

2009

Mystic Lake
Relicensing 2301

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION



LICENSE (MAJOR);
RELICENSE; LICENSE TERM

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

The Montana Power Company) Project No. 2301

ORDER ISSUING NEW LICENSE (MAJOR)

(Issued October 5, 1976)

The Montana Power Company (Applicant) of Butte, Montana, filed on December 23, 1968, amended December 23, 1969, and supplemented October 29, 1970, and January 6, 1972, an application for: (1) a new major license under Section 15 1/ of the Federal Power Act (Act) for the existing 10-megawatt (MW) Mystic Lake Project No. 2301; and (2) authorization to construct a 49-acre re-regulating reservoir to allow peaking operation of the power plant during winter months. The project is located on West Rosebud Creek, a tributary of the Stillwater River, in Custer National Forest and Stillwater County, Montana.

Construction of the Mystic Lake Project began in 1920 and was completed in 1927, with power being first generated on March 20, 1925. The original license 2/ was issued October 12, 1962, effective for the period December 1, 1961, to December 31, 1969. The project is presently operating under an annual license issued December 10, 1975.

1/ 16 U.S.C. §808.

2/ Order Issuing License (Major), The Montana Power Company, Project No. 2301, 28 F.P.C. 586 (1962).

The Mystic Lake Project consists of a 446-acre storage reservoir impounded by a 45-foot high concrete arch dam, a 12,700-foot long conduit system, a powerhouse with two 5000 kW generators, and the proposed 49-acre re-regulating reservoir. The project works are described in greater detail in paragraph (B) of this order. All power generated at Project No. 2301 is used for public utility purposes.

Public notice of the application for license was issued on August 4, 1971, with October 11, 1971, as the last day for filing of protests or petitions to intervene. Notice of the application was published in the Federal Register on August 14, 1971 (36 Fed. Reg. 14778).

On October 7, 1971, Central Montana Electric Generation and Transmission Cooperative, Inc. (Central) and Mid-West Electric Consumers Association, Inc. (Mid-West) filed a joint petition to intervene 3/ stating that they wished to engage in "meaningful regional planning" with Applicant and that any future license should be conditioned to require such planning. On October 22, 1971, Applicant replied that it is a leader in regional planning for the area and would have no objection to conditioning a new license to require the licensee to engage in regional planning to the full extent required by the Act. In this context, we believe that Article 10, inter alia, of the license herein issued adequately provides for the concerns of intervenors and ensures the Licensee's cooperation with regard to regional planning.

The U.S. Department of the Army, Corps of Engineers (Corps), commented by letter dated November 15, 1971, that a recommendation for redevelopment or takeover of the project by the Corps was not warranted, that the project is not in conflict with any existing or proposed Corps project,

3/ Order Granting Intervention, The Montana Power Company, Project No. 2301, issued April 21, 1972.

and that licensing of the project, as modified by the re-regulating reservoir, would have no significant environmental impact from the standpoint of its responsibilities.

The U.S. Department of Health, Education, and Welfare commented by letter dated October 22, 1971, that while it had no recommendations regarding the relicensing of the project, it was of the opinion that the deepened Rosebud Lake (re-regulating reservoir) might reduce the breeding of nuisance mosquitoes.

The Montana State Department of Fish and Game commented by letter dated September 7, 1971, that it believed the proposed re-regulating dam would enhance the sport fishery and that improvement of the reservoir trail and the construction of a parking area and sanitary facilities near the end of the project access road would improve the area's overall recreation potential.

The Montana Water Resources Board commented by letter dated October 5, 1971, that the project enhances the environment and should be relicensed.

The U.S. Department of the Interior commented by letter dated January 3, 1972, that the project does not conflict with any of its existing or proposed projects and that no existing or proposed National Park Service Areas, National Landmarks, or Indian lands are affected by the project. Interior did not recommend Federal takeover of the project, nor did it oppose the issuance of a new license. Interior did, however, make certain recommendations and requests as hereinafter noted.

Interior requested that applicant be required to provide a minimum flow of 10 cfs in West Rosebud Creek, as measured at the weir located in the creek channel just upstream from the power plant, or an amount equal to the inflow to Mystic Lake during periods of lower inflow than 10 cfs. Such flows would enhance fishery conditions in that portion of the stream between Mystic Lake and the powerhouse. Applicant objected to Interior's request for 10 cfs minimum flow, claiming that such a flow requirement would cause a 12% reduction in average energy production amounting to a loss of \$30,000 annually. By Article 34 we are requiring a 10 cfs minimum flow during June, July, and August and 2 cfs for the

remainder of the year. This should improve existing conditions by creating a live stream for maintaining trout habitat and by providing for stream angling during the recreation season while the two-year study of minimum flow requirements is taking place as required by Article 34. The minimum flow requirements, hereinafter established by Article 34, would reduce the project's average annual generation by 956,000 kwh. The project's average annual energy production under the Interior proposal would be reduced by an estimated 3,824,000 kwh. We believe that it is in the public interest to maintain a balance between the need for energy production and preservation of fish habitat pending a definitive result from the two-year flow release study required herein.

Interior requested that standard L-form and stream gaging articles be included in any license issued in order to protect the area's fish and wildlife resources. Applicant had no objection to Interior's request and the license reflects the above mentioned articles.

Interior also requested that applicant be required to fund an archeological survey and necessary salvage of the project area after consulting with the National Park Service. Such work is recommended before starting construction of the re-regulating reservoir. Applicant proposed instead that the Montana State University Department of Sociology and Archeology perform the survey and any necessary salvage. We believe that Article 36 will properly ensure the preservation of any archeological values which may be associated with the project area.

Interior further recommended that Applicant's Exhibit R be amended to show lands set aside for future (recreational) development and that the exhibit include provision for periodic review. Applicant suggested by letter dated April 7, 1972, that the U.S. Forest Service is the appropriate agency to direct planning of future recreational development in the project area. The Forest Service manages the public use of these lands including the Beartooth Primitive Area, which borders the project area on three sides, and is interested in maintaining the quality of recreational opportunities available to the public. Recognizing the interest of the Forest Service in recreational development, we are requiring Applicant to consult and coordinate with

that agency in carrying out its responsibility under its license in providing for recreational planning and for any future recreational development or planning at the project. Applicant would be required to conduct a biennial review of the project's recreational use and development needs and, through consultation with the Forest Service and other appropriate Federal and State agencies, determine what steps for recreational development, if any, need to be taken at the project. 4/ We conclude that the recreational use plan as proposed by Applicant's Exhibit R would adequately provide for the present and future public recreational needs at Project No. 2301 and should be included as part of the license.

The U.S. Department of Agriculture, Forest Service proposed by letter dated February 3, 1972, that the Forest Supervisor should be given authority to prevent unauthorized and excessive use of such project facilities as the railway, the tramway, and the dwellings at the powerhouse in order to ensure proper management of the National Forest lands around Mystic Lake. The proposal, which received no objection from Applicant, is included as one of several specific provisions of Article 35 designed to enhance and protect the project's environment during all phases of construction and operation of the project.

The Forest Service also recommended that the term of license be 20 years rather than the maximum of 50 years as requested by Applicant. The Forest Service cites the rapid growth and changing character of the demands for recreational opportunities as well as alternative sources of power planned for the region as evidence that

4/ Section 8.11 of the Commission's Regulations under the Act, 18 C.F.R. §8.11 (1975), requires licensees to file biennially for each licensed project a Form No. 80 containing information concerning the use and development of public recreational opportunities at the project.

revision of the license may be desirable as early as 20 years from the date of its issuance. The Forest Service subsequently expanded its earlier comments by letter dated September 26, 1975. In that letter Forest Service stated that a longer term would be acceptable if the license was conditioned by "open end" provisions designed to allow reevaluation of the overall project after 20 years and to permit alterations in operating criteria and new construction during the license term.

Section 6 of the Act provides that licenses shall be issued for a period not exceeding fifty years. The Commission may, in its discretion, choose a shorter term of license. We first considered the appropriate term of years for a license issued under Section 15 of the Act in The Empire District Electric Co., Project No. 2221, 44 F.P.C. 614 (1970). There we adopted the rationale previously expressed in Southern California Edison Company, 32 F.P.C. 553, 555 (1964) that a "twenty-five year term for a new license upon expiration of the original authorization 'will give the licensee a sufficient degree of certainty to permit integration of the project into its overall plans while at the same time bringing the project before the Commission for consideration within a reasonable period.'" Subsequently, the Commission has issued licenses under Section 15 for terms other than twenty-five years.

In some instances we have synchronized the termination date of a Section 15 license with the termination date of outstanding licenses for other projects in the same river basin. We have also issued Section 15 licenses for terms of less than twenty-five years when warranted by unusual circumstances or when limited by the life expectancy of project works.

In South Carolina Electric & Gas Co. (Parr), Project No. 1894, 52 F.P.C. 537 (1974), it was determined that substantial new construction justified relicensing an existing project for a term of fifty years from expiration of the previous license. Applicant had proposed to redevelop the project by utilizing the existing conventional project as a lower reservoir for the Fairfield Pumped-Storage facility. More recently, in Wisconsin Public Service Corp., Project No. 1999, 53 F.P.C. ____ (April 2, 1975), we relicensed the project for a term of twenty-five years from expiration of the previous license and noted that in view of the age of the project works, along with the absence of plans for redevelopment of the site in the future, a fifty-year term for the license was not warranted.

Applicant stated in its letter of April 17, 1972, that a fifty-year term would be necessary in order to justify expenditures for the proposed re-regulating reservoir and other project betterments. Other than its assertion, Applicant has made no showing that a license term of fifty years would be required to make the project economically feasible. We believe that the proposed re-regulating reservoir and other project betterments have been shown to be of the magnitude necessary to qualify for a term of license in excess of twenty-five years. While the proposed construction can be categorized as "substantial," Applicant does not propose construction that can be characterized as of the same nature and degree as the Parr project, where a new 518.4 MW pumped storage facility was proposed. With this perspective, we conclude that, while a term in excess of twenty-five years would be appropriate in this instance, a term of fifty years would be excessive and unwarranted. We therefore propose to grant a license with a term of forty years from expiration of the previous license for this and other projects licensed under Section 15 of the Act where the applicant has proposed or recently completed substantial new construction, but has not redeveloped or proposed to redevelop the project. We believe that this policy would reflect the economic realities of financing new construction and would encourage applicants for new licenses to propose such construction, thus enhancing the prospects for construction of new capacity and other project facilities.

In Empire District, supra, and all other licenses issued under Section 15 of the Act, the expiration date of the previous license was used as the reference date for the new license. The stated purpose was to ensure that all applicants receive equal treatment. We also noted that "delays in relicensing could effectively protract the term of the license" if any reference date other than expiration of the previous license were adopted. We conclude, therefore, absent unusual circumstances, that the expiration date of the previous license shall be the proper reference date for all licenses issued under Section 15 of the Act. This policy comports with the rationale expressed in Androscoggin 5/, and is consistent with our previous orders issuing Section 15 licenses.

We are mindful that delays occur in the relicensing process and that the effective license term of each new license would, under the policy herein detailed, be necessarily curtailed to the extent of time required to relicense the project. In order to prevent any undue shortening of the new license term, we propose to increase the term of license as enunciated in Empire District, supra, from twenty-five years to thirty years.

In summation, it shall be our policy, absent unusual circumstances or exceptions previously noted, to issue licenses under Section 15 for terms of thirty, forty, or fifty years, as previously discussed. Such licenses shall become effective as of the first day of the month of issuance and shall terminate thirty, forty, or fifty years, respectively, from the expiration date of the previous license issued under Section 4(e) of the Act. Of course, this policy should not be viewed as one to be adhered to without deviation. Factors may be presented in any given proceeding, in particular safety and adequacy considerations, which, when taken in conjunction with the policy considerations we have noted, support a different term of license. The

5/ Order Issuing License, Public Service Company of New Hampshire, Project No. 2288, 27 F.P.C. 830 (1962).

license for Project No. 2301 shall be for a term of forty years, and shall thus terminate forty years from the expiration date of the previous license.

Finally, the Forest Service proposed provisions, hereinafter provided by Article 34, that would require Mystic Lake's level to be maintained at elevation 7663.5 feet or above during the July 1 - September 15 recreation season. Also, Forest Service recommended that a minimum streamflow release of 20 cfs be maintained in West Rosebud Creek below the re-regulation dam except (1) when natural inflow is less than 20 cfs and storage is depleted in Mystic Lake and (2) when maintenance of project facilities prevents such release. Applicant agreed to both provisions in its letter dated April 7, 1972.

Commission staff prepared a Draft Environmental Impact Statement (DEIS) on the application for license pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 ^{6/} and our implementing Order No. 415-C. Copies of the DEIS were sent on January 30, 1974, to various local, State, and Federal agencies, including the Council on Environmental Quality, for their comments. Following consideration and review of the comments received, the Commission staff prepared a Final Environmental Impact Statement (FEIS) incorporating and discussing the matters raised in said comments.

Substantive comments on the DEIS by the various responding agencies were mainly a reiteration of their concerns previously expressed in their comments on the license application and accompanying exhibits. The project environment has largely stabilized from the original adverse effects associated with construction of the Mystic Lake Project. Continued operation of the project is not expected to produce any additional significant negative effects. Moreover, provisions contained in the license herein should enhance the environment and partially mitigate the aquatic habitat losses brought on by project induced alterations of stream flows in West Rosebud Creek.

^{6/} 42 U.S.C. §4332(2)(c).

Construction of the re-regulating dam to impound a reservoir of 49 acres would have both adverse and beneficial impacts on the environment. Location of borrow and spoil areas which may be required by dam construction would be coordinated with and approved by the Forest Service. Adverse effects such as noise and air pollution which may result from the construction activities would be of a short-term nature and largely unavoidable. The 24 acres of wildlife habitat that would be lost by the additional flooding could be partially replaced by planting native species of food and cover plants on lands adjacent to the project reservoirs. The presence of the re-regulating dam itself would have some adverse impact on scenic values. However, provisions of the license, including Article 35, would ensure that these and other adverse effects, such as land erosion and stream siltation, would be minimized by such measures as may be needed to protect and enhance the environmental values of the project.

Resulting beneficial effects from construction of the re-regulating reservoir include (1) an increase in the dependable capacity of the project, (2) a uniform minimum stream flow of 20 cfs downstream from the re-regulating dam (except when natural inflow is less than 20 cfs or when maintenance of facilities prevents such a release), and (3) less ice formation in West Rosebud Creek and West Rosebud Reservoir, thereby enhancing the winter habitat for trout.

The continued operation of the project without continuous flow releases between Mystic Lake and the powerhouse would perpetuate an adverse environmental impact which has been associated with the project from its beginning. Provisions for mitigating the loss of aquatic habitat in this 2 mile section of Rosebud Creek have been included in this license as heretofore discussed.

Construction of the re-regulating dam and operation of the project will result in certain adverse environmental effects which are considered unavoidable. Twenty-four acres of wildlife habitat will be lost. Scenic and aesthetic values will suffer temporarily from the noise and air pollution associated with construction of the re-regulating dam. The dam itself will to some degree impact scenic values. However, with appropriate mitigation measures, as herein

provided, these unavoidable adverse effects can be minimized to a point where we do not believe they will substantially affect the environment.

Alternatives to the proposed project which we have considered include: (1) denial of license, (2) takeover by the United States, and (3) issuance of a new license for the existing project with no provisions for modification or construction of the re-regulating dam. Denial of the license could lead to removal of the project works and reasonable restoration of the area to a natural condition. However, this course of action would preclude the continued beneficial use of stream flow for power generation. Takeover would not lessen the project's environmental impact. Licensing the project without permitting construction of the re-regulating reservoir would deny the enhancement of aquatic habitat, and preclude development of the effective use of the project's power potential.

Use of project lands and waters for power and other related purposes, such as recreation, are short-term benefits to be derived from the proposed project, since the project area could in the future be restored to a natural setting.

We have considered all information pertinent to the environment of Project No. 2301, including Applicant's environmental report, the Commission staff's FEIS and the comments of interested local, State, and Federal agencies reflected therein. We conclude that the adverse impact on the land and water resources of the project area resulting from continued operation and maintenance of the project, and from its present and potential recreational use, is minimal. Any adverse environmental effects associated with the continued operation and maintenance of the project or with construction of the re-regulating dam are outweighed by the resulting power and recreational benefits accruing to the public.

The issuance of this license would authorize the continued operation of a project utilizing a renewable resource capable of producing 10,000 kW and an average annual energy output of about 51.5 million kWh. This is equivalent to an annual savings of about 85,000 barrels of oil.

With regard to the transmission facilities connected to this project, we conclude that only the 6.6 kV generator leads, the 6.6/50 kV step-up transformers, and appurtenant facilities connecting them to Applicant's 50 kV interconnected system should be considered part of the project within the meaning of Section 3(11) of the Act. Applicant proposed in its application that a portion of the Mystic Lake-Columbus transmission line licensed as Project No. 1148 and a portion of the Mystic Lake-Red Lodge transmission line licensed as Project No. 558, both minor-part projects whose licenses expired in 1969, be licensed as part of Project No. 2301. However, analysis of the operation data for these lines indicates that (1) much of the power supplied to these 50 kV lines is from sources other than the Mystic Lake Project and (2) that the lines deliver power to numerous loads along their routes. We therefore conclude that both lines are part of Applicant's distribution system and not part of any project. Therefore, Applicant should obtain permits from the appropriate Federal agencies for those portions of former Project Nos. 558 and 1148 that cross United States lands.

The installed capacity of Project No. 2301 is 10,000 kW. Article 38 of the license issued herein provides that the authorized installed capacity of the project for annual charge purposes shall be 13,300 horsepower.

Exhibit J, filed as part of the application for license, is only conditionally approved herein, and Exhibit K is not approved as discussed below. Article 39 of this license requires Licensee to file, inter alia, revised Exhibits J and K for the project within six months of the completion of the re-regulating dam at West Rosebud Lake. The acreage of U.S. lands occupied by the project and the annual charges for such use will be determined hereafter when the revised Exhibit K is approved.

Exhibit J should be supplemented with a second sheet showing: (1) roads in the project area, including the trail to Mystic Lake, the project tramway, the railway, and the access road to the project; (2) reservations of the United States and boundaries thereof; and (3) reference to Exhibit K indicating by outline the portion shown on each sheet.

Exhibit K should be revised to show: (1) the as-built boundary of the proposed re-regulating reservoir; (2) facilities such as the 2300-volt service line for operation of the gate at the re-regulating dam, the entire railroad, and the identity of the Mystic Lake spillway; (3) official protractations of township and section lines for unsurveyed lands; (4) the elevation and area of Mystic Lake prior to construction of the dam; (5) the tie between the re-regulating reservoir boundary and the public land survey; (6) a more detailed depiction of the flowage easement areas downstream from the project; and (7) the transmission lines which are non-project facilities.

Exhibit L of the license application, described more fully in ordering paragraph (B) of this order, has been examined and found to substantially conform to the Commission's Rules and Regulations, and should be approved and made part of this license.

The Exhibit S filed by Applicant, while generally complying with the Commission's Regulations, does not propose facilities or measures for fish and wildlife enhancement and would therefore serve no useful purpose if included as part of the license. Articles 12, 15, 16, 34 and 35 among others, would adequately provide for any fish and wildlife measures which may be required during the term of the license.

The Exhibit R filed with the license application, and supplemented on October 29, 1970, adequately provides for the public recreational needs at the project, and should be approved and made part of this license. Licensee is required to report its consultation with the U.S. Forest Service and other appropriate agencies on recreational use and development at the project, during preparation of its biennial filed Licensed Projects Recreation Report, as required by Section 8.11 of the Commission's Rules and Regulations 7/. Licensee and the U.S. Forest Service entered

7/ 18 C.F.R. §8.11 (1975).

into a Memorandum of Understanding on October 26, 1970, relative to certain aspects of Project No. 2301, including development and maintenance of project lands for public recreational purposes. We find it unnecessary, in light of the provisions contained in the license, to incorporate as part of this license the Memorandum of Understanding between the U.S. Forest Service and the Applicant.

Pursuant to Section 401(a)(1) of the Federal Water Pollution Control Act Amendments (FWPCA) of 1972, 8/ Applicant filed a Water Quality Certificate issued by the Montana Department of Health and Environmental Sciences. Copies of this certificate were transmitted on February, 15, 1972, to the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 123.11 of that agency's regulations. 9/

We do not believe that Federal takeover of the project is warranted at this time. Applicant asserts that such action would result in power being transmitted out of the project area to preference customers, thereby requiring Applicant to import power to the area; would result in higher costs to its customers; and would lower local and state tax revenues. No recommendations for Federal takeover of this project have been received. By letter to the Congress dated March 11, 1968, we recommended against takeover by the United States stating that the then available facts supported the continued operation of the project by a licensee of this Commission. No additional facts which would alter this conclusion have been brought to our attention.

The Commission has determined that the project's fair value and Applicant's net investment in the project as of December 1, 1961, are \$4,350,000. 10/

8/ 33 U.S.C. §1341(a)(1).

9/ 40 C.F.R. §123.11(1975).

10/ Order Determining Fair Value and Waiving Certain Commission Regulations, Montana Power Company, Project No. 2301, December 9, 1974. ~~26,023,614 (101)~~ - ~~21,673,614 (108)~~

There are no competing applications for license on file with the Commission, nor does the project affect a Government dam. The project structures have been inspected, and have been found to be safe and adequate.

The Commission finds:

(1) The Mystic Lake Project No. 2301 affects public lands of the United States.

(2) Applicant, The Montana Power Company, is a corporation organized under the laws of the State of Montana and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of the license for the project.

(3) Public notice of the filing of the application for major license was given on August 4, 1971. Intervention was granted based on a joint petition to intervene filed by Central Montana Electric Generation and Transmission Cooperative, Inc., and Mid-West Electric Consumers Association, Inc. pursuant to Section 1.8(a)(2) of this Commission's Rules of Practice and Procedure.

(4) Subject to the conditions hereinafter set forth, the project is best adapted to the comprehensive development of the West Rosebud Creek Basin for the improvement and utilization of water power development, and for other beneficial public uses, including recreational uses.

(5) No conflicting application is before the Commission.

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

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 13,300 horsepower, and the amount of annual charge based on such capacity to be paid under the license for the project for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It is necessary to reserve for a later date a determination as to the amount of annual charges for the use, occupancy and enjoyment of lands of the United States.

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

(10) The Exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved to the extent indicated, as part of the license for the project.

(11) No recommendation for Federal takeover has been received, and Federal takeover of the project is not warranted.

(12) The Applicant has demonstrated satisfactory evidence that it has the necessary financial capabilities to undertake further development and operation of the project.

The Commission orders:

(A) This license is hereby issued to The Montana Power Company, Butte, Montana, under Section 15 of the Federal Power Act, effective the first day of the month in which the license is issued and expiring December 31, 2009, for the construction, operation and maintenance of the Mystic Lake Project No. 2301 located on West Rosebud Creek in Stillwater County, Montana, affecting lands of the United States in Custer National Forest subject to the terms and conditions of the Act which is incorporated herein by reference as 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 Mystic Lake Project No. 2301 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:

Exhibit J (FPC No. 2301-24) General Map of Project Area.

(ii) project works consisting of: (1) a 145-foot long, 15-foot high earth dike with concrete core; (2) a 368-foot long, 45-foot high concrete arch dam with a 300-foot overflow spillway controlled by flashboards; (3) a 446-acre storage reservoir having a usable capacity of 21,000 acre-feet between its maximum and minimum elevations of 7,673.5 feet and 7,612 feet (USGS datum); (4) a conduit from the reservoir to the powerhouse consisting of a 1005-foot long tunnel, a 9,012-foot-long wood-stave pipeline, a surge tank and a 2,690-foot-long steel penstock; (5) a powerhouse containing two generating units each rated at 5,000 kW; (6) a 19-foot-high, 410-foot-long earth fill dam at the outlet of West Rosebud Lake forming a 49-acre re-regulating reservoir about one mile downstream from the powerhouse with normal elevation at 6397.4 feet (USGS datum); and (7) 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. 2301-</u>	<u>Showing</u>
Sheet 1	31	Dams (as constructed)
2	32	Details of Flashboard Structure
3	33	General Plan of Intake
4	34	Surge Tank
5	35	Floor Plan of Powerhouse
6	36	Cross Section of Power- house
7	37	Reregulating Reservoir Dam - West Rosebud Lake

Exhibit M: "General Description of Equipment" consisting of one typed page, filed December 23, 1969, except that the second paragraph describing the Mystic-Columbus and Mystic-Red Lodge transmission lines be omitted.

Exhibit R: Pages 11, 12, 14, 15, 16 and 17 of the Exhibit R text and a drawing entitled "Recreational Use Plan Map" (FPC No. 2301-39).

(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, and such other 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; together with 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-2 (Revised October 1975) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," which terms and conditions designated as Articles 1 through 32 are attached hereto and made a part hereof, and subject to the following special conditions which are set forth as additional articles:

Article 33. Pursuant to Section 10(d) of the Act, 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 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 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 34. Pending further order by the Commission on its own motion or at the request of others, after notice and opportunity for hearing, the Licensee shall:

(a) until a permanent schedule of minimum flows is established as provided for in (b) below, the Licensee shall provide for a 10 cfs minimum flow of water during June, July, and August, and a 2 cfs minimum flow during the remainder of the year, as measured at the weir located in the West Rosebud Creek channel immediately upstream of the powerhouse;

(b) consult and cooperate with the Montana Fish and Game Department and the U.S. Fish and Wildlife Service of the Department of the Interior in making studies for the purpose of recommending a schedule of minimum flows in West Rosebud Creek between the project dam and the powerhouses to protect and enhance the fishery resource of West Rosebud Creek. Within two (2) years of issuance of this order, the Licensee shall file with the Commission the results of such studies. If the studies show a need to modify the minimum flows specified in (a) above, Licensee shall file for Commission approval the minimum flows proposed;

(c) maintain a minimum water surface elevation of 7,663.5 feet, (USGS datum) from July 1 to September 15 each year.

(d) provide for a minimum flow release of 20 cfs downstream from the West Rosebud Creek re-regulating dam except when natural inflow is less than 20 cfs or when maintenance of facilities prevents such a release.

Article 35. Licensee shall consult with the U.S. Forest Service and the Montana Fish and Game Department and take such measures as may be needed during the construction of the re-regulating dam and during the operation of the project to protect and enhance the environmental values

of the project area, throughout the period of the license, including but not limited to selection of areas and methods of clearing, excavation, borrow, spoil disposal, and of leveling, revegetation, and selective or screen plantings; maintenance and utilization of administrative buildings, railway, and tramway consistent with the scenic values, optimum use of outdoor recreation values, and operation and maintenance of the project; location and construction of roads; and sewage and solid waste disposal methods.

Article 36. The Licensee shall, prior to the commencement of construction, consult with the Montana State Historic Preservation Officer and the National Park Service to determine the extent of any archeological survey or salvage that may be necessary within the project boundary and the proper mitigation of project impacts on any sites that may be discovered during archeological surveys or construction activities: Provided, that Licensee shall make a reasonable effort and provide reasonable funds for the protection or salvage of archeological sites, as required; Provided further, that reports of surveys and salvage excavations shall be forwarded to the State Historic Preservation Officer, the Federal Power Commission, and the Director, Midwest Region, National Park Service; Provided further, that, in the event the Licensee and the Montana State Historic Preservation Officer cannot reach agreement on the amount of money to be expended on archeological work at the project, the Commission reserves the right, after notice and opportunity for hearing, to require Licensee to conduct such preconstruction archeological survey and salvage operations at the project as it may find necessary.

Article 37. In the interest of preserving and promoting the environment of the project area, Licensee shall consult and cooperate with interested local, State and Federal environmental protection agencies, and the Commission reserves the right, after notice and opportunity for hearing, to require such changes in the project and its operation as may be necessary to preserve and promote the environmental values of the project.

Article 38. The Licensee shall pay the United States the following annual charges, effective as of the first day of the month in which the 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 13,300 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, an amount to be established at a future date, upon Commission approval of the revised Exhibit K to be filed pursuant to Article 39 or such amount as may be determined from time to time pursuant to the Commission's regulations.

Article 39. Licensee shall file, in accordance with the Commission's rules and regulations, revised Exhibits F, J, K, and M for the project within six months of the completion of the re-regulating dam at West Rosebud Lake.

Article 40. Licensee shall commence construction of the West Rosebud Lake Re-regulating Dam within eighteen months from the date of issuance of the license and shall thereafter in good faith and with due diligence prosecute and complete such construction of project works within three years from the date of issuance of the license.

(D) The Exhibits designated and described in paragraph (B) above are hereby approved to the extent indicated and made a part of this license.

(E) This order shall become final 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 this 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.

Project No. 2301

IN TESTIMONY of its acknowledgment of acceptance of all of the provisions, terms and conditions of the foregoing license, The Montana Power 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)

FEDERAL POWER COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR
UNCONSTRUCTED MAJOR PROJECT
AFFECTING 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 works shall be constructed 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.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations 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 a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work 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 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 consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, 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. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

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

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

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

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

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment

of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

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

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

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

Article 29. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), 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 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 31. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 32. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

(C) This license is also subject to the terms and conditions set forth in Form L-2 (Revised October 1975) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," which terms and conditions designated as Articles 1 through 32 are attached hereto and made a part hereof, and subject to the following special conditions which are set forth as additional articles:

Article 33. Pursuant to Section 10(d) of the Act, 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 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 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

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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 34. Pending further order by the Commission on its own motion or at the request of others, after notice and opportunity for hearing, the Licensee shall:

(a) until a permanent schedule of minimum flows is established as provided for in (b) below, the Licensee shall provide for a 10 cfs minimum flow of water during June, July, and August, and a 2 cfs minimum flow during the remainder of the year, as measured at the weir located in the West Rosebud Creek channel immediately upstream of the powerhouse;

(b) consult and cooperate with the Montana Fish and Game Department and the U.S. Fish and Wildlife Service of the Department of the Interior in making studies for the purpose of recommending a schedule of minimum flows in West Rosebud Creek between the project dam and the powerhouses to protect and enhance the fishery resource of West Rosebud Creek. Within two (2) years of issuance of this order, the Licensee shall file with the Commission the results of such studies. If the studies show a need to modify the minimum flows specified in (a) above, Licensee shall file for Commission approval the minimum flows proposed;

(c) maintain a minimum water surface elevation of 7,663.5 feet, (USGS datum) from July 1 to September 15 each year.

(d) provide for a minimum flow release of 20 cfs downstream from the West Rosebud Creek re-regulating dam except when natural inflow is less than 20 cfs or when maintenance of facilities prevents such a release.

Article 35. Licensee shall consult with the U.S. Forest Service and the Montana Fish and Game Department and take such measures as may be needed during the construction of the re-regulating dam and during the operation of the project to protect and enhance the environmental values

of the project area, throughout the period of the license, including but not limited to selection of areas and methods of clearing, excavation, borrow, spoil disposal, and of leveling, revegetation, and selective or screen plantings; maintenance and utilization of administrative buildings, railway, and tramway consistent with the scenic values, optimum use of outdoor recreation values, and operation and maintenance of the project; location and construction of roads; and sewage and solid waste disposal methods.

Article 36. The Licensee shall, prior to the commencement of construction, consult with the Montana State Historic Preservation Officer and the National Park Service to determine the extent of any archeological survey or salvage that may be necessary within the project boundary and the proper mitigation of project impacts on any sites that may be discovered during archeological surveys or construction activities: Provided, that Licensee shall make a reasonable effort and provide reasonable funds for the protection or salvage of archeological sites, as required; Provided further, that reports of surveys and salvage excavations shall be forwarded to the State Historic Preservation Officer, the Federal Power Commission, and the Director, Midwest Region, National Park Service; Provided further, that, in the event the Licensee and the Montana State Historic Preservation Officer cannot reach agreement on the amount of money to be expended on archeological work at the project, the Commission reserves the right, after notice and opportunity for hearing, to require Licensee to conduct such preconstruction archeological survey and salvage operations at the project as it may find necessary.

Article 37. In the interest of preserving and promoting the environment of the project area, Licensee shall consult and cooperate with interested local, State and Federal environmental protection agencies, and the Commission reserves the right, after notice and opportunity for hearing, to require such changes in the project and its operation as may be necessary to preserve and promote the environmental values of the project.

Article 38. The Licensee shall pay the United States the following annual charges, effective as of the first day of the month in which the 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 13,300 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, an amount to be established at a future date, upon Commission approval of the revised Exhibit K to be filed pursuant to Article 39 or such amount as may be determined from time to time pursuant to the Commission's regulations.

Article 39. Licensee shall file, in accordance with the Commission's rules and regulations, revised Exhibits F, J, K, and M for the project within six months of the completion of the re-regulating dam at West Rosebud Lake.

Article 40. Licensee shall commence construction of the West Rosebud Lake Re-regulating Dam within eighteen months from the date of issuance of the license and shall thereafter in good faith and with due diligence prosecute and complete such construction of project works within three years from the date of issuance of the license.

(D) The Exhibits designated and described in paragraph (B) above are hereby approved to the extent indicated and made a part of this license.

(E) This order shall become final 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 this 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.