

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Virginia Hydrogeneration
and Historical Society, L.C.**

)
)

Project No. 8657

FILED
OFFICE OF THE
SECRETARY
2005 JUL 22 P 2:11
FEDERAL ENERGY
REGULATORY COMMISSION
Old

JOINT OFFER OF SETTLEMENT

Virginia Hydrogeneration and Historical Society, L.C. (Licensee) and the Division of Enforcement (Enforcement), Office of Market Oversight and Investigation (OMOI), (collectively the "Settling Parties"), submit this Joint Offer of Settlement to resolve all matters in the above-referenced proceeding. As provided by Rule 602 of the Commission's Rules of Practice and Procedure, the Settling Parties attach hereto the following documents:

- (1) Stipulation and Consent Agreement; and
- (2) Joint Explanatory Statement.

As detailed in the Joint Explanatory Statement, the Settlement Agreement resolves all issues between Enforcement and the Licensee in the proceeding. If approved by the Commission, this Agreement will revoke the License of the Virginia Hydrogeneration and Historical Society, L.C. (Licensee), owner of the Harvell Dam, Project No. 8657 (Project). The Licensee has agreed to revocation, and has executed the attached Stipulation and Consent Agreement. Further, the Licensee has disconnected all electrical generating equipment at the Project from the power grid by removing the generator leads and removing the fuses allowing for interconnection with the grid, secured the site against potential trespassers, and reported the completion of all the aforementioned activities to Enforcement. Under the terms of the Agreement, the Commission will be barred from bringing action against the Licensee, its officers, managers, agents, members and investors arising out of matters to which the Agreement applies, except to the extent necessary to enforce the terms of the Agreement.

Background

The Harvell Dam Project is located on the lower Appomattox River in the City of Petersburg, Chesterfield and Dinwiddie Counties, Virginia. It is the first dam encountered on the Appomattox River, about 12 miles upstream from the confluence of the Appomattox River with the James River. Harvell dam was constructed in 1856 and licensed in 1987.¹ Dam construction occurred many

¹ Greenwood Ironworks and Harvell Hydro Associates, 41 FERC ¶ 62,193 (1989).

decades prior to the introduction of any power generation capability. The dam is 390 feet long and 7-9 feet high. It provides an impoundment with a surface area of seven acres and an estimated storage capacity of 49 acre-feet. Project generating capacity is approximately 750 kW. The Project includes a Denil fishway with a capacity of about 40 CFS at the south end of the dam.

As the Commission has recognized in the past, the Licensee has a long history of violations of its License.² Moreover, the Licensee has not had a power contract to generate energy at the Project for the past 38 months, and has disconnected the Project from the power grid. Revocation will terminate the Licensee's legal ability to generate electric power, and the Commission's enforcement actions against the Licensee.

The effect of revoking the license is to recognize and formalize the existing shutdown of the electrical generating capability of the Project. The dam would remain in place with no operation of Project facilities. The Commission would no longer have jurisdiction over the site as an operating hydroelectric project. After revocation, dam safety, public safety aspects, and fish passage operations would be addressed by the Commonwealth of Virginia and other agencies such as the Department of the Interior Fish and Wildlife Service and the Department of Commerce, National Marine Fisheries Service.

Environmental Assessment

Staff issued a draft environmental assessment on November 14, 2003, and the final environmental assessment (FEA) on June 16, 2004. In the FEA, Staff considered the proposed action, revocation without mitigation. Under this action, the Project would be shut down, and the dam would remain in place, with no operation of the Project's hydroelectric facilities or fish passage facilities. Alternative B is revocation with partial dam breach. Under this alternative, the license would be revoked, the Project would be shut down, and the dam would be breached or partially removed. Alternative C is revocation with total dam removal. Under this alternative, the license would be revoked, the Project would be shut down, and the dam would be totally removed except for a section near the south bank. Under Alternatives A, B and C, the Commission would no longer have jurisdiction over the site. Alternative D is the no-action alternative. Under this alternative, the Commission would not revoke the license for the Project, but would continue to pursue compliance with the Licensee using existing regulatory avenues. *The Staff made no recommendation in the FEA.*

² Virginia Hydrogeneration and Historical Society, L.C., "Order Proposing Revocation of License," 104 FERC ¶ 62,282 (2003) (Order Proposing Revocation).

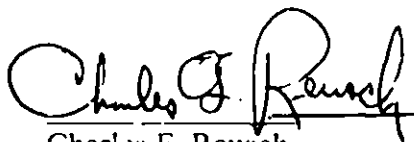
The Settling Parties agreed on revocation without mitigation. They also agreed to waiver of the remaining \$24,677.58, including interest of \$5,667.58, through July 31, 2005, based on the unpaid principal balance of \$19,000 from the 1997 civil penalty.

During preparation of the FEA, the Commission solicited and received comments from interested agencies and the public. The following entities filed comments: Department of Interior, Fish and Wildlife Service; American Rivers; Virginia Department of Game and Inland Fisheries; National Park Service; James Rivers Associates; Virginia Department of Environmental Quality; Virginia Canal and Navigation Society; Friends of the Lower Appomattox River; Chesapeake Bay Commission; and the City of Petersburg, Virginia (City).

Staff issued a notice of settlement conference on March 17, 2005, and on March 31, 2005, the participants met to discuss settlement, including discussion of post-revocation treatment of the dam facilities. No settlement was reached with respect to what will be done with the dam facilities after revocation. Accordingly, Enforcement and the Licensee submit this Joint Offer of Settlement.

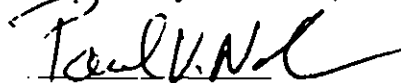
The Stipulation and Consent Agreement is in the public interest and the Commission should approve it. Approval will resolve the matters discussed herein as to the Licensee and Enforcement, allow the Settling Parties to bring an end to enforcement actions, provide for regulatory certainty through revocation of the license, and promote administrative efficiency.

Comments on the Joint Offer of Settlement should be filed by interested parties with the Commission's Secretary. See Rule 602(f). Initial comments are due on August 11, 2005, and reply comments are due on August 22, 2005.

 07/22/05

Charles F. Reusch
Division of Enforcement
Office of Market
Oversight and Investigations
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202)-502-8401
Charles.Reusch@ferc.gov

Respectfully submitted,



Paul V. Nolan
5515 North 17th Street
Arlington, VA 22205
(703)-534-5509
(703)-587-5895 (c)
Pvnolan@aol.com

Attorney for the Licensee

Attachment A: Stipulation and Consent Agreement
Attachment B: Joint Explanatory Statement

FILED
OFFICE OF THE
SECRETARY

2005 JUL 22 P 2:14

FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Virginia Hydrogeneration
and Historical Society, L.C.

)
)

Project No. 8657

JOINT EXPLANATORY STATEMENT

The Virginia Hydrogeneration and Historical Society, L.C., Licensee for the Harvell Hydroelectric Project (Licensee), Project No. 8657 (Project), and the Division of Enforcement (Enforcement), Office of Market Oversight and Investigations, submit for Commission approval an Offer of Settlement (Offer). The Offer includes: (1) a Stipulation and Consent Agreement (Agreement); and (2) this Explanatory Statement. The Offer, if accepted by the Commission, will resolve all disputes in the proceeding, and result in revocation of the Project License.

I. INTRODUCTION

On September 15, 2003, the Commission issued an Order Proposing Revocation of License (Proposed Revocation Order) for Project No. 8657. 104 FERC ¶ 61,282. The Revocation Order stated that Virginia Hydrogeneration and Historical Society, L.C. (Virginia Hydro) had violated and was violating two Compliance Orders issued October 29, 2002, and March 4, 2003. 101 FERC ¶ 62,065 (2002); 102 FERC ¶ 62,144 (2003). In addition, the Licensee had violated and was violating the Order Approving Stipulation and Consent Agreement issued October 17, 1997, including failure to pay a civil penalty. 81 FERC ¶ 61,043 (1997). By letter dated October 14, 2003, the Licensee requested an evidentiary hearing as set forth in Paragraph 66(B) of the Proposed Revocation Order. Subsequently, the Licensee determined to settle the proceeding through License revocation. On June 16, 2004, the Commission issued a Notice of Availability of Final Environmental Assessment.

II. SUMMARY OF THE TERMS OF THE STIPULATION
AND CONSENT AGREEMENT

The Stipulation and Consent Agreement will resolve, as to the Licensee and the Division of Enforcement, all issues in the proceeding. In the Agreement, the Licensee, through its representatives C.D.L. Perkins and William Harrity, agree not to contest Commission revocation of the License for Project No. 8657, and to withdraw their request for a hearing dated October 14, 2003. In addition, the Licensee has disconnected all electrical generating equipment at Harvell from the

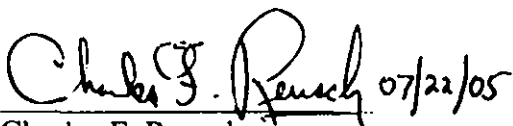
power grid, taken reasonable measures to secure the site against potential trespassers, and reported the completion of all such activities to the Division of Enforcement. Therefore, the necessary actions have been taken for the Commission to revoke the Project License.

Under the terms of the Agreement, the Commission will be barred from bringing action against the Licensee, its officers, managers, agents, members and investors arising out of matters to which the Agreement applies, except to the extent necessary to enforce the terms of the Agreement. Nothing in the Agreement prevents the Commission from taking action with respect to violations of this Agreement. The Division of Enforcement evidences its intention to settle entirely only the matters referred to in the Agreement within the Commission's jurisdiction and statutory authority to settle. The Licensee, C.D.L. Perkins and William Harrity warranty that all statements set forth are true to the best of their knowledge, information and belief, and that they understand this Agreement is entered into by the Division of Enforcement in express reliance on those representations. Enforcement and the Licensee are bound by the provisions of this Agreement as of the date the Commission issues an order approving the Agreement without modification thereto. In this proceeding, the Licensee, Mr. Perkins and Mr. Harrity waive the right to a hearing, filing of proposed findings of fact and conclusions of law, an initial decision, post-hearing procedures, and judicial review by any court.

III. CONCLUSION

The Stipulation and Consent Agreement is in the public interest and should be approved by the Commission. Accordingly, the Licensee and the Division of Enforcement request that the Stipulation and Consent Agreement be approved as filed.

Respectfully submitted,

 07/22/05

Charles F. Reusch
Division of Enforcement
Office of Market
Oversight and Investigations
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202)-502-8401
Charles.Reusch@ferc.gov



Paul V. Nolan
5515 North 17th Street
Arlington, VA 22205
(703)-534-5509
(703)-587-5895 (c)
Pvnpyvn@aol.com

Attorney for the Licensee

FILED
OFFICE OF THE
SECRETARY

2005 JUL 22 P 2:14

FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Virginia Hydrogeneration)
And Historical Society, L.C.)

Project No. 8657

STIPULATION AND CONSENT AGREEMENT

I. Introduction

The Division of Enforcement (Enforcement), Office of Market Oversight and Enforcement (OMOI), and Virginia Hydrogeneration and Historical Society, L.C. (Virginia Hydro) enter into this Stipulation and Consent Agreement (Agreement) to resolve all issues through the date of this Agreement relating to the Commission's revocation of Virginia Hydro's license for the Harvell Project, Project No. 8657 (Project).

II. Stipulated Facts

1. The Commission issued the original license for Project No. 8657 on December 1, 1987. 41 FERC ¶ 62,193 (1987). On August 13, 1997, the Commission issued an order transferring the license to Virginia Hydro. 80 FERC ¶ 62,124 (1997). The transfer of license was contingent upon Virginia Hydro being subject to all terms and conditions of the license as if it were the original licensee. Mr. C.D.L. Perkins and Mr. William Harrity are members of Virginia Hydro. Mr. Perkins is also the manager of Virginia Hydro.

2. On September 15, 1997, Virginia Hydro and the Commission's Enforcement Section entered into a Stipulation and Consent Agreement in which Virginia Hydro admitted that it violated: (1) Article 407 of its license, 41 FERC ¶ 62,193 (1987); (2) a Compliance Order, 63 FERC ¶ 62,216 (1993); and (3) an Order Amending License and Modifying and Approving a Preliminary Fish Passage Plan, 71 FERC ¶ 62,210 (1995). Virginia Hydro agreed to pay a \$50,000 civil penalty to be paid over three years. On October 17, 1997, the Commission approved the Stipulation and Consent Agreement. 81 FERC ¶ 61,043. However, Virginia Hydro has paid only \$31,000 of the agreed penalty amount. Based on the remaining principal balance of \$19,000, the licensee owes the Commission \$22,162.64, including interest, as of June 30, 2003.

3. On October 29, 2002, the Commission issued a Compliance Order (2002 Compliance Order) in which it directed Virginia Hydro, the licensee, to file, within 21

Stipulation and Consent Agreement
Project No. 8657

- 2 -

days, an annual monitoring report and recommendations, including documentation of agency comments, on the 2001 fish passage monitoring study results. 101 FERC ¶ 62,065 (2002). In the 2002 Compliance Order, the Commission warned the licensee that failure to comply with the order would subject the licensee to the enforcement provisions of Section 31 of the Federal Power Act (FPA). To date, the licensee has not filed a complete annual fish passage monitoring study report for 2001 or any other year that incorporates recommendations and documentation of resource agencies' review with respect to future fish passage facilities, as required by the 1996 Final Fish Passage Plan Order, 77 FERC ¶ 62,161 (1996), and the 2001 Order Approving Fish Passage Monitoring Plan, 95 FERC ¶ 62,238 (2001).

4. On March 4, 2003, the Commission issued another Compliance Order (2003 Compliance Order) in which it required the licensee to: (1) comply with Article 407 of the license within 15 days by providing documentation to the Commission that the entrainment barrier at the turbine intake is in operable and functioning condition; (2) within 45 days file with the Commission results of barrier screen velocity measurements; and (3) within 60 days file with the Commission the 2000 and 2001 fish passage monitoring reports in compliance with Article 408. 102 FERC ¶ 62,144 (2003). To date, the licensee has not met any of those requirements.

5. On September 15, 2003, the Commission issued an Order Proposing Revocation of License. 104 FERC ¶ 61,282 (2003). On October 17, 2003, Virginia Hydro requested a hearing on this matter. On November 14, 2003, the Commission issued a Notice of Availability of Draft Environmental Assessment. On June 16, 2004, the Commission issued a Notice of Availability of Final Environmental Assessment.

III. Remedies

1. For purposes of settling any and all civil and administrative disputes and in lieu of a revocation hearing, civil penalty or any other remedy which the Commission might assess or determine concerning any of the matters described or referred to in Section II above, Virginia Hydro and the Division of Enforcement agree to the following:

2. Virginia Hydro agrees not to contest Commission revocation of the license for Project No. 8657, and withdraws its October 14, 2003 request for a hearing.

3. Virginia Hydro has: (a) disconnected all electrical generating equipment at Harvell from the power grid, and; (b) taken reasonable measures to secure the site against potential trespassers.

Stipulation and Consent Agreement
Project No. 8657

- 3 -

IV. Terms

1. With Virginia Hydro's compliance with the requirements of the Remedies section above, the Commission will revoke the license for the Project. At the same time, the Commission will be barred from bringing or seeking against Virginia Hydro, its officers, managers, agents, members and investors any proceeding or actions arising out of the matters to which this Agreement applies, except to the extent necessary to enforce the terms of the Agreement.

2. The Division of Enforcement and Virginia Hydro state that they enter into this Agreement voluntarily and that, other than the agreement provided herein, no tender, offer or promise of any kind whatsoever has been made by any of them, or by any member, officer, agent or representative thereof, to induce any party to enter into this Agreement other than those contained in this Agreement.

3. By this Agreement, the Division of Enforcement evidences its intention to settle entirely only the matters referred to herein within the Commission's jurisdiction and within the Commission's statutory authority to settle.

4. With respect to any representations by Virginia Hydro and by C.D.L. Perkins or William Harrity set forth herein, C.D.L. Perkins and William Harrity warrant that they have read them and know the contents thereof, that all the statements and matters set forth are true and correct to the best of their knowledge, information and belief, and that they understand this Agreement is entered into by the Division of Enforcement in express reliance on those representations.

5. Nothing in this Agreement prevents the Commission from taking action with respect to violations of this Agreement.

6. The provisions in this Agreement shall apply to Virginia Hydro, C.D.L. Perkins and William Harrity, and their successors and assigns and investors, officers, agents, and/or members of Virginia Hydro.

7. The parties agree to be bound by the provision of this Agreement as of the date the Commission issues an order approving this Agreement without modification thereto. Prior to that date, this Agreement, as a settlement of these proceedings, shall have no effect whatsoever and shall not be admitted into evidence in any proceeding against any participant who objects to such admission.

Stipulation and Consent Agreement
Project No. 8657

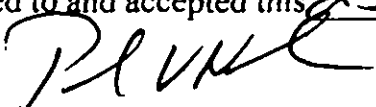
- 4 -

8. As to the matters covered by this Agreement, Virginia Hydro, C.D.L. Perkins, and William Harrity waive:

- a. Hearings pursuant to the applicable provisions of the FPA;
- b. The filing of proposed findings of fact and conclusions of law;
- c. An initial decision by an administrative law judge pursuant to the Commission's Rules of Practice and Procedure;
- d. Post-hearing procedures pursuant to the Commission's Rules of Practice and Procedure; and
- e. Judicial review by any court.

9. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts the Agreement on the party's behalf.

Agreed to and accepted this 23 day of December, 2004.


/s/ by Paul V. Nolan for:

C.D.L. Perkins
Manager and Member
Virginia Hydrogeneration
And Historical Society, L.C.


/s/ by Paul V. Nolan for:

William Harrity
Member
Virginia Hydrogeneration
And Historical Society, L.C.

 7/14/05

Robert E. Pease
Deputy Director
Investigations and Enforcement
Office of Market Oversight and
Investigations



Paul V. Nolan, Esq.
Agent for Virginia Hydrogeneration and
Historical Society, LC
5515 North 17th Street
Arlington, VA 22205

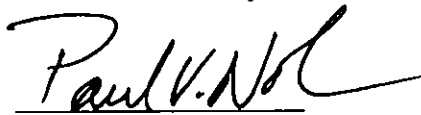
Stipulation and Consent Agreement
Project No. 8657

- 5 -

VERIFICATION

IN WITNESS WHEREOF, the members of Virginia Hydrogeneration and Historical Society, LC, have caused this Stipulation and Consent Agreement to be submitted under their names and that of Virginia Hydrogeneration and Historical Society, LC by Paul V. Nolan, under a grant of limited agency for this submission, on this 23rd day of December 2004.

BY: Virginia Hydrogeneration and
Historical Society, LC

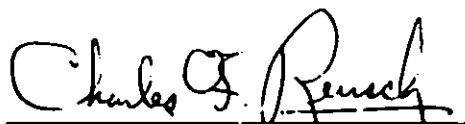
A handwritten signature in black ink, appearing to read "Paul V. Nolan", written over a horizontal line.

Paul V. Nolan, Esq.
Agent for Virginia Hydrogeneration and
Historical Society, LC
5515 North 17th Street
Arlington, VA 22205

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Joint Offer of Settlement, Joint Explanatory Statement, and Stipulation and Consent Agreement in Project No. 8657 upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure (18 C.F.R. § 385.2010):

Dated at Washington, D.C. this 22nd day of July, 2005.

A handwritten signature in black ink, reading "Charles F. Reusch", is written over a horizontal line.

**Charles F. Reusch
Division of Enforcement
Office of Market Oversight & Investigation
Federal Energy Regulatory Commission
Room 52-63
888 First Street, N.E.
Washington, DC 20426
(202)-502-8401
(202)-208-0057 FAX
charles.reusch@ferc.gov**