

No Color
Documents
In File

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Utah Power & Light Company
(Name of Claimant)
1407 West North Temple, Salt Lake City, Utah 84110 Telephone No. 535-2174
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) January 1, 1922

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Bear River tributary to Great Salt Lake

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs, gpd, AFA)	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>16,472 AFA</u>	Use <u>Power Storage</u>	Period of Use From <u>Jan. 1</u>	To <u>Dec. 31</u>
Quantity	<u>16,472 AFA</u>	Use <u>Power from Storage</u>	Period of Use From <u>Jan. 1</u>	To <u>Dec. 31</u>
Quantity	<u>600.0 CFS</u>	Use <u>Power</u>	Period of Use From <u>Jan. 1</u>	To <u>Dec. 31</u>
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

(4) 16,472 AFA 600 CFS TOTAL QUANTITY USED.
(cfs, gpd, AFA)

(5) A) Point of diversion: (Location of point where water is diverted from its source)
SE ¼ NW ¼, Sec. 17 Twp. 9 S Rge. 41 E B.M., County of Caribou
Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Reservoir - 16,472 ac. ft. capacity and 92 ft. in elevation.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9 S	41 E	17								X									

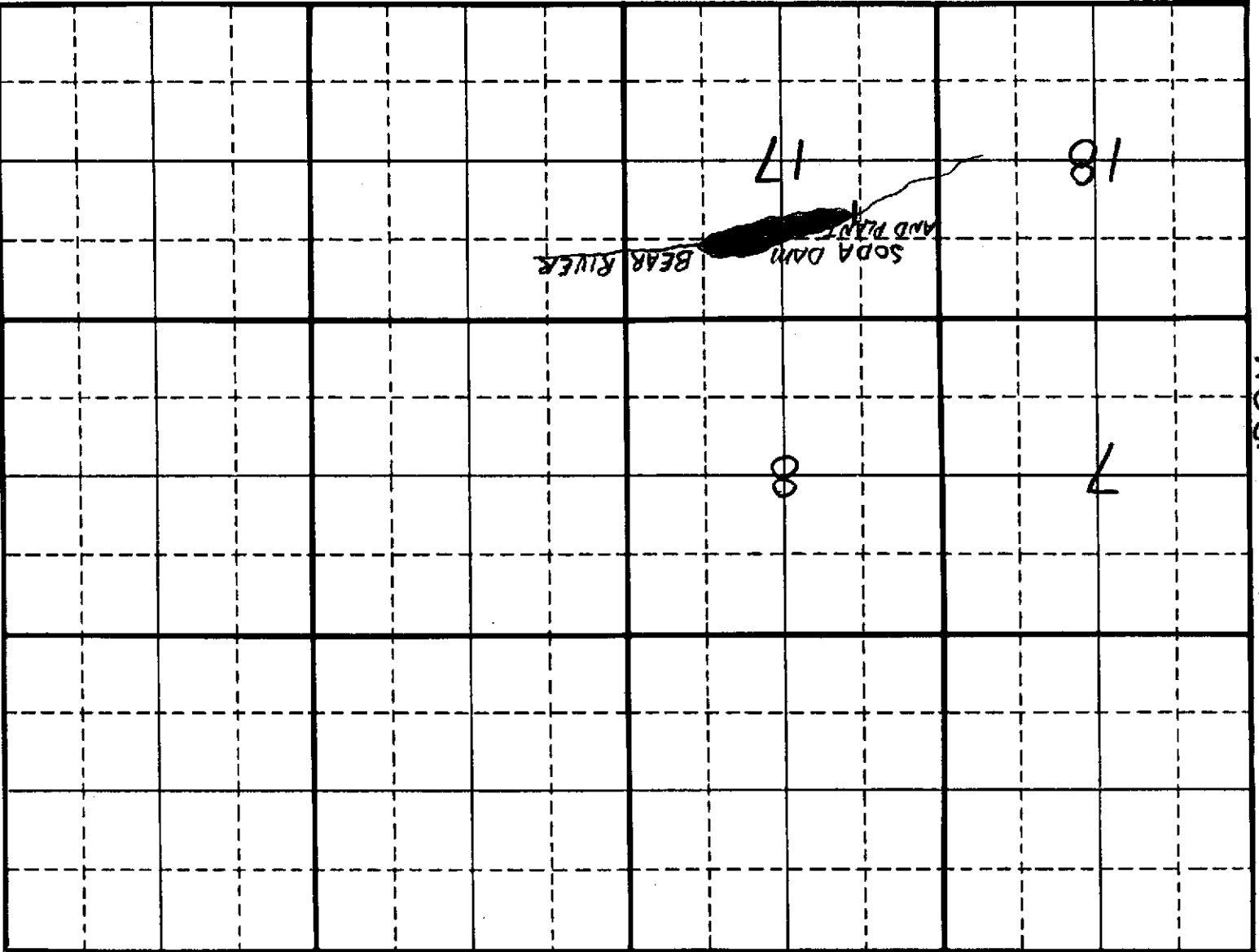
No. of acres

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: Generation of Hydro-Electric Power at Soda Plant.

NOTE: Include here the type and number of stock watered: n/a

(7) If you are claiming water as a member of an organization, list name of organization: n/a

MICROFILMED



Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho
County of Butte
) ss.
)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 28th day of April, 1980
Vice President (claimant) C. J. Stinson
Notary Public David J. Young
Residing at Butte Lake City, Utah
My commission expires Sept. 28, 1981

Received by Caribou County Sun Date 5/19/80
Prelim. check by Caribou County Sun Date 5/14/80
\$20.00 fee received by Caribou County Sun Date 5/30/80
Published in Caribou County Sun Date 5/29 & 6/05/80
Dates 5/29 & 6/05/80
Exception filed by: Caribou County Sun Date 5/14/80
Forwarded to Caribou County Sun Date 5/30/80
claimant by: Caribou County Sun Date 5/30/80
Date 5/30/80

PUBLIC NOTICE

First Time
Published

NOTICE OF CLAIMS TO
WATER RIGHTS

Notice is hereby given that the following claim(s) to water right(s) have been established by diversion and application to beneficial use:

11-4093 ok

LAKEY, EZRA
BOX 575, SODA SPRINGS,
ID 83276

Source: SWAN LAKES
tributary to SINKS

Priority Date: 05-12-1888

Amount: 5.00 CFS

Diversion Point: SWSE SESE
Sec 30 T 09S R 43E, CARIBOU
Co.

Use: IRRIGATION (5.00
CFS) from 04-01 to 11-01

Place of Use: NESW NWSW
SWSW SESW NESE NWSE
SWSE SESE Sec 25 T 09S R 42E
FOR 270 ACRES

Diversion Means: DIVER-
SION DAMS & SPRINKLER
SYSTEM.

11-4094 ok

LAKEY, EZRA
BOX 575, SODA SPRINGS,
ID 83276

Source: ROWLEY SPRINGS
tributary to SINKS

Priority Date: 05-12-1888

Amount: 0.22 CFS

Diversion Point: SWSW Sec 30
T 09S R 43E, CARIBOU Co.

Use: IRRIGATION (0.10
CFS) from 04-01 to 11-01
DOMESTIC (0.12 CFS) from
01-01 to 12-31

Place of Use: SESE Sec 25 T
09S R 42E FOR 5 ACRES

Diversion Means: CON-
CRETE HEADBOXES & PIPE-
LINE.

13-4128 ok

UTAH POWER & LIGHT
COMPANY

1407 WEST NORTH
TEMPLE, SALT LAKE CITY,
UT 84110

Source: BEAR RIVER tribu-
tary to GREAT SALT LAKE

Priority Date: 01-01-1922

Amount: 600.00 CFS 16472.0
AC-FT

Diversion Point: SENW Sec 17
T 09S R 41E, CARIBOU Co.

Use: POWER (600.00 CFS)
from 01-01 to 12-31 POWER
STORAGE (16472.0 AC-FT)
from 01-01 to 12-31 POWER
FROM STORAGE (16472.0
AC-FT) from 01-01 to 12-31

Place of Use: SENW Sec 17 T
09S R 41E

Diversion Means: RESER-
VOIR.

Any exception to any claim of
water right may be filed with the
Director of the Idaho Department
of Water Resources, 1515 Lincoln
Road, Idaho Falls, Idaho 83401.

C. STEPHEN ALLRED

Director

Published May 29 and June 5,
1980 in the Caribou County Sun.

Affidavit of
Publication

County of Caribou } ss.
State of Idaho }

Mark Steele

being first duly sworn on his
oath, states:

That he is Publisher
of the Caribou County Sun, a
newspaper of general circula-
tion in Caribou County, Idaho,
published weekly at Soda
Springs in said County that said
newspaper has been published
in said County uninterruptedly
and continuously for over sev-
enty-eight consecutive weeks,
prior to the first publication of
the annexed notice or advertise-
ment;

That the annexed notice was
published as per clipping at-
tached in the regular and entire
edition of said newspaper and
not in any supplement thereof

for 2 successive weekly
issues thereof, the date of the
first publication being the

29th day of

June, 1980

The date of the last publication

being the 5th day of

June, 1980

Subscribed and sworn to be-

fore me this 13th day

of June, 1980

Notary Public, residing
at Soda Springs, Idaho
(SEAL)

My Commission expires the

1 day of March

19 84.

RECEIVED

JUN 17 1980

Department of Water Resources
Eastern District Office

25-6852	.35 cfs/ 209.2 af	04/16/1976	Application / WUCS	Stockwater / Irrigation	BR Slough
25-6943	7.5 af	10/31/1965	Application / WUCS	Irrigation / Storage	Spring
25-7780		01/01/1860	Diligence	Stockwater	BR Project
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
29-1953 (a21627)		01/01/1900	WUC	Stockwater	Cutler Area
25-9637		09/18/1995	Application	Stockwater	Cutler Area
HYDRO PROJECTS					
• Bear River hydro water rights appear in bold print					
WATER RIGHT	AMOUNT	PRIORITY DATE	STATUS	TYPE OF USE	PLACE OF USE
29-1506	2500 cfs	12/19/1923	Certificate	Power	Cutler Hydro
29-1855	270 cfs	12/01/1903	Decree	Power	Cutler Hydro
29-2146	135 cfs	12/01/1906	Decree	Power	Cutler Hydro
29-2147	135 cfs	02/01/1908	Decree	Power	Cutler Hydro
29-2148	500 cfs	12/02/1912	Decree	Power	Cutler Hydro

RAFT January 28, 2000

25-8186	32.5 cfs	08/11/1980	Application	Power	High Creek Hydro
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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

February 10, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Michael B. Burke
Project Manager
PacifiCorp
825 NE Multnomah, Suite 1500
Portland, OR 97232

file
11-04359
my

Dear Mr. Burke:

RE: Comments on Draft License Applications for:
Soda Hydroelectric Project, FERC No. 20
Grace/Cove Hydroelectric Project, FERC No. 2401
Oneida Hydroelectric Project, FERC No. 472

Your letter of November 9, 1998, requested comments by February 8, 1999. In our telephone conversation on February 5, you indicated it would be acceptable to submit comments a few days late or by February 10. Thank you for that consideration. Our comments are as follows.

For the Soda Project, FERC No. 20, in the initial statement, page IS-3, a clarification and correction is suggested in regard to the water rights. The lead sentence should more correctly read, PacifiCorp has decreed and claimed non-consumptive water rights . . ." (underlined words are the changed language). Water rights are established for 1,500 cubic feet per second (cfs) as shown in our letter of July 12, 1996, placed near the front of section 3, volume IV of the above draft license application. There is an additional 1,000 cfs claimed under two claims with 16,472 acre-feet of storage noted in one claim. See the attached table for a repeat of our July 12, 1996, details on water rights and claims; the table includes the recent claim at the Soda Project. The claims, of course, have not been adjudicated.

For the Grace/Cove Project, FERC No. 2401, in the initial statement, page IS-3 a clarification and correction again is suggested in regard to the water rights. Here it would be more correct to remove the words "and permitted" since all water rights are decreed. You might desire to add the word "non-consumptive" ahead of "decreed" as is done for the Oneida Project. The correction would be to list the amount of decreed storage as 4,000 acre-feet at Cove. There is no storage water right or claim found for the Grace powerplant. If that active storage capacity is 250 acre-feet, an additional water right claim should be filed with our department. (Approved Application for Permit 13-02012A associated with Water Right 13-00957 showed a request for 290 acre-feet of storage at the Grace Project. That storage request was not carried forth into the license.) See the following table for more details.

UNCLASSIFIED

For the Oneida Project, FERC No. 472, in the initial statement, page IS-3 clarifications and correction, also, are suggested in regard to the water rights. Here the lead sentence again should read "PacifiCorp has decreed and claimed non-consumptive water rights . . ." (underlined word added). The second sentence might note the decreed water rights total 2,500 cfs with an additional 700 cfs upon which a claim has been filed for a total of 3,200 cfs. It would be correct to add that the above claim includes 11,485 acre-feet of water for storage. In the text the word "insure" might better be removed since a court adjudication first is needed to quantify and validate the claim.

The following comments reference page numbers in the Oneida Hydroelectric Project Draft License Application. The same comments, if applicable, also refer to the Soda Hydroelectric Project and the Grace/Cove Hydroelectric Project Draft License Applications; however, the page numbers will be different.

On page E1-1, paragraph 1.2 and page E2-1, paragraph 2.1.1, the figure references in parenthesis likely were intended to be Figure 1.0.1 in Exhibit A.

On page E1.4, paragraph 1.6, additional information would be helpful. As seen in appendix IV, section 3, we stated in our July 12, 1996, letter for the first stage consultation that:

The last five year Independent Consultant Inspection and Safety Report dated December 15, 1995, suggested the Soda Reservoir probable maximum flood level, at elevation 5735.8, would flood the Union Pacific Railroad right-of-way. A map of the flood plain around Soda Point, Cove and Oneida Reservoirs is requested. The 100 year, 500 year, and probable maximum flood elevations should be shown. Flood easements, protective measures, or financial allowance for damages then can be provided for existing uses, and proposed new development would have clear notice of the flood hazard.

Since this noted railroad track is the main route from the eastern states to serve Portland, Oregon, there is a need to understand the hazard level relative to Soda Dam, its water release capability, and the backwater effects of this reservoir. In regard to Oneida Reservoir, the backwater effects at this reservoir also have affected surrounding land. An understanding is needed of what property is involved at the different flood levels. (We acknowledge that in recent years, additional property has been purchased in this area by the reservoir owners because of flooding exasperated by the deposition of sediment in the backwater of Oneida Reservoir.) The hazard likely is low in the Cove Reservoir area.

On page E2-2, it would be helpful to the reader to understand that the top 3 feet of storage can flow out of Bear Lake by gravity (perhaps at a lower rate than the pumps will provide.) Also only for the Soda Hydroelectric Project Draft License Application, the 5,904.0 elevation should be changed to 5,902.0 as the lowest level to which the lake may be pumped. For all three draft license application's, an added parentheses would note the settlement agreement of 1995 regarding lake

bottom dredging; that agreement is between the irrigators, PacifiCorp and environmental interests to limit pumping to elevation 5904.0.

On page E2-4 for the West Cache Canal a note should be added that in 1998 the canal company moved the diversion of up to 120 cfs to a pumping plant located in Utah about 10 river miles above the backwater of Cutler Reservoir. This water right is administered by the state of Idaho because of some flexibility the canal company has on the amount of water diversions the company may choose at either diversion point.

On page E2-8, Figure 2.2-2 appears as if it should be re-labeled to Figure 2.2-1.

See page E2-11 & 12, paragraphs 2.2.5 and 2.2.6 in regard to Oneida Powerhouse Ramping. We have some concern here about the effect of the low flow portion of these ramping amounts during the irrigation season upon the water diverters below Oneida and the resulting impact upon the river below the last major diverter. Th last major diverter is the West Cache Canal Co. who is located, as noted previously, about 10 miles above the backwater of Cutler Reservoir. The historic diversion by all of these diverters can be near 380 cfs at mid-summer (August 1) which is over the 250 cfs negotiated minimum releases or inflow at Oneida. Early season diversions, of course, are greater. (See page E3-82 for the negotiated minimum release.) In summary, releases, ramping levels, and ramping rates from Oneida must recognize and not adversely affect diversions in Idaho and Utah on an instantaneous basis.

In this paragraph 2.2.5, several references are made to an Oneida Reservoir minimum water release of 240 cfs. In view of the above noted negotiated minimum releases from Oneida, we assume there is at least 10 cfs of leakage past Oneida. That information likely is in other sections of the report but a sentence of clarification or other explanation in this section would be useful to the reader. Also it would be good to clarify that irrigation-season low releases are limited to the downstream water rights which may be 350 cfs; that is if natural inflow to Oneida is available.

Also in paragraph 2.2.6, second paragraph, last sentence, the authors might note that irrigation diversions can contribute to the reduction or "damping" of the downstream flows.

On page E2-24 last sentence of paragraph 2.3.1.1 after the words "Some of the major irrigation users' annual rights," please change the word "rights" to "supply contracts" and add the words "from Bear Lake storage."

On page E2-24, table 2.3-1 for the Twin Lakes Canal Company, the point of diversion would be "Bear River below Oneida." Also for this company a parentheses should be added in the first column such as (Contract sold to WCCC) and then after West Cache Canal Company add (WCCC). The word "Over" could be added to "100 Individual Irrigators."

For the Soda Project, on page E2-25, table 2.3-2 please change the column labeled "Source of Water Right" to "Type of Water Filing." In that table, for Soda License 15596, please show only "License" and not the number 15596 since the number no longer is germane. Since the Department of Water Resources has recently changed claim numbers to match the basin, please change "Claim No. 13-1428" to Claim No. 11-04359," correct the amount from 700 cfs to 600 cfs, and remove the number in the License column since the claim is not licensed. Similarly please change "Claim No. 13-4128" to "Claim No. 11-04359" and remove the number in the license column. Also for the Soda Project, you may add a new "Claim No. 11-04357" filed in 1998 for 400 cfs with a description of Divert Natural Flow and the Location of Use as Soda Powerhouse.

In this table for the Oneida Project in regard to License 13-00967, you may change the first line amount from 100 cfs to 1,000 cfs. For the two Oneida claims please move the numbers from the license column to the Type of Water Filing column. The claim dates would appear to provide more information to the user if they provided the priority dates instead of the dates the claims were filed. The claimed priority date for the Soda Project is 1922 and for the Oneida Project, the date is 1910.

Again in table 2.3-2 in regard to the Cutler Project which is downstream in Utah, their water right license numbers might better reflect the numbers the state of Utah has assigned to them since the Utah watermaster will administer these water rights. These license numbers are by date: 1903, 29-1855; 1906, 29-2146; 1908, 29-2147; 1912, 29-2148; 1917, 29-2102; and for both 1924 rights, 29-1506. (The 13- series of numbers are correct but are Idaho numbers.) We understand year 1917 certificate 528 for 1,434 cfs has been disallowed under the current state of Utah adjudication as well as previously by the Dietrich Decree in Idaho and by the immediately following Kimball Decree in Utah both in the early 1920's.

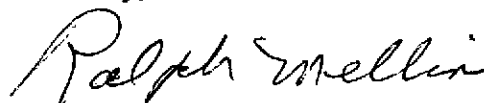
<u>Plant</u>	<u>Water Right or Claim</u>	<u>Number</u>	<u>Priority Date</u>	<u>Date of Filing</u>	<u>Amount in ac-ft</u>	<u>Amount in cfs</u>
Soda	Water Right	11-02081	6-12-1922	6-12-1922	--	1,500
Soda	Claim	13-04128 11-04359	1-01-1922	4-28-1980	16,472	600
Soda	Claim	11-04357	1-01-1922	11-06-1998	<u>—</u>	<u>400</u>
Total					16,472	2,500
Grace	Water Right	13-00957	12-28-1905	Decree	--	500
Grace	Water Right	13-00958	7-06-1908	Decree	--	<u>500</u>
Total						1,000

Cove	Water Right	13-00962	3-19-1916	Decree	--	1,500
Cove	Water Right	13-00963	3-28-1916	Decree	<u>4,000</u>	<u>--</u>
Total					4,000	1,500
Oneida	Water Right	13-00967	6-17-1910	Decree	--	1,000
Oneida	Water Right	13-00968	1-18-1911	Decree	--	1,500
Oneida	Claim	13-04129	1-01-1910	4-28-1980	<u>11,485</u>	<u>700</u>
Total					11,485	3,200

On page E2-29 second paragraph up from the bottom after the words "is below a certain elevation," please add "5,914.61 feet (UP&L datum).," This elevation is placed at other locations in the report, but it would be good to repeat it here.

As in our previous comment letters, we trust this input will assist PacifiCorp in developing a stronger license application.

Sincerely,



Ralph Mellin
Special Projects Coordinator

- c: Doug Abderhalden, Idaho Division of Environmental Quality
Mary Lucachick, Idaho Department of Parks and Recreation
Pete Peterson, Idaho Bear River Watermaster
Will Reid, Idaho Department of Fish and Game
Will Whelan, Idaho Office of the Attorney General

MEMORANDUM

TO: FILE NO. 11-04359

FROM: PAM SKAGGS²/STATE OFFICE

SUBJECT: RIGHT RENUMBERED

DATE: January 28, 1999

=====

This right was originally numbered 13-04128. Review of this right found that the diversion actually is located within Basin 11. Right 13-04128 has been **renumbered to 11-04359**.

11-04359

11-04359

RECEIVED

MAY 18 1998

BILLING CODE 6717-01-M

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

) Project Nos. 20, 472, and 24

NOTICE OF STAFF ATTENDANCE AT RELICENSING MEETING

(May 11, 1998)

Staff from the Federal Energy Regulatory Commission, Office of Hydropower Licensing, will be attending a May 28, 1998, Technical Advisory Committee meeting in Pocatello, Idaho on the relicensing of PacifiCorp's Soda, Grace-Cove, and Oneida hydroelectric projects. The meeting will be conducted by PacifiCorp and will include briefings on the status of the relicensing process, flow issues, and PacifiCorp's proposed enhancement measures.

A meeting agenda may be obtained from Michael Burke of PacifiCorp at 503-464-5344.

David P. Boergers
Acting Secretary

MICROFILMED

ORDER RULING ON PETITION FOR DECLARATORY ORDER
AND FINDING LICENSING REQUIRED

(Issued August 13, 1996)

On June 3, 1996, PacifiCorp filed a Petition for Declaratory Order concerning the Grace-Cove Hydroelectric Project, located on the Bear River, in Caribou County, Idaho, and raised the question of whether licensing is required for the project under Part I of the Federal Power Act. The project is currently licensed as Project No. 2401, whose license will expire in 2001.

PROJECT DESCRIPTION

The project consists of two developments:

Grace Development (1) a dam 180.5 feet long and 51 feet high; (2) a reservoir with 250 acres-feet of storage; (3) two, 4.8 mile-long conduits; (4) a powerhouse containing three 11,000 kilowatt (kW) generators; and (5) appurtenant facilities. Cove Development (1) a 140-foot-long, 24-foot-high dam; (2) a conduit; (3) a 528-foot-long penstock; (4) a powerhouse containing a 7,500 kW generator; and (5) appurtenant facilities.

BACKGROUND

Notice of the DI was published July 3, 1996. Protests, comments, and petitions to intervene were to be filed on or before August 2, 1996. Comments and a motion to intervene were received from the Idaho Rivers United (IRU) and American Whitewater Affiliation (AWA). The issues raised will be addressed under COMMENTS. No other protests, comments, or motions to intervene have been received.

COMMENTS

In their Motion to Intervene with comments, the IRU and AWA assert the following:

- Substantial construction has occurred after 1935;
- The Bear River is a navigable waterway; and
- The project is located on public lands.

The changes to the project that have occurred since 1935 do not constitute Post-1935 construction; further, the installed capacity of the project has actually decreased. The navigable

DC-A-3

D196-9-000

-2-

status of the Bear River is not being addressed in this order and the project's location on public lands is discussed below.

JURISDICTION

Pursuant to Section 23(b) (1) of the Federal Power Act, 16 U.S.C. § 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- is located on a navigable water of the United States;
- occupies lands of the United States;
- utilizes surplus water or water power from a government dam; or
- is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

A determination of navigability has not been made at this time since the Commission is asserting its jurisdiction on the project's location on federal lands.

The Grace-Cove Hydroelectric Project occupies 5.04 acres of public lands of the United States. The 5.04 acres of United States lands are located in T. 10 S., R. 40 E., section 21, NW1SW1, Boise Meridian, Idaho. Therefore, the project meets the above criterion of occupying public lands or reservations of the United States. In accordance with Section 23(b) (1), therefore, PacifiCorp must be licensed for the continued operation of the Grace-Cove Hydroelectric Project.

The Director orders:

(A) Pursuant to Section 23(b) (1) of the Federal Power Act, the Grace-Cove Hydroelectric Project is required to be licensed.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Fred E. Springer
Director, Office of
Hydropower Licensing

RECEIVED

AUG 19 1996

Department of Water Resources

2401
13-4128

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

MICROFILMED

FEB 11 1999

101465
BI96-9
STATE OF IDAHO DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, ID 83706-2237



UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE STREET
SALT LAKE CITY, UTAH 84140

LEGAL DEPARTMENT
JODY L. WILLIAMS
ATTORNEY AT LAW
801-220-2851

RECEIVED
APR 4 1990

Department of Water Resources

April 2, 1990

RECEIVED
APR 16 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, Idaho 83706-2237

Re: Notice to Change Mailing Address

Dear Dept. of Water Resources representative:

Please change your mailing records (~~which are currently as shown on the attached mailing label~~) to reflect the following corrected address (P.O. Box 899 is no longer being used by our Company):

Ms. Jody L. Williams
Utah Power & Light Company
1407 W. North Temple
Salt Lake City, Utah 84140

Thank you.

Very truly yours, .


Jody L. Williams

JLW:cld

21-7363
25-7403
01-7051
11-2081
2084
4004

13-4128
4129
21-4060
27-7018
35-2830

+ misc. decreed files - computer updated 4-17-90
SC

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: gc

Right Number 13 4128 Applicant UPL

NOTE: 13-4128 IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
 - ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
 - ☒ Source.
 - ☒ Quantity, use, period.
 - ☒ Point(s) of diversion.
 - ☒ Location of use.
 - ☒ Signature/notarization/fee.
- 6/1/6

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received.
- ☒ Claim published correctly.
- ☐ Exceptions processed.

By Ernest Carlson Date 6-23-80.

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By W. Lawrence Date 6/25/80

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

JUNE 16, 1980

UTAH POWER & LIGHT COMPANY
1407 WEST NORTH TEMPLE
SALT LAKE CITY UT 84110

RE: Claim No. 13-4128

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

RONALD D. CARLSON
Eastern Region Supervisor

Enclosure

RECEIVED
JUN 18 1980

June 2, 1980

RE: Claims to Water Rights Nos. 12-4128 (Soda Reservoir)
13-4129 (Oneida Reservoir)
21-4060 (Ashton Reservoir)

Utah Power & Light Company
1407 West North Temple
Salt Lake City, UT 84110

Gentlemen:

Attached herewith is Departmental Receipt No. 14809 in the amount of \$60.00
for the above referenced claims.

Sincerely,

KAY WALKER
Secretary

RECEIVED
JUN 11 1980
BUREAU OF LAND MANAGEMENT
SALT LAKE CITY, UTAH

NOTICE OF CLAIMS TO WATER RIGHTS

Notice is hereby given that the following claim(s) to water right(s) have been established by diversion and application to beneficial use:

Any exception to any claim of water right may be filed with the Director of the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 .

C. STEPHEN ALLRED

Director

Published 5/29 & 6/05/80.



UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE, SALT LAKE CITY, UT 84110

Source: BEAR RIVER tributary to GREAT SALT LAKE

Priority Date: 01/01/1922

Amount: 600.00 CFS 16472.0 AC-FT

Diversion Point: SENW Sec 17 T 09S R 41E, CARIBOU Co.

Use: POWER	(600.00 CFS)	from 01/01 to 12/31
POWER STORAGE	(16472.0 AC-FT)	from 01/01 to 12/31
POWER FROM STORAGE	(16472.0 AC-FT)	from 01/01 to 12/31

Place of Use: SENW Sec 17 T 09S R 41E

Diversion Means: RESERVOIR.

Per Jim Johnson
on 1-29-99:

The manilla folder,
inside this file is
not to be microfilmed.

But is only ~~here~~ for
reference for Ralph Mellin.

January 6, 1987

Miss Betty Knick
Public Information Section
Federal Energy Regulatory Commission
825 North Capital Street NE, Room 1000
Washington, DC 20426

Dear Miss Knick:

As a follow-up to my letter of December 1, 1986 to you and subsequent telephone conversation on January 5, 1987 with Rebecca Poe of FERC's Division of Intergovernmental Affairs, please send copies of the following documents on Utah Power and Light hydro-electric projects:

Project No. 20 - Soda - 7-4-
7-4-2003

- ✓ 1. July 29, 1980 - Order issuing new license. (major)
- ⊙ 2. March 5, 1984 - Order issued amending license pursuant to filing of 6/21/83. (003) *new Recreation facilities & minor payments to FERC for license*

Project No. 472 - *Oneida* 6-30-2000

- ✓ 1. May 1, 1981 - Order issuing new license. (major)
- ⊙ 2. September 6, 1984 - Order issued amending license. (003) (Designated Amendment No. 2, Instrument No. 3) *Improve east road at recreation & limited moving paving work & flows*
- ⊙ 3. April 4, 1985 - Order issued granting appeal filed 9/6/84. (005) *Definition of east road noted & excess flows for irrigation allowed.*

1978 Project No. 2401 *Grace Lake* 5-1-1990

- ✓ 1. October 6, 1976 - Order issuing major license for constructed project and denying request for disclaimer of jurisdiction. *Original license - 25 yr from 1965 to 1990*
- ⊙ 2. March 16, 1977 - Order issued on rehearing affirming commission order issuing major license and granting petition to intervene of Idaho Water Resource Board.
- 3. February 23, 1978 - Filed notice of intervention of Idaho Public Utilities Commission. (If this article is difficult to locate, it may be left out.)
- ⊙ 4. July 29, 1981 - Order amending license. (major) (Designated Amendment No. 1, Instrument No. 3) *Units 1 & 2 removed; units 3, 4 & 5 still operational*
11,000kw " " 33,000kw " "

January 6, 1987

Project No. 2420 - Cutler 12-31-1973

- ✓ 1. December 23, 1968 - Order issuing license (major) and dismissing request for disclaimer of jurisdiction filed in application on 10/25/63.
- / 2. February 20, 1969 - Order issued modifying Article 29 of order issued 12/23/68.
- ③ 3. February 4, 1977 - Commission letter sent February 4, 1977 issued and served on parties of record.
(Designated Instrument No. 3) *amortization Reserve Account note: Power is generated only when water in excess of irrigation requirements is available.*

Ordering information taken from FPC Form 847, Licensed Project Proceeding, for the indicated project number.

In order to reduce delay, you may call me at FTS-554-4496 or (208) 334-4496 for communicating the necessary copying cost or for other needs.

Sincerely,

Ralph J. Mellin, Chief
Special Studies Section

RJM/cjk

December 1, 1986

Miss Betty Knick
Public Information Section
Federal Energy Regulatory Commission
825 North Capital Street NE, Room 1000
Washington, DC 20426

Dear Miss Knick:

Please send to my attention a copy of the hydroelectric license with special conditions and amendments for the following plants owned by Utah Power and Light Company.

Soda
Grace
Cove
Oneida
Cutler

This written request is in response to a telephone request to your office on this date. If further information is needed, you may telephone me at FTS 554-4496 or (208) 334-4496.

Sincerely,

Ralph J. Mellin, Chief
Special Studies Section

RJM:cjk

JAN 20 1987

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

Department of Water Resources

January 15, 1987

Mr. Ralph J. Mellin, Chief
Special Studies Section
State of Idaho
Department of Water Resources
450 W. State Street
Boise, Idaho 83720

Dear Mr. Mellin:

Thank you for your letter of December 22, 1986, to Chairman Hesse regarding your letter of December 1, 1986, to Betty Knick, Chief of the Federal Energy Regulatory Commission's (FERC) Public Reference Section. Your letter has been referred to me for response and I apologize for any inconvenience or delay in answering your request.

Approximately five years ago, because of severe budgetary constraints, it became necessary to discontinue the free distribution of documents issued by the FERC. At the time free distribution was discontinued generally, the Commission did agree to provide copies of the FERC daily orders to each state's Public Utility Commission and the Governor's energy designee. The object was to furnish copies to the states and permit them to make further distribution within their states, if they deemed it appropriate and feasible. The Idaho Public Utilities Commission and Idaho Department of Water Resources, Bureau of Energy Resources, Hydro Section, at the Governor's request, receives these daily orders which includes for hydro activities copies of all FERC notices of applications for preliminary permits, exemptions, licenses, and subsequent Commission orders.

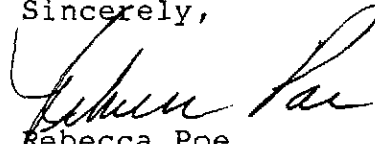
The FERC's Office of Intergovernmental Affairs will be happy to furnish you with selected items free of charge, but extensive orders, such as your request of December 1, to Betty Knick, will have to be purchased through TS Infosystems. A copy of the TS Infosystems information and order form is enclosed for your use.

- 2 -

As you can see from the docket sheets that were recently sent to you, along with the TS Infosystem information, some of these project files are extensive and complex. Your letter of January 6, was received by the Public Information Section without the TS Infosystem information, which is necessary for processing your requests.

If I can be of further assistance to you in this or any other FERC matter, please do not hesitate to contact me on (202) 357-8392.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rebecca Poe", written over the typed name.

Rebecca Poe
Assistant Director
Intergovernmental Affairs

EC-102

Enclosure

JAN 20 1987

TS INFOSYSTEMS, INC.
DOCUMENT DISTRIBUTION SERVICES & PRICES FOR THE
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

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- E. Search Fee: Cost is \$5.00 per 20 minute increment to locate documents on microfilm or microfiche.

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TS INFOSYSTEMS, INC.
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New Accounts Section
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Fort Washington, Maryland 20744

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_____ Weekly

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_____ AH. Ad Hoc Commission Notices

_____ AN. Weekly Commission Agenda

_____ AR. Area Rate Proceedings (discontinued)

_____ CI. Certificate of Independent Natural Gas Producers

_____ CP. Certificate on Natural Gas Pipelines

_____ CS. Certificate of Small Natural Gas Producers

_____ DA. Power-Site Land Determinations (discontinued)

_____ E. Electric Rates, Securities and Mergers (discontinued)

_____ EA. Review of major energy actions proposed by the Secretary of Energy relating to oil pricing and allocation.

_____ EC. Applications of public utilities for authority for sale, lease, purchase, acquire or merge, and applications for determination of jurisdiction.

_____ EF. Federal Electric Rates

_____ EL. Other formal proceedings related to Electric Power

_____ ER. Electric Rates

_____ ES. Electric Securities, Mergers or Facilities

_____ FE. News Releases

- _____ FA. Financial Audit
- _____ FS. Fourth Section matters as it pertains to oil pipelines refers to Section 4, Part 1, of the Interstate Commerce Act which set forth the provisions for long and short haul charges; competition with water routes.
- _____ G. Gas Companies (discontinued)
- _____ GT. Gas Tariff matters
- _____ GP. General Docket for matters under the NGPA where the assignment of a docket number would be useful for such purposes as noticing and otherwise tracking the proceeding.
- _____ HB. Headwater Benefits (followed by two digits designating river basins)
- _____ ID. Interlocking Directorates
- _____ IR. Implementation Reports under Subpart D, Section 292, 401, Order No. 69 - Reports by State Regulatory Authority and non-regulated electric utility on cogeneration and small power production.
- _____ IS. Suspension and investigations into rates, fares, charges and practices of oil pipelines pursuant to Section 15(7) of the ICC Act, 49 U.S.C. 15(7).
- _____ OR. Oil Pipeline Rate Cases (a case formerly under the jurisdiction of the ICC will also carry the former ICC docket number for convenience).
- _____ PP. Code Generation Report
- _____ P. Hydroelectric Power Project Licenses and Permits
- _____ PD. Depreciation and related matters as it pertains to Oil Pipelines
- _____ PV. Oil Pipeline Valuation Cases
- _____ QF. Qualifying status of a small power production facility
- _____ R. Rulemaking Notices and Orders (discontinued)
- _____ RA. Appeals from denials of requests for adjustments issued by the Economic Regulatory Administration.
- _____ RE. Report of exemption or extension of time (Electric)
- _____ RI. Rates of Independent Natural Gas Producers
- _____ RM. Rulemaking Notices and Orders (including any former ICC reference).
- _____ RO. Appeals from remedial orders issued by the Economic Regulatory Administration.

- _____ RP. Rates of Natural Gas Pipeline Companies
- _____ SA. Staff adjustments under the interim regulations in order No. 24, Section 502(c) of the NGPA requires the FERC to adopt procedural rules under which any person may seek an adjustment of rules and orders which have the applicability and effect of rules and which are issued under the NGPA.
- _____ SP. Special Permission Applications or other permissible waivers of rules regarding tariffs or schedules under Section 6(3) of the Interstate Commerce Act, 49 U.S.C. Section 6(3).
- _____ ST. Transportation pursuant to Section 311(a), sales pursuant to Section 311(b) and assignments pursuant to Section 312 of the NGPA; including self-implementing sales and transportation pursuant to the FERC's Fuel Oil Displacement Program.
- _____ TA. Tracking Filings (following fiscal year, the second element will be either the number "1" or "2" indicating the first half or the second half of the fiscal year.)
- _____ TF. Transportation Filing
- _____ TC. Tariff Curtails of Natural Gas Pipeline Companies
- _____ D. Determinations
- _____ X. Document Release List. TSI prepared list containing document number, title, organization involved and official posting data for every document released at each FERC posting time.
- _____ GR. Monthly Gas Activity Report
- _____ OP. Oil Price Index
- _____ PR. Quarterly Report on Qualifying Small Power Production and Cogeneration Facility Filings.

IV. For additional information please contact:

Operations/General Info:

TSI Supervisor
Room 1000
825 N. Capital St., NE
Washington, D.C. 20426
PHONE: (202) 898-1151

News Accounts/Billing

Accounts Receivable Section
TS Infosystems, Inc.
10905 Ft. Washington Rd.
Ft. Washington, MD 20744
PHONE: (301) 292-0100

FERC:

Division of Public
Information
825 N. Capital St., N
Washington, D.C. 2042
PHONE: 357-8119

(OVER FOR NEW ACCOUNT CREDIT INFORMATION)

V. NEW ACCOUNT CREDIT INFORMATION:

1. Billing Address:

Company Name: _____

ATTENTION: _____ PHONE #: _____
(For Billing Purposes, indicate specific recipient)

Address: _____

City: _____ State: _____ Zip: _____

2. Credit Reference:

Please list one (1) principal source of reference (Bank Reference, Major Credit Card or enclose Company's Annual Report).

Name: _____

Account No.: _____

Address: _____

City: _____

Phone No.: _____ Contact: _____

3. Account Authorization:

Below must be completed and signed by a company official authorized to establish an account with TS Infosystems, Inc.

Signature: _____

Name: (Printed) _____

Position: _____ Phone #: _____

Date: _____

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Utah Power & Light Company) Project No. 20

ORDER ISSUING NEW LICENSE (MAJOR)

(Issued July 29, 1980)

Utah Power & Light Company (UP&L) has filed an application under Part I of the Federal Power Act for a new major license to authorize the continued operation and maintenance of the constructed Soda Project No. 20. 1/ The project is located on the Bear River, a navigable water of the United States, in Caribou County, Idaho. The original license for Project No. 20 was issued on July 5, 1923, for a period of 50 years.

Public notice of the filing of the application was given. No protests, notices of intervention, or petitions to intervene were received. Significant issues raised in comments of various federal and state agencies are presented below.

Project Description

The constructed project includes a concrete dam 28 feet high and 432 feet long, an earthen dike 28 feet high and 60 feet long, and a reservoir with a surface area of 1,100 acres and storage capacity of 16,300 acre-feet. The powerhouse contains two generating units with a total installed capacity of 14 MW. The project began operation in 1923. A more detailed description is given in ordering paragraph (B) below.

Safety and Adequacy

All project structures, machinery, and appurtenant facilities were inspected by the Commission's staff and found to be adequately maintained and in good operating order.

The Commission's staff has analyzed the project works for stability and found them to be safe against sliding and overturning under various normal and extreme loadings. The staff's analysis also shows that the project spillway capacity is sufficient to pass the probable maximum flood (PMF).

An independent consultant inspected the project in 1967 and found no deficiencies that might endanger the public safety. The 1967 independent inspection did recommend minor changes to improve the safety of the dam during the PMF. These recommendations were

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under Section 375.308 of the Commission's regulations, 18 CFR 375.308, [as amended in Docket No. RM78-19 (August 14, 1978) and in Docket No. RM79-59 (July 23, 1979), and Docket No. RM80-45 (March 28, 1980)].

DC-A-21

subsequently implemented. Subsequent independent inspections in 1972 and 1977 showed no significant changes in the project structures. The U. S. Department of the Interior (Interior) in its comments on the application recommended that UP&L include in its application for license an appraisal of the safety of the dam for another 50 years of operation. In view of Staff's analysis and the inspection by an independent consultant a safety appraisal report of the type recommended by Interior is not considered necessary. It is concluded that the project works are safe and adequate.

Comprehensive Development

Project No. 20 is one of 14 hydroelectric projects in the Bear River Basin. UP&L operates three other projects downstream (Project Nos. 472, 2401, and 2420). All 14 of these projects are operated subject to the provisions of the Bear River Compact, an agreement entered into between the States of Idaho, Utah, and Wyoming which was consented to by Congress on March 17, 1958 (Public Law 85-348, 72 Stat. 38) and approved by the President. A major purpose of the Compact was to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River and to provide for efficient use of water for multiple purposes. The Compact specifically provides that the waters of Bear Lake shall constitute a reserve for irrigation, and that such waters shall be used for power generation after release for irrigation, provided that such power use is not inconsistent with use of the waters for irrigation. Thus, the operation of all hydroelectric projects along the Bear River must be coordinated to ensure maximum generation from a limited water supply.

Article 40 makes clear that UP&L's water rights under applicable state law rather than the terms of its license shall govern any claim UP&L may have for damages if water is diverted for irrigation or other beneficial consumptive uses. This provision is consistent with that provided in the Commission's order issuing a license for the downstream Grave-Cove Project No. 2401.

In 1962 and 1966 Interior's Bureau of Reclamation (now the Water and Power Resources Service) formulated plans to more fully develop the water resources in the Bear River Basin below Bear Lake. The 1966 plan if implemented would result in the inundation of the existing Oneida Project No. 472 and would reduce power generation at UP&L's other three projects including Project No. 20. Interior however, has given no indication that its plan will be carried out in the foreseeable future.

It is concluded that the project under the terms and conditions of this license will be best adapted to a plan for comprehensive development of the Bear River Basin.

Federal Takeover

Section 14 of the Federal Power Act reserves to the United States the right to take over a non-publicly owned project upon expiration of the license. No federal department or agency, state, or municipality recommended takeover or redevelopment of the project by the United States or any other entity. The project is not in conflict with any project authorized or under study by the United States. No state or federal agency has objected to the relicensing of the project. There appears to be no reason why federal takeover of the project would better serve the public interest than issuance of this license.

Water Quality and Fish

The Idaho Department of Health and Welfare (DHW) commented that the project reservoir provides an opportunity for an increase in water temperature thereby creating the potential for thermal stress on fish and other living organisms. DHW, however, did not recommend any preventive or corrective measures. The Commission's staff agrees that there is a potential for thermal stress but believes that no specific measures are presently necessary. If measures should be found appropriate during the term of license, authority to require such measures is reserved by Article 15. DHW also certified that there was a reasonable assurance that the project will not violate any applicable state water standards. A copy of DHW's certification was forwarded to the Environmental Protection Agency (EPA).

Since there is no minimum flow from the project, the Bear River downstream is subjected to periods when there is little or no water flowing in the stream channel. About four miles of stream are affected. This reach of the Bear River provides some sport fishing for rainbow trout and brown trout, especially during the spring and early summer months. Article 39 would require that the licensee, in cooperation with the Idaho Fish and Game Department (IFGD) and Interior, conduct a study to determine the need for a minimum flow release from the project, and any modification in project operation necessary to protect the fishery resources of the Bear River downstream of the project.

Recreation

IFGD recommended that no additional shoreline development be undertaken at the project. Interior however, specifically recommended the addition of more picnic units, and the extensive upgrading of the existing picnic tables, restrooms, the solid waste disposal system, access roads, and informational signs. Interior also noted the non-existence of a boat dock described in the applicant's Exhibit R and the siting over of a boat ramp. The Idaho Department of Parks and Recreation (IDPR) commented that recreational development at the project could be improved both in quality and quantity. Based on the Commission's staff's analysis of the Exhibit R and the comments of Interior it is concluded that UP&L's Exhibit as submitted

should not be approved. Article 38 of this license requires that the licensee file a revised Exhibit R which will conform to the requirements of the Commission's regulations. The revised Exhibit R should more accurately indicate existing recreational facilities, recreational facilities now being developed, and proposed recreational facilities. Also, consistent with the Commission's Order Amending license for Project No. 1490, Article 47 has been added to this license. 2/ Article 47 gives the licensee authority to grant, without prior Commission approval, permission to allow certain types of uses and occupancy of project lands and waters in the interest of protecting the project's scenic, recreational, and other environmental values. Article 47 also grants the licensee authority to grant without prior Commission approval, fee title, easements or rights-of-way, or leases for certain kinds of uses that usually prove to be routine or inconsequential.

Historical and Archeological Resources

There are no sites listed in the National Register of Historic Places within or near the project boundary which would be affected by continued operation of the project. Article 46 requires UP&L to consult with the State Historic Preservation Officer (SHPO) prior to any project-related construction to ensure the protection of any archeological or cultural resources that may exist in the project area.

Environmental Conditions

Issuance of a new license for Project No. 20 would permit the continued operation of the project. This license authorizes no new construction or change in project operation. Any proposed expansion of recreational facilities should comply with existing land use patterns and should not result in any significant adverse environmental impacts. On the basis of the record, including the staff's independent analysis, it is concluded that issuance of this new license for Project No. 20, as conditioned, is not a major federal action significantly affecting the quality of the human environment.

Exhibits

The Exhibit K filed as part of the application is not in conformance with the Commission's regulations. Article 45 requires the licensee to file a new Exhibit G conforming to the Commission's regulations as modified on January 1, 1980. Exhibits G, when approved, will supersede Exhibit K as part of this license.

License Period

Interior noted that the parties to the Bear River Compact, the states of Idaho, Utah, and Wyoming were studying a proposed reallocation of the waters of the Bear River which could affect the operation of Project No. 20. In view of such a possibility, Interior

2/ See, the Brazos River Authority, Morris Shepard Project No. 1490, Order Amending License (issued May 15, 1980).

recommended that consideration be given to a shorter license period for Project No. 20 in order to allow the above mentioned states greater flexibility in any reallocation of the waters of the Bear River Basin. The Idaho Department of Water Resources (DWR) recommended a license period of five years and that no long term license be issued until the completion of the Bear River Compact negotiations. UP&L in its response to agency comments strongly objected to DWR's recommendation. UP&L argued 1) that UP&L's water rights are appropriated and fixed by judicial decree, 2) that the Compact if amended would be subject to UP&L's water rights, 3) that the parties to the Compact have been negotiating since 1970 and have yet to execute a new agreement, and 4) that the extent of any proposed Compact amendment is unknown and the parties may or may not amend the Compact at all.

The Commission's staff believes that a five-year license term would be administratively inefficient. The Commission and other agencies would be faced with the repetitive burden of processing yet another application describing essentially the same project within a very few years. A five-year license term would also be inconsistent with the Commission's policy of issuing new licenses for essentially unchanged constructed projects for a term of thirty years. Given the uncertain future and speculative nature of any amendment to the Bear River Compact, a five-year license term would not be in the public interest. Therefore, consistent with the Commission's Order Issuing License for Project No. 2301, this license will terminate 30 years from the expiration of the original license. 3/

It is ordered that:

(A) This license is issued to Utah Power & Light Company of Salt Lake City, Utah, under Part I of the Federal Power Act (Act), for a period effective the first day of the month in which this license is issued and terminating July 4, 2003, for the continued operation and maintenance of the constructed Soda Project No. 20, located on the Bear River, a navigable water of the United States in Caribou County, Idaho. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under provisions of the Act.

(B) The Soda Project No. 20 consists of: (1) All lands, to the extent of the licensee's interest in those lands, constituting the project area and enclosed by the project boundary, the project area and boundary being shown and described by certain exhibits which form part of the application for license and are designated and described as:

Exhibit	FERC NO. 20-	Showing
J	39	General System Map
K-1	31	Project Boundary
K-2	32	Project Boundary

3/ See, the Montana Power Co., Mystic Lake Project No. 2301, Order Issuing New License (Major) (Issued October 5, 1976).

(2) Project works consisting of: (a) a concrete gravity overflow dam 432 feet long with a maximum height of 103 feet, comprising (1) a controlled spillway section containing three 30 x 14-foot radial gates; (2) a center section 117 feet long consisting of an intake structure, and a powerhouse containing two 7,000 KW generating units; and (3) a gravity section 210 feet long; (b) an earthen dike 60 feet long and 28 feet high connecting the left end of the spillway to the left abutment; (c) a 1,100-acre reservoir with gross storage capacity of 16,300 acre-feet, and (d) appurtenant facilities. The location, nature, and character of these project works are more specifically shown and described by the exhibits cited above and by the following exhibits that also form a part of the application for license and which are designated and described as:

Exhibit	FERC NO. 20-	Showing
L-1	33	Plan and Downstream Elevation of Powerhouse, Intake House, Spillway, and Dam
L-2	34	Plan, Elevation, and Sections of Powerhouse, Gatehouse, Spillway, and Dam

Exhibit M - "General Description and General Specifications of the Mechanical, Electrical and Transmission Equipment" consisting of one (1) typewritten page, filed June 26, 1970.

Exhibit S:

Entitled "Effect of the Project Upon Fishing and Wildlife Resources in the Project Area", consisting of two pages of text, filed with the Commission on June 26, 1970.

(3) All of the structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located within the project boundary, all portable property that may be employed in connection with the project, whether located on or off the project area, as approved by the Commission, and all riparian or other rights which are necessary or appropriate for the operation or maintenance of the project.

(C) Exhibits L, M, and S, as described in ordering paragraph (B) above, are approved and made a part of this license. Exhibits J and K designated and described in ordering paragraph (B) above are approved to the extent that they show the general nature and extent of the project.

(D) This license is also subject to Articles 1 through 37, set forth in Form L-5 (revised October 1975), entitled "Terms and

Conditions of license for Constructed Major Project Affecting Navigable Waters and Lands of the United States" attached to and made a part of this license. This license is also subject to the following conditions set forth as additional articles:

Article 38. The licensee shall, within one year of the date of issuance of this license, file for Commission approval a revised Exhibit R that conforms to the requirements of Section 4.41 Exhibit R of the Commission Rules and Regulations.

Article 39. Licensee shall within one year from the date of issuance of this license, conduct a study in cooperation with the U. S. Fish and Wildlife Service of the Department of the Interior and the Idaho Fish and Game Department to determine the need for and quantity of any continuous minimum water release, if found necessary, to protect the downstream fish resource. The licensee shall, within three months following conclusion of the study, file with the Commission a report of the findings of the study together with recommendations for any changes in the operation of the project to protect the downstream fish resources.

Article 40. This license shall not be construed as affecting in any way any claim the licensee may have concerning its water rights acquired pursuant to State Law. Those rights, not this license, shall govern any claim the licensee may advance against the United States for any damages resulting from any future depletion in the flow of the waters of the Bear River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 41. The licensee shall, within one year of the date of issuance of this license, submit for approval by the Director, Office of Electric Power Regulation, a plan and schedule for periodically measuring flow and uplift pressure at the foundation drains provided in the Soda Dam. The need for and frequency of cleaning and flushing drains shall be determined from the flow and uplift pressure measurements. The licensee shall plot the flow and uplift pressure measurements. The licensee shall plot the flow and uplift pressure values recorded for each drain and shall furnish a copy annually to the Commission's authorized representative.

Article 42. The licensee shall implement, and modify when appropriate, the emergency action plan filed with the Commission, designated to provide an early warning to upstream and downstream inhabitants and property owners if there should be an impending or actual sudden release of water caused by an accident to, or failure of, project works. That plan shall include: instructions to be provided on a continuing basis to operators and attendants for actions they are to take in the event of an emergency; detailed and documented plans for notifying law enforcement agents, appropriate Federal, State, and local agencies, operators of water-related facilities, and those residents and owners of properties that could be endangered; actions that would be taken to reduce the inflow to the reservoir;

if possible, by limiting the outflow from upstream dams or control structures; and actions to reduce downstream flows by controlling the outflow from dams located on tributaries to the stream on which the project is located. The licensee shall also maintain on file with the Commission a summary of the study used as a basis for determining the areas that may be affected by an emergency, including criteria and assumptions used. The licensee shall monitor any changes in upstream or downstream conditions in the emergency action plan. The Commission reserves the right to require modifications to the plan.

Article 43. The licensee shall, to the satisfaction of the Commission's authorized representative, install and operate any signs, lights, sirens, barriers or other safety devices that may reasonably be needed to warn the public of fluctuations in flow from the project and to protect the public in its recreational use of project lands and waters.

Article 44. The licensee shall pay the United States the following annual charge, effective on the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 18,700 horsepower;

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

Article 45. The licensee shall file, for Commission approval, within one year of the date of issuance of this license an Exhibit G conforming to the requirements of the Commission's Regulations.

Article 46. The licensee shall, prior to the commencement of any construction or development of any project works or other facilities at the project, consult and cooperate with the State Historic Preservation Officer (SHPO) to determine the need for, and extent of, any archaeological survey and any mitigative measures that may be necessary. The licensee shall provide funds in a reasonable amount for such activity. If any previously unrecorded archaeological sites are discovered during the course of construction, construction activity in the vicinity shall be halted, a qualified archaeologist 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 resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological work related to the project, the Commission reserves the right, after notice and opportunity for hearing to require the Licensee to conduct, at its own expense, any archeological work found necessary.

Article 47 (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 for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed. If a permitted use and occupancy violates any conditions 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) piers, landings, boat docks, or similar structures and facilities; 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 standard, guidelines, and procedures for implementing this paragraph (b) and to require modifications 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 waters; (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, drainage, or effluent lines that discharge into project waters, for which all necessary federal and state water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) 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 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 for 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 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: (1) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (11) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

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

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

Article 43. Pursuant to Section 10(d) of the Act, the rate as computed below shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, with the exception that, if there is a deficiency of project earnings below that specified rate of return per annum for any fiscal year under the license, the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; the amounts thus established in the project amortization reserve account shall be maintained until further order of the Commission. The annual specified reasonable rate of return shall be the sum of the weighted cost components of long-term debt, preferred stock, and the cost of common equity, as defined below. The weighted cost component for each element of the reasonable rate of return is the product of its capital ratios and cost rate. The current capital ratios for each of the above elements of the rate of return shall be calculated annually based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

(E) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in §1.7(d) of the Commission's Regulations, 18 CFR 1.7(d) [as amended in Docket No. RM79-59 (July 23, 1979) and in Docket No. RM78-19 (August 14, 1978)]. The filing of a petition appealing this order to the Commission or an application for rehearing as provided in §1313(a) of the Act does not operate as a stay of the effective date of this license or any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this license and its terms and conditions, it shall be signed by the licensee and returned to the Commission within 60 days from the date of this order.

(SEAL)

William W. Lindsay
William W. Lindsay
Director, Office of Electric
Power Regulation

FEDERAL ENERGY REGULATORY COMMISSION

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

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 pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment of 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

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

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 United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and 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 Secretary of the Army may prescribe in the interest of navigation, and 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 Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other 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 project use causes the Licensee to incur. Any such

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.

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 the 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. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. 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 27. 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 28. 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 29. 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 30. 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 as stated in the license.

Article 31. 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 12. 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 13. 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 14. The licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 601, as amended (30 U.S.C. 200, 601, et seq.), of 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 15. 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 16. 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 17. 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.

Director, Office of Electric
Power Regulation

Project No. 20.

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Utah Power & Light Company, this _____ day of _____, 1980, has caused its corporate name to be signed hereto by _____, its _____ President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 19____, a certified copy of the record of which is attached hereto.

UTAH POWER & LIGHT COMPANY

By _____
President

Attest:

Secretary

(Executed in quadruplicate)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Utah Power & Light Company)

Project No. 20-003

ORDER AMENDING LICENSE (MAJOR)

(Issued March 5, 1984)

Utah Power & Light Company (UP&L), Licensee for the Soda Project, FERC Project No. 20, located on the Bear River in Caribou County, Idaho, pursuant to Articles 38 and 45 filed for approval 1/ on June 21, 1983, and supplemented on November 4 and December 12, 1983, an application for amendment of its new license issued in 1980. 2/

Article 38 of the new license requires that UP&L file a revised Exhibit R to conform to the requirements of the Commission's regulations. 3/ The revised Exhibit R accurately depicts existing recreational facilities and proposed recreational facilities, conforms to the Commission's rules and regulations, and fulfills the requirements of Article 38.

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902 (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

2/ See Utah Power & Light Company, 12 FERC 162,062 (July 1980).

3/ Article 38 states as follows:

Article 38. The Licensee shall, within one year of the date of issuance of this license, file for Commission approval a revised Exhibit R that conforms to the requirements of Section 4.41 Exhibit R of the Commission Rules and Regulations.

The Revised Exhibit R

UP&L proposes in its revised Exhibit R to design, and provide funds for, the construction of the Oregon Trail Marina on the north shore of Soda Point Reservoir. After constructing the facilities, Caribou County (CC) will own, operate, and maintain them at its own expense. Facilities will include floating docks, individual and group picnic areas, and a parking lot. UP&L has also signed an agreement with CC stipulating that construction must be completed prior to August 1, 1985. In preparing its recreation plan UP&L consulted with the appropriate Federal, state and local agencies. All agencies responded favorably to UP&L's proposed development plan.

UP&L's revised recreational plan appears to adequately meet the needs of project-oriented recreationists. UP&L's required Form 80 recreation reports and the recreation inspections by the Commission's staff will ensure that recreational facilities are adequate to serve the public.

Approval of the revised recreation plan would not alter project operations. Adverse environmental impacts would be limited to the construction period and would include erosion and sedimentation from land clearing operations. Wildlife habitat would not be significantly affected by construction or operation of the recreational facilities. For the above reasons, UP&L's Exhibit R is approved.

Other Exhibits and License Articles

The Exhibit K project description filed as part of the new license application was not in conformance with the Commission's regulations. For this reason, UP&L's Exhibits J and K were approved and made a part of the new license only to the extent that they show the general nature and extent of the project. Article 45 of UP&L's new license requires that UP&L file a new Exhibit G project description superseding the old Exhibit K and conforming to the Commission's regulations as modified on January 1, 1980. 4/ The new Exhibit G conforms to the Commission's rules and regulations and fulfills the requirements of Article 45.

4/ Article 45 states as follows:

Article 45. The Licensee shall file, for Commission approval within one year of the date of issuance of this license an Exhibit G conforming to the requirements of the Commission's regulations.

The new Exhibit G drawings also conform with the revised Exhibit R and properly portray the existing and proposed project features. Additionally, the new Exhibit G contains sufficient information to enable the establishment of the acreage of U. S. lands for annual charge purposes. Therefore license Article 44 which requires an annual charge for use of government lands will be revised accordingly.

Approval of the above described plans and exhibits and attendant modifications of relevant license provisions is an administrative action, involving no significant modification of the project or its operation, and is not a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) The revised Exhibit R, filed June 21, 1983, and further revised on November 4, 1983, consisting of 15 pages of text titled "Recreation Plan for Utah Power & Light Company's Soda Hydro Plant Project No. 20", is approved and made a part of the license for FERC Project No. 20.

(B) The following Exhibit G and Exhibit R drawings are approved and made a part of the license for FERC Project No. 20, superseding the Exhibit K drawings noted:

<u>Exhibit</u>	<u>FERC No.</u>	<u>Showing</u>	<u>Superseding FERC No.</u>
G (1 of 2)	20 - 40	Location and Principal Features Map	(K - 1) 20 - 31
G (2 of 2)	20 - 41	Project Boundary Map	(K - 2) 20 - 32
R	20 - 42	Soda Point Reservoir Recreational Sites	-
R - 1	20 - 43	Oregon Trail Marina Development Plan	-

(C) License Article 44 in the order issuing new license (issued July 29, 1980), for Project No. 20 is hereby revised to read as follows:

Article 44. The Licensee shall pay the United States the following annual charges effective July 1, 1980:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 18,700 horsepower;

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 48.90 acres of its lands, other than for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

(D) Within 90 days of the date of issuance of this order, the Licensee shall file an original of each exhibit drawing being approved herein reproduced on silver or gelatin 35 mm microfilm mounted on Type D (3-1/4" x 7-3/8") aperture cards. In addition, Licensee shall file two Diazo-type duplicate cards. The FERC drawing numbers shall be shown in the margin below the title block of the microfilmed drawings, and also in the upper right corner of each appropriate aperture card. Also, both the exhibit number and drawing number must be put on each aperture card.

(E) The superseded drawings, listed in ordering paragraph (B) are deleted from the license.

(F) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

Lawrence R. Anderson
Director, Office of Electric
Power Regulation

8.4

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

-2-

PacifiCorp

Project No. 20-016
Idaho

ORDER AMENDING LICENSE
(Issued December 21, 1994)

On September 14, 1994, PacifiCorp, licensee for the Soda Project, FERC No. 20, filed with the Commission information regarding the installed capacity of the project. The filing was made to correct a discrepancy between the capacity as stated in the license¹ and the project's as-built installed capacity.

Background

On July 7, 1994, the Commission's San Francisco Regional Office (SFRO) conducted a plant operation inspection of the Soda Project. During the inspection, the SFRO noted that generator unit 2 had been rewound and a secondary nameplate had been added. The nameplate showed an electrical winding capacity of 9,020 KVA with a Power Factor of 0.855, equivalent to 7,712 kW. The license authorizes a powerhouse containing 2 generating units with 7,000 kW each, for a total installed capacity of 14,000 kW.

In order to resolve the discrepancy between the authorized and installed capacity of the project, the licensee filed a letter on September 9, 1994. In the letter the licensee explains the following:

- the new stator windings allow generator 2 to run more efficiently. It has a greater current carrying capacity capable of producing greater megawatt output;
- the unit is still limited to 7,000 kW, by the turbine unit, since no work has been done to the turbine; and
- the secondary nameplate on generator 2 should be ignored and the original nameplate used to indicate the actual generating capacity of 7,000 kW.

Review

Staff review of the filing found that, the rewinding of the generator unit 2 did not affect the generating capacity of unit 2, which remains at 7,000 kW. Because of the modifications

¹ 12 FERC ¶ 62,062, Order Issuing New License (Major), July 29, 1980.

DC-A-7

performed at the project, the license is amended to reflect the rewinding of the generator unit, and the additional nameplate at generating unit 2.

This order amends the project description in the license to reflect the project's as-built condition. This order does not authorize a change in installed capacity or amend the annual charges for the Soda Project.

The Director orders:

(A) The license for the Soda Project, FERC No. 20, is amended as provided by this order, effective the first day of the month in which this order is issued.

(B) Ordering Paragraph (B)(2) of the license is revised, in part, to read:
"...a powerhouse containing two generating units with 7,000 Kw each, and an additional nameplate capacity in unit 2 showing an electrical winding capacity of 9,020 KVA with a P.F. of 0.855..."

(C) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.

J. Mark Robinson
J. Mark Robinson
Director, Division of Project
Compliance and Administration

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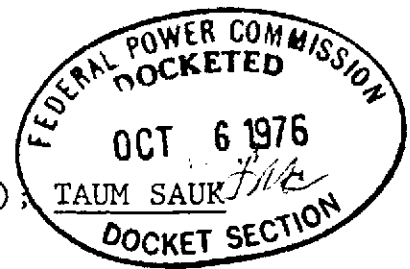
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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION



Department of Water Resources

LICENSE (MAJOR)

TAUM SAUK

Before Commissioners: Richard L. Dunham, Chairman;
Don S. Smith, John H. Holloman III,
and James G. Watt,

Utah Power & Light Company)

Project No. 2401 - *Grace-Cove*

70 May 1, 1970 (a.c.)

ORDER ISSUING MAJOR LICENSE FOR CONSTRUCTED
PROJECT AND DENYING REQUEST FOR
DISCLAIMER OF JURISDICTION

2571 from 1965-(p.10)

(Issued October 6, 1976)

Utah Power & Light Company (Applicant) of Salt Lake City, Utah, filed on August 30, 1963, and supplemented June 18, 1968, January 27, 1969, December 10, 1971, and April 20, and December 4, 1972, an application for major license for, or alternatively a disclaimer of jurisdiction over, the constructed Grace-Cove Project No. 2401 located on the Bear River in Caribou County, Idaho. The project consists of two diversion dams, a reservoir containing 250 acre-feet of storage, and three powerhouses with a total installed capacity of 51,500-kW.

The project is composed of two developments. The Grace development, containing two 5,500-kW generating units was constructed in 1908 by a predecessor of the Applicant. Utah Power & Light Company purchased the plant in 1912. In 1914 the Applicant built an additional powerhouse with two 11,000-kW units, and added a third 11,000-kW unit in 1923. The flume was replaced between 1937 and 1952, and in 1950 a new dam was constructed immediately downstream of the original one.

The Cove development was constructed by the Applicant in 1927. The powerhouse contains a single 7,500-kW generating unit. Since the initial construction, the flume and spillway have been repaired (1949-50) and a substation has been built (1955). The license application does not request authorization for any modifications of the existing project.

Public notice of the license application was issued October 18, 1963, 28 Fed. Reg. 11463, with December 9, 1963, given as the last day for filing protests or petitions to intervene. No protests or petitions to intervene were received.

Jurisdiction

Applicant, in Exhibit P of its application, questions whether the Grace-Cove Project must be licensed under the Federal Power Act. Applicant attests that its application was filed in response to our decision in Public Service Company of New Hampshire, (Androscoggin), 1/ wherein we established the policy of backdating licenses for projects dilatory in seeking Commission authorization. However, Applicant believes that there is uncertainty in the application of Androscoggin to the Grace-Cove Project. Applicant argues that the fact that jurisdiction in Androscoggin was based upon navigability of the river on which the project was located distinguishes it from Grace-Cove where it contends that the associated river is non-navigable.

We do not find it necessary to reach the questions raised by the Applicant regarding the navigability of the entire Bear River, or the applicability of the Androscoggin case to non-navigable waters. Jurisdiction over Project No. 2401 may be found through the Supreme Court's determination in FPC v. Union Electric Co. (Taum Sauk) 2/, where the Court concluded that Section 23(b) of the Act 3/ gives the Commission licensing authority over a water power project which utilizes the headwater of a navigable river to generate energy for an interstate power system. Grace-Cove is such a project.

The Bear River, at a point downstream from the project, has historically been used for navigational purposes. Between 1871 and 1873 a stern-wheel steam boat was used along the lower stretch of the Bear River to transport freight, ore, and passengers from the railroad junction city of Corinne, at approximately river mile 15, to Salt Lake City via the Great Salt Lake and the Jordan River. 4/

1/ 27 FPC 830 (1962).

2/ 381 U.S. 90 (1965).

3/ Federal Power Act Section 23(b), 16 U.S.C. §817(b).

4/ D.E. Miller, Great Salt Lake Past and Present, 13 (1949); Box Elder Chapter-Sons of Utah Pioneers, Box Elder Lore (Sept. 1951).

Such evidence requires a finding that the Bear River downstream from the Grace-Cove Project was a navigable waterway of the United States. It is irrelevant that diversion of the upstream water for irrigation has rendered the river no longer suitable for navigation. The Supreme Court has determined that if a river was navigable at an earlier period of time, it is unimportant that actual navigation has now been abandoned. ^{5/} The Commission may find a river navigable ". . . if (1) it presently is being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements." ^{6/}

Having determined that Grace-Cove utilizes waters which become navigable at a point below the project, jurisdiction may be based on Taum Sauk if it can be shown that the project generates energy for an interstate power system. The Grace and Cove plants are connected to Utah Power & Light's 46-kV and 161-kV interconnected transmission facilities. These transmission facilities interconnect with Applicant's generating stations in Idaho, Utah, and Wyoming, and interconnect at the Utah-Arizona state line with the Bureau of Reclamation's Colorado River Storage Project. The system also interconnects with the Montana Power Company at the Idaho-Montana state line through a 161-kV line leased by Utah Power & Light from Idaho Power Company. Power flows in both directions across each of these state lines. The interstate transmission of electric energy and a project which generates energy for such transmission affects commerce among the states. ^{7/} The analogy to Taum Sauk is complete.

Despite the application of Taum Sauk to the instant proceeding, the question of licensing jurisdiction remains somewhat clouded as application of §23(b) has been held nonretroactive from its 1935 enactment date. In Farmington River Power Company v. FPC, ^{8/} the Second Circuit found that a project which "was constructed in 1925 and remains essentially unchanged today", did not fall within the

^{5/} U.S. v. Appalachian Power Co. 311 U.S. 377 (1940).

^{6/} Rochester Gas and Electric Corp. v. Federal Power Commission, 344 F. 2d 594, 596 (2d Cir. 1965)

^{7/} Taum Sauk, at 94.

^{8/} 455 F. 2d 86 (2d Cir. 1972).

jurisdictional ambit of Section 23(b), which was added to the Act after the project was built. 9/ Nevertheless, in our recent decision in Puget Sound Power and Light Company, 10/ we distinguished Farmington and concluded that licensing jurisdiction did exist where substantial post-1935 construction on a project had occurred. In the instant proceeding, the facts are similar to those in Puget. Although initial construction on both the Grace and Cove plants was completed long before 1935, a new dam was constructed at the Grace facility in 1950. The new dam's construction did not constitute repair or maintenance, thereby leaving the project "essentially unchanged", but was a significant addition, thus bringing the project within our jurisdiction.

Comments on the Application

By letters dated October 16, 1963, the then Acting Secretary of the Commission requested comments on the application from appropriate Federal and State agencies pursuant to Section 4(e) of the Act. 11/ Comments received and responses to those comments are as follows:

Conservation and Enhancement of Fish & Wildlife Resources

The State of Idaho Fish and Game Department (Department) reported (December 9, 1963) that the project at present offers little or no enhancement of wildlife resources. The Department recommended two special license articles to provide for any future development of potential fish, wildlife, and recreational resources associated with the project. One proposed article would require the Applicant to construct and maintain those fish and wildlife conservation facilities deemed necessary by either the Commission, the Secretary of the Interior, or the Idaho Fish and Game Department; the other would require Applicant to permit the United States or the State of Idaho to use project lands to a reasonable extent free of charge for the development or improvement of facilities and to make whatever project modifications are necessary to accommodate Federal or State

9/ Id. at 89-90.

10/ Order Establishing Jurisdiction, Project No. 2495, issued July 31, 1975, F.P.C. (1975), appeal docketed, No. 75-3523, 9th Cir., Nov. 17, 1975.

11/ 16 U.S.C. §797(e).

conservation developments. Articles 16 and 17 of this license provide for the Department's recommendations.

The Department of the Interior, (Interior) in a letter received March 25, 1964, recommended that conditions relating to fish and wildlife resources be included in any license issued. These recommendations are similarly met by the inclusion of Articles 16 and 17 of this license.

Further protection of fish and wildlife resources is afforded by Article 27, which requires Applicant to file an Exhibit S within one year of the issuance date of the license. Although Order No. 323, which requires the preparation of an Exhibit S, was issued after the license application for Project No. 2401 was filed, a substantial period of time has elapsed since that filing and 25 years will elapse before a new license containing a fish and wildlife plan will be issued. In addition, the Department's aforementioned report concluded that little activity geared toward fish and wildlife enhancement had occurred within the project boundaries. For these reasons, we determine through Article 27 of the proposed license that an Exhibit S must be filed.

Recreation

The Applicant has not advanced a plan for future recreational development nor a statement of the agencies consulted during the preparation of its Exhibit R. Applicant concluded that only the small ponds behind the diversion dam could offer any possible recreational use, and that these ponds are subject to such violent water level fluctuations that they are of little value. Therefore, as there is limited potential for recreational development at the project and many bodies of water and streams in the area are available for fishing, boating, and other recreational uses, it is not necessary for Applicant to file a revised Exhibit R at this time.

Water Use

The March 25, 1964, letter from Interior recommended the inclusion of a special article that would subordinate Applicant's water rights for power purposes to irrigation uses. Interior noted the ever-present importance of irrigation to the area affected by the Grace-Cove facility and concluded that a stipulated subordination of water use for power purposes would assure the needed economic development of the Bear River Basin.

To allege or assert
Applicant ~~opposed~~ such an article by letter filed June 9, 1964. It ~~averred~~ that during the previous 30 years there had been no water releases from Bear Lake solely for the generation of power. Applicant further argued that water has consistently been conserved for irrigation, with power being generated by its downstream Bear River plants only when irrigation demands required water releases.

We are not including the article proposed by Interior. Special Article 25, included herein, precludes the use of the license as the basis of damage claims if water is diverted for irrigation or other beneficial consumptive uses.

The Corps of Engineers reported (February 11, 1964) that insertion in the license of special terms and conditions in the interest of navigation were not considered necessary and that plans for the structures affecting navigation were satisfactory. The Department of Health, Education, and Welfare, by report received January 23, 1964, concluded that this project would have no adverse effect on water supply, water quality, or vector control.

Environmental Considerations

Applicant filed an Environmental Report as a supplement to its application on April 20, 1972. Comments on Applicant's Report were received from Interior, Forest Service, Corps of Engineers, Department of Health, Education, and Welfare, Idaho Water Resources Board, and the City of Grace, Idaho, with no objections to issuance of the license. Following a thorough review of Applicant's Report and agency comments thereon we conclude that the issuance of a license by the Commission for Project No. 2401 does not constitute a major Federal action significantly affecting the quality of the human environment. The license does not authorize any new construction or change in project operation. Thus, the preparation of an environmental impact statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 12/ and our implementing Order No. 415-C is not required.

Interior, in its environmental comments concerning Project No. 2401, recommended the investigation of possible historic places within the project boundary and an archaeological survey of project lands. The National Register of Historic Places has been reviewed through June 5, 1975, and no historic structures or sites are listed for the project area. As no new construction is being authorized by the

12/ 42 U.S.C. §4332(2)(C).

issuance of this license, no further study of a historic or archeological nature is required. Nevertheless, should Applicant ever seek Commission approval for subsequent project construction it very well may be required to conduct the surveys and studies outlined by Interior.

Transmission Facilities

With regard to the transmission facilities connected with this project, we conclude that the following transmission facilities are subject to any license issued for Project No. 2401: (a) the 6.6-kV generator leads of Grace units 3, 4 and 5 to the 138-kV step-up transformer; (b) the 2.4-kV generator leads of Grace units 1 and 2, the 2.4/46-kV step-up transformer and a short section of 46-kV transmission line to the outdoor substation; (c) the 6.6-kV generator leads to the Cove outdoor substation and the 6.6/46-kV step-up transformer; (d) 1.6 miles of dual 46-kV line between the Cove and Grace plants; (e) the 6.6/138-kV transformer at the Grace plant; and (f) appurtenant facilities at both developments.

Exhibit M of the application lists the 2.4/46-kV and 6.6/138-kV transformers at the Grace plant and the 6.6/46-kV transformers at the Cove plant as being part of the project. In a letter dated April 21, 1967, the Applicant expressed no objection to including the 46-kV transmission lines from the Cove plant to the Grace plant. The Applicant overlooked the generator leads and the short 46-kV line when compiling Exhibit M; these are considered appurtenant facilities and are included as such in the project description with the previously mentioned facilities. Additionally, special Article 26 requires the inclusion of both 46-kV lines and the generator leads in Applicant's filing of revised Exhibits F, K, and M.

Computation of Annual Charges

The installed capacity of the project is 51,500 kilowatts. For annual charge purposes this capacity is converted to 68,700 horsepower by multiplying the kilowatts by 4/3. Special Article 24 provides for the annual charges for the project.

Exhibits

Exhibits J and L have been examined and found to substantially conform to the Commission's Rules and Regulations, and should be approved and made part of this license. Exhibits F, K, and M have been examined and found to generally conform to the Commission's Regulations; however,

they do not include as part of the project all the aforementioned transmission facilities. Therefore, these exhibits are approved and made a part of the license only to the extent that they show the general location and nature of the project.

There are no conflicting applications for a preliminary permit or a license before the Commission. The project does not affect a government dam. Under the circumstances, the license for Project No. 2401 under the terms and conditions hereinafter provided best fulfills the standards of Section 10(a) of the Federal Power Act, 13/ Section 10(a) requires that the approved project shall:

be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreation purposes. . .

We conclude on the basis of the facts before us that a major license should be issued to Applicant effective May 1, 1965, the first day of the month in which Taum Sauk was decided, and terminating 25 years from the first day of the month in which this license is issued. This is in accordance with the principles enunciated in the Commission's Order issued September 24, 1976, in Pacific Power and Light Co., Project No. 2652, F.P.C. (1976).

The Commission finds:

(1) The Bear River is a navigable waterway of the United States from at least the City of Corinne, approximately at river mile fifteen to its mouth.

(2) The Grace-Cove Project No. 2401, is located on the Bear River.

(3) The Grace-Cove Project No. 2401, as constituted under this license, generates electric energy for an interstate system and has undergone major post-1935 construction.

(4) The Applicant, Utah Power & Light Company, is a corporation incorporated under the laws of the State of

Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(5) Public notice of the application was given. No protests or petitions to intervene were received by the Commission.

(6) No conflicting application is before the Commission.

(7) The project does not affect a government dam, nor will the issuance of a license, subject to the conditions hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) Subject to the terms and conditions hereinafter imposed, the project is best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 68,700 horsepower, and the amount of annual charge based on such capacity to be paid to the United States under the license for the project for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(10) Exhibits J and L as designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved and made a part of the license for the project.

(11) Exhibits K and M as designated and described in paragraph (B) below should be approved only to the extent that they show the general location and nature of the project.

(12) The plans for the structures affecting navigation have been approved by the Corps of Engineers.

(13) This action does not require the preparation of an environmental impact statement.

(14) The term of the license hereinafter authorized is reasonable.

The Commission orders:

A. This license is hereby issued to Utah Power & Light Company of Salt Lake City, Utah, under Section 4(e) of the Federal Power Act, for a period effective May 1, 1965, and terminating 25 years from the first day of the month in which this license is issued, for the continued operation and maintenance of the Grace-Cove Project No. 2401, located on the Bear River in Caribou County, Idaho, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

B. The Grace-Cove Project No. 2401 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the Licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

<u>Exhibit</u>	<u>FPC No. 2401</u>	<u>Showing</u>
J	-1	General Map of Project Area
K-1	-17	Grace-Cove Project
K-2	-18	" " "
K-3	-19	" " "

(ii) project works consisting of:

Grace Development-- (1) a timber crib, rock-filled dam, 180.5 feet long and 51 feet high, with 120 feet of spillway controlled by flashboards and about 200 feet of earth dike; (2) a reservoir of 250 acre-feet storage at elevation 5,556; (3) 2 conduits of wood stave and riveted steel pipe about 4.8 miles long; (4) a powerhouse containing two horizontal turbines each driving a generator rated at 5,500-kW; (5) a powerhouse containing three vertical turbines each driving an 11,000-kW generator; (6) the 2.4/46-kV step-up substation; (7) the 6.6/138-kV step-up substation;

Cove Development-- (8) a reinforced concrete dam 140 feet long and 24 feet high and 150 feet of earth dike; (9) a conduit consisting of a concrete-lined canal and open

box wood flume; (10) a steel penstock 528 feet long; (11) a powerhouse containing one vertical turbine driving a 7,500-kW generator; (12) the 6.6/46-kV step-up substation; (13) two 46-kV transmission lines between the Grace and Cove stations; and (14) appurtenant facilities -- the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

<u>Exhibit L</u>	<u>FPC No.</u>	<u>Showing</u>
1 (Grace)	2401- 4	Plan and Elevation of Grace Dam
2 "	2401- 5	Plan and Sections of Grace Intakes
3 "	2401- 6	Elevations and Sections of Grace Intake Houses
4 "	2401- 7	Plan, Sections and Elevations of Grace Surge Tanks
5 "	2401- 8	Plan of Grace Powerhouse
6 "	2401- 9	Elevations and Sections of Grace Powerhouse
1 (Cove)	2401-10	Sections and Elevations of Cove Powerhouse
2 "	2401-11	Plans and Sections of Cove Powerhouse
3 "	2401-12	Sections of Cove Lower Spillway, Penstock Intake and Flume
4 "	2401-13	General Plan and Sections of Cove Headworks
5 "	2401-14	Plan and Sections of Cove Intake and Details of Screens and Lifting Yoke
6 "	2401-15	Plan, Elevation, and Sections of Cove Dam

Exhibit M: Consisting of two typewritten pages entitled, "General Description of Mechanical, Electrical, and Transmission Equipment" filed with the Commission August 30, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-10 (revised October 1975) which terms and conditions, designated as Articles 1 through 23, are attached hereto and made a part hereof and subject to the following special conditions set forth herein as additional articles.

Article 24. The Licensee shall pay the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 68,700 horsepower.

Article 25. This license shall not be construed as affecting in any way any claim the Licensee may have concerning its water rights acquired pursuant to State Law. Those rights, not this license, shall govern any claim the Licensee may advance against the United States for any damages resulting from any future depletion in the flow of the waters of the Bear River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 26. The Licensee shall file, in accordance with the Commission's Rules and Regulations, revised Exhibits F, K, and M, within one year after issuance of this license to show and describe the existing 46-kV transmission line between the Grace and Cove plants; the 6.6-kV

generator leads of Grace units 3, 4 and 5 to the 138-kV step-up transformer, the 2.4-kV generator leads of Grace units 1 and 2, the 6.6-kV generator leads to the Cove outdoor substation, and a short section of 46-kV transmission line to the outdoor substation as a part of the project facilities.

Article 27. Licensee shall, within one year following issuance of this license, file for Commission approval an Exhibit S prepared in accordance with the requirements of Section 4.41 of the Commission's Regulations under the Federal Power Act.

Article 28. The Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on project lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstances, be subject to the payment of rent in a reasonable amount: Provided, that the Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where feasible, and shall ensure that such facilities are constructed and maintained in such manner as to be consistent with shoreline aesthetic values; Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities, which are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 29. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: Provided, that, if and to the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency

shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the weighted cost components of long-term debt, preferred stock, and the cost of common equity, as defined herein. The weighted cost components for each element of the reasonable rate of return is the product of its capital ratios and cost rate. The current capital ratios for each of the above elements of the rate of return shall be calculated annually based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10 year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 30. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water.

Article 31. Licensee shall file with the Commission an emergency action plan designated to provide an early warning to downstream inhabitants and property owners if there should be an impending or actual sudden release of water caused by an accident to, or failure of, project structures. Such plan to be submitted within one year of the date of issuance of the license, shall include, but not be limited to, instructions to be provided on a continuing basis to operators and attendants for actions they are to take in the event of an emergency; detailed and documented plans for notifying law enforcement agents, appropriate Federal, State and local agencies, operators

of downstream water-related facilities, and those residents and owners of properties endangered; actions that would be taken to reduce the inflow to the reservoir, if such is possible, by limiting the outflow from upstream dams or control structures; and actions to reduce downstream flows by controlling the outflow from dams located on tributaries to the stream on which the project is located. Licensee shall also submit a summary of the study used as a basis for determining the areas that may be affected by such an emergency occurrence, including criteria and assumptions used.

(D) Licensee shall, within 90 days from the date of acceptance of this license, file in accordance with the provisions of Section 11.20(a) (4) of the Regulations a statement under oath showing the gross amount of kilowatt-hours generated by the project for each calendar year commencing with the effective date of the license.

(E) This order shall become final within 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the license for Project No. 2401. In acknowledgement of its acceptance of the license, it 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)

Lois D. Cashell,
Acting Secretary,

IN TESTIMONY of its acknowledgement of acceptance of all of the provisions, the terms and conditions of the license for Project No. 2401, as amended, Utah Power & Light Company, this _____ day of _____, 1976, has caused its corporate name to be signed hereto by _____, its _____ President, and its corporate seal to be affixed hereto and attested by _____, its _____ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 1976, a certified copy of the record of which is attached hereto.

By _____
President

Attest:

Secretary

(Executed in quadruplicate)

RECEIVED

Form L-10
(Revised October, 1975)

JAN 14 1987

FEDERAL POWER COMMISSION

Department of Water Resources
**TERMS AND CONDITIONS OF LICENSE
FOR CONSTRUCTED MAJOR PROJECT AFFECTING
THE INTERESTS OF INTERSTATE
OR FOREIGN COMMERCE**

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

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

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

approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

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

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 Through 29 re U.S. Lands not included

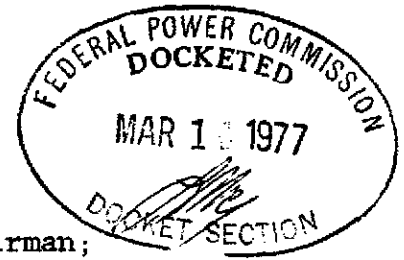
Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed

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 22. 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 23. 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.

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION



Before Commissioners: Richard L. Dunham, Chairman;
Don S. Smith, John H. Holloman III,
and James G. Watt.

Utah Power & Light Company) Project No. 2401

ORDER ON REHEARING AFFIRMING COMMISSION ORDER ISSUING
MAJOR LICENSE AND GRANTING PETITION FOR INTERVENTION

(Issued March 16, 1977)

Utah Power & Light Company (UP&L) filed, on August 30, 1963, an application for license or a disclaimer of jurisdiction over the constructed Grace-Cove Project FPC No. 2401. Pursuant to the application we issued a major license and denied UP&L's request for disclaimer of jurisdiction on October 6, 1976. On November 4, 1976, UP&L filed a timely application for rehearing of our order. On November 5, 1976, the Idaho Water Resources Board (Board) filed an untimely petition to intervene in the Project No. 2401 proceeding and additionally petitioned for rehearing of the matter.

The Commission thereafter on November 30, 1976, issued an order concluding that rehearing of Project No. 2401 should be granted for purposes of further consideration. This order allowed UP&L and Board to file additional information to aid the Commission in determining the merits of their aforementioned requests. In response to our order, additional documents were filed by UP&L on December 15, 1976 and by Board on January 3, 1977. We will deal with UP&L's application for rehearing, the Board's petition to intervene, and the Board's petition for rehearing each separately.

Application for Rehearing-UP&L

In its application for rehearing, UP&L asserts that the Commission erred in denying UP&L's request for a disclaimer of jurisdiction over Project No. 2401. The alleged error is founded on two assertions: (1) That the Commission was incorrect in its finding that the Bear River is a navigable waterway of the United States; and (2) That the Commission incorrectly determined that Section 23(b) of the Federal Power Act (16 U.S.C. 817) applies to Project No. 2401, as no substantial post-1935 project construction has occurred.

By this order we affirm our prior findings regarding Commission jurisdiction over Grace-Cove Project No. 2401. We reiterate that jurisdiction over this project may be found through the Supreme Court's determination in Taum Sauk, 1/ where the Court concluded that Section 23(b) of the Act gives the Commission licensing authority over a waterpower project which utilizes the headwater of a navigable stream. The historic evidence of the Bear River's use for navigational purposes requires a finding that the River downstream from the Grace-Cove Project is a navigable waterway of the United States.

Additionally, we again conclude that the jurisdictional question in Project No. 2401 is distinguishable from Farmington, 2/ wherein the Second Circuit found that a project constructed prior to the 1935 enactment date of Section 23(b) and which had remained essentially unchanged since 1935, did not fall within the proscription of Section 23(b). We cannot agree with UP&L's position that no significant post-1935 project construction has occurred. Examination of the drawings submitted by UP&L and, indeed, the language used by UP&L in its original license application, requires the determination that major construction, including the building of a new dam, occurred in 1950.

Petition for Intervention-Idaho Water Resources Board

In its untimely petition seeking intervention in the Project No. 2401 proceeding, the Board submits that it was not established as a state entity until after the December 9, 1963, deadline for requesting intervention. We are not totally persuaded that the Board was unaware of the pending application prior to issuance of the license, because in addition to our original notice of application, notice was given in the Federal Register on October 7, 1972 3/ of the environmental statement relating to the project. Additionally, the Board asserts that it has the power and duty to formulate a program for the use of all unappropriated water resources of the State of Idaho. As waters within

1/ F.P.C. v. Union Electric Co. 381 U.S. 90 (1965).

2/ Farmington River Power Company v. F.P.C., 455 F. 2d 86 (2d Cir. 1972).

3/ 37 Fed. Reg. 21382 (1972).

the Bear Basin are included within the unappropriated water resources of the State, and since Project No. 2401 is located on the Bear River, the Board concludes it represents an interest sufficient to merit intervention.

Notwithstanding the untimeliness of the Board's petition to intervene, we conclude that the Board may have a significant interest in this proceeding and that granting its petition to intervene may be in the public interest.

Petition for Rehearing-Idaho Water Resources Board

The Idaho Water Resources Board seeks rehearing of the Commission Order issuing a license to Project No. 2401 for purposes of shortening the project license term from May 1, 1990, to May 1, 1981. In support of its petition the Board asserts that with the approval of certain prospective amendments to the Bear River Compact, water depletions for the States of Idaho, Utah, and Wyoming will be altered. As Project No. 2401 is located on waters under the jurisdiction of the Bear River Compact, the Board concludes that a review, in light of any Compact amendments, should be conducted within five years of the Commission's order granting license. Thus, they allege a shorter license term is in order.

We cannot concur with the Board's conclusions. The current time remaining on the license term for Project No. 2401 is little more than 13 years. It is not possible to predict the precise nature and content of any amendments which may become a part of the Bear River Compact, as any Compact alterations require the approval of the Idaho, Wyoming, and Utah legislatures, and must thereafter be ratified by the United States Congress. It is inappropriate, in view of the relatively small difference in time between the current license termination date and the Board's proposed license termination date, to shorten the Project No. 2401 license term.

In response to the Commission's order seeking further information, issued November 30, 1976, the Board filed a memorandum on January 3, 1977. Therein, the Board recommended the inclusion of a special license article designed to

prevent any project operation that would conflict with future flow depletion or upstream diversion of the Bear River. We will treat the Board's proposed language as a matter for Commission reconsideration.

We determine that it is improper, given the existing articles in the Project No. 2401 license and the inchoate status of the Bear River Compact amendments, to include the license condition proposed by the Board. Article 25 of the project license is intended to negate any claim by UP&L that the license affords any greater water rights than UP&L might otherwise have. 4/ This article serves to protect the rights of all parties who seek beneficial use of the Bear River. Additionally, we see no reason why the use of water by UP&L should be inherently subjugated to beneficial uses delineated by the Bear River Compact. Such is especially true in light of the speculative nature of the proposed Compact amendments.

The Commission further finds:

(1) Although the petition to intervene of the Idaho Water Resources Board was not timely filed, good cause exists for permitting the late filing.

(2) Participation by the Idaho Water Resources Board in this proceeding may be in the public interest.

(3) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed by Utah Power & Light on November 4, 1976, and the Idaho Water Resources Board on November 5, 1976, present no facts or legal principles that warrant any change in or modification of the Commission's October 6, 1976, order issuing a license for Project No. 2401.

(4) The grounds for reconsideration set forth by the Idaho Water Resources Board in its memorandum of January 3, 1977, present no facts or legal principles that

4/ See. Utah Power & Light Company, Project No. 2420, Order Modifying License Order On Rehearing, 41 FPC 175 (1969).

warrant any change in or modification of the Commission's October 6, 1976, order issuing a license for Project No. 2401.

The Commission orders:

(A) The Idaho Water Resources Board is hereby permitted to intervene in the proceeding subject to the Rules and Regulations of the Commission: Provided, that participation of the intervenor should be limited to the matters affecting asserted rights and interests specifically set forth in its petition to intervene; Provided further, that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order issued in this proceeding.

(B) Utah Power & Light's and the Idaho Water Resources Board's applications for rehearing are hereby denied.

(C) The relief sought by the Idaho Water Resources Board in its motion for reconsideration is hereby denied.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Utah Power & Light Company)

Project No. 2401

ORDER AMENDING LICENSE (MAJOR)

(Issued July 29, 1981)

Utah Power & Light Company (Licensee), filed 1/ on January 13, 1978, revised Exhibits pursuant to Article 26 2/ of its license for its Grace-Cove Project No. 2401, located on the Bear River in Caribou County, Idaho. 3/ Licensee filed on January 18, 1978, a response to the Order To Show Cause. 4/ On January 20, 1978, Licensee filed an application for amendment of its license requesting authorization to retire and remove the Grace No. 1 flowline, Grace generating units Nos. 1 and 2, and certain appurtenant facilities.

The Old Grace Plant, having an installed capacity of 11,000-kW, was constructed in 1908 and continuously operated until the flowline ruptured in 1973. The New Grace Plant was constructed in 1914, with an additional unit installed in 1923, and continues to be operated. The New Grace Plant, having an installed capacity of 33,000-kW, includes flowline No. 2 and generating units Nos. 3, 4 and 5, and may be operated independently of the Old Grace Plant.

-
- 1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation under 18 C.F.R. §375.308 (1980), as amended 46 Fed. Reg. 14119 (1981).
 - 2/ Article 26. The Licensee shall file, in accordance with the Commission's Rules and Regulations, revised Exhibits F, K, and M, within one year after issuance of this license to show and describe the existing 46-kV transmission line between the Grace and Cove plants, the 6.6-kV generator leads of Grace units 3, 4 and 5 to the 138-kV step-up transformer, the 2.4-kV generator leads of Grace units 1 and 2, the 6.6-kV generator leads to the Cove outdoor substation, and a short section of 46-kV transmission line to the outdoor substation as a part of the project facilities.
 - 3/ See Order, dated October 6, 1976, issuing major license for constructed project and denying request for disclaimer of jurisdiction.
 - 4/ See Order, dated December 19, 1977, to show cause as to the removal of generating units without prior Commission approval.

JUL 29 1981

DC-A-10
DOCKET SECTION

Under the proposed amendment, the Licensee would remove flowline No. 1, generating units Nos. 1 and 2, and related appurtenances. The flowline No. 1 intake structure would be retained and used as a sluiceway for dewatering the reservoir when dam repairs are required. Powerhouse No. 1 (Old Grace) would be retained and used as a warehouse and repair shop.

Public notice of the filing of the application was given. No protest or petition to intervene was received. Interested Federal, State, and local agencies were asked to comment on the application. Substantive comments that were received are discussed below.

When the conduit that supplied water to Grace generating units Nos. 1 and 2, failed, causing considerable damage to the conduit and to the surrounding farm land, Licensee studied the feasibility of replacing the conduit and determined that the rehabilitation costs exceeded the benefits of keeping units Nos. 1 and 2 in service. Without prior Commission approval, Licensee began to remove units Nos. 1 and 2 and the failed conduit. When the conduit failed, the license issuance had been pending before the Commission. The license was subsequently issued after the failure.

Units Nos. 3, 4 and 5 are capable of utilizing 98 percent of the total available flow of the Grace Development. The Licensee estimates the benefit-cost ratio of replacing the conduit as 0.12. Therefore the Licensee concluded that rehabilitation was not economically feasible for utilization of only a 2 percent increase in flow. Staff concurs with Licensee's determination that the replacement of the conduit is not justifiable and that units Nos. 1 and 2 should be removed from service, thereby reducing the installed capacity of the project from 51,500-kW to 40,500-kW.

Revised Exhibits F, J, K, L, M, Q, R, S, and W have been filed. Certain exhibits have been filed in response to license Articles, others in response to the Show Cause Order and as part of the amendment application, and still others to correct inaccuracies and to generally update the various exhibits.

The Exhibit S has been approved. 5/ Exhibits J, K, L, and M have been revised pursuant to Article 26 and to show the proposed facility changes. These exhibits are being approved as part of the amendment. Article 33 is being added to the license requiring Licensee to submit as-built Exhibit(s) and, if necessary, revised Exhibit drawing(s), upon completion of the facility changes being approved.

5/ See Order, dated March 19, 1979, approving Exhibit S.

The Department of the Interior (Interior) commented that the Exhibit R was inadequate and should be expanded. An Exhibit R is not required to be filed as part of the application for amendment and is not being approved. The Interior comment is considered as pertaining to a license or relicense application, and should be considered at such time. Action on the application for amendment will not foreclose any action that may be taken in the future with respect to recreation at the project.

Interior and the State Historic Preservation Officer (SHPO) concur that a determination of eligibility of the plant buildings for inclusion in the National Register of Historic Places should be undertaken. The amendment being approved authorizes the removal of installed equipment and a change in the use of the plant buildings. No changes to the plant buildings themselves are being approved. Therefore, approval of the subject application for amendment will not affect any action that may be taken in the future with respect to the National Register eligibility status of the plant buildings. However, prior to removal of the equipment the Licensee shall consult with the SHPO. Article 34 is included in the license to address this situation.

The removal of flowline No. 1 and the associated activities would result in noise, air pollution, and disruption of wildlife habitat. These impacts, however, would be minor in nature and of short-term duration. Applicant would restore the affected land area to the general topography of the surrounding area, replant native vegetation, and return as much land as possible to farming use. For the above reasons, it is concluded that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) Utah Power & Light Company is authorized to remove flowline No. 1, generating units Nos. 1 and 2 and related appurtenances from the Grace Development, and to change the use of the flowline No. 1 intake structure and powerhouse No. 1 as described and depicted in the application filed on January 20, 1978, for amendment of license for the Grace-Cove Project No. 2401.

(B) The following drawings are approved and made a part of the license for FERC Project No. 2401:

<u>Exhibit</u>	<u>FERC No.</u>	<u>Title</u>
J (Sheet 1 of 2)	2401-23	Project Map
J (Sheet 2 of 2)	2401-24	System Map
K (Sheet 1 of 3)	2401-25	Detail Map
K (Sheet 2 of 3)	2401-26	Detail Map
K (Sheet 3 of 3)	2401-27	Detail Map
L (Sheet 1 of 6)	2401-28	Grace Design Drawing
L (Sheet 2 of 6)	2401-29	Grace Design Drawing
L (Sheet 3 of 6)	2401-30	Grace Design Drawing
L (Sheet 4 of 6)	2401-31	Grace Design Drawing
L (Sheet 5 of 6)	2401-32	Grace Design Drawing
L (Sheet 6 of 6)	2401-33	Grace Design Drawing

(C) The drawings designated as FPC Nos. 2401-1, 2401-4, 2401-5, 2401-6, 2401-7, 2401-8, 2401-9, 2401-17, 2401-18, and 2401-19 are superseded and deleted from the license for the Grace-Cove Project.

(D) The revised Exhibit M, consisting of three typewritten pages entitled, "General description of mechanical, electrical and transmission equipment remaining on the project," filed January 8, 1979, is approved and made a part of the license for FERC Project No. 2401.

(E) The Exhibit M filed August 30, 1963, is superseded and deleted from the license for the Grace-Cove Project.

(F) The following articles are added to the license for FERC Project No. 2401:

Article 32. The Licensee shall pay the United States the following annual charges:

(a) 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 54,000 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 5.04 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 33. The Licensee, shall, within 1 year of completing the Grace Development facility changes described and depicted in the application for amendment of license filed on January 20, 1978, file for approval by the Director, Office of Electric Power Regulation, and in conformance with the Commission's Rules and Regulations, revised Exhibit(s) and revised Exhibit drawing(s), as necessary, describing the project as it then exists. Should there be no revisions to the approved Exhibit(s) and Exhibit drawing(s) needed, such written notification shall constitute compliance with this article.

Article 34. The Licensee shall, prior to the removal of any equipment or the commencement of any construction at the project, cooperate with the Idaho State Historic Preservation Officer (SHPO) to carry out any needed cultural resource survey and assessment and mitigation 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 historical 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.

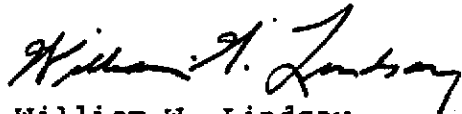
(G) Article 24 and Article 26 are superseded and deleted from the license for the Grace-Cove Project.

(H) The Order to Show Cause issued December 19, 1977, having been satisfactorily answered by Licensee's Response filed January 18, 1978, is rendered moot by the amendment being approved herein.

(I) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. 1.7(d) (1979), as amended, 44 Fed. Reg. 46449 (1979). The filing of a petition appealing this order to

the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this amendment or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this amendment. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

(S E A L)

A handwritten signature in cursive script, reading "William W. Lindsay".

William W. Lindsay
Director, Office of Electric
Power Regulation

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
NOTICE OF INTENT TO FILE APPLICATION FOR NEW LICENSE

(May 28, 1996)

13-04128

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of filing: Notice of Intent to File Application for New License
- b. Project No.: 2401
- c. Date filed: April 4, 1996
- d. Submitted By: PacifiCorp, current licensee
- e. Name of Project: Grace-Cove
- f. Location: On the Bear River in Caribou County, Idaho
- g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations
- h. Effective date of original license: May 1, 1965
- i. Expiration date of original license: October 1, 2001
- j. The project consists of two developments. The Grace Development consists of a rock filled timber crib dam which impounds 250 acre-feet of water, a 26,000-foot-long, 11-foot-diameter flowline, two surge tanks, two 90-inch-diameter steel penstocks, and a powerhouse with a total installed capacity of 33,000 kW.

The Cove Development consists of a concrete dam which impounds 65 acre-feet of water, a 5,700-foot-long wooden flume, a 550-foot-long diameter steel penstock and a powerhouse with an installed capacity of 7,500 kW.
- k. Pursuant to 18 CFR 16.7, information on the project is available at: PacifiCorp
920 SW 6th Avenue
Portland, OR 97204
Phone: (503) 464-5343
- l. FERC contact: Hector M. Perez (202) 219-2843

- Project No. 2401
- 2 -
- m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 1, 1999.

Lois D. Cashell
Secretary

RECEIVED
JUN 03 1996
Department of Water Resources

DC-A-11

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

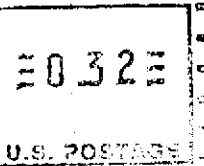
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE. \$300



U.S. OFFICIAL MAIL

PENALTY
FOR
PRIVATE
USE \$300

PM METER
7250412



P-2401 101465
LOREN HOLMES DISTRICT MGR
IDAHO DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, ID 83706-2237

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RECEIVED

PacificCorp

Project No. 2401-004
Idaho

DEC 12 1994

Department of Water Resources

ORDER APPROVING REVISED EXHIBIT DRAWINGS

(Issued December 8, 1994)

On August 22, 1994, PacificCorp, licensee for the Grace-Cove Project, FERC No. 2401, filed revised exhibit K and L drawings for the Commission's approval. The revised exhibits show the location of penstock No. 3, the common penstock to penstock Nos. 4 and 5, the emergency control butterfly valve, the penstock Nos. 4 and 5 air vent, and the flow meters on penstock Nos. 3, 4, and 5.

The revised exhibit drawings were submitted in response to recommendations by the independent consultant in the 1993 Safety Inspection Report for the Grace-Cove Project. The revised exhibit K and L drawings conform to the as-built structures.

The revised exhibit drawings conform to the Commission's rules and regulations. This order approves the revised exhibit drawings.

The Director orders:

(A) The exhibit K and L drawings filed on August 22, 1994, are approved. The drawings are made part of the license¹ and numbered as follows:

EXHIBIT	FERC NO.	TITLE	SUPERSEDED/ DELETED
K Sheet 2	2401-34	Detail Map of Project Area	2401-26
L Sheet 4	2401-35	Plan, Section and Details of Surge Tank	2401-31

(B) The superseded exhibit drawings are eliminated from the license.

56 FPC 2102, Order Issuing Major License for Constructed Project and Denying Request for Disclaimer of Jurisdiction, issued October 6, 1976, and 16 FERC 162,126, Order Amending License (Major), issued July 29, 1981.

DC-A-6

-2-

(C) Within 90 days of the issuance date of this order, the licensee shall file an original and three duplicate aperture cards of the approved drawings. The original should be reproduced on silver or gelatin 35 mm microfilm. The duplicates are copies of the originals made on Diazo-type microfilm. All microfilm should be mounted on a Type D (3 1/4" x 3 3/8") aperture card.

Prior to microfilming, the FERC Drawing Numbers, 2401-34 and 2401-35, shall be shown in the margin below the title block of each approved drawing. After mounting, the FERC Drawing Number should be typed in the upper right corner of each aperture card. Additionally, the Project Number, Drawing Title, and date of this order should be typed on the upper left corner of each aperture card.

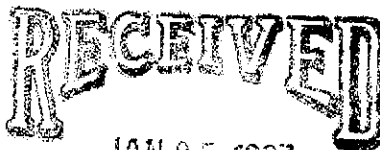
The original and one duplicate set of aperture cards should be filed with the Secretary of the Commission. One duplicate set of aperture cards should be filed with the Commission's San Francisco Regional Office. The remaining duplicate set of aperture cards should be filed with the Bureau of Land Management's Idaho State Office.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the issuance date of this order, pursuant to 18 C.F.R. §385.713.

Mark Robinson
Director, Division of Project
Compliance and Administration

² The address for the Bureau of Land Management's Idaho State Office is as follows:

State Director
Idaho State Office
Bureau of Land Management
Land Services Section (ID-943A)
Attn: FERC Withdrawal Recordation
3380 Americana Terrace
Boise, ID 83706-2500



In the matter of: _____

Effective: _____
 Period: _____
 Permit: _____
 License: _____
 Expires: _____

Department of Water Resources

Construction completed:
Hearings

In operation

Project Location:

Grace - Cove

Licensee-Transferee:

Effective Date:

Amendments:

Instrument No. 2

Issued:

3/19/79

Amendment No. 1

Instrument No. 3

7/29/81

Cost Determination:

Cost \$

as of

determined

Date	Docket Entries
<u>1963</u>	
Aug. 30	Filed Applicant for License for, or disclaimer of jurisdiction over, operation and maintenance of the constructed Grace-Cove River/ in ^{Project} Caribou County, Idaho, together with Exhibits B, S, G, H, I, J, K, L, P, N, O, P, Q and R. (tracings received this day.)
Oct. 16	Letters (3) sent to following enclosing copy of application last above for report within 90 days: Chief of Engineers Secretary of Health, Education and Welfare Secretary of Interior
Oct. 18	Notice of Application for License filed 8/30/63 issued. (Due Date: 12/9/63) (Pub: 10/25/63; 28 FR 11463)
Oct. 22	Advertising order sent to Caribou County Sun, Soda Springs, Idaho, for publication of Notice of Application filed 8/30/63.
Dec. 9	Filed comment of Idaho Fish and Game Department, pursuant to Notice sent 10/18/63.
Dec. 13	Filed proof of publication of notice of application filed 8/30/63 in Caribou County Sun, Soda Springs, Idaho, pursuant to advertising order sent 10/22/63.
<u>1964</u>	
Jan. 23	Filed Report on behalf of Secretary of Health, Education and Welfare, pursuant to letter sent 10/16/63.
Feb. 11	Filed Report of Chief of Engineers, pursuant to letter sent 10/16/63.
Mar. 25	Filed Report of Secretary of Interior, pursuant to letter sent 10/16/63.
Dec. 22	Letter sent to Mr. Robert B. McCall, Assistant to the Governor, Boise, Idaho, enclosing copy of the applicant's statement on existing or proposed recreation development for your comment and early reply.
<u>1967</u>	
Apr. 28	Filed letter from applicant supplementing application filed 8/30/63.
June 18	Filed letter from applicant supplementing application filed 8/30/63, reference to Exhibit C, D, and F.
<u>1969</u>	Applicant's
Jan. 27	Filed license letter submitting Exhibit F - Statement of Nature, Extent and Ownership of Lands for approval. (tracings received)
<u>1971</u>	
Oct. 4	Letter sent to Applicant requesting additional information on environmental matters, pursuant to application filed 8/30/63 to comply with the requirements of the National Environmental Policy Act to be submitted within 60 days hereof.
Dec. 3	Filed letter on behalf of applicant requesting an extension of thirty days within which to file the Environmental Impact Statements.
Dec. 10	Filed Applicant's Environmental Impact Statement relating to its Grace-Cove Project Application for License, pursuant to request filed 10/4/71.
Dec. 20	Letter sent to Applicant extending time to and including 1/3/72, within which applicant shall file an Environmental Statement, pursuant to request filed 12/3/71.
<u>1972</u>	
Feb. 18	Letter sent to Applicant enclosing a copy of a topical outline and Order 415-B to assist in the preparation of filing revised statements to the 12/10/71 environmental statement to be submitted within 30 days hereof.
Mar. 10	Filed Applicant's letter requesting an extension of time to 3/31/72 and 4/28/72 within which to submit additional Environmental Statements, pursuant to request filed last above.

(continued)

In the matter of: UTAH POWER & LIGHT COMPANY

Sheet No. 2

Date	DOCKET ENTRIES
<u>1972</u>	
Apr. 20	Filed Applicant's revised Environmental Impact Statement as supplementing the pending application for license filed 8/30/63.
July 21	Letter sent to Applicant requesting the filing of fifty-five-(55) additional copies of the revised Environmental Statement so that it may be distributed to the appropriate Federal, State, and local governmental agencies for comments and requesting additional information to revised Exhibit K within 45 days hereof.
Aug. 23	Filed Applicant's letter requesting and extension of time to 11/30/72, within which to file the additional copies of the revised Environmental Statement and revised Exhibit, pursuant to request filed last above.
Sept. 1	Letter sent to Applicant extending time to and including 10/30/72, within which to file its revised Exhibits F and K, pursuant to request filed last above.
Oct. 3	<u>Notice of Availability</u> of Environmental Statement for Inspection sent to the Federal Register. (Due Date: 45 days from 10/9/72) (Pub: 10/7/72:37FR 24313)
Oct. 4	Letters (16) sent to the following enclosing draft environmental statement for comments within 45 days: Council on Environmental Quality, Washington, D. C. The Mayor, Grace, Idaho Board of Commissioners, Soda Springs, Idaho Water Administration Agency, Boise, Idaho Water Resources Board, Boise, Idaho Department of Health, Boise, Idaho Fish and Game Department, Boise, Idaho Department of Parks, Boise, Idaho State Soil Conservation Commission, Boise, Idaho Secretary of the Interior Department of the Army Department of Commerce Department of Agriculture Secretary of Health, Education and Welfare Environmental Protection Agency, Seattle, Washington Pacific Northwest River Basins, Vancouver, Washington
Oct. 16	Filed letter from applicant requesting an extension of time to file revised Exhibits F and K.
Oct. 18	Letter sent to applicant extending time to and including 11/30/72 to file revised Exhibits F and K, pursuant to request last above.
Oct. 20	Filed letter of comment from Department of Agriculture, pursuant to letter sent 10/4/72.
Nov. 3	Filed letter of comment from Idaho Water Resource Board, pursuant to letter sent 10/4/72.
Nov. 20	Filed letter of comment from Department of Health, Education, and Welfare, Seattle, Washington on draft environmental statement.
Nov. 24	Filed letter of comment from The Mayor, Grace, Idaho, pursuant to letter sent 10/4/72.
Dec. 1	Filed letter of comment from Department of the Army, pursuant to letter sent 10/4/72.
Dec. 4	Filed Licensee's letter advising that they were forwarding under separate cover copies of Exhibit F and Exhibit K pursuant to letter sent 7/21/72. (Tracings & Exhibits recieved)

(over)

In the matter of:

Sheet No.

Date	DOCKET ENTRIES
<u>1973</u> Feb. 9	Filed letter of comment from Secretary of the Interior, pursuant to letter sent 10/4/72.
<u>1974</u> Dec. 10	Filed Applicant's Operation Report for the Cove Grace Projects.
<u>1975</u> Aug. 6	Filed Licensee's letter requesting an extension of time of 90 days to submit safety inspection report.
Sept. 15	Letter sent to Licensee extending time to 2/1/76 within which to file safety inspection report.
<u>1976</u> Oct. 6	<u>Order Issuing Major License for Constructed Project and Denying Request for Disclaimer of Jurisdiction.</u> (Pub: 10/18/76:4182, 45826)
Nov. 4	Filed Licensee's Application for rehearing of order issued last above.
Nov. 5	Filed Petition for intervention of Idaho Water Resource Board.
Nov. 5	Filed Petition of Idaho Water Resource Board for rehearing of order issued 10/6/76.
Nov. 19	Filed Licensee's Answer to petition for intervention and petition for rehearing The Idaho Water Resource Board, filed 11/5/76.
Nov. 30	<u>Order issued granting rehearing for purposes of further consideration.</u> (Pub:
Dec. 28	Filed Licensee's supplement to answer filed 11/19/76.
<u>1977</u> Jan. 3	Filed Affidavit of Idaho Water Resource Board in support of petition to intervene filed 11/5/76.
Jan. 21	Filed Licensee's statement showing the gross amount of kilowatt-hours generated during the calendar year 1976.
Mar. 16	<u>Order issued on Rehearing Affirming Commission Order Issuing Major License and granting petition to to intervene of Idaho Water Resource Board.</u>
Apr. 29	<u>License executed and accepted by licensee on 4/21/77 and filed together with a certified copy of Resolution of Board of Directors authorizing such acceptance.</u> (OGC)
May 12	Letter sent to Licensee advising that License (Major) has been properly executed and accepted.
Dec. 19	<u>Order to Show Cause, issued.</u> (Pub: 12/30/77:422265262)
<u>1978</u> Jan. 10	Filed Licensee's statement showing the gross amount of kilowatt-hours generated covering the period May 1, - December 31, 1965 and each calendar year thereafter thru 1976.
Jan. 13	Filed Licensee's motion for an extension of time to 1/27/78 within which to file its response to the Order to Show Cause issued 12/19/77.
Jan. 18	Filed Licensee's response to Order to Show Cause.
Jan. 20	Filed Licensee's application for amendment of license together with Exhibit K.
Jan. 20	Filed Licensee's statement showing the gross amount of kilowatt-hours generated during the calendar year 1977.
Feb. 23	Filed notice of intervention of Idaho Public Utilities Commission.

(Continued)

In the matter of: UTAH POWER & LIGHT COMPANY

Sheet No. 3

Date	DOCKET ENTRIES
<u>1978</u>	
Mar. 24	Filed Licensee's Exhibit S for approval.
Mar. 27	Filed Licensee's Initial Statement showing actual legitimate original cost and estimated accrued depreciation of project.
May 1	Filed letter on behalf of Applicant supplementing its pending application for license by enclosing a letter dated 4/12/78, addressed to Applicant and signed by the State Historic Preservation Officer, Idaho State Historical Society which contains the needed determination under 36CFR800.4(b).
Oct. 30	Filed Licensee's Consultant's initial Safety Inspection report.
Dec. 4	Filed Letter on behalf of Licensee requesting an extension of time of an additional 45 days to complete and file Revised Exhibits F, K and M.
Dec. 27	Letter sent to Licensee extending time to and including 1/18/79, within which to file revised Exhibits F, K, and M, pursuant to request filed last above.
<u>1979</u>	
Jan. 8	Filed Licensee's Revised Exhibit M, K and F supplemental filing of 1/31/78 and 1/20/78. (Exhibit M not received)
Jan. 22	Filed Licensee's statement showing the gross amount of kilowatt hours generated during the calendar year 1978.
Mar. 19	<u>Order issued</u> Approving Exhibit S. (Instrument No. 2)
Nov. 13	Filed Telluride Power Company's conveying fee title, lands acquired and deeds dated.
<u>1980</u>	
Jan. 24	Filed Licensee's statement showing the gross amount of kilowatt hours generated during the calendar year 1979.
May 14	<u>Notice of Application</u> for amendment of license filed 1/20/78, issued. (Due Date: 6/30/80) (Pub:
June 25	Letters (12) sent to the following enclosing copies of application for amendment of license for comments within 60 days: Fish and Game Department of Boise, Idaho Department of Parks and Recreation Idaho Public Utilities Commission Department of Water Resources Board of County Commissioners Secretary of the Interior Idaho Historical Society Department of Commerce Environmental Protection Agency, Seattle, Washington Environmental Protection Agency, Wash, D. C. Secretary of Health, Education, and Welfare Department of Agriculture Department of The Army
Sept. 24	Letter sent to Licensee enclosing copies of agency letters commenting on subject application, for response within 30 days hereof.
Oct. 10	Filed letter of comment of the United States Department of the Interior.
Oct. 28	Filed letter of Comments of Department of the Army South Pacific Division Corps of Engineers San Francisco, California

(over)

In the matter of:

Date	DOCKET ENTRIES
<u>1980</u>	
Nov. 21	Filed letter of comments of U. S. Dept. of Agriculture Forest Service Wash., DC.
<u>1981</u>	
Jan. 26	Filed Licensee's statement showing the gross amount of kilowatt hours generated during the calendar year 1980.
July 29	<u>Order amending</u> license. (Major) (Designated Amendment No. 1, Instrument No. 3)
Aug. 31	Amendment No. 1, Instrument No. 3 executed and accepted by Licensee on 8/28/81 and filed together with copy of Resolution of the Board of Directors acknowledging such acceptance. (OGC)
<u>1982</u>	
Feb. 1	Filed Licensee's statement showing the gross amount of kilowatt hours generated during the calendar year 1981.
<u>1983</u>	
Jan. 20	Filed Licensee's statement of gross generation for the calendar year 1982.
Nov. 10	Filed Licensee's Consultant's Part 12 Inspection Report.
<u>1985</u>	
Jan. 18	Filed Licensee's statement of gross generation for the calendar year ended 12/31/84.
Jan. 28	Filed Licensee's Review of Part 12 Additional Information.
<u>1986</u>	
Feb. 13	Filed Licensee's statement of gross generation for calendar year ended 12/31/85.