptee must include

Project No. 14633-001

- 24 -

documentation of its consultation, copies of comments and recommendations made in connection with the plan, and a description of how the plan accommodates the comments and recommendations. If the exemptee does not adopt a recommendation, the filing must include the exemptee's reasons, based on project-specific information. The Commission reserves the right to make changes to any plan filed. Upon Commission approval, the plan becomes a requirement of the exemption, and the exemptee must implement the plan, including any changes required by the Commission. Any changes in the above schedule or plans require approval by the Commission before implementing the proposed change.

(b) Requirement to File Reports

Certain Interior and Rhode Island DEM conditions in Appendices A and B of this exemption require the exemptee to provide information or reports. These reports will document compliance with the requirements of this exemption and may have bearing on future actions. Each such report must also be submitted to the Commission. These reports are listed below.

Interior 30(c) Condition No.	Rhode Island DEM Certification Condition No.	Report Name	Date Due
3	12	Bypassed Reach Flow Study Report	Within 4 years of exemption issuance or within 6 months of study completion
6	15	Water Quality Monitoring Report	Within 4 years of exemption issuance and by December 1 of any subsequent survey years
7.A	16.A	Mussel Survey Report	Within 1 year of exemption issuance
8	17	AST Injury and Mortality Study Report	Within 2 years of exemption issuance
9	18	Juvenile American Eel Survey Report	Within 4 years of exemption issuance

The exemptee must submit to the Commission documentation of any consultation with Interior and Rhode Island DEM, and copies of any comments and recommendations made by the agencies in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

(c) Requirement to Notify the Commission of Planned, Temporary Modifications to Exemption Requirements

The exemptee may deviate from the Interior and Rhode Island DEM conditions in Appendices A and B of this exemption for short periods of time (up to 3 weeks), without prior Commission approval, after concurrence from Interior and Rhode Island DEM. The exemptee must file a report with the Secretary of the Commission as soon as possible, but no later than 14 calendar days after the onset of the deviation. Each report must include: (1) the reasons for the deviation and whether operations were modified, (2) the duration and magnitude of the deviation, (3) any observed or reported environmental effects, and

(4) documentation of consultation with the agencies. For planned deviations exceeding 3 weeks, the exemptee must file an application for a temporary amendment to the exemption and receive Commission approval prior to implementation.

(d) Requirement to Notify the Commission of Unplanned Deviations that Last Longer than 3 Hours or Result in Environmental Effects

If the exemptee deviates from Interior's or Rhode Island DEM's conditions in Appendices A and B of this exemption, the exemptee must report each incident to the Secretary of the Commission. For any deviation that lasts longer than 3 hours or results in environmental effects, the exemptee must file a report as soon as possible, but no later than 14 calendar days after each such incident. The report must include: (1) the cause of the event; (2) the duration and magnitude of the deviation; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the exemptee's response; (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies; (6) documentation of any observed or reported environmental effects; and (7) a description of measures implemented to prevent similar deviations in the future.

(e) Requirement to Notify the Commission of Unplanned Deviations that Last 3 Hours or Less, and do not Result in Environmental Effects

For deviations lasting 3 hours or less that do not result in environment effects, the exemptee must file an annual report, by January 31, describing each incident up to 1 month prior to the reporting date, including: (1) the cause of the event; (2) the duration and magnitude of the deviation; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the exemptee's response; (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies; and (6) a description of measures implemented to prevent similar deviations in the future. Any deviations that occur within the month prior to the reporting date should be included in the following year's report.

(f) Requirement to File Amendment Applications

Certain Interior and Rhode Island DEM conditions in Appendices A and B of this exemption contemplate unspecified long-term changes to project operation or facilities for the purpose of addressing environmental effects (e.g., operational changes to mitigate for low dissolved oxygen, upstream anadromous fish passage facilities). These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the exemption. In any amendment request, the exemptee must identify related project requirements and request corresponding amendments or extensions of time, as needed, to maintain consistency among requirements.

Article 27. Soil and Sediment Testing and Disposal Plan. At least 3 months prior to the start of project construction, the exemptee must file for Commission approval, a plan to specify the procedures for testing soil and sediment for hazardous material contamination, and safely disposing of any contaminated soil and sediment.

The plan must include the following:

- (1) a description of the methods to be employed in testing disturbed soil and sediments during construction;
- (2) a description of the mitigation measures proposed to minimize inputs of contaminated soil and sediment into the water column during construction and other sediment-disturbing activities; and
- (3) an implementation schedule.

The exemptee must prepare the plan after consultation with Interior and Rhode Island DEM. The exemptee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The exemptee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the exemptee does not adopt a recommendation, the filing must include the exemptee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan and construction of the project must not begin until the exemptee is notified by the Commission that the plan is approved. Upon Commission approval, the exemptee must implement the plan, including any changes required by the Commission.

Article 28. Fish Passage Measures. To reduce project effects on downstream migrating fish and facilitate downstream fish passage, the exemptee must construct the project with the following design features:

- (1) A rubber bumper on the leading edge of the Archimedes Screw Turbines;
- (2) Removal of sharp edges or pinch points on the Archimedes Screw Turbines that could injure or kill fish; and
- (3) Construction of the outlet works to minimize obstructions, including smoothing the concrete channel to allow uniform passage around the turbines and through the tailrace.

Project No. 14633-001

- 28 -

To reduce the potential for false attraction of upstream migrating fish at the tailrace, the exemptee must design the tailrace so that it disperses water at the point of discharge to the Blackstone River.

Article 29. Northern Long-Eared Bat Protection Measures. The exemptee must avoid cutting trees equal to or greater than 3 inches in diameter at breast height on project lands from June 1 through July 31, unless a tree poses an immediate threat to human life or property.

Article 30. Public Access for Recreation. Within four years from the issuance date of this exemption, the exemptee must provide access to the Blackstone River for fishing by installing: (1) a parking lot that accommodates six cars at the end of the project access road, adjacent to the eastern bank of the Blackstone River; and (2) a sign at the parking lot indicating where fishing is permitted at the project.

Within 90 days of completing installation, the licensee must file documentation showing the completed parking lot and sign, including photographs that reflect the as-built condition.

Article 31. Programmatic Agreement and Historic Properties Management Plan. The exemptee must implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the Rhode Island State Historic Preservation Office for Managing Historic Properties that may be Affected by Issuing an Exemption from Licensing to New England Hydropower Company, LLC for the Construction and Operation of the Albion Dam Hydroelectric Project in Providence County, Rhode Island (FERC No. 14633-001)” (Programmatic Agreement), executed on August 11, 2020, and including but not limited to the Historic Properties Management Plan (HPMP) for the project. Pursuant to the requirements of this Programmatic Agreement, the exemptee must file, for Commission approval, an HPMP within six months of issuance of this order. The Commission reserves the authority to require changes to the HPMP at any time during the term of the exemption. If the Programmatic Agreement is terminated prior to Commission approval of the HPMP, the exemptee must obtain approval from the Commission and the Rhode Island 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.

(E) The exemptee must 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 constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2018), and section 385.713 of the Commission’s regulations, 18 C.F.R. § 385.713 (2020). The filing of a request for rehearing does not

Project No. 14633-001

- 29 -

operate as a stay of the effective date of this exemption or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Terry L. Turpin
Director
Office of Energy Projects

Project No. 14633-001

- 30 -

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, the National Marine Fisheries 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 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 land agencies. The Commission may accept a license application submitted 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.

Project No. 14633-001

- 31 -

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 part 12 of the Commission's regulations (as they may be amended from time to time).

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

Conditions filed by the U.S. Department of the Interior on August 7, 2019, pursuant to section 30(c) of the Federal Power Act, for the exemption for Project No. 14633.

1. The Exemptee shall operate the Project in an instantaneous run-of-river mode, whereby inflow to the Project shall equal outflow from the Project at all times 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 Rhode Island Department of Environmental Management.

2. The Exemptee shall provide an interim conservation flow of 100 cfs, or inflow (if less) to the bypass reach. This flow shall be released upon commencement of project operation, and shall continue until the Exemptee has been notified by the U.S. Fish and Wildlife Service of a permanent bypass flow requirement (to be determined via Condition #3 below). The Exemptee shall release the flow as uniform spill across the dam.

3. Prior to the commencement of construction or alteration activities at the project site, the Exemptee shall prepare and file for Federal Energy Regulatory Commission approval a bypass reach flow study plan. The goal of the study will be to collect data for the agencies to use in determining what conservation flow regime would sufficiently protect aquatic resources in the 100-foot-long stretch of River that would be bypassed by the Project. The objective of the flow evaluation will be to perform a flow study to assess the relationship between habitat and flow in the 100-foot-long stretch of River that would be bypassed by the Project.

The study plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The study shall be conducted during the Project's first operational period of low flow (June–October). The Exemptee shall provide the results of the flow study to the agencies within 3 months of concluding the study. The U.S. Fish and Wildlife Service will use the results to determine whether the interim bypass flow of 100 cfs is an adequate permanent bypass flow or if a higher flow is warranted.

4. The Exemptee shall, within three (3) months of commencement of project operation, prepare and file for approval by the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management a plan for maintaining and monitoring run-of-river operation and minimum flow releases at the Project. The plan will include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods used for recording data on run-of-river

operation and minimum flow releases, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management.

5. The Exemptee shall install a trashrack with clear spacing of no less than 9 inches. The trashrack shall be installed and operational concurrent with project generation. The rack shall be required to be kept free of debris and maintained to design specifications.

6. The Exemptee shall conduct a post-operation water quality monitoring survey. The survey protocol shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. Data shall be collected for up to three (3) years and shall be initiated the first low-flow season after Project commences commercial generation. If results indicate that the Project is not meeting water quality standards, mitigation measures may be required.

7. The Exemptee shall undertake the following measures and studies related to freshwater mussels:

Pre-Construction Freshwater Mussel Survey. The study plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The objectives of the study will be to:

- (1) document the identity of any mussels living in the project area prior to project construction;
- (2) document the location of identified mussels; and
- (3) determine if any mussel beds would be affected by construction activities. The study shall be completed prior to the initiation of construction activities. If results of the survey indicate that construction-related activities will impact mussel beds, the Exemptee shall implement protective measures as directed by the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management.

If the survey conducted pursuant to Condition 7.A. documents mussels residing in the Blackstone River that would be impacted by construction, the Exemptee shall be required to develop a Freshwater Mussel Monitoring and Relocation Protocol. The protocol shall be developed in consultation with, and require the approval of, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The objectives of the protocol will be to:

Project No. 14633-001

- 34 -

- (1) monitor specific locations within Blackstone River during construction; and
- (2) relocate exposed mussels from those locations to areas that will remain wetted during construction. If this protocol is required, it shall be submitted for approval prior to construction.

8. The Exemptee shall provide the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management with data showing results of previous AST injury/mortality studies. If the U.S. Fish and Wildlife Service or the Rhode Island Department of Environmental Management determine the data are insufficient, the Exemptee shall undertake an additional AST Injury/Mortality Assessment at the project site. The assessment shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The objective of the assessment will be to determine if passage through the AST causes injury or mortality to fish. The assessment will be initiated the first passage season after the Project commences commercial generation. The Project shall not commence commercial generation until the data from previous studies or the additional assessment have been approved by the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. If results of the assessment(s) indicate that the AST system or specific components of the system do not provide safe, timely and effective passage, the Exemptee shall implement mitigation measures as directed by the U.S. Fish and Wildlife Service and/or the Rhode Island Department of Environmental Management.

9. The Exemptee shall provide safe, timely and effective upstream passage for American eels. Within six (6) months of exemption issuance, the Exemptee shall prepare and file for Federal Energy Regulatory Commission approval a survey protocol to assess the areas of concentration of juvenile eels attempting to move upstream past the Project. The protocol shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The Exemptee shall conduct the surveys during the first post-operational migration season after study plan approval.

Survey results and information shall be submitted to the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management by the end of the calendar year that the study is conducted. Based on the results of those surveys, the Exemptee shall submit a plan for designing, constructing, installing, maintaining, operating, and evaluating one or more upstream eelways at the Project. The plan shall be developed in consultation with and require approval by the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. Depending on the site, these may be eel traps, Delaware-style eel passes, volitional pass-through ladders, or facilities of other appropriate design. All upstream eel passage facilities shall be operational within three (3) years of project start-up and shall operate during times

when the River water temperature is 10°C or greater.

10. The Exemptee shall be responsible for providing safe, timely and effective upstream passage for anadromous fish at the Project, when notified by the U.S. Fish and Wildlife Service or the Rhode Island Department of Environmental Management that such fishways are needed. All plans and schedules associated with the design, construction, operation, maintenance and evaluation of the prescribed fishways shall be developed by the Exemptee in consultation with, and require approval by, the U.S. Fish and Wildlife Service. Upstream fish passage facilities shall be operational within three (3) years of receiving said notification.

11. The Exemptee shall, within three (3) years of receiving notification that upstream anadromous fish passage facilities are needed, prepare and file for Federal Energy Regulatory Commission approval a Fish Passage Facilities Effectiveness Study Plan. The plan shall detail how the upstream passage facilities will be evaluated for their effectiveness at passing anadromous migrants in a safe, timely and effective manner. The effectiveness evaluation shall require a maximum of three (3) years of study, contingent on the studies: (1) being completed to the satisfaction of the agencies; and (2) taking place during representative environmental conditions (i.e., water temperature and flow within the 25th to 75th percentiles for the relevant sampling season). The plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management.

12. The Exemptee shall develop and implement a Fish Passage Facilities Operations and Maintenance Plan. The plan shall detail how and when the fishways will be operated and describe routine maintenance activities that will occur both during and outside of the fish passage seasons. The plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The plan shall be in place within six (6) months of the first passage facilities coming on-line, and shall be updated as needed as new passage facilities are placed into service and based on information obtained from operation of the facilities.

13. The Exemptee shall, within 12 months of the date of issuance of an exemption from licensing by the Federal Energy Regulatory Commission, prepare and file for approval by the U.S. Fish and Wildlife Service an Invasive Species Monitoring and Control Plan. The objectives of the plan will be to map existing invasive species, monitor the area periodically, and initiate an early detection, rapid response protocol for infestations of target species. The plan shall be developed in consultation with, and require approval of, the U.S. Fish and Wildlife Service.

14. The Exemptee shall implement an impoundment refill procedure whereby, during impoundment refilling after drawdowns for maintenance or emergency purposes,

Project No. 14633-001

- 36 -

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 U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management.

15. The Exemptee shall notify, in writing, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management when the Project commences commercial generation operation. Such notice shall be sent within 30 days of start-up to:

For the U.S. Fish and Wildlife Service:

Supervisor, New England Field Office, U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, NH 03301

For the Rhode Island Department of Environmental Management:

Supervising Fisheries Biologist - Freshwater Fisheries & Wildlife
Great Swamp Field Headquarters
Great Neck Road
West Kingston, RI 02892

16. The Exemptee shall furnish the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management with a set of as-built drawings concurrent with filing said plans with the Federal Energy Regulatory Commission.

17. The Exemptee shall allow the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management 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.

18. The U.S. Fish and Wildlife Service reserves 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 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.

19. 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

Water Quality Certification Conditions issued by the Rhode Island Department of Environmental Management (Rhode Island DEM) on June 5, 2020.

1. You must obtain a permit from the RIDEM Freshwater Wetlands Program pursuant to 250- RICR-150-15-1 prior to the commencement of any clearing or construction for this project.
2. Material used for fill and construction is clean and free of matter that could cause pollution of the waters of the State.
3. Prior to and during construction, proper erosion and sedimentation controls/procedures, as identified within the above-referenced plans, or as further required under a Freshwater Wetlands Permit to Alter, are installed and maintained in functional condition for the duration of the construction project.
4. No sewage, refuse, or waste of any kind shall be discharged into waters of the State from activities associated with the proposed project. Any release of materials from the site associated with the project during the construction period will require immediate notification to the Department.
5. No in-water fueling or maintenance of equipment shall be performed at this site.
6. You must notify this Program in writing of the anticipated start date, and of your contractor's contact information, by submitting the Notice of Start of Construction Form prior to commencement of any permitted site alterations or construction activity. You must also notify this Program in writing upon completion of the project. The Start of Construction form can be found on the webpage: dem.ri.gov/stormwaterconstruction.
7. A copy of this Water Quality Certificate (WQC) must be kept at the site at all times during site preparation, construction, and final stabilization. Copies of this WQC must be made available for review by any DEM or Town representative upon request.
8. Any alterations, additions or modifications to the site design plans from that approved herein must be reviewed and approved by RIDEM prior to being put into effect.
9. You shall operate the Project in an instantaneous run-of-river mode, whereby inflow to the Project shall equal outflow from the Project at all times 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 your control, or for short periods upon mutual agreement between you, the U.S. Fish and

Project No. 14633-001

- 38 -

Wildlife Service and RIDEM.

10. You shall provide an interim conservation flow of 100 cfs, or inflow (if less) to the bypass reach. This flow shall be released upon commencement of project operation and shall continue until you have been notified by either RIDEM or the U.S. Fish and Wildlife Service of a permanent bypass flow requirement (to be determined via Condition #11 below). Flow to the bypass reach shall be released as uniform spill across the dam.

11. Any sediment removed from the river for construction and removed from the site is to be disposed of at the RI Central Landfill disposal site as specified in the application materials.

12. Prior to the commencement of construction or alteration activities at the project site, you shall prepare and file for Federal Energy Regulatory Commission approval, a bypass reach flow study plan. The goal of the study will be to collect data for the agencies to use in determining what conservation flow regime would sufficiently protect aquatic resources in the 180-foot-long stretch of River that would be bypassed by the project. The objective of the flow evaluation will be to perform a flow study to assess the relationship between habitat and flow in the 180-foot-long stretch of River that would be bypassed by the project.

The study plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and RIDEM. The study shall be conducted during the project's first operational period of low flow (June-October). The results of the flow study shall be provided to the agencies within 3 months of concluding the study. The results will be used to determine whether the interim bypass flow of 100 cfs is an adequate permanent bypass flow or if a higher flow is warranted.

13. Within three (3) months of commencement of project operation, a plan for maintaining and monitoring run-of-river operation and minimum flow releases at the project shall be prepared and filed for approval by the U.S. Fish and Wildlife Service and the RIDEM WQC Program. The plan will include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, the methods used for recording data on run-of-river operation and minimum flow releases, an implementation schedule, and a plan for maintaining the data for inspection by the U.S. Fish and Wildlife Service and the RIDEM WQC Program. At a minimum, any monitoring plan must provide for real-time recording of upstream water elevations and calibrated to ensure that the minimum bypass flow is maintained, and allow for remote access by the agencies to the relevant flow and water level data.

14. A trashrack with clear spacing of no less than 9-inches shall be installed at the Project intake. The trashrack shall be installed and operational concurrent with Project generation. The rack shall be required to be kept free of debris and maintained to design

specifications.

15. A post-operation water quality monitoring survey shall be conducted. The survey protocol shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the RIDEM WQC Program. Data shall be collected for up to three (3) years and shall be initiated the first low-flow season after Project commences commercial generation. If results indicate that the Project is not meeting water quality standards, mitigation measures may be required.

16. You shall undertake the following measures and studies related to freshwater mussels:

A. Pre-Construction Freshwater Mussel Survey. The study plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the Rhode Island Department of Environmental Management. The objectives of the study will be to:

- (1) Document the identity of any mussels living in the Project area prior to Project construction;
- (2) Document the location of identified mussels;
- (3) Determine if any mussel beds would be affected by construction activities. The study shall be completed prior to the initiation of construction activities. If results of the survey indicate that construction-related activities will impact mussel beds, protective measures shall be implemented as directed by the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife.

B. If the survey conducted pursuant to Condition 16(A) documents mussels residing in the Blackstone River that would be impacted by construction, you shall be required to develop a Freshwater Mussel Monitoring and Relocation Protocol. The Protocol shall be developed in consultation with, and require the approval of, the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. The objectives of the Protocol will be to:

- (1) Monitor specific locations within Blackstone River during construction;
and
- (2) Relocate exposed mussels from those locations to areas that will remain wetted during construction. If this Protocol is required, it shall be submitted for approval prior to construction.

Project No. 14633-001

- 40 -

17. You shall provide the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife with data showing results of previous AST injury/mortality studies. If the U.S. Fish and Wildlife Service or the RIDEM Division of Fish & Wildlife determine the data are insufficient, an additional AST Injury/Mortality Assessment shall be undertaken at the Project Site. The assessment shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. The objective of the assessment will be to determine if passage through the AST causes injury or mortality to fish. The assessment will be initiated the first passage season after the Project commences commercial generation. The Project shall not commence commercial generation until the data from previous studies or the additional assessment has been approved by the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. If results of the assessment(s) indicate that the ASG system or specific components of the system do not provide safe, timely and effective passage, mitigation measures shall be implemented as directed by the U.S. Fish and Wildlife Service and/or the RIDEM Division of Fish & Wildlife.

18. You shall provide safe, timely and effective upstream passage for American eels. Within six (6) months of FERC exemption issuance, the Exemptee shall prepare and file for Federal Energy Regulatory Commission approval, a survey protocol to assess the areas of concentration of juvenile eels attempting to move upstream past the project. The protocol shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. The surveys shall be conducted during the first post- operational migration season after study plan approval. Survey results and information shall be submitted to the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife by the end of the calendar year that the study is conducted. Based on the results of those surveys , a plan shall be submitted for designing, constructing, installing, maintaining, operating, and evaluating one or more upstream eelways at the project. The plan shall be developed in consultation with and require approval by the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. Depending on the site, these may be eel traps, Delaware-style eel passes, volitional pass-through ladders, or facilities of other appropriate design. All upstream eel passage facilities shall be operational within three (3) years of project start-up and shall operate during times when the River water temperature is 10°C or greater.

19. You shall be responsible for providing safe, timely and effective upstream passage for anadromous fish at the project, when notified by the U.S. Fish and Wildlife Service or the RIDEM Division of Fish & Wildlife that such fishways are needed. All plans and schedules associated with the design, construction, operation, maintenance and evaluation of the prescribed fishways shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and RIDEM. Upstream fish passage facilities shall be operational within three (3) years of receiving said notification.

Project No. 14633-001

- 41 -

20. Within three (3) years of receiving notification that upstream anadromous fish passage facilities are needed, a Fish Passage Facilities Effectiveness Study Plan shall be prepared and filed for Federal Energy Regulatory Commission approval. The Plan shall detail how the upstream passage facilities will be evaluated for their effectiveness at passing anadromous migrants in a safe, timely and effective manner. The effectiveness evaluation shall require a maximum of three (3) years of study, contingent on the studies: (I) being completed to the satisfaction of the agencies; and (2) taking place during representative environmental conditions (i.e., water temperature and flow within the 25th to 75th percentiles for the relevant sampling season). The plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife.

21. A Fish Passage Facilities Operations and Maintenance Plan shall be developed and implemented. The Plan shall detail how and when the fishways will be operated and describe routine maintenance activities that will occur both during and outside of the fish passage seasons. The Plan shall be developed in consultation with, and require approval by, the U.S. Fish and Wildlife Service and the RIDEM Division of Fish & Wildlife. The Plan shall be in place within six (6) months of the first passage facilities coming on-line and shall be updated as needed as new passage facilities are placed into service and based on information obtained from operation of the facilities.

22. An impoundment refill procedure shall be implemented whereby, during impoundment refilling after drawdowns for maintenance 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 U.S. Fish and Wildlife Service and the RIDEM's WQC Program.

23. The RIDEM's Division of Fish & Wildlife shall be notified in writing when the Project commences commercial generation operation. Such notice shall be sent within 30 days of start-up to:

Supervising Fisheries Biologist - Freshwater Fisheries & Wildlife
Great Swamp Field Headquarters
Great Neck Road
West Kingston, RI 02892

24. The RIDEM WQC Program shall be furnished with a set of as-built drawings concurrent with filing said plans with FERC.

25. Access by the U.S. Fish and Wildlife Service and RIDEM shall be allowed to inspect the Project area at any time while the Project operates to monitor compliance with their terms and conditions.

Project No. 14633-001

- 42 -

26. This WQC shall expire on June 5, 2024. Project construction is to be completed by this date. You are required to submit a request for any modification(s) and/or extension(s).

27. Notwithstanding the expiration date in Condition No. 26, multiple terms and conditions of this WQC require post-construction studies, monitoring, or operational requirements that are to be complied with as a condition of this WQC and will remain in effect until such requirements are satisfied or for the life of the Project, as applicable. Specific conditions referenced herein include Conditions 9, 10, 12, 13, 15 through 21, 23 and 25.

28. This WQC does not relieve your obligation to obtain and adhere to any other applicable local, state, and federal permits prior to commencing construction. Should any stipulation/condition identified within any other applicable permit be in conflict with the conditions set forth in this permit, the applicant shall notify RIDEM immediately.

29. You 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.

Document Content(s)

2020-09-18_P-14633 Albion Dam Order.DOCX.....1