

LICENSE
TERMS AND CONDITIONS

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Raymond J. O'Connor, Chairman;
Georgiana Sheldon, J. David Hughes,
A. G. Sousa and Oliver G. Richard III.

Green Lake Water Power Company) Project No. 7189-001

ORDER ON APPEAL

(Issued May 25, 1984)

The United States Department of the Interior ("Interior") has appealed the Director, Office of Electric Power Regulation's order issuing a license to the Green Lake Water Power Company ("Licensee") for the Green Lake Project No. 7189. In its appeal, Interior submits that an agreement it reached with the Licensee with respect to Interior's Green Lake National Fish Hatchery 1/ be incorporated into the license as a condition deemed necessary by Interior for the adequate protection and utilization of the hatchery in accordance with Section 4(e) of the Federal Power Act, 16 U.S.C. § 797(e).

As issued, the license articles reflect certain substantive parts of the agreement and direct the Licensee to submit a new agreement with Interior to detail remaining provisions deemed necessary for protection of the hatchery.

Consultation between the Commission's and Interior's staff has led to proposed modification of certain terms of the license. 2/ Accordingly, a number of new provisions will be added to the license to cover details previously required by Article 32 to be the subject of a further agreement. Among the major changes, Article 29 now includes precise provisions for a penstock tap to ensure that the hatchery always has enough water, and also includes the drawdown schedule previously found in Article 30. Article 32 no longer requires the Licensee to submit a further agreement with Interior. Rather, it sets forth Interior's authority to inspect the project works and operations for threats to or adverse effects on the

1/ The agreement has not been executed, but Interior represents that both it and the Licensee are ready to sign.

2/ The modified terms embody a departure in some minor respects from Interior's position in its filed appeal, but Interior is in agreement with the language changes as a result of staff consultation.

hatchery, and to modify them as needed to protect the hatchery. Article 37 has been altered so it does not apply to U.S. lands within the hatchery. Under new Article 38, inasmuch as the project, subject to the terms and conditions of this license and the agreement between the U.S. Department of the Interior and the Licensee, entails a certain benefit to the United States, the Commission in its discretion under Section 10(i) of the Act, 16 U.S.C. § 803(i), waives Section 10(e) of the Act, 16 U.S.C. § 803(e), insofar as it relates to annual charges for recompensing the United States for use of its property. New Article 40 provides that the Licensee shall supply emergency power to the hatchery under certain circumstances, and new Article 41 gives Interior approval authority over project design, construction, and materials, insofar as they affect the hatchery. New Article 42 indemnifies Interior against any liability arising out of project construction, operation, or maintenance, and directs the Licensee to obtain insurance to that effect. Finally, new Article 43 forbids the Licensee from using license terms and conditions to avoid any obligations under the agreement.

It is ordered that:

The ordering paragraphs of the license order issued by delegated authority for the Green Lake Project No. 7189 are modified to read as follows:

(A) This license is issued to Green Lake Water Power Company (Licensee), under Part I of the Federal Power Act (Act), for a period of 40 years, effective the first day of the month in which this order is issued, for the construction, operation and maintenance of the Green Lake Project No. 7189 located on Green Lake and Reeds Brook, near the City of Ellsworth, Hancock County, Maine, and located in part on and affecting lands of the United States administered by the U.S. Department of the Interior, Green Lake National Fish Hatchery. This license is subject to the terms and conditions of the Act, which are incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Green Lake Project No. 7189 consists of:

(1) all lands, to the extent of the Licensee's interest in those lands, constituting the project area. The project area is shown and described by a certain exhibit that forms part of the application for license and that is designated and described as:

<u>Exhibit</u>	<u>FERC No. 7189</u>	<u>Showing</u>
G Sheet 1	6	General Location Map
G Sheet 2	7	Project Plan and Profile

(2) Project works consisting of: (1) a 7.5 foot-high, 270-foot-long dry stone and timber dam with an integral 15-foot-long gate section containing two lift gates; (2) fish screening devices; (3) a 2,989-acre reservoir with a usable storage capacity of approximately 10,000 acre-feet at elevation 160.7 feet U.S.G.datum; (4) a 1,700-foot-long, 4-foot-diameter concrete and wood stave penstock; (5) a powerhouse containing two turbine-generators with a total rated capacity of 375 kW; (6) the 4.16 kv generator leads, the 500-kVA 4.16/12.47-kv transformer, and the 1,000-foot-long, 12.47-kv underground transmission line; and (7) appurtenant facilities.

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

<u>Exhibit</u>	<u>FERC No. 7189</u>	<u>Showing</u>
F Sheet 1	1	Powerhouse Floor Plan
F Sheet 2	2	Powerhouse Elevations
F Sheet 3	3	Powerhouse Sections
F Sheet 4	4	Powerhouse Site Plan
F Sheet 5	5	Dam and Intake Plans, Sections and Elevations

- (3) Exhibit A - Entitled "Project Description" pages A-1 to A-7 incorporating the mechanical, electrical and transmission equipment.
- (4) All structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Pursuant to Section 10(i) of the Act, it is in the public interest to waive the following Sections of Part I of the Act, and they are excluded from the license:

Section 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(e), insofar as it relates to recompensing the United States for the use of its property; 10(f), 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(D) Exhibits A, F, and G designated in Ordering Paragraph (B) above, are approved and made a part of the license.

(E) The license is also subject to the terms and conditions set forth in Form L-17 (revised October, 1975), designated Articles 1 through 14 and 16 through 26 and entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting Lands of the United States," attached to and made a part of this license. The license is also subject to the following additional articles.

Article 27. Licensee shall release from the Green Lake Project, a continuous minimum flow of 1.0 cubic foot per second, as measured immediately downstream from the project dam, or the inflow to the reservoir, whichever is less, for the protection and enhancement of fish and wildlife resources in Reeds Brook. This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, for inspections and maintenance and for short periods upon mutual agreement among the Licensee, U.S. Fish and Wildlife Service, and the Maine Department of Environmental Protection.

Article 28. The Licensee shall continue to consult with the U.S. Fish and Wildlife Service and the Maine Department of Environmental Protection, and within 6 months from the date of issuance of this license, file, for Commission approval, functional design drawings and a schedule for construction of an intake screen that would minimize fish mortality due to entrainment, and prevent downstream movement of adult salmonids from Green Lake. Comments on the drawings from the consulted agencies shall be included in the filing. Further, within 90 days after completion of project construction, Licensee shall file as-built drawings with the Commission.

Article 29. (a) The Licensee shall, in order to ensure that operation of the Project will not interfere with the ability of the hatchery to draw water in an amount up to thirty (30) cubic feet per second (cfs) from the Lake at any time, cause to be installed at its own expense, and at no expense to Interior, a 24-inch diameter pipe from the penstock, with suitable control devices, to supply, along with existing water supply lines, a total of 30 cfs to the hatchery's filtration plan. This inter-connection shall be constructed in such a manner so that the flow in the existing 30-inch supply pipe to the hatchery remains un-

interrupted and unimpaired except for a period as designated by the hatchery manager not exceeding 5 days between May 15 and June 15, provided that until said interconnection is operational, the Licensee shall limit the drawdown of Green Lake to no lower than elevation 158 feet (U.S.G.S. datum), subject to further limitation of drawdown between June 1 and September 1 as indicated below. Said interconnection shall be utilized as follows:

- i) The Licensee shall limit the drawdown of Green Lake for power generation to no lower than elevation 157.5 feet in compliance with the conditions of Water Quality Certification issued by the Maine Department of Environmental Protection on July 13, 1983, provided that the Licensee shall further limit said drawdown in order that the lake level remain between elevations 159.7 feet and 160.7 feet between June 1 and September 1. The above notwithstanding, the hatchery manager may in his discretion permit the temporary drawdown of Green Lake below the limit set forth in this subsection for normal maintenance purposes upon the request of the Licensee and with the express written approval of the Maine Department of Environmental Protection. The hatchery manager retains the absolute discretion to restrict the time and duration of any such temporary drawdown, and moreover, retains the absolute discretion to totally deny any such drawdown.
- ii) The Licensee shall limit power generation if necessary to assure that the proper pressure gradient exists on the penstock to allow water from the penstock tap to be withdrawn at the filtration plant by the hatchery whenever the hatchery's priority use of up to 30 cfs is unavailable through its existing water supply lines; provided, however, that the hatchery shall not draw water through the penstock tap as an alternative to proper, continued maintenance and use of its existing water supply lines.
- iii) The Licensee shall construct and install at its own expense the pipeline and any valves associated with the penstock tap beyond the valve box, which box is between the concrete penstock and the hatchery's iron pipeline, however, the same shall not be considered a part of the project works and shall not be included within the project boundary or any right-of-way easement. The Licensee shall, at its own expense, maintain the penstock tap up to and including the valve and valve box, but shall not be responsible for maintenance of any part of

the penstock tap between the valve box and the hatchery's filtration plant.

(b) Unless required by operating emergencies beyond the control of the Licensee, the Licensee shall at no time maintain water levels at abnormally high levels so as to pose a threat of damage to Interior land and hatchery structures, and in the event of any operating emergencies beyond the control of the Licensee, Licensee shall use its best efforts to act as promptly as possible to prevent such circumstance from affecting hatchery operations.

Article 30. The Licensee shall, to protect salmonid redds, complete the fall reservoir drawdown no later than October 15 of each year, and shall reduce the reservoir water level during the spring drawdown to no lower than the reservoir water level attained on the previous October 15.

Article 31. The Licensee shall: (1) refrain from major construction activity, particularly blasting, that may disturb the feeding activities of the bald eagle in the vicinity of the project from April 15 to May 15 of each year; and (2) bury the project transmission line to avoid adverse impacts on bald eagles in the project area. Any and all blasting necessitated by said construction shall be conducted on a schedule approved by the hatchery manager.

Article 32. The Fish and Wildlife Service shall have the right to inspect the dam and project structures affecting hatchery operations to determine if the physical condition of the dam or such project structures threaten or are adversely affecting hatchery operation, and if such threats or adverse effects are occurring, to enter and correct, or order the Licensee to correct, at the Licensee's expense, such conditions as promptly as possible, and further, to refer the matter to the Commission for appropriate action. In the event of emergency, and if the Fish and Wildlife Service finds that project operations pose an immediate threat to the hatchery and its operations, the Licensee shall cease project operations immediately and notify the Commission.

Article 33. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation and the Regional Director, U.S. Fish and Wildlife Service, one copy each of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, at least 60 days prior to start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to assure a safe and adequate project. The Regional Director, U.S. Fish and Wildlife Service, may require such changes to be modified when

and as he deems necessary for the adequate protection and utilization of the Green Lake National Fish Hatchery.

Article 34. The Licensee shall within 90 days of completion of construction file for approval of the Director, Office of Electric Power Regulation, and the Regional Director, U.S. Fish and Wildlife Service, revised Exhibits A, F, and G to describe and show the project as-built.

Article 35. The Licensee shall commence construction of the project within 2 years from the effective date of the license and shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such project works within 4 years from the effective date of the license.

Article 36. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation and the Regional Director, U.S. Fish and Wildlife Service one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 37. (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 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, including the purposes of the Green Lake National Fish Hatchery. 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 non-complying structures and facilities.

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

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support 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 water, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit 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 file a letter to the Director, Office of Electric Power Regulation, 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 paragraphs (c) or (d) of this article.

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

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

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

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

(E) 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) This article does not authorize the Licensee to exercise any authority whatsoever over uses of United States lands within the Green Lake National Fish Hatchery.

Article 38. The Licensee shall pay the United States the following annual charge, effective the first day of the month in which the license is issued:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 500 horsepower.

Article 39. The Licensee shall, prior to the commencement of any future construction at the project, consult with the Maine State Historic Preservation Officer (SHPO) about the need for any cultural resource survey and salvage work. The Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historic work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 40. (a) The Licensee will provide, at its own expense, an appropriate connection at the proposed powerhouse for the transmission of electric power between the proposed powerhouse and the hatchery, capable of providing emergency electric power to serve the hatchery if regular commercial sources of electricity are disrupted. The Licensee shall also provide and maintain, at its own expense, that portion of the underground transmission line to the hatchery that lies within the proposed project boundary. Interior will provide and maintain, at its own expense, connection and transformer equipment at the hatchery, and that portion of underground transmission line that lies outside the proposed project boundary, provided that nothing in this license shall be interpreted to obligate Interior actually to install or maintain such connection or transformer equipment.

(b) In the event that regular commercial sources of electricity to the hatchery are disrupted, the Licensee shall, unless prevented by operating emergencies beyond the Licensee's control, supply up to 75 kW of emergency power to the hatchery, provided that the hatchery takes all practicable steps to re-establish its commercial sources of energy as quickly as possible, and provided that the Licensee shall not be obligated to furnish emergency power in an amount which would impair the integrity of the Project, or require the Licensee to draw the level of Green Lake below the level specified in Article 29, unless Interior expressly authorizes the Licensee to draw the level of Green Lake below that point, and the Licensee has received all other necessary governmental approvals, and provided further that the hatchery pays the Licensee for all said emergency power supplied hereunder at a charge to be determined in accordance with the agreement between the U.S. Department of Interior and the Licensee.

Article 41. Insofar as project construction, design, or materials may affect the hatchery or its purposes, the Licensee shall obtain the approval of the Regional Director, Region 5, Fish and Wildlife Service, before construction commences, provided that the Regional Director may reasonably modify such approval if new information, of which the Regional Director was unaware at the time approval was granted, becomes available, and provided that Interior cooperates to the extent possible with the Licensee and in any further construction or alterations which the Licensee may deem necessary, and provided further that the U.S. Department of Interior has no obligation hereunder to provide manpower, equipment, or funds. Such approval includes the right of the Regional Director to approve of or require modification to the design and material used in the penstock and all other project structures to be constructed by the Licensee and the contractor or contractors who will construct the project structures. The Licensee shall provide such approval or required modification by the Regional Director to the Commission, with a copy to the Commission's Regional Engineer, which shall be requested to incorporate it into any Commission approval of the Licensee's plans, specifications, and contract documents.

Article 42. Aside from operating emergencies beyond the control of the Licensee, the Licensee will indemnify and hold harmless the U.S. Department of the Interior from and against any and all loss, liability or expense arising out of the construction, operation and maintenance of the project. The Licensee's indemnification of the U.S. Department of the Interior shall continue and apply beyond the term and termination of this License so long as any of said loss, liability, or expense arose out of the construction, operation or maintenance of the project occurring during the term of this License. The Licensee shall procure and maintain insurance in an amount and form satisfactory to the Regional Director, insuring the hatchery and its operations against loss or damage resulting from project construction, operation, and maintenance. The Licensee shall list the U.S. Department of the Interior as an additional insured in such insurance.

Article 43. Inasmuch as the agreement between the U.S. Department of the Interior and the Licensee regarding protection of the hatchery is deemed necessary by Interior for the adequate protection and utilization of the Green Lake National Fish Hatchery under Section 4(e) of the Federal Power Act, and is recognized by the Commission as fully binding and enforceable between Interior and the Licensee, and since the provisions of said agreement are not inconsistent with the terms and conditions of this license, the Licensee shall not use the terms and conditions of this license as giving the Licensee any defense whatsoever against the U.S. Department of the Interior in Interior's enforcement of the agreement. In the event any of the language in Articles 1 through 26 is read to be inconsistent with other articles in this license, the language in Articles 27 through 43 shall govern.

(P) This order is final unless an application for rehearing is filed 30 days from the date of issuance, as provided in Section 313(a) of the Act. The filing of an application for rehearing does not operate as a stay of the effective date of this license, except as specifically ordered by the Commission. Failure of the Licensee to file an application for rehearing shall constitute acceptance of this license. In acknowledgment of acceptance of the license, the license shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission,

(S E A L)



Kenneth F. Plumb,
Secretary.