

PacifiCorp Pioneer Hydroelectric License FERC Project No. 2722

Current License, with Subsequent Amendments Incorporated

Please Note: This document does not reflect Amendments to License Exhibits. It treats only Amendments to the text of the license articles, citing the FERC Orders issuing them. Amendments appear in *italics*. Deleted text has actually been deleted. “[]” denote Editor’s Notes.

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UNITED STATES OF AMERICA 91 FERC ¶ 62,143  
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Project No. 2722

**ORDER ISSUING NEW LICENSE  
(Major Project)  
(Issued: May 26, 2000)  
License effective September 1, 2000**

***PIONEER LICENSE PROVISIONS:***

On August 21, 1998, PacifiCorp filed an application for a new license pursuant to Sections 15 and 4(e) of the Federal Power Act (FPA),<sup>1</sup> for the continued operation and maintenance of the 5-megawatt (MW) Pioneer Hydroelectric Project No. 2722. The project is located on the Ogden River near the City of Ogden, Weber County, Utah. Water to operate the project is released from the Pineview reservoir through the Pineview dam; which is owned and operated by the Bureau of Reclamation (BOR). From the dam, water is transported to the project via the Ogden Canyon Conduit (flowline) which is jointly owned by PacifiCorp and BOR. A 1, 300-foot-section of the project's 5.5-mile-long flowline is located on 1.49 acres of Wasatch-Cache National Forest.

## I. BACKGROUND

The existing license for the project was issued on October 10, 1980 and will expire on August 31, 2000.<sup>2</sup>

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<sup>1</sup>16 U.S.C. §§ 791(e), 808.

<sup>2</sup>13 FERC ¶ 62,039 (1980).

The Commission issued a public notice soliciting motions to intervene for the project on November 30, 1998. No motions to intervene were filed. The Commission then issued a public notice on July 9, 1999, indicating the project was ready for environmental analysis (REA) and soliciting comments, recommendations, and terms and conditions. In response, the Commission received comments from the U.S. Department of the Interior's Bureau of Reclamation (BOR). No other agencies responded.

On February 17, 2000, the Commission's staff made available for public comment a draft environmental assessment (DEA). The DEA recommended that the project be issued a new license and found that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment. Comments on the DEA were filed by PacifiCorp and the U.S. Department of the Interior's Fish and Wildlife Service (FWS). On April 12, 2000, the Commission issued the final environmental assessment which is incorporated by reference in this license. BOR and FS filed final 4(e) conditions, on March 30, 2000, and April 3, 2000, respectively. Agency and interested parties comments have been fully considered and addressed in this order in determining whether, and under what conditions, to issue this license.

## II. PROJECT DESCRIPTION

The existing project consists of: (1) a 75-inch-diameter, 5.5-mile-long flowline; (2) a 27-foot-high by 28-foot-diameter surge tank; (4) a 6-foot-diameter, 4,000-foot-long steel penstock; (5) a brick powerhouse with two generating units having a total installed capacity of 5 MW; (6) a 3,000-foot-long tailrace canal; and (6) appurtenant facilities.

The project operates on water released from BOR's Pineview reservoir based on irrigation agreements judicially established with the surrounding water conservation districts. These agreements are coordinated with a state-appointed river commissioner who determines how much water to release for the various water users downstream of the Pioneer Project. The amount of water released by the water commissioner is determined by the water user's water rights and the availability of water in the system. PacifiCorp varies the powerhouse operation depending on the amount of flow the river commissioner is releasing from the Pineview reservoir. The powerhouse can operate on flows between 20 and 200 cubic-feet-per-second.

## III. APPLICANT'S PLANS AND CAPABILITIES

The staff evaluated PacifiCorp's record as a licensee for these areas: (1) consumption improvement program; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6)

transmission line improvements; (7) cost effectiveness of plans; (8) actions affecting the public; and (9) ancillary services. I accept the staff's findings in each of these areas.

### 1. Consumption Improvements Program

PacifiCorp has a long record of encouraging and assisting its customers to conserve electricity. To carry out this objective, the applicant devised a demand-side management (DSM) program. The DSM's goal is to achieve a total of 76 MW of cost effective reductions. The principal components of the program are:

- a) commercial, industrial, and irrigation retrofitting services and implementing measures meant to help save about 52 MW of capacity;
- b) the Energy FinAnswer, a program for providing financing to new commercial customers that contribute to a reduction in the peak loads. The target for this program is 16.2 MW of capacity;
- c) increasing the use of fluorescent lamps in the residential sector thus achieving another 2.6 MW of savings; and
- d) the water savings measures program contributing about 2 MW to the savings.

Staff concludes that the applicant is making a good faith effort to conserve electricity and promote energy conservation by its customers.

### 2. Compliance History and Ability to Comply with the Requirements of the New License

PacifiCorp's overall record of making timely filings and compliance with its license is satisfactory. Therefore, staff believes that the applicant can satisfy the conditions of a new license.

### 3. Safe Management, Operation, and Maintenance of the Project

Staff have reviewed PacifiCorp's record of management, operation, and maintenance of the Pioneer Project pursuant to project safety. Staff concludes that the project works are safe and that PacifiCorp's record of managing, operating, and maintaining these facilities is satisfactory.

### 4. Ability to Provide Efficient and Reliable Electric Service

To evaluate PacifiCorp's ability to provide efficient and reliable service, we reviewed: (1) its operating plan; (2) its program to upgrade the project's equipment; and (3) its unscheduled outages.

After reviewing the operation and maintenance record, staff finds that PacifiCorp has made numerous repairs and replacements to the equipment. For instance, a partial listing of the improvements includes rewinding of Unit No. 6 in 1984 and replacing Unit Nos. 3 and 6 brass runners with stainless steel runners in 1987. In 1989, the Company started a 7-year project to replace portions of the 5-mile-long flowline with concrete enclosed steel flowline. This project was completed in 1995. A penstock isolation valve at the head of the penstock and a flow monitoring system was installed in 1996.

Lost generation due to unscheduled outages at the project for the period 1993 - 1997 was not significant - an average of 750 megawatt-hours (MWh) per year when compared to the average annual generation of 17,821 MWh.

Staff concludes that PacifiCorp has demonstrated the ability and shows commitment to continued efficient and reliable electric service.

#### 5. Need for Power

PacifiCorp provides electricity and related energy services to about 1.3 million customers in 7 western states. About half of PacifiCorp's retail sales are to industrial customers, the rest are divided equally among commercial and residential customers.

Each year, PacifiCorp analyzes future load growth, the capability of the existing power system, and the need for new resources--including both new power plants and customer efficiency programs. Based on their latest planning results, PacifiCorp will need to add about 1,154 MW of baseload resources in the next 10 years (1996-2006).

The PacifiCorp system is part of the Northwest Power Pool Area of the Western Systems Coordinating Council region (WSCC). This area includes the entire states of Washington, Oregon, Idaho, and Utah, parts of California, Montana, Wyoming, and Nevada, and the Canadian provinces of Alberta and British Columbia.

In their 1997 report, WSCC projects a regional peak demand growth rate of 2.2 percent and a regional energy growth rate of 1.9 percent. For the Northwest Power Pool Area, the report shows 2,770 MW of proposed capacity being added during the forecast period, which extends to 2007.

Staff concludes that power from the project, if licensed, would continue to be useful in meeting part of the need for power projected by both PacifiCorp and the Northwest Power Pool Area. By producing hydroelectricity, the Pioneer Project displaces the need for other power plants to operate, thereby avoiding some power plant emissions and creating an environmental benefit. Consequently, continued operation of the Pioneer Project would likely reduce annual carbon emissions in the region. The

amount of greenhouse gases (GHG) emissions that are avoided depends on the type of power displaced, which is region-specific.<sup>3</sup> In the Western States Coordinating Council (WSCC) reliability region where the Pioneer Project is located, the capacity mix includes a proportionately large amount of hydropower, relative to other parts of the country.

#### 6. Transmission Services

If PacifiCorp were to be denied a new license for the Pioneer Hydroelectric Project, any new licensee would undoubtedly use the existing PacifiCorp transmission system to transmit the project power and operation characteristics would likely remain unchanged. This would certainly be true if the new licensee sold the project's power to PacifiCorp.

PacifiCorp states that, if the project were not relicensed, or transferred to another licensee, additional costs would be incurred from the need to find replacement energy and to decommission the project. By removing the transmission line, PacifiCorp states that there would be one less source of voltage control and system stability for the area.

#### 7. Cost Effectiveness of Plans

PacifiCorp doesn't propose any major modifications or additional capacity. Staff has examined the design of the plant and agree that the project, as presently constructed and as PacifiCorp proposes to operate it, fully develops and uses the hydropower potential of the site.

#### 8. Actions Affecting the Public

Issuing a new license for the project would insure that low cost electricity will continue to be available to neighboring communities.

#### 9. Ancillary Services

In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). These benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

Ancillary services are now mostly priced at rates that recover only the cost of providing the electric service at issue, which do not resemble the prices that would occur in competitive markets. As competitive markets for ancillary services begin to develop,

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<sup>3</sup>EIS at p. 1-6.

the ability of hydro projects to provide ancillary services to the system will increase the benefits of the projects.

#### IV. WATER QUALITY CERTIFICATION

Under Section 401 (a)(1) of the Clean Water Act(CWA),<sup>4</sup> the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has either 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 state certification shall become a condition on any federal license or permit that is issued.<sup>5</sup> Only a reviewing court can revise or delete these conditions.<sup>6</sup>

PacifiCorp applied for water quality certification (WQC) for the project on March 20, 1996. The State of Utah Department of Environmental Quality issued water quality certification on April 3, 1996, with the conditions that appropriate Best Management Practices (BMP's) be incorporated during project activities to minimize erosion-sediment input to any adjacent waters and that appropriate water quality parameters be monitored in adjacent waters to determine the effectiveness of the BMP's. The WQC conditions are included in this license as Appendix A.

#### V. THREATENED AND ENDANGERED SPECIES

Section 7(a) of the Endangered Species Act of 1973 (ESA)<sup>7</sup> requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of designated critical habitat. The following federally listed species may occur in the project area: the threatened bald eagle, Ute ladies'-tresses, Canada lynx, and mountain plover. Staff concluded that licensing the project as recommended by staff would not affect any threatened or endangered species.<sup>8</sup> By letter dated March 15, 2000, the FWS concurred with our determination that the project would not affect threatened and endangered species. No further consultation pursuant to the Endangered Species Act of 1973 is needed.

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<sup>4</sup> 33 U.S.C. § 1341(a)(1).

<sup>5</sup>33 U.S.C. § 1341(d).

<sup>6</sup>See American Rivers v. FERC, 129 F.3d 99 (D.C. Cir. 1997).

<sup>7</sup>16 U.S.C. § 1536(a).

<sup>8</sup>See Section V.C.3 in the FEA.

## VI. SECTION 4(e) FINDINGS AND CONDITIONS

Section 4(e) of the FPA<sup>9</sup> states the Commission may issue a license for a project located within any reservation only after finding that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. Section 3 (2) of the FPA<sup>10</sup> defines reservations as including national forests. Section 4 (e) also requires that licenses issued for hydroelectric projects located within United States reservations must include all conditions that the secretary of the department under whose supervision the reservation falls (in this proceeding, the Secretary of the U.S. Department of Agriculture and the Secretary of the U.S. Department of the Interior) shall deem necessary for the adequate protection and utilization of the reservation.

The U.S. Forest Service claims 4(e) authority on the basis of United States ownership of lands within the Wasatch-Cache National Forest. Interior claims Section 4(e) authority on the basis of land withdrawn for the Pineview dam as part of Reclamation's Ogden River and Weber Basin Projects. It is undisputed that part of the Pioneer Project is located on land in which the United States has a property interest and that the Forest Service and Reclamation administer. Consequently, the project lands within the reservations are subject to 4(e) conditions.

The United States owns the land in the Pineview dam area and the uppermost section of the project flowline. Pursuant to Public Law 88-99, this land has been designated as national forest land and, as such, is under the administrative jurisdiction of the U.S. Forest Service, Department of Agriculture. However, Section 3(a) of the Cache National Forest-Utah, Public Law 88-99: 77 STAT. 124, an act to add certain lands to the Cache National Forest, Utah, provides that the Secretary of Agriculture shall make available, to the Department of the Interior, Bureau of Reclamation, such lands as the Secretary of the Interior finds are needed in connection with the Weber Basin and Ogden River reclamation projects. Management of these lands is further defined in a Memorandum of Agreement between Reclamation and the Forest Service.<sup>11</sup> Therefore, both the FS and BOR filed 4 (e) terms and conditions (see Appendix B - FS and Appendix C - BOR). There is no evidence or allegations in this proceeding to indicate that the relicensing of the project will interfere with the purpose of the Cache National Forest. I therefore find that this license will not interfere or be inconsistent with the purpose for which the reservation was created.

There is however one Forest Service condition that does not qualify for Section 4(e) status. Condition 1, which requires PacifiCorp to obtain a Forest Service special-use authorization for the project's occupancy and use of National Forest lands. Section 2401

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<sup>9</sup>16 U.S.C. § 797 (e).

<sup>10</sup>16 U.S.C. § 796 (2).

<sup>11</sup>Letter from Robert F. Stewart, Regional Environmental Officer, Bureau of Reclamation dated September 2, 1999.

of the Energy Policy Act of 1992 amended Section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA) <sup>12</sup> to add a new subsection (d), which grandfathers hydropower projects that did not have special use authorization prior to enactment of the Energy Policy Act of 1992.<sup>13</sup> The Pioneer Project did not previously receive a permit, right-of-way, or other approval under Section 501 of FLPMA, and this relicensing proceeding does not involve the use of any additional public or National Forest lands. **Therefore, we are barred by the Energy Policy Act from requiring PacifiCorp to obtain a special use authorization, and Condition 1 cannot be a part of this license.**<sup>14</sup>

## VII. RECOMMENDATION OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Under the provisions of Section 10 (j) (1) of the FPA,<sup>15</sup> the Commission is required to include license conditions, based upon recommendations of state and federal fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, for the protection of, mitigation of adverse impacts to, and enhancement of fish and wildlife resources affected by the project. If the Commission believes that any such recommendations may be inconsistent with the purpose and requirements of Part I of the FPA, or other applicable law, Section 10(j)(2) of the FPA requires the Commission and the agencies to attempt to resolve such inconsistencies, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

No fish and wildlife agency submitted recommendations that fall within the scope of Section 10(j) of the FPA.

## VIII. OTHER ISSUES

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<sup>12</sup>43 U.S.C. § 1761.

<sup>13</sup>Section 2401 (d) states: With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act (FPA) which is located on lands subject to a reservation under section 24 of the FPA and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for the continued operation, including continued operation pursuant to section 15 of the FPA, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.

<sup>14</sup>See *Henwood Associates, Inc.*, 63 FERC ¶ 61,227 (1993), *Pacific Gas and Electric Co.*, 69 FERC ¶ 61,070 (1994), and *Southern California Edison*, 86 FERC ¶ 61,230 (1999).

<sup>15</sup>16 U.S.C. § 803 (j) (1).



A. Administrative Conditions

The Commission collects annual charges from licensees for administration of the FPA, and to reimburse the United States for the occupancy and use of any federal lands and use of the government dam. Article 201 provides for the collection of such funds.

The Commission requires licensees to file sets of approved project drawings on microfilm. Article 202 provides for the filing of these drawings.

Some projects directly benefitted from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 501 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

B. Aquatic Resources

PacifiCorp proposes to enhance fish habitat in the lower section of the tailrace by strategically placing boulders in the stream to provide velocity shelter and pool habitat for brown trout. The Utah Department of Wildlife requested tailrace enhancement and concurs that the boulder placement, as proposed by PacifiCorp, would help protect brown trout production in the lower tailrace. Staff concluded in Section V.C.1 of the FEA that a tailrace enhancement plan, including the proposed boulder placement, would not only help protect adult and juvenile brown trout during periods of high project discharge (i.e., high tailrace velocities), but also maintain spawning habitat and moderate the effects of project shutdowns. Article 401 requires PacifiCorp to prepare and implement a tailrace enhancement plan.

C. Cultural Resources

On April 21, 1989, the Pioneer Power Plant Historic District in Salt Lake County, Utah, was listed on the National Register of Historic Places as part of the Electric Power Plants of Utah Multiple Property listing. PacifiCorp provided the Utah State Historic Preservation Officer (SHPO) with a report concerning the Pioneer Project. PacifiCorp determined that the continued operation of the Pioneer Project would have no effect on the historic district. This determination was made because no changes to the project facilities or its operation are being proposed. The SHPO and Commission staff concur with PacifiCorp, that continued operation of the project would have no effect on this historic property.

Commission staff recommends and I concur that if archeological or historic sites are discovered during project operation, or if the licensee plans to modify any previously discovered archeological or historic sites, steps should be taken to protect the discovered

archeological or historic sites. Article 402 requires PacifiCorp to implement appropriate measures.

D. Use and Occupancy of Project Lands and Waters

Requiring a licensee to obtain prior Commission approval for every use or occupancy of land would be unduly burdensome. Article 403 allows PacifiCorp to grant permission, without prior Commission approval, for the use and occupancy of project lands for minor activities, such as landscape planting. Such uses must be consistent with the purpose of protecting and enhancing the scenic, recreational, and environmental values of the project.

IX. COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA<sup>16</sup> requires the Commission to consider the extent to which a hydroelectric project is consistent with federal and state comprehensive plans for improving, developing, or conserving waterways affected by the project.<sup>17</sup> Under Section 10(a)(2)(A), federal and state agencies filed 17 comprehensive plans that address various resources in Utah. Of these, staff identified and reviewed 2 plans relevant to the Pioneer Project.<sup>18</sup> No inconsistencies were found.

X. COMPREHENSIVE DEVELOPMENT

In determining whether a proposed hydroelectric power project will be best adapted to a comprehensive plan for developing a waterway for beneficial public uses, pursuant to Section 10(a)(1), the Commission considers a number of public interest factors, including the projected economic benefits of project power.

Under the Commission's current approach to evaluating the economics of hydropower projects, as articulated in Mead Corp.,<sup>19</sup> the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power without incorporating forecasts concerning the effects of potential future inflation, escalation, or deflation. The purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. In making its decision, the Commission considers the project power benefits both with the applicant's proposed mitigation and

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<sup>16</sup>16 U.S.C. § 803(a)(2)(A).

<sup>17</sup>Comprehensive plans for this purpose are defined at 18 CFR 2.19 (1999).

<sup>18</sup>(1) Forest Service. Wasatch-Cache National Forest land and resource management plan. Undated, Department of Agriculture, Salt Lake City, Utah; (2) Utah Department of Natural Resources. Division of Parks and Recreation. 1985. Statewide comprehensive outdoor recreation plan. Salt Lake City, Utah. December 1985.

<sup>19</sup>72 FERC ¶ 61,027 (1995).

enhancement measures and with the Commission's modifications and additions to the applicant's proposal.

As proposed by PacifiCorp, the project would produce an average of 17,821 MWh of energy annually at an annual cost of \$1,853,980 or 104 mills/kWh.<sup>20</sup> The current annual value of the project's power is about \$430,200 or 24.1 mills/kWh.<sup>21</sup> To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current cost, the project as currently operating would cost about \$1,424,240 or 80 mills/kWh more than the current cost of alternative power.

Despite a cost that exceeds the current cost of alternative power, it is up to PacifiCorp to decide whether to operate the project in view of what appear to be the net economic cost of the development. Project economics is only one of the many public interest factors the Commission considers in determining whether or not, and under what conditions, to issue a license. I conclude that it is in the public interest to issue a license for the project, with the appropriate conditions needed to meet the equal consideration and comprehensive development standards of FPA Sections 4(e) and 10(a)(1), and to leave to PacifiCorp the decision of whether or not to modify and operate the project as so conditioned.

Sections 4(e) and 10(a)(1) of the FPA<sup>22</sup> require the Commission, in acting on applications for license, to give equal consideration to developmental and environmental values. Any license issued shall be in the Commission's judgment best adapted to a comprehensive plan for improving or developing the waterways for beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

Based on the record in this proceeding, and for the reasons discussed herein, I conclude that the proposed project with our additional measure to protect cultural resources in the project area will be best adapted to a comprehensive plan for developing the waterway for beneficial public uses. The 17,821 MWh of clean, domestic, and reliable energy that would be produced by the project would displace fossil-fueled electric generation, thereby conserving nonrenewable fossil fuels and avoiding the emission of additional noxious gases caused by the combustion of those fuels. The

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<sup>20</sup>The high cost of power production at this project is mostly due to the project's high net investment (undepreciated capital costs), which reflects major replacement and repair work recently completed on the project's 5.5-mile-long flowline and generation equipment. The net investment accounts for about 63 mills/kWh of the total cost. The project operation and maintenance cost, based on information contained in Pacificorp's Form 1 filings to the Commission, is about 41 mills/kWh.

<sup>21</sup>We base our estimate of project value on PacifiCorp's Utah avoided power cost.

<sup>22</sup>16 U.S.C. §§ 797(e) and 803(a)(1).

environmental measures – enhance tailrace habitat, develop a detailed tailrace enhancement plan, and protect archeological or historic sites during any future project modifications and during project operation and maintenance – would reduce adverse effects on water quality and fisheries and protect cultural resources in the project area.

## XI. LICENSE TERM

Section 15 (e) of the FPA<sup>23</sup> specifies that any license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years from the date on which the license is issued. The Commission's policy establishes 30-year terms for projects with little or no proposed redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with moderate amount thereof; and 50-year terms for projects with extensive amount thereof. **Because relicensing the project would require no new construction and only minor enhancement measures, I am providing a license term of 30 years for the project.**

## XII. SUMMARY OF FINDINGS

The FEA contains background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license.

The Director orders:

(A) **This license is issued to PacifiCorp (licensee) for the Pioneer Hydroelectric Project, for a period of 30 years, effective September 1, 2000.** The existing license expires on August 31, 2000. The license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to regulations the Commission issues under the provisions of the FPA.

(B) The project consists of :  
(1) All lands, to the extent of the licensee's interest in those lands, enclosed by the project boundary as shown in the following exhibit G figure:

|                |                       |                             |
|----------------|-----------------------|-----------------------------|
| <u>Exhibit</u> | <u>FERC No. 2722-</u> | <u>Showing</u>              |
| <b>G-1</b>     | <b>1002</b>           | <b>Project boundary map</b> |

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<sup>23</sup>16 U.S.C. § 808 (e).

(2) Project works consisting of: (1) an intake structure; (2) a 75-inch-diameter, 5.5-mile-long flowline; (3) a 27-foot-high by 28-foot-diameter surge tank; (4) a 6-foot-diameter, 4,000-foot-long steel penstock; (5) a brick powerhouse with two generating units having a total installed capacity of 5 MW; (6) a 3,000-foot-long tailrace canal; and (6) appurtenant facilities.

These project works are more specifically described in Table A-1 of exhibit A of the license application and the following exhibit f drawing:

| <u>Exhibit</u> | <u>FERC No. 2722-</u> | <u>Showing</u>                |
|----------------|-----------------------|-------------------------------|
| <b>F-1</b>     | <b>1001</b>           | <b>General design drawing</b> |

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibits A, F, and G as designated in ordering paragraph (B) above, are approved and made part of this license.

(D) This license is subject to the conditions submitted by the State of Utah Department of Environmental Quality under section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(E) This license is subject to the conditions submitted by the U.S. Forest Service under Section 4(e) of the FPA, as those conditions are set forth in Appendix B to this order.

(F) This license is subject to the conditions submitted by the U.S. Department of the Interior, Bureau of Reclamation under Section 4(e) of the FPA, as those conditions are set forth in Appendix C to this order.

(G) This license is subject to the articles set forth in [Form L-1](#) (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States" and the following additional articles:

**Article 201. The licensee shall pay the United States an annual charge, effective September 1, 2000:**

(a) For the purposes of reimbursing the United States for the cost of administration of Part I of the Federal Power 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 5,000 kilowatts. (“Order Amending Order Issuing New License”, 96 FERC ¶ P62,176 (August 21, 2001); Pioneer Project FERC No. 2722))

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 1.49 acres of its lands, other than transmission line right-of-way, a reasonable amount determined in accordance with the provisions of the Commission's regulations in effect from time to time.

(c) For the purpose of recompensing the United States for the use of the Bureau of Reclamation's Pineview Dam and other government property, the licensee shall discharge its obligations as set forth in the contract among the licensee, Ogden River Water Users Association, and the United States Department of the Interior dated as of October 18, 1934.

**Article 202.** Within 45 days of the effective date (September 1, 2000) of the license, the licensee shall file three sets of aperture cards of the approved exhibit drawings. The sets must be reproduced on silver or gelatin microfilm and mounted on type D (3 1/4" X 7 3/8") aperture cards.

Prior to microfilming, the FERC drawing number (2722-1001) shall be shown in the margin below the title block of the approved drawing. The exhibit number shall be revised to agree with the exhibit number assigned in ordering paragraph (B) above. Additionally the project number, FERC exhibit (e.g., F-1, G-1, etc.), drawing title, and date of this license must be typed on the upper left corner of each aperture card.

**Two sets of aperture cards must be filed with the Secretary of the Commission. The remaining set of aperture cards shall be filed with the Commission's San Francisco Regional Office.**

**Article 401.** Within six months of the effective date of this license (September 1, 2000), the licensee shall file with the Commission, for approval, a plan to place boulders in the lower, natural channel portion of the tailrace using appropriate methods to minimize disturbance. At a minimum, the plan shall include:

- (1) a description of the methods and material to be used to place boulders in the tailrace;
- (2) a description of the timing and duration of boulder placement activity;
- (3) erosion control and reclamation measures, including revegetation of disturbed riparian and upland habitats;

- (4) an implementation schedule for the plan;
- (5) provisions to consult with Utah Division of Wildlife Resources prior to any scheduled flowline or project maintenance which results in tailrace dewatering; and
- (6) provisions to consult with Utah Division of Wildlife Resources immediately following any unscheduled project outages that result in the tailrace being dewatered in excess of four hours.

**The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the Utah Division of Wildlife Resources, and the Utah Department of Environmental Quality.** The licensee shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

**A courtesy copy of the plan shall be filed with the Commission's San Francisco Regional Office.** The Commission reserves the right to require changes to the plan. No land-clearing or land-disturbing activities associated with this plan shall begin until the Commission notifies the licensee that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 402. If archeological or historic sites are discovered during any future project modifications or construction that require land-disturbing activities, or during project operation or maintenance, or if the licensee plans any future modifications, other than routine maintenance, to already discovered archeological or historic sites, the licensee shall: (1) consult with the Utah State Historic Preservation Officer (SHPO) and the Forest Service (FS) about the discovered sites; (2) prepare a site-specific plan, including a schedule, to evaluate the significance of the sites and to avoid or mitigate any impacts to sites found eligible for inclusion in the National Register of Historic Places; (3) base the site-specific plan on recommendations of the SHPO and the FS, and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; (4) file the site-specific plan for Commission approval, together with the written comments of the SHPO and the FS; and (5) take the necessary steps to protect the discovered archeological or historic sites from further impact until notified by the Commission that all of these requirements have been satisfied.

The Commission may require cultural resources surveys and changes to the site-specific plans based on the filings. The licensee shall not implement a cultural resources management plan, begin any land-clearing or land-disturbing activities in the vicinity of any discovered sites, or modify previously discovered sites until informed by the Commission that the requirements of this article have been fulfilled.

Article 403. (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 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 use 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, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. 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 use 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 or roads where 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 certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) 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 project waters at normal 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 60 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 the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to insure 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; and (iii) the grantee shall not unduly restrict public access to project waters.

(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.

Article 501. If the licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

(F) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order is issued under authority delegated to the Director and is final unless a request for a rehearing by the Commission is filed within 30 days from its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing of this order shall constitute acceptance of the license.

Daniel M. Adamson  
Director  
Office of Energy Projects

APPENDIX A

STATE OF UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY CERTIFICATION CONDITIONS

1. The certificate holder shall incorporate appropriate Best Management Practices (BMPs) to minimize erosion-sedimentation load to any adjacent waters during project activities.
  2. Appropriate water quality parameters of adjacent waters shall be monitored for effectiveness.
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APPENDIX B

UNITED STATES DEPARTMENT OF AGRICULTURE  
UNITED STATES FOREST SERVICE

UNITED STATES FOREST SERVICE SECTION 4 (e) CONDITIONS

Condition No. 1 - (Deleted by "Order on Rehearing and Denying Stay", 95 FERC ¶ 61,061(April 13, 2001); Pioneer Project FERC No. 2722)

Condition No. 2 - Forest Service Approval of Final Design

Before any construction of the project occurs on National Forest System land, the licensee shall obtain the prior written approval of the Forest Service for all final design plans for project components which the Forest Service deems as affecting or potentially affecting National Forest System resources. The licensee shall follow the schedules and procedures for design review and approval specified in the Forest Service special-use authorization. As part of such prior written approval, the Forest Service may require adjustments in final plans and facility locations to preclude or mitigate impacts and to issue that the project is compatible with on-the-ground conditions. Should such necessary adjustments be deemed by the Forest Service, the Commission, or the licensee to be substantial change, the licensee shall follow the procedures of Article 2 of the license. Any changes to the license made for any reason pursuant to Article 2 or Article 3 shall be made subject to any new terms and conditions of the Secretary of Agriculture made pursuant to section 4(e) of the Federal Power.

Condition No. 3 - Approval of Changes After Initial Construction

Notwithstanding any license authorization to make changes to the project, the licensee shall get written approval from the Forest Service prior to making any changes in the location of any constructed project feature or facilities, or in the use of project lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and at least 60 days prior to initiating any such changes or departure, the licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission. This article does not relieve the licensee from the amendment or other requirements of Article 2 or Article 3 of this License.

Condition No. 4 - Consultation

Each year during the 60 days preceding the anniversary date of the license, the licensee shall consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area. Within 60 days following such consultation, the licensee shall file with the Commission evidence of the consultation with any recommendations made by the Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation that may be necessary to accomplish natural resource protection.

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APPENDIX C

THE UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

(Deleted by "Order on Rehearing and Denying Stay", 95 FERC ¶ 61,061(April 13, 2001); Pioneer Project FERC No. 2722)

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING  
LANDS OF THE UNITED STATES**

October 1975

**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 Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him 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

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pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

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

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

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

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

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

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

**Article 12.** The 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 13.** On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

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

**Article 15.** 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 16.** Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

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



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

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

**Article 20.** The Licensee shall 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 21.** Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

**Article 22.** The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

**Article 23.** The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

**Article 24.** The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

**Article 25.** The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project

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as stated in the license.

**Article 26.** In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

**Article 27.** The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

**Article 28.** The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

**Article 29.** The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, *et seq.*), mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided, further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

**Article 30.** 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 31.** 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 32.** 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.