

154 FERC ¶ 62,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northbrook Lyons Falls, LLC

Project No. 2548-046

ORDER AMENDING LICENSE AND REVISING ANNUAL CHARGES

(Issued March 30, 2016)

1. On May 15, 2015, Northbrook Lyons Falls, LLC, licensee for the Lyons Falls Project No. 2548, filed an application to amend its license to increase the installed capacity at one of the project's three developments. The licensee proposes to replace the existing five generating units at the Lyons Falls Mills development with two new generating units, which would increase the Lyons Falls development's installed and hydraulic capacities by 5,610 kilowatts (kW) and 1,514 cubic feet per second (cfs), respectively. The Lyons Falls Project is located on the Moose and Black Rivers in Lewis County, New York.

Background

2. On May 6, 1986, the Commission issued a new license for the Lyons Falls Project¹ and issued orders transferring the license to Lyons Falls Hydroelectric, Inc. in 1987.² The Commission issued an order transferring the license to the current licensee in 2000.³ The existing project, as amended, consists of three developments: Lyons Falls, Gouldtown, and Kosterville. On March 24, 1993, the Commission issued an order amending the license that set the project's authorized total installed capacity at 8,640 kW. Each development's authorized installed capacity is as follows: Lyons Falls Mill development with 5,590 kW, Gouldtown development with 2,000 kW, and Kosterville development with 1,050 kW.⁴

¹ *Georgia-Pacific Corporation*, 35 FERC ¶ 62,229 (1986).

² *Georgia-Pacific Corporation and Lyons Falls Hydroelectric, Inc.*, 39 FERC ¶ 62,290 (1987).

³ *Lyons Falls Hydroelectric, Inc. and Northbrook Lyons Falls, LLC*, 90 FERC ¶62,230 (2000).

⁴ *Lyons Falls Hydroelectric, Inc.*, 62 FERC ¶ 62,203 (1993).

3. The Lyons Falls Mill development consists of: (1) a 430-foot-long, 10-foot-high concrete gravity dam from which three penstocks lead to two powerhouses with a total authorized installed capacity of 5,590 kW. The first powerhouse has one generating unit with an authorized capacity of 1,040 kW and the second powerhouse has four generating units with an authorized capacity of 4,550 kW.

4. The Lyons Falls Mill development is located in the Village of Lyons Falls in the Town of West Turin, New York. The existing dam, powerhouses, and impoundment are located within and adjacent to a former Georgia-Pacific paper mill at the confluence of the Black and Moose Rivers approximately 82 river miles upstream of Lake Ontario. Recently, the owner of the adjacent paper mill demolished it. As a result, the licensee is proposing to redevelop the Lyons Falls Mill development within the footprint of the former mill site.

Proposed Amendment

5. The licensee proposes to increase the installed and hydraulic capacities at the Lyons Falls Mill development. The proposed work would consist of: (1) demolishing the existing four-unit primary powerhouse and mothballing the secondary single-unit powerhouse; (2) constructing a new 60-foot-long, 45-foot-wide, and 40-foot-high combined intake and trashrack structure adjacent to the river's left dam abutment; (3) constructing two 11.5-foot-diameter, 75-foot-long steel penstocks; (4) constructing a new concrete and masonry powerhouse located along the river's left bank, largely in the footprint of the existing primary powerhouse (to be demolished) that would contain two generating units. The proposed work would increase the development's installed capacity from 5,590 to 11,200 kW and its hydraulic capacity from 1,170 to 2,684 cfs. This would increase the total installed capacity of the project to 14,250 kW.

6. The redevelopment would use the existing dam and spillway. The existing intake and trashrack structures would be replaced. Because there would be no modification to the dam there would be no changes to the surface area, gross storage capacity, or usable storage capacity of the existing impoundment. The trashrack structure would be oriented at a 30-degree angle to the flow of the river to reduce fish entrainment. To reduce ice buildup, the trashracks would have a clear-bar spacing of three inches and would be equipped with full-depth, seasonal, one-inch trashrack overlays. An automatic trash rake would also be installed. Immediately in front of the trashracks and perpendicular to the flow of the river would be a new 5-foot by 5-foot debris sluice gate.

7. The licensee proposes a number of protection, mitigation, and enhancement measures to protect environmental resources during and following construction activities. Some of these measures were proposed in response to agency comments and recommendations. The licensee's proposed measures are discussed below.

Consultation

8. The licensee initiated in the fall of 2014, consultation with resource agencies and stakeholders including the New York State Department of Environmental Conservation (New York DEC), U.S. Fish and Wildlife Service (FWS), Town of Lyons Falls, New York State Council of Trout Unlimited (TU), and Lewis County. On January 30, 2015, the licensee distributed an Initial Consultation/Amendment Package (ICAP) to the parties noted above. Subsequent to this initial distribution, on February 3, 2015, the licensee distributed copies of the ICAP to additional resource agencies, stakeholders, and federally recognized Indian tribes with a potential interest in the redevelopment of the Lyons Falls Mill development. On March 4, 2015, the licensee held a joint agency/public meeting and a site visit.

9. The licensee says the consultation process undertaken in the preparation of the amendment application was comprehensive, including the distribution of an ICAP, a publically noticed joint agency public meeting, and over 60 days to provide comments following the March 4, 2015 public meeting. Considering this, the licensee is requesting a waiver of select aspects of the pre-filing consultation requirements. In accordance with the Commission's requirements, the licensee requested that consulted parties affirm in writing that they had no objections to a waiver of any parts of 18 CFR §4.38 that are not explicitly covered by the consultation record accompanying its amendment application. The licensee included in its application letters from consulted agencies and stakeholders indicating the licensee has provided sufficient and adequate review opportunities to ensure that the respective party's resource interests were addressed. Additionally, each party indicated that they supported the proposed amendment and that their comments have been fully and adequately addressed.

Public Notice

10. On July 7, 2015, the Commission issued a public notice that the amendment application was accepted for filing and soliciting comments, protests, and motions to intervene, recommendations, terms and conditions, and fishway prescriptions.

11. On August 5, 2015, the U.S. Department of the Interior filed a motion to intervene on behalf of its component bureaus, the FWS and the National Park Service. On June 10, 2015, the New York DEC filed a motion to intervene.

12. On August 5, 2015, the FWS filed its comments as well as recommendations under section 10(j) of the Federal Power Act (FPA), saying it generally concurs with the protection, mitigation, and enhancement (PME) measures proposed by the licensee. On August 7, 2015, the New York DEC provided comments and later issued a Section 401 Water Quality Certification (WQC) on December 9, 2015. The licensee responded to FWS's and New York DEC's comments in a letter filed September 11, 2015.

Water Quality Certification

13. Under section 401(a) of the Clean Water Act (CWA),⁵ the Commission may not issue a license for a hydroelectric project that authorizes any activity that may result in a discharge from the project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.⁶

14. On June 1, 2015, the licensee submitted its request for water quality certification for the Lyons Falls license amendment and received a WQC on December 9, 2015, as mentioned above. The conditions of the WQC are set forth in Appendix A of this order, and are incorporated into the license by ordering paragraph (K). The conditions include requirements for project operations and impoundment fluctuations, bypassed flows, fish protection, trashrack management, fish passage, and project maintenance, construction, and monitoring. Some of these measures require the licensee to prepare plans that must be filed for Commission approval. These plans will be developed in consultation with the resource agencies, and most will need to be approved by New York DEC prior to the commencement of construction.

Threatened and Endangered Species

15. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)⁷ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of critical habitat.

16. By letter issued June 2, 2015, the Commission designated the licensee as its non-federal representative for the purpose of conducting informal consultation under section 7 of the ESA. The only potential endangered species in the project area is the Indiana bat and one threatened species, the northern long-eared bat. The licensee proposes to develop a Bat Management Plan, if necessary. In its August 4, 2015 letter, the FWS states that if there are no impacts from the proposed action on either species, then a Bat Management Plan is not necessary. Based on the industrial nature of the project site, lack of suitable vegetation, and because the abandoned paper mill has been demolished, the

⁵ 33 U.S.C. § 1341(a) (2012).

⁶ 33 U.S.C. § 1341(d) (2012).

⁷ 16 U.S.C. § 1536(a) (2012).

Commission has determined that the proposed action would have no effect on the Indiana bat or the northern long-eared bat. Therefore, this order does not require a Bat Management Plan.

National Historic Preservation Act

17. Under section 106 of the National Historic Preservation Act (NHPA)⁸ and its implementing regulations,⁹ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places, defined as historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on any undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties and to seek ways to avoid or minimize any adverse effects.

18. By letter issued June 2, 2015, the Commission designated the licensee as its non-federal representative for the purpose of consulting with the New York SHPO. As a result of its consultation, the New York SHPO issued a letter on May 8, 2015, stating that no historic properties would be affected by the project. In addition, the Oneida Indian Nation also stated in a letter dated April 29, 2015, that the project would not adversely affect historic properties of significance to the Oneida Indian Nation.

Section 18 Fishway Prescriptions

19. Section 18 of the FPA¹⁰ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. In its August 4, 2015 letter, the FWS requested Section 18 reservation of authority to prescribe fishways during the remaining term of the license. Consistent with Commission policy, Article 411, which is being added to the license by ordering paragraph (S), reserves the Commission's authority to require fishways that may be prescribed by the FWS for the Lyons Falls Project.

⁸ 54 U.S.C. § 300101(2012) *et seq.*

⁹ 36 C.F.R. Part 800 (2014).

¹⁰ 16 U.S.C. § 811 (2012).

Recommendations of Federal and State Fish and Wildlife Agencies Pursuant to Section 10(j) of the FPA

20. Section 10(j)(1) of the FPA requires the Commission to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

21. In response to the July 7, 2015 public notice, the FWS filed eight recommendations under section 10(j). One of these recommendations requires the project to operate in a run-of-river-mode. This recommendation is already covered by Article 403 which requires a run-of-river operation. This order includes conditions consistent with the seven remaining recommendations that are within the scope of section 10(j). These conditions include: refilling the impoundment using gradual changes; maintaining the impoundment at the dam crest; developing a Flow Monitoring Plan; ensuring equipment required by the Flow Monitoring Plan is operational within 18 months of construction; requiring a new trashrack design; requiring downstream fish passage; and an Invasive Species Monitoring Plan. In its September 11, 2015 letter, the licensee agreed to all of FWS’s section 10(j) recommendations.

22. New York DEC’s condition No. 7 in the WQC requires the impoundment to be maintained within one foot of the crest of the flashboards (806.5 msl) except during certain situations defined in condition No. 7. The FWS’s recommendation that the licensee maintain the impoundment at or above dam crest is unclear whether they are referring to the crest of the dam with the flashboards or without (804.33 msl). In addition, the FWS’s recommendation does not specify any conditions where operating within a specific range may be acceptable. Therefore, we are requiring the Stream Flow and Water Level Monitoring Plan, which is being added to the license by ordering paragraph (L), to resolve these differences. This plan would become part of the license upon Commission approval.

Section 10(a)(1) of the FPA

23. Section 10(a) of the FPA¹¹ requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

¹¹ 16 U.S.C. § 803(a)(1) (2012).

A. Agency Recommendations

24. In its August 4, 2015 letter, the FWS approved the licensee's seasonal use of the one-inch clear spaced trashrack overlay. However, the FWS recommends the overlay remain in place from March 15 through November 30, the same period that the licensee's proposed fish passage attraction flow would be provided. The New York DEC concurred with this recommendation in its August 7, 2015 letter. Both agencies recommended the licensee develop a Trashrack Management Plan (TMP).

25. The New York DEC agreed with the licensee's proposal to provide a minimum flow of 45 cfs for downstream fish passage; however, it recommended the minimum flow be maintained at all times without reference to the elevation at crest.

B. Licensee's Proposed Measures

26. The licensee proposes a number of protection, mitigation, and enhancement measures to protect environmental resources during and following construction activities.

27. The licensee proposes to release up to 70 cfs seasonally downstream from Lyons Falls Dam. Of the 70 cfs, a minimum of 45 cfs would be released annually from March 15 through November 30 to provide a fish movement continuity flow to facilitate the downstream movement of fish. In addition, a flow of 25 cfs would be released annually during the recreation season (May 1 through October 31) to provide flow over a portion of Lyons Falls for aesthetic purposes. The licensee agrees with the New York DEC's recommendation to provide the 45 cfs flow, or inflow, whichever is less, continuously from March 15 through November 30.

28. The licensee proposes to prepare a TMP in support of installation and management of the proposed seasonal trashracks. This plan is required by ordering paragraphs (O) and (P). Consistent with the FWS's recommendations, the TMP would identify when and how the trashrack overlays would be installed and removed and what procedures would be followed when a time extension for trashrack overlay installation is needed. The TMP would be developed in consultation with the FWS and New York DEC and would include protocols to be undertaken when the overlays cannot be timely installed due to ice or other conditions that could affect project or personnel safety.

29. The redeveloped powerhouse would incorporate a new trashrack structure that would be oriented at a 30 degree angle to the flow of the river. The FWS concurred with this design.

30. During periods of high flow, when inflow equals or exceeds the Lyon Falls Mill development's proposed hydraulic capacity of 2,684 cfs, the Lyons Falls Mill development would be operated at full gate. Flows in excess of the hydraulic capacity would be passed over the development's sluice gate or via the downstream fish

movement gate. Consistent with current operations, as necessary, the development's flood gates would be used to pass high flows as needed. When flows are insufficient for both generation and the seasonal minimum flow, the licensee would cease generation to ensure that seasonal minimum flow requirements are met.

31. The licensee proposes to prepare a Construction Soil Erosion and Sedimentation Control Plan and a Temporary Construction Emergency Action Plan. These plans are required by ordering paragraphs (H), (M) and (N). The licensee also proposes to develop an Invasive Species Management Plan that includes controlling invasive aquatic species. This plan would be filed for Commission approval prior to the start of construction and is required by ordering paragraph (R).

Environmental Review

32. Below, is a brief description of some of the potentially significant environmental impacts of the licensee's proposed action.

A. Aquatic Resources

33. The existing license for the project does not require continuous minimum flows to be released from the Lyons Falls Mill development. To protect aquatic resources, the licensee proposes to release seasonal minimum flows totaling 70 cfs downstream from the Lyons Falls Dam. Of the 70 cfs a minimum of 45 cfs would be released from March 15 through November 30 to provide a fish movement continuity flow to facilitate the downstream movement of fish. This release would be through a "gate-in-gate" structure to be installed in the new debris sluice gate immediately upstream from the trashracks. A minimum flow of 25 cfs would also be released May 1 through October 31 during the recreation season over a portion of Lyons Falls for aesthetic purposes. These releases would be provided by notching the flashboards.

34. During construction, temporary cofferdamming would be required and flows would cease through the existing powerhouses. During construction all flows would pass over the spillway.

35. The licensee would also protect aquatic resources by developing a Construction Soil Erosion and Sedimentation Control Plan. This plan would include standard best-management practices that the licensee would implement to address sediment and erosion control during construction and final stabilization and/or revegetation in accordance with New York DEC technical guidance. This plan would be filed for New York DEC and Commission approval prior to the start of construction. In addition, the licensee would prepare a Temporary Construction Emergency Action Plan which would include a list of emergency response agencies, a plan drawing showing the proposed arrangement of cofferdams and temporary retaining structures, the location of safety devices and escape

routes, and a brief description of testing procedures for the plan. This would also be filed with New York DEC and the Commission for approval prior to the start of construction

36. The Moose River is managed by the New York DEC as a coldwater trout fishery. The trout fishery in the Black River and the Moose River is supplemented through stocking by the New York DEC. Based on consultation with the resource agencies, the licensee identified a target seasonal minimum flow of 45 cfs to provide for downstream fish movement from March 15 through November 30, annually. The licensee also identified specific criteria for providing safe downstream movement routes for fish passing through a gate-in-gate release structure. These criteria include shaded areas downstream of the release structure consisting of plunge pools and connective channels constructed using native rock and materials. The plunge pool depth would be equal to 25 percent of the applicable free-fall height and connective channel geometry to achieve at least one foot of flow depth. Ordering paragraph (Q) requires the licensee to file a plan for downstream fish passage facilities.

37. The buildup of frazil ice on the trashracks and in the penstocks during the winter has been a problem at the Lyons Falls Mill. For this reason, the proposed new intake structure would use trashracks with clear-bar spacing of three inches and bars angled 30 degrees to flow direction, with approach velocities no greater than two feet per second. After ice-out, the licensee proposes to install seasonal one-inch trashrack overlays as a fish protection measure. To further protect fishery resources, the licensee is proposing to develop an Invasive Species Management Plan to include invasive aquatic species, for New York DEC and Commission approval, prior to the start of construction.

B. Terrestrial Resources

38. Few terrestrial impacts are anticipated from the proposed action because the project is located in an industrial area and construction of the new powerhouse would occur on lands already disturbed by the removal of the paper mill. There is no significant or high quality upland, riparian, or wetland habitat within the project location.

39. The FWS identified the federally listed endangered Indiana bat and the federally listed threatened northern long-eared bat as species that may be present in the vicinity of Lyons Mill Falls. To protect these species, the licensee proposed to develop a Bat Management Plan, if necessary. Because of the lack of suitable bat habitat surrounding the project, particularly the removal of the abandoned paper mill, Commission staff has determined that there would be no effect to the Indiana bat or the northern long-eared bat.

C. Recreation

40. Existing recreation facilities at Lyons Falls Mill include boat access and portage routes, fishing, picnicking, walking, and sightseeing along the Moose and Black Rivers. Downstream of the dam is an improved canoe/kayak access site. The licensee also

provides access to the impoundment with a boat launch located just upstream of the confluence of the Black and Moose Rivers. Adjacent to Lyons Falls Mill, but outside of the project boundary, is the Lyons Falls Community Park which provides sports fields, a skating rink, and picnic facilities. None of the recreation resources would be impacted by construction, however, noise created by the construction activities could potentially impact the quality of the recreational experience, but these impacts would be temporary.

41. To improve the aesthetic quality at Lyons Falls Mill, the licensee is proposing a seasonal minimum aesthetic flow of 25 cfs over Lyons Falls during the recreation season (May 1 through October 31).

D. Cultural Resources

42. Pursuant to article 409 of the project license, the licensee consulted with the SHPO and the Oneida Indian Nation. In a letter dated May 8, 2015, the SHPO determined that no historic properties would be affected by the project. The Oneida Indian Nation stated in its letter dated April 29, 2015, that the project would not adversely affect historic properties of significance to the Oneida Indian Nation.

E. Conclusion

43. Based on information provided by the licensee, agency comments, and staff's independent analysis, we find that the licensee's proposal to redevelop the Lyons Falls Mill development, with the mitigation measures required by this order, would not constitute a major federal action significantly affecting the quality of the human environment. Therefore, the amendment application will be granted, as considered herein.

Administrative Conditions

A. Project Description

44. In its May 15, 2015 amendment application, the licensee included an Exhibit A which describes the new and existing facilities. However, the exhibit also contains outdated information about the existing generating units that were modified by an Order Approving As-Built Exhibits, Amending License and Revising Annual Charges issued March 29, 1993.¹² The Commission's requirements detailed in section 4.41(b) of the Commission's regulations state that an Exhibit A includes a description of all project features at each project development. Therefore, the licensee's Exhibit A included in the amendment application cannot be approved. We will require the licensee in ordering paragraph (C) to file a revised Exhibit A for Commission approval, to describe the entire

¹² *Lyons Falls Hydroelectric, Inc.*, 62 FERC ¶ 62,203 (1993).

project, including the Lyons Falls Mill development as amended and approved in this order.

B. Exhibit Drawings

45. The licensee included four new Exhibit F drawings with its amendment application that show the new features of the Lyons Falls Mill redevelopment. The Exhibit F drawings comply with the Commission's rules and regulations and are approved in ordering paragraph (D) of this order. The Exhibit F drawings that show the existing features will be deleted from the license. Ordering paragraph (E) requires the licensee to file the approved drawings in electronic format. The project boundary Exhibit G drawings are not affected by the proposed amendment of license.

46. The licensee states that given the ongoing design activities associated with the proposed new powerhouse and intake structure, it anticipates that revised Exhibit F drawings will be filed with the Commission upon completion of the construction activities. The licensee also states that while the proposed redevelopment of the Lyons Falls Mill Development will occur within the project's existing project boundary, the licensee is proposing to provide the Commission with a fully georeferenced and updated boundary of the entire project boundary, including the Gouldtown and Kosterville developments, along with its filing of the applicable as-built drawings following construction of the new powerhouse. Therefore, if during construction, changes to project facilities approved by this order occur, ordering paragraph (F) requires the licensee to file updated Exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

C. Start of Construction

47. Ordering paragraph (G) requires the licensee to start and complete construction of the redevelopment of the Lyons Falls Mill development, as authorized in this order, within two years and four years, respectively, from the issuance date of this order.

D. Review of Final Plans and Specifications

48. Ordering paragraph (H) requires the licensee to provide the Commission's Division of Dam Safety and Inspections - New York Regional Office (D2SI-NYRO), prior to the start of construction, with final contract drawings and specifications and supporting design documents, together with a quality control and inspection program, a temporary construction emergency action plan, and an erosion and sediment control plan consistent with the Commission's engineering guidelines.

49. Ordering paragraph (I) requires the licensee to provide the Commission's Division of Dam Safety and Inspections - New York Regional Office (D2SI-NYRO) with

contractor-designed cofferdam and deep excavation plans, if cofferdams will be used for the construction activities authorized or required by this order.

E. Annual Charges

50. The licensee's proposal would increase the authorized installed capacity of the project by 5,610 kW. The Commission collects annual charges from licensees, based on the authorized installed capacity of their projects, to recompense it for the administration of part I of the FPA. As a non-municipality, the licensee's assessments of annual charges for new authorized capacity begin on the date by which the licensee is required to commence construction of the new capacity.¹³ Ordering paragraph (J) revises the annual charges under Article 201 of the license.

The Director orders:

(A) Northbrook Lyons Falls, LLC's application to amend the license for the Lyons Falls Project No. 2548, filed May 15, 2015, is approved as provided by this order, effective the day this order is issued.

(B) Ordering paragraph (C)(2)(A) of the license for the Lyons Falls Project is revised to read as follows:

(A) *The Lyons Falls development*: located on the confluence of the Moose and Black Rivers, consisting of: (a) a 431.5-foot-long, 10-foot-high, "L-shaped" concrete gravity dam with a 362-foot-long spillway section with crest elevation of 804.3 feet mean sea level (m.s.l), and a 69.5-foot-long concrete gate structure adjoining the west (river left) end of the dam; (b) 26-inch-high wooden flashboards mounted on the spillway section that maintain a 130-acre impoundment with a gross storage volume of 730 acre-feet at an elevation of 806.5 feet m.s.l; (c) two 6-foot high, 25-foot-wide flood control gates and one 6-foot-high, 8-foot-wide sluice gate, in the concrete gate structure; (d) a new 60 feet long, 45 feet wide, and 40 feet high, combined intake and trashrack structure adjacent to the river left dam abutment; (e) two new 11.5-foot-diameter, 75-foot-long steel penstocks; (f) a new concrete and masonry powerhouse located along river left, with two identical generating units having a total installed capacity of 11,200 kilowatts (kW) (each turbine has a rated installed capacity of 5,600 kW and a hydraulic capacity of 1,342 cfs, connected to a generator having a rated installed capacity 5,626 kW); (g) generator leads from the new powerhouse to a new 15 MVA, 4.16/23-kV step-up transformer; (h) a new 23 kV, 2640-foot-long aerial transmission line extending to the

¹³ 18 C.F.R § 11.1 (c)(5) (2016).

existing circuit breaker for Lyons Falls Mill, and an existing overhead 540-foot-long transmission line from this point to the utility point of interconnection at the existing National Grid transformer located in the Franklin Street Substation; and (i) appurtenant facilities.

(C) *Exhibit A*: Within 60 days of the date of issuance of this order, the licensee must file, for Commission approval, a revised Exhibit A that describes the entire project, including those existing facilities and developments that are unaffected by this amendment, and those changes as approved in this order.

(D) *Exhibit F Drawings*: The following Exhibit drawings filed on May 15, 2015, for the Lyons Falls Project conform to the Commission's rules and regulations, and are approved and made part of the license, as labeled and numbered below. The old Exhibit F drawings (F-1 through F-5 with FERC drawing numbers P-2548-2, 3, 4, 22 and 23), for the Lyons Falls Mill development are deleted from the license.

EXHIBIT	FERC DRAWING No.	FERC DRAWING TITLE
F-1	2548-29	Lyons Falls Mill development, Site Layout
F-2	2548-30	Lyons Falls Mill development, Angled Intake Structure
F-3	2548-31	Lyons Falls Mill development Powerhouse Longitudinal Cross Sections
F-4	2548-32	Lyons Falls Mill development Powerhouse Transverse Cross Sections

(E) Within 45 days of the date of issuance of this order, as directed below, the licensee must file two sets of the approved exhibit drawings in electronic file format on compact disc with the Secretary of the Commission, ATTN: OEP/DHAC.

a) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-2548-29) must be shown in the margin below the title block of the approved drawing. Exhibit F drawings must be identified as **Critical Energy Infrastructure Information (CEII) material under 18 CFR §388.113(c)**. Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this order, and file extension in the following format [P-2548-29, F-1, Lyons Falls Mill development, Site Layout, MM-DD-YYYY.TIF]. 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 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT	22" x 34" (min), 24" x 36" (max)
FILE SIZE	less than 1 MB desired

(F) *As-Built Exhibits:* Within 90 days of completion of construction of the facilities authorized by this license amendment, if any changes were made to the approved exhibits during construction, the licensee must file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

(G) *Start and Completion of Construction:* The licensee must start and complete construction of the redevelopment of the Lyons Falls Mill development, as authorized in this order, within two years and four years, respectively, from the issuance date of this order.

(H) *Contract Plans and Specifications.* At least 60 days prior to start of construction, the licensee must submit one copy of its final contract plans and specifications and supporting design documents to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission. The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, Soil Erosion and Sediment Control Plan, and, if necessary a Blasting Plan. The licensee may not begin construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

(I) *Cofferdam and Deep Excavation Construction Drawings.* Should construction require cofferdams or deep excavations, the licensee 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 licensee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

(J) *Revised Annual Charges:* Article 201 is amended to read as follows:

Article 201. The licensee must pay the United States the following annual charge:

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

- (1) 8,640 kilowatts for the current existing capacity, effective until the due date of the start of construction of the authorized additional capacity.
- (2) 14,250 kilowatts that includes the additional capacity authorized in this order, effective two years from the issuance date of this order.

(K) This license is subject to the conditions submitted by the New York State Department of Environmental Conservation under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2012), as those conditions are set forth in Appendix A to this order.

(L) *Stream Flow and Water Level Monitoring Plan:* The licensee must file for Commission approval, a Stream Flow and Water Level Monitoring Plan (Flow Monitoring Plan), at least 60 days prior to the start of construction. The Flow Monitoring Plan must include, but is not limited to, measures to determine head pond elevations; fish passage flows; aesthetic flows; and provide an appropriate means of independent verification by the New York State Department of Environmental Conservation (New York DEC) and the U.S. Fish and Wildlife Service (FWS). The plan must also rectify any discrepancies between impoundment elevations and operating ranges, as required by New York DEC in condition No. 7 of its Water Quality Certificate, and recommendations made by the FWS, as discussed in this order.

The staff gages, pins, and ancillary equipment required by the Flow Monitoring Plan, including head pond gages, must be made operational and calibrated within 18 months of the completion of construction and commencement of project operations. The Flow Monitoring Plan must contain provisions for the installation of binary staff gages at appropriate locations to permit independent verification of head pond water levels, fish passage flows, and aesthetic flows. Binary staff gages must be visible to the general public.

This plan must be developed in consultation with the New York DEC and the FWS. The licensee must include with the plan, documentation of consultation, copies of recommendations on the completed plan after it has been provided to the resource

agencies, and any specific descriptions of how agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes to the plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee must implement the plan, including any changes required by the Commission.

(M) *Construction Soil Erosion and Sedimentation Control Plan*: The licensee must file, for Commission approval, a Construction Soil Erosion and Sedimentation Control Plan, within 60 days prior to the start of construction. The plan must comply with the New York State Department of Environmental Conservation's Water Quality Certificate conditions Nos. 17 and 18. The plan must describe standard best-management practices that will be used to address sediment and erosion control during construction and final stabilization and/or revegetation in accordance with New York State Department of Environmental Conservation technical guidance. This plan should be included in the submittal of the plans and specification to the Regional Engineer, as required by ordering paragraph (H).

(N) *Temporary Construction Emergency Action Plan*: The licensee must file, for Commission approval, a Temporary Construction Emergency Action Plan (TCEAP), within 60 days prior to the start of construction. The TCEAP must include a notification list of emergency response agencies, a plan drawing showing the proposed arrangement of cofferdams and temporary retaining structures, the location of safety devices and escape routes, and a description of testing procedures for the plan. This plan should be included in the submittal of the plans and specification to the Regional Engineer, as required by ordering paragraph (H).

(O) *Trashracks*: The licensee must install new trashracks with three-inch clear spacing. The trashracks must be angled 30 degrees or less to inflow. One-inch clear-spaced overlays must be seasonally installed from March 15 through November 30. Approach velocities, as measured one foot in front of the trashracks, must not exceed two feet per second, whether the overlays are in place or only the three-inch clear-spaced trashracks are being used.

(P) *Trashrack Management Plan*: The licensee must file a Trashrack Management Plan (TMP), for Commission approval, within one-year of the date of this order. The plan must comply with the New York State Department of Environmental Conservation's (New York DEC) Water Quality Certificate condition No. 10. The TMP must identify when and how the trashrack overlays would be installed and removed, and what procedures would be followed when a time extension for trashrack overlay

installation is needed. The TMP must be developed in consultation with the U.S. Fish and Wildlife Service and New York DEC and include protocols to be undertaken when the overlays cannot be timely installed due to adverse ice conditions or other measures affecting safety.

(Q) *Downstream Fish Passage:* The licensee must provide downstream fish passage for the protection and enhancement of fishery resources. Attraction and conveyance flows must be 45 cubic feet per second. All passage routes must be smooth and kept free of obstructions. The plunge pool must be at least one-foot deep for each four feet of drop. Conceptual designs for the downstream fish passage facilities must be reviewed and approved by the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. The approved drawings must be filed with the Commission, for approval, at least 60 days prior to the start of construction

(R) *Invasive Species Management Plan:* The licensee must file an Invasive Species Management Plan, for Commission approval, at least 60 days prior to the start of construction. This plan must be developed in consultation with the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service. The licensee must include with the plan, documentation of consultation, copies of recommendations on the completed plan after it has been provided to the resource agencies, and any specific descriptions of how agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

(S) The license is subject to the following additional article:

Article 411. *Reservation of Authority to Prescribe Fishways:* Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act.

(T) 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. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2015). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

APPENDIX A

New York State Department of Environmental Conservation
Water Quality Certification Conditions
Issued December 9, 2015

- 1. Conformance with Plans.** All activities authorized by this Permit shall be in strict conformance with the approved plans, including any approved amendments thereto, submitted by the Permit Holder or his agent as part of the permit application.
- 2. State Not Liable for Damage.** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
- 3. Precautions Against Contamination of Waters.** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the Repowering Project.
- 4. No Interference with Navigation.** There shall be no unreasonable interference with navigation by the work herein authorized.
- 5. State May Require Site Restoration.** If any work, including, without limitation, the Repowering Project, authorized by this permit has not been completed upon expiration or revocation of this Permit or the FERC license, the applicant shall, without expense to the State, and to such extent and in such time and manner as the New York State Department of Environmental Conservation (NYSDEC) may with appropriate authority require, remove all or any portion of the uncompleted structure, stabilize the project area consistent with the approved Erosion and Sediment Control Plan (hereinafter, the approved ESCP) or fill and restore the site consistent with the approved ESCP. No claim shall be made against the State of New York on account of any such removal or alteration.
- 6. Notification Requirements for Emergencies.** Prior to commencement of emergency activities, the Permit Holder shall notify NYSDEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to NYSDEC is not possible, then NYSDEC shall be notified by the Permit Holder within 24 hours of commencement of the emergency activities. In either case, notification shall be by certified mail or other form of communication, e.g. Fax and electronic mail. This notification shall be followed within 24 hours by submission of the following information:

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

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in General Condition #4.

OPERATING CONDITIONS

7. Project Operations and Impoundment Fluctuations. Upon issuance and acceptance of the amended FERC license (License), and completion of the Repowering Project the Permit Holder shall operate project reservoirs as run-of-river in accordance with Article 403 of the License. In support of defining compliance and reporting requirements associated with project operations and impoundment fluctuations, the following is applicable to project operations.

- a. Water Levels: Except as temporarily modified by (1) maintenance activities approved by NYSDEC, (2) extreme hydrological conditions, as defined below, (3) emergency electrical system conditions, as defined below, (4) flashboard failure, or (5) agreement between the applicant and appropriate state and /or federal agencies, beginning within 60 days of issuance of a FERC license for the project or upon such other schedule as established by FERC, water levels in the Mill impoundment shall be maintained within one foot of the full pond elevation of 806.5 feet (crest of flashboards) to the maximum extent possible. Maintenance drawdowns shall be limited to August and September, with attainment of full pond no later than October 15.
- b. Extreme Hydrologic Conditions: Means the occurrence of events beyond the Licensee's control, such as but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.
- c. Emergency Electrical System Conditions: Means operating emergencies beyond the Licensee's control which requires changes in flow regimes to eliminate such emergencies which may in some circumstances include but are not limited to equipment failure or other abnormal temporary operating condition generating unit operation or third-party mandated interruptions under power supply emergencies; and orders from local, state or federal law enforcement or public safety authorities.

8. Bypassed Flows. Effective upon completion of the Re-powering Project, the Permit Holder shall provide at least 45 cfs or inflow whichever is less from March 15th through

November 30th annually in the downstream fish passage structure. In addition, at least 25 cfs will be released for aesthetic flow from May 1st through October 31st annually through the flashboard notch allocated for aesthetic flow.

- a. Bypassed Flows: Except as temporarily modified by (1) maintenance activities approved by NYSDEC, (2) extreme hydrologic conditions, as defined below, or (3) emergency electrical system conditions, as defined below, or (4) agreement between the applicant and appropriate state and/or federal agencies, beginning within 60 days of issuance of a FERC license for the project or upon such other schedule as established by FERC, minimum flows shall be released from the Mill project in accordance with the agreed upon minimum flow.
- b. Extreme Hydrologic Conditions: Means the occurrence of events beyond the Licensee's control, such as but not limited to, abnormal precipitation, extreme runoff, flood conditions, ice conditions or other hydrologic conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the safe operation of the Project.
- c. Emergency Electrical System Conditions: Means operating emergencies beyond the Licensee's control which requires changes in flow regimes to eliminate such emergencies which may in some circumstances include but are not limited to equipment failure or other abnormal temporary operating condition generating unit operation or third-party mandated interruptions under power supply emergencies; and orders from local, state or federal law enforcement or public safety authorities

Bypassed Flows:

March 15th through November 30th Downstream Fish Passage	45 cfs
May 1st through October 31st Additional Aesthetic Flow	25 cfs

9. Fish Protection. Effective upon completion of the Re-powering Project including the construction of the intake and trashrack structure, one-inch clear spaced trashrack overlays shall be installed annually and maintained on a seasonal basis from March 15th through November 30th in accordance with the Trashrack Management Plan as required by Permit Condition # 10.

10. Trashrack Management Plan. Within 12 months of date license issuance, the Permit Holder in consultation with USFWS and NYSDEC shall develop an approvable trashrack management plan (TMP). The TMP will identify when and how the trashrack overlays will be installed and removed annually and what procedures will be followed when a time extension for trashrack overlay installation or removal is needed (e.g., when the overlays cannot be timely installed due to adverse ice conditions or other measures affecting safety). Also, the Permit Holder will collect and maintain data regarding the

timing and circumstances surrounding the annual installation and removal of the overlays for use in the future relicensing.

11. Fish Passage. Effective upon completion of the Re-powering Project, the Permit Holder shall provide a means for downstream fish movement from March 15th through November 30th as described in the application.

PROJECT MAINTENANCE AND CONSTRUCTION

12. In-Water Work Restriction. In-water maintenance activities (including but not limited to dredging, cofferdam construction or removal, etc.) involving the potential disturbance of the bed and/or banks of the Black River or facility reservoir, **shall not** occur from **March 15 to July 15** annually, unless otherwise authorized by the Department in writing, in order to minimize impacts to fish spawning activities.

13. Impoundment Drawdowns/Dewatering Activities. Impoundment drawdowns **shall not** occur from **October 1 to July 15** annually, to protect hibernating amphibians and reptiles and fish spawning activities in the impoundment. Prior to any drawdown or dewatering activities, the Permit Holder shall consult with and receive NYSDEC's written approval regarding drawdown timing and refill rates. Impoundment drawdowns or dewatering activities shall not occur until the certificate holder has given proper prior notification to NYSDEC as per Natural Resource Permit Condition #22.

Impoundment drawdown/refill operations shall occur at a gradual rate (pursuant to the aforesaid consultation and approval) in order not to strand aquatic species. The Permit Holder shall monitor areas affected by the drawdown/refill operations or dewatering activities and return any stranded fish back to adequate water conditions.

14. Maintenance Dredging. The Permit Holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities associated with the Project. Refer to Natural Resource Permit Condition #12 for in-water work restrictions.

Appropriate turbidity control structures (such as, but not limited to, filter fabric or turbidity curtains weighted across the bottom and suspended at the top by floats) shall be positioned to enclose the work site before commencing dredging. The containment method shall remain in place and in functional condition during all phases of dredging operations and remain in place until after dredging has terminated and turbidity inside the containment area no longer exceeds ambient levels. During any portion of the dredging operation or prior to containment removal, if noticeable turbidity occurs outside the containment area, and such level of turbidity is in breach of the approved ESCP, work

shall cease until the containment method is repaired or reinforced and is functioning properly.

15. Sediment Analysis and Disposal. The Permit Holder shall sample any sediment which will be disturbed or removed from the project 's waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol that is consistent with NYSDEC's Technical and Operations Guidance 5.1 .9 or applicable guidelines/regulations. The sampling protocol shall include a disposal protocol based on analytical sediment sampling results and current applicable regulations/guidelines. The sampling results are required to be submitted to NYSDEC at least 60 days prior to the commencement of dredging or work that will disturb sediment in the project waters. Dredging or other excavation shall not commence until the Permit Holder also secures NYSDEC's written approval for the disposal or interim holding locations for any sediments to be removed from the project waters.

16. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Black River or project reservoir. Before any cofferdam installation or other work commences which encroaches on the bed or banks of the Black River, the proposed design of all such structures as they pertain to water quality, to compliance with water quality standards, and to this Permit shall be approved, in writing, by NYSDEC prior to installation. NYSDEC will conduct its review of the proposed design within 60 days after receipt of all materials it determines are necessary for completing such review.

17. Erosion and Sediment Control Plan. At least 60 days prior to commencing any major construction or maintenance activities within the project boundary which could adversely affect water quality, the Permit Holder shall submit to NYSDEC for review and approval, an erosion and sediment control plan (ESCP). The ESCP and work proposed therein shall meet the erosion and sediment control goals and performance standards set forth in Natural Resource Permit Condition #18. Work shall not commence until the certificate holder receives NYSDEC's written approval of the ESCP.

18. Erosion and Sediment Control Goals and Performance Standards. At a minimum, the Permit Holder shall ensure that the ESCP provides for implementing the following erosion and sediment/contaminant control measures, are adhered to during operation, construction and/or maintenance that may result in sediments/contaminants entering any wetland or waterbody:

- a) All erosion and sediment controls measures shall be installed prior to work. Site preparation work shall not be undertaken until all required erosion control measures have been installed and are functioning properly. Siltation prevention measures (e.g. silt fencing, sediment traps or settling basins) shall be installed and maintained during the project to prevent

movement of silt and turbid waters from the project site and into any watercourse, stream, water body or wetland.

- b) Effective erosion control measures shall be installed on the downslope of all disturbed areas (including, but not limited to construction/maintenance equipment staging areas, driveways, roads ramps or other areas where runoff would reach a waterbody) to prevent eroded material from entering any waterbody or wetland. Erosion control measures shall be maintained in a fully functional condition until the disturbed areas are fully stabilized. These erosion control measures are to be installed before commencing any other involving soil disturbance, equipment staging or major construction/maintenance activities commence.
- c) Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction/maintenance activities from entering any waterbody or wetland.
- d) Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered.
- e) Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into any waterbody or wetland.
- f) Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.
- g) All areas of soil disturbance resulting from project operation, construction or maintenance shall be seeded with an appropriate perennial grass, and mulched with straw immediately upon completion of the activity. Mulch shall be maintained until suitable vegetation cover is established to NYSDEC's satisfaction.
- h) Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project.
- i) Ensure the immediate and complete removal of all dredged and excavated material, debris or excess materials from operation, construction, or

maintenance from the bed and banks of all water areas to a Department approved upland disposal site.

- j) Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by NYSDEC.

19. Turbidity Monitoring. During activities related to maintenance or construction in or near the Black River or project reservoir, the Permit Holder shall monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 200 feet downstream from any discharge point or other potential source of turbidity. The Permit Holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the cause is corrected. The certificate holder is required to report any events where turbidity measurements for the downstream locations exceed the measurements from the upstream locations to NYSDEC's Region 6 Natural Resources contact person (as specified in General Condition #4), within 24 hours of the incident.

20. Maintenance of River Flows. Until completion of the Repowering Project and associated construction activities, the Permit Holder shall maintain compliance with Article 403 of the Existing License. Following completion of the Repowering Project, the Permit Holder shall operate the Lyons Falls Mills facility in accordance with this Permit. If adequate river flows are not maintained, the Permit Holder is required to notify NYSDEC's Natural Resources Supervisor in the Region 6 office in Watertown (as specified in General Condition #4), within 24 hours of the incident.

21. Stormwater SPDES. All activities at the project requiring the disturbance of greater than one acre shall obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-00-15-002) (see <http://www.dec.ny.gov/chemical/8468.html>).

22. Notifications and Department Authorizations. The Regional Natural Resources Supervisor, or other appointed Natural Resources staff, shall be notified in writing at least 60 days prior to commencing any project maintenance or construction work pertaining to water quality, compliance with water quality standards or to this Permit. Additionally, the Permit Holder shall contact the assigned Region 6 Natural Resources staff (as specified in General Condition #4) within 7 days prior to the activity commencing (including but not limited to all drawdowns, flashboard replacements requiring drawdowns or disruptions of flows, and all construction or maintenance activities pertaining to water quality, compliance with water quality standards or this Permit) and within 7 days after it is finished (start notification/end notification).

NYSDEC reserves the authority to temporarily prohibit the project operator from commencing impoundment releases or drawdowns, or conducting in-water maintenance work (including dredging) due to NYSDEC's determination that such actions will cause the project or facility to be out of compliance with applicable water quality standards or the water quality certificate issued for the hydropower license. The project operator shall contact NYSDEC Natural Resources staff contact person (as specified in General Condition #4) as soon as the project operator finds that water quality conditions permit the release, drawdown or in-water work to be conducted without being out of compliance with water quality standards or this certificate. NYSDEC Natural Resources staff person will then advise the project operator if conditions permit commencing releases or drawdowns.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification. The New York State Department of Environmental Conservation hereby certifies that:

- it has reviewed the Permit Holder's Application for Amendment of Federal Hydroelectric License (May 2015) and all other available pertinent information; and
- the project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a); and
- the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 700-706.

This Water Quality Certification is issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 U SC 1341) and 6 NYCRR §608.9

GENERAL CONDITIONS- Apply to ALL Authorized Permits:

1. Facility Inspection by NYSDEC. The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of NYSDEC of Environmental Conservation (NYSDEC) to determine whether the Permit Holder is complying with this Permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-030 I and SAPA 40 I (3).

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

A copy of this Permit, including management plans, as well as the FERC application, license and all pertinent maps, drawings and special conditions shall be available for inspection by Department staff at all times during such inspections at the project site or facility. Failure to produce a copy of any of these documents upon request by a Department representative is a violation of this Permit.

2. Relationship of this Permit to Other Department Orders and Determinations.

Unless expressly provided for by NYSDEC, issuance of this Permit does not modify, supersede or rescind any order or determination previously issued by NYSDEC or any of the terms, conditions or requirements contained in such order or determination. This Permit supplements and modifies the Section 401 Water Quality Certification for the project issued February 12, 1985 (see Attachment 1) only as it pertains to the Lyons Falls Mill facility.

3. Applications for Permit Renewals or Modifications. The Permit Holder shall submit a separate written application to NYSDEC for renewal, modification, or transfer of this Permit. Such application shall include any forms or supplemental information NYSDEC requires. Any renewal, modification or transfer granted by NYSDEC shall be in writing.

4. Department Contacts. All matters concerning this Permit, including, but not limited to: Water Quality Certification Specific Conditions, General Conditions, and Other Permit Holder Conditions, and all applications for permit modification or renewal are to be submitted to:

Regional Permit Administrator- DEC Region 6
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601
Fax: (315) 785-2242
Phone: (315) 785-2245
Email: dec.sm.DEP.R6@dec.ny.gov

All matters concerning Natural Resource Permit Conditions, including, but not limited to: submission of the information required by the Natural Resource Permit Conditions, the reporting of possible violations, and requests to deviate from timing windows in the Natural Resource Permit Conditions are submitted to:

Regional Natural Resource Supervisor- DEC Region 6
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601

Fax: (315) 785-2242

Phone: (315) 785-2263

Email: information.r6@dec.ny.gov

5. Permit Modifications, Suspensions and Revocations by NYSDEC. NYSDEC reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include, without limitation:

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

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

7. Adjudicatory Hearing/Acceptance. The Permit Holder has the right to object to conditions in this Permit through the adjudicatory hearing process. A hearing must be requested in writing within 30 calendar days of the date of the mailing of this Permit by writing to the Regional Permit Administrator (as specified in General Condition #4). Failure to object to the conditions in this Permit shall be deemed acceptance by the Permit Holder.

OTHER PERMIT HOLDER OBLIGATIONS

Item A: Permit Holder Accepts Legal Responsibility and Agrees to Indemnification.

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

Item B: Permit Holder's Contractors to Comply with Permit. The Permit Holder is responsible for informing its independent contractors and subcontractors, employees, agents and assigns of their responsibility to comply with this Permit, including all conditions while performing any of the permitted activities on behalf of the Permit Holder, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the Permit Holder.

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

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

Document Content(s)

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