

144 FERC ¶ 62,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp
St. Anthony Hydro LLC

Project Nos. 2381-063 and
14552-000

ORDER AMENDING LICENSE, DESIGNATING NEW DOCKET NUMBER,
APPROVING TRANSFER OF LICENSE, AND REVISING ANNUAL CHARGES

(Issued September 13, 2013)

1. On June 11, 2013, PacifiCorp (PacifiCorp or transferor), and St. Anthony Hydro LLC (St. Anthony or transferee) (together referred to as applicants) filed a joint application to divide the license for the Ashton – St. Anthony Hydroelectric Project No. 2381 into two licenses and to transfer one license to St. Anthony Hydro LLC. The project is located on the Henry’s Fork of the Snake River in Fremont County, Idaho, and includes the Ashton and St. Anthony developments. The St. Anthony development is also located on the Egin Irrigation Canal (Egin Canal), a diversion of the Henry’s Fork. The Ashton development occupies 0.39 acres of federal land administered by the Bureau of Land Management. The St. Anthony development does not occupy any federal lands.

Background

2. The Ashton – St. Anthony Project was originally licensed to Utah Power and Light Company on December 19, 1977,¹ and relicensed on August 3, 1987.² The project was transferred to PacifiCorp on November 23, 1988.³ As licensed,⁴ the Ashton

¹ *Utah Power & Light Co.* 1 FERC ¶ 61,263 (1977). The license was made effective January 1, 1938, with an expiration date of December 31, 1987.

² *Utah Power & Light Co.* 40 FERC ¶ 61,139 (1987). The new license was issued effective January 1, 1988, with an expiration date of December 31, 2027.

³ *Utah Power & Light Co. and PC/UP&L Merging Corp.*, 45 FERC ¶ 62,145 (1988). The license transfer was a result of a merger of PacifiCorp and Utah Power & Light Corp. into PacifiCorp.

⁴ The project description was amended in *Utah Power & Light Co.*, 50 FERC ¶ 62,070 (1990), *PacifiCorp*, 58 FERC ¶ 62,042 (1992), *PacifiCorp*, 65 FERC ¶ 62,146 (1993), and *PacifiCorp*, 66 FERC ¶ 62,198 (1994).

development is comprised of: (a) a 56.6-foot-high, 226-foot-long, earth and rock-filled dam having its downstream slope covered with roller compacted concrete, upstream slope stabilized by additional rock fill, and crest elevation at 5,156.6 mean sea level (msl); (b) two-foot-high flashboards on the dam crest to prevent spillage from reservoir wave-action; (c) an 82-foot-long reinforced concrete spillway surmounted by six 10-foot-high radial gates; (d) a reservoir having a surface area of 404 acres, a gross storage capacity of 9,800 acre-feet and a usable storage capacity of 3,988 acre-feet at normal water surface elevation 5,156.6 feet msl; (e) a reinforced-concrete powerhouse located at the right bank, having integral intakes controlled by vertical slide gates and containing two generating units, each rated at 2,000 kW, and one generating unit rated at 2,850 kW; (f) a tailrace; (g) a 46/2.3-kV step-up transformer; (h) a 133-foot-long, 46-kV transmission line; (i) a 2,160-foot-long access road; and (j) appurtenant facilities.

3. The St. Anthony development is comprised of: (a) a 375.2-foot-long concrete overflow diversion dam that is approximately 6.5 feet high with a crest elevation of 4,952.5 feet msl. The crest is formed by a 152.9-foot-long concrete ogee section and by a 1.0-foot-high, 169.3-foot-long timber section. The dam also includes a 31-foot-wide stoplog section and fish passage section at the left abutment; (b) a 41-foot-wide reinforced-concrete canal intake structure; (c) a 35-foot-wide, 1,350-foot-long power and irrigation canal; (d) an irrigation canal headworks structure; (e) a 16-foot-wide, 145-foot-long screened and rubber-lined wooden-box flume having an overflow spillway and an ice chute; (f) a reinforced concrete powerhouse containing one generating unit rated at 500-kW; (g) a tailrace; (h) the 2.3-kV generator leads; and (i) appurtenant facilities.

4. The turbine at the St. Anthony development has not been operational since 2002 when the turbine shaft coupling failed. PacifiCorp states that continued operation of the facility is no longer an economically viable option for it. PacifiCorp has been providing the Commission's Division of Dam Safety and Inspections – Portland Regional Office with quarterly reports that include options on the rebuilding, decommissioning, or sale of the St. Anthony development since 2003.

Proposed Action

5. The Applicants propose to divide the two developments, remove the St. Anthony development from the original license, and transfer it to a separate license issued to St. Anthony Hydro LLC. The separation of the two noncontiguous developments does not include any alteration to project works, nor will approval of the division of the two developments and the transfer result in any lands or waters being added to or deleted from the developments.

6. St. Anthony Hydro LLC plans to restore the St. Anthony development. Attachment B of the application includes a detailed plan with work items that will be completed to restore the turbine and return the St. Anthony development to an operational

state. The estimated capital cost to return the project to operation is \$800,000. Attachment C of the application includes a bank statement and letter of credit worthiness demonstrating that St. Anthony Hydro LLC has adequate financial resources to fund the rehabilitation work.

Public Notice

7. The Commission issued a public notice of the application on July 12, 2013, that established August 12, 2013, as the deadline to file comments, motions to intervene, and protests. The State of Idaho filed a timely notice of intervention on July 25, 2013.⁵ No other comments, motions to intervene, or protests were received.

Discussion

A. License Amendment and Separate License

8. The license amendment would separate the Ashton and St. Anthony developments, leaving the Ashton development under the existing license, and creating a separate license for the St. Anthony development, with a new docket number. The license for the new St. Anthony Project will include all of the terms and conditions of the existing license that are applicable to that development. The two projects are not connected either physically or operationally, and the separation would not require any changes to project works. I will approve the separation of the two developments into two licenses as described below.

B. Transfer of the St. Anthony Project.

9. The separate St. Anthony Project license would be transferred to St. Anthony Hydro LLC as applicable to the two developments. None of the terms of the license for the Ashton – St. Anthony Project will be changed (although, as discussed below, we will add some new requirements in the St. Anthony Project license). The licenses for each of the new, separate projects will include those terms of the current license that are applicable to each project.⁶ A transfer of license does not authorize any deviation from the terms and conditions of the existing license.

⁵ By filing a timely notice of intervention, the State of Idaho is a party by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2) (2013)

⁶ In other words, all of the general terms and conditions of the current license will be included in both of the new licenses. Terms and conditions that are applicable to specific project works will be included in the license for the project that includes those
(continued)

10. PacifiCorp has complied fully with the terms and conditions of the license, with the exception of allowing the St. Anthony development to remain non-operational since 2002, and has agreed to pay charges attributable to the St. Anthony Project until the date of the transfer. St. Anthony Hydro LLC is qualified to hold a license and operate the properties under the license, and agrees to accept and be bound by all of the terms and conditions of the license as though it was the original licensee. The owner of St. Anthony Hydro LLC currently owns or manages the operation of nine hydroelectric plants ranging in size from 290 kW to 7.5 megawatts.⁷ These projects have generally complied with the terms and conditions of the existing licenses or exemptions. This order includes several additional requirements for the St. Anthony Project that aim to ensure the project becomes operational in a reasonable time frame and to protect the environment and public safety in the event that the project does not become operational. By accepting the transfer St. Anthony Hydro LLC agrees that the failure to satisfy these requirements will be taken as its intention to surrender the project and that the Commission may terminate the license through implied surrender.

11. This action does not authorize new construction or any change in project operations other than that already approved in the license for the Ashton – St. Anthony Project. St. Anthony Hydro LLC’s rehabilitation of the St. Anthony Project consists only of restoring the turbines and related equipment within the project powerhouse. The Commission’s regulations provide that neither an environmental assessment nor an environmental impact statement need be prepared for a license transfer, and the rehabilitation work will have no environmental consequences that would require analysis. Accordingly, there is no need to prepare an environmental document in this proceeding.⁸ In light of the facts discussed herein, the proposed actions are consistent with the Commission's regulations and are in the public interest.

C. Ashton License (Project No. 2381)

12. The Ashton license includes only the Ashton development of the prior Ashton – St. Anthony license, and includes the articles of the license as modified by this order.

13. Exhibits A, F, and G of the Ashton license will need to be revised to reflect the separation and removal of the St. Anthony development. PacifiCorp must revise the

works.

⁷ FERC Project Nos. 3574 (Tiber Dam), 5637 (Pancheri), 6552 (North Fork Sprague River), 7194 (Birch Creek), 8438 (Schaffner), 9134 (Dry Creek), 10468 (Marsh Valley), 12597 (Lower Turnbull Drop), and 12598 (Upper Turnbull Drop).

⁸ 18 C.F.R. § 380.4(a)(8) (2013).

exhibits to accurately reflect the project name, project number, and licensee. This order requires PacifiCorp to file for Commission approval, revised Exhibits A, F, and G, that reflect the administrative changes approved by this order and conform to sections 4.39 and 4.41 of the Commissions regulations. PacifiCorp should also take this opportunity to verify all information on the exhibits is accurate and make revisions, if necessary.

14. The Commission collects annual charges from licensees for administration of the Federal Power Act (FPA) and, where applicable, use and occupancy of U.S. lands. The Ashton Project occupies 0.39 acres of federal land administered by the Bureau of Land Management. Article 201 provides for the collection of funds for administration of the FPA and use and occupancy of U.S. lands. This order revises Article 201 of the Ashton license to reflect the correct installed capacity of the Ashton Project of 6,850 kW.⁹

D. St. Anthony License (Project No. 14552)

15. The St. Anthony license includes only the St. Anthony development of the prior Ashton – St. Anthony license and includes the requirements set forth in this order. While some of the requirements of the articles set forth below have been satisfied by the transferor and the articles may have no outstanding requirements, the articles will remain part of the St. Anthony license.

16. St. Anthony Hydro LLC must file revised Exhibits A, F, and G for Commission approval that reflect the administrative changes approved by this order and conform to sections 4.39 and 4.41 of the Commissions regulations. The exhibits must accurately reflect the project name, project number, and licensee. St. Anthony Hydro LLC should also take this opportunity to verify all information on the exhibits is accurate and make revisions, if necessary.

17. The application includes a detailed plan to return the St. Anthony Project to operation. While this plan is acceptable, the applicant did not provide a schedule. This order requires St. Anthony Hydro LLC to re-file its plan and a supplemental schedule when it files plans and specifications with the Commission's Division of Dam Safety and Inspection – Portland Regional Engineer.

18. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA. The authorized installed capacity for the St. Anthony Project is 500 kW. Under the

⁹ The application identifies the authorized installed capacity for the Ashton-St. Anthony Project as 9,600 horsepower (hp). The Commission issued an order on November 16, 1993, that revised the capacity to 9,800 hp. The Commission currently uses kilowatts measurement to determine annual charges. 18 C.F.R. § 11.1 (2013).

regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW, like this project, will not be assessed an annual charge.

The Director orders:

(A) The applicants' request to separate the two developments in Project No. 2381 into two licenses is approved, as described by this order.

(B) The transfer of the license for the St. Anthony Project No. 14552 (formerly the St. Anthony development of the Ashton – St. Anthony Project No. 2381), from PacifiCorp to St. Anthony Hydro LLC is approved. The license to operate and maintain the St. Anthony Project has an expiration date of December 31, 2027, and is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(C) PacifiCorp shall pay all annual charges for the St. Anthony Project No. 14552 (formerly the St. Anthony development of the Ashton – St. Anthony Project 2381), that accrue up to the effective date of the transfer to St. Anthony Hydro LLC.

(D) Approval of the transfer of the St. Anthony Project No 14552 (formerly the St. Anthony development of the Ashton – St. Anthony Project 2381), from PacifiCorp to St. Anthony Hydro LLC is contingent upon: (1) transfer of title of the properties under license, transfer of all project files including all dam safety related documents, and delivery of all license instruments to St. Anthony Hydro LLC, which shall be subject to the terms and conditions of the license as though it were the original licensee for that development; and (2) St. Anthony Hydro LLC acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, St. Anthony Hydro LLC shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(E) Project No. 2381, formerly known as the Ashton – St. Anthony Project, is now the Ashton Project.

(F) The project description for the Ashton Project No. 2381 set forth in ordering paragraph (B)(2) of the August 3, 1987 Order Issuing New License (Major Project—Existing Dam),¹⁰ is revised to read as follows:

¹⁰ The project description was amended in *Utah Power & Light Co.*, 50 FERC ¶ 62,070 (1990), *PacifiCorp*, 58 FERC ¶ 62,042 (1992), *PacifiCorp*, 65 FERC ¶ 62,146 (1993), and *PacifiCorp*, 66 FERC ¶ 62,198 (1994).

Project works consisting of: (a) a 56.6-foot-high, 226-foot-long, earth and rock-filled dam having its downstream slope covered with roller compacted concrete, upstream slope stabilized by additional rock fill, and crest elevation at 5,156.6 mean sea level (msl); (b) two-foot-high flashboards on the dam crest to prevent spillage from reservoir wave-action; (c) an 82-foot-long reinforced concrete spillway surmounted by six 10-foot-high radial gates; (d) a reservoir having a surface area of 404 acres, a gross storage capacity of 9,800 acre-feet and a usable storage capacity of 3,988 acre-feet at normal water surface elevation 5,156.6 feet msl; (e) a reinforced-concrete powerhouse located at the right bank, having integral intakes controlled by vertical slide gates and containing two generating units, each rated at 2,000 kW, and one generating unit rated at 2,850 kW; (f) a tailrace; (g) a 46/2.3-kV step-up transformer; (h) a 133-foot-long, 46-kV transmission line; (i) a 2,160-foot-long access road; and (j) appurtenant facilities.

(G) The following exhibits are deleted from the Ashton Project No. 2381:

Exhibit	FERC Drawing No.	Title
F-10	2381-55	Dam and Fish Passage Structure - Plan, Profile and Details
F-11	2381-41	Canal Intake and Wasteway - Plans, Elevation and Sections
F-12	2381-61	General Design Drawing
F-13	2381-43	Powerhouse – Plan
F-14	2381-44	Powerhouse – Sections
F-15	2381-45	Powerhouse – Elevations
G-7	2381-56	Project Location Map - Project Works and Principal Features

(H) The licensee for the Ashton Project No. 2381 shall file, within 60 days from the effective date of the transfer, revised Exhibits A, F, and G, for Commission approval. The revised exhibits shall reflect the administrative changes approved by this order and confirm to sections 4.39 and 4.41 of the Commissions regulations.

(I) Articles 403, 407, and 409 are deleted from the license for the Ashton Project No. 2381.

(J) Articles 201 and 404 of the license for the Ashton Project No. 2381 are revised to read as follows:

Article 201. The licensee shall pay the United States the following annual charges, as determined in accordance with the provisions of the Commission's regulations in effect from time to time:

(a) effective as of the issuance date of this order, to reimburse the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 6,850 kW.

(b) effective as of the issuance date of this order, for the purpose of recompensing the United States for the use, occupancy, and enjoyment of 0.39 acres of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, shall develop a monitoring plan to evaluate turbine-induced injury and mortality to fish resources at the Ashton Project. Within six months from the effective date of the license, the licensee shall file a copy of the monitoring plan, along with any comments from the above agencies on the plan, and a schedule for filing the results of the monitoring program. The Commission reserves the right to require modifications to the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with any comments from the consulted agencies. If the results of the monitoring indicate that measures are necessary to minimize adverse effects to fish resources, the licensee also shall provide, for Commission approval, its recommendations for mitigation measures and a schedule for implementing the measures, along with comments from the above agencies on the recommended measures. Measures to be considered by the licensee shall include, but need not be limited to, screening the intakes, providing an equivalent offsite enhancement of a wild trout population, providing supplemental stocking, and providing other nonscreening alternatives, such as behavior barriers, to minimize and compensate for any fish losses. At the same time, copies of the schedule shall be served upon the agencies consulted. The Commission reserves the right to require the licensee to undertake measures different than those recommended by the licensee and to make changes in the implementation schedule.

(K) The St. Anthony Project No. 14552 shall consist of the following:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G.

(2) Project works consisting of: (a) a 375.2-foot-long concrete overflow diversion

dam that is approximately 6.5 feet high with a crest elevation of 4,952.5 feet msl. The crest formed by a concrete ogee section extending a length of 152.9 feet and by a 1.0-foot-high timber section extending a length of 169.3 feet. The dam, including a 31-foot-wide stoplog section and a fish passage section at the left abutment; (b) a 41-foot-wide reinforced-concrete canal intake structure; (c) a 35-foot-wide, 1,350-foot-long power and irrigation canal; (d) an irrigation canal headworks structure; (e) a 16-foot-wide, 145-foot-long screened and rubber-lined wooden-box flume having an overflow spillway and an ice chute; (f) a reinforced concrete powerhouse containing a 500-kW generating unit; (g) a tailrace; (h) the 2.3-kV generator leads; and (i) appurtenant facilities.

The project works generally described above are more specifically shown and described by Exhibits A and F.

(L) The following sections of the Federal Power Act are waived and excluded from the license for the St. Anthony Project No. 14552: 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers, and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(M) The license for the St. Anthony Project No. 14552 shall be subject to the articles set forth in Form L-12 (October 1975), entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" and attached to this order. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charges, as determined in accordance with the provisions of the Commission's regulations in effect from time to time: effective as of the issuance date of this order, to reimburse the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 500 kW. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW will not be assessed an annual charge.

Article 202 (formerly Article 203 of the Ashton Project No. 2381). The Commission reserves the authority to order upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian tribes, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 203 (formerly Article 204 of the Ashton Project No. 2381). The licensee

for the St. Anthony Project No. 14552 shall file, within 60 days from the effective date of the transfer, revised Exhibits A, F, and G, for Commission approval. The revised exhibits shall reflect the administrative changes approved by this order and confirm to sections 4.39 and 4.41 of the Commission's regulations.

Article 301. The licensee shall start construction of the proposed work authorized in this order within one year and complete construction within three years from the effective date of the transfer. Failure to commence construction within one year from the issuance date of this order, or complete construction within three years from the issuance date of this order, will be considered intent to surrender the project and the Commission may terminate the license by implied surrender.

Article 302. At least 60 days prior to the start of construction, the licensee shall submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI)–Portland Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, a Soil Erosion and Sediment Control Plan, and a Restoration Plan and Schedule. The licensee may not begin construction until the D2SI-Portland Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 303. Should construction require cofferdams or deep excavations, the licensee shall: (1) review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction; and (2) shall 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 shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland 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.

Article 304. Within 90 days of completion of construction of the facilities authorized by this order, the licensee shall file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI)–Portland Regional Engineer, the Director, D2SI, and the Director, Division of Hydropower Administration and Compliance.

Article 305. Within 60 days from the effective date of the transfer, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of a Public Safety Plan. The plan shall include an evaluation of public safety concerns at the project site, including designated recreation areas, and assess the need for the installation of safety devices or other safety measures. The submitted plan should include a description of all public safety devices and signage, as well as a map showing the location of all public safety measures. For guidance on preparing public safety plans the licensee can review the Guidelines for Public Safety at Hydropower Projects on the FERC website.

Article 306. Within 60 days from the effective date of the transfer, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of an Emergency Action Plan (EAP). The plan should be in accordance with Part 12, Subpart C of the Commission's Regulations and Chapter 6 of the Commission's Engineering Guidelines. If applicable, the licensee may ask for an exemption from filing an EAP in accordance with Subpart 12.21 of the Commission's Regulations.

Article 307. The licensee shall file, within 120 days from the effective date of the transfer, a Financial Assurance Plan, for Commission approval. The plan shall identify that the licensee has the funds necessary to operate and maintain the project, and identify those project facilities that would be removed, secured in-place, or otherwise modified to ensure public safety and any other measures needed to protect environmental resources in the event the licensee cannot complete project restoration or is unable to operate the project once restoration is completed. The plan must include, at a minimum, financial statements, including a balance sheet, income statement, and a statement of actual or estimated cash flows over the license term which provide evidence that the licensee has sufficient assets, credit, and projected revenues to cover project 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 plan shall also include an itemized cost estimate, prepared by a registered engineer, for those project facilities that would be removed, secured in-place, or otherwise modified in the event the licensee cannot complete project restoration or is unable to operate the project once construction is completed.

Subsequent to Commission approval of the Financial Assurance Plan, the licensee shall file documentation that the licensee has obtained a bond or equivalent financial instrument that ensures the licensee has the financial means necessary to implement the Financial Assurance Plan. The implementation of the plan and the determination of

measures necessary to render the site safe for the public and to protect environmental resources shall be at the direction of the Commission. The licensee shall maintain the bond or equivalent financial instrument throughout the term of the license. The licensee shall file annually by January 1 of each year a report documenting that the bond or equivalent financial instrument will remain in effect for the ensuing year.

Article 401 (formerly Article 403 of the Ashton Project No. 2381). The licensee shall consult with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service and, within six months from the effective date of the license, file with the Commission, for approval, functional design drawings of fish passage facilities for the Egin Irrigation Canal diversion dam at the St. Anthony Project, and a plan to monitor the operation of the fish passage facilities. The filing shall include documentation of agency consultation and any agency comments on the drawings and monitoring plan. The Commission reserves the right to require changes in the design of the fish passage facilities and in the monitoring plan. The licensee shall file as-built drawings with the Commission within three months after completion of the construction of the fish passage facilities.

Article 402 (formerly Article 404 of the Ashton Project No. 2381). The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, shall develop a monitoring plan to evaluate turbine-induced injury and mortality to fish resources at the St. Anthony Project. Within six months from the effective date of the license, the licensee shall file a copy of the monitoring plan, along with any comments from the above agencies on the plan, and a schedule for filing the results of the monitoring program. The Commission reserves the right to require modifications to the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with any comments from the consulted agencies. If the results of the monitoring indicate that measures are necessary to minimize adverse effects to fish resources, the licensee also shall provide, for Commission approval, its recommendations for mitigation measures and a schedule for implementing the measures, along with comments from the above agencies on the recommended measures. Measures to be considered by the licensee shall include, but need not be limited to, screening the intakes, providing an equivalent offsite enhancement of a wild trout population, providing supplemental stocking, and providing other nonscreening alternatives, such as behavior barriers, to minimize and compensate for any fish losses. At the same time, copies of the schedule shall be served upon the agencies consulted. The Commission reserves the right to require the licensee to undertake measures different than those recommended by the licensee and to make changes in the implementation schedule.

Article 403 (formerly Article 407 of the Ashton Project No. 2381). The licensee,

after consultation with the City of St. Anthony, and within one year from the effective date of the license, shall repair or replace those portions of the diversion structure and retaining wall at the St. Anthony Project necessary to prevent flooding conditions at Keefer Park. Further, the licensee shall continue to maintain the above facilities during the license period.

Article 404 (formerly Article 408 of the Ashton Project No. 2381). If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all construction and development activities in the vicinity of the sites and shall consult a qualified cultural resources specialist and the SHPO concerning the eligibility of the sites for listing in the National Register of Historic Places and any measures needed to avoid the sites or to mitigate effects on the sites. If the licensee and the SHPO cannot agree on the amount of money to be spent for project-specific archeological and historical purposes, the Commission reserves the right to require the licensee to conduct the necessary work at the licensee's own expense.

Article 405 (formerly Article 409 of the Ashton Project No. 2381). The licensee, within one year from the effective date of the license, and after consultation with the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, and the Idaho Board of Water Resources, shall prepare and file with the Commission a detailed, site specific plan to minimize the quantity of sediment or other potential water pollutants resulting from construction of fish passage facilities at the Egin Irrigation Canal diversion dam. The plan shall address, among other things, measures to contain sediment, to filter sediment-laden discharges, and to store and dispose of excess sediment and other spoil materials. The plan shall also include functional design drawings and map locations of control measures, an implementation schedule, monitoring and maintenance programs for construction of these facilities, provisions for periodic review of the plan and for making any necessary revisions to the plan.

Documentation of consultation with agencies during preparation of the plan, and a summary of agency comments and recommendations, must be included in the filing. In the event that the licensee does not concur with any agency recommendations, the licensee shall provide a discussion of the reasons for not concurring, based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Energy Projects, within 90 days from the filing date instructs otherwise, the licensee may commence instream construction or spoil-producing activities associated with installation of fish passage facilities at the Egin Irrigation Canal diversion dam at the end of that period.

Article 406 (formerly Article 410 of the Ashton Project No. 2381). (a) In accordance with the provisions of this article, the licensee shall have the authority to

grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any noncomplying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) noncommercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

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

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

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

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

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

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

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

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

(N) The licensee for the St. Anthony Project No. 14552 shall serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(O) 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 Federal Power Act, 16 U.S.C. § 825*l* (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2013). 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. Failure to file a request for rehearing shall constitute acceptance of this order.

Charles K. Cover, P.E.
Chief, Project Review Branch
Division of Hydropower Administration
and Compliance

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MINOR PROJECT AFFECTING THE INTERESTS OF
INTERSTATE OR FOREIGN COMMERCE**

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

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

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

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and

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

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

Article 6. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters

adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 8. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive

reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 11. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 12. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil

erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon the request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 16. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 17. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 18. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, _____ this _____ day of _____, 20____, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 20____, a certified copy of the record of which is attached hereto.

By _____

Attest:

Secretary
(Executed in triplicate)