

EXECUTIVE SUMMARY

On August 18, 2005, the Power Authority of New York (Power Authority) filed an application with the Federal Energy Regulatory Commission (Commission or FERC) for a new license for the 2,755 MW⁶ Niagara Project (FERC No. 2216). On August 19, 2005, the Power Authority filed an Offer of Settlement and Explanatory Statement for its proposed relicensing of the project. The Offer of Settlement included four separate agreements, only one of which, the Relicensing Agreement, includes measures intended by the signatories to become part of the license.⁷

The project is located on the Niagara River between Lake Erie and Lake Ontario, in Niagara County, New York. The project diverts water from the Niagara River 2.6 miles upstream of Niagara Falls (Falls) and releases it back to the river about 5 miles downstream of the Falls. The project includes the 240 MW Lewiston Pumped Storage Plant and the 2,515 MW Robert Moses Niagara Power Plant.

The project is located in an international waterway and is subject to the jurisdiction of the International Joint Commission pursuant to the 1909 Boundary Waters Treaty between the United States and Canada. In addition, the project operates in accordance with the 1950 Niagara River Water Diversion Treaty between the United States and Canada (1950 Treaty). The 1950 Treaty requires that a minimum of 100,000 cfs flow over the Falls during daytime hours during the tourist season, and that a minimum of 50,000 cfs flow over the Falls at all other times. The 1950 Treaty further provides that, except for certain designated portions of the outflow from Lake Erie, the remaining Niagara River flow is divided equally between the United States and Canada, and is available for power generation purposes. Within these constraints, the project operates in a store and release mode to maximize the amount of energy produced during peak demand periods.

⁶This plant capacity is based on currently authorized upgrades, all of which have been completed, except for the 43 MW upgrade of Robert Moses Unit 8. These upgrades were authorized by Commission Order on December 21, 1993.

⁷ In addition to the Power Authority, the Relicensing Agreement was signed by the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the New York State Department of Environmental Conservation, the New York Department of State, the New York State Office of Parks, Recreation, and Historic Preservation, the Niagara Falls Water Board, the New York Association of Public Power, the Municipal Electric Utility Association, the New York State Rural Electric Cooperative Association, New York Rivers United, Friends of the Buffalo-Niagara River, and Niagara Relicensing Environmental Coalition.

In deciding whether to issue a license for a hydroelectric project, the Commission must determine that a project is best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (*e.g.*, flood control, irrigation, water supply), the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

In this EIS, we evaluate four alternatives for licensing the project, including: (1) the proposed action (Relicensing Agreement); (2) a staff alternative that includes most of the proposed measures; (3) a composite alternative that includes the staff-recommended measures plus the mandatory conditions of the water quality certification (certification); and (4) no-action (continued operation as required by the existing license). We use no-action as the baseline against which the other alternatives are compared.

As noted, the Offer of Settlement includes four separate agreements: (1) a Relicensing Agreement (proposed action) with measures the settlement parties request be included in a new license; (2) a host community agreement; (3) an agreement between the Power Authority and the Tuscarora Nation; and (4) a power allocation agreement between the Power Authority and neighboring states. The major components of the proposed action (Relicensing Agreement) include: (1) funding for 8 habitat improvements projects (HIP)s upstream of the project within the project affected fluctuation zone of the Niagara River; (2) funding for unspecific future habitat enhancement and restoration projects through a habitat restoration and enhancement (HERF) fund; (3) funding to upgrade the City of Niagara Falls water treatment system Falls Street Tunnel; (4) funding for recreation facility improvements; (5) removing 8 parcels of land from the current project boundary; (6) no change in the project's mode of operation.

The staff alternative includes the measures in the proposed action with the following exceptions: (1) staff do not recommend the HERF be a license requirement because it could be used to address resources not affected by operation of the Niagara Project; (2) staff recommend a plan to monitor the effects of the proposed Falls Street Tunnel upgrade; (3) staff recommend keeping parcel 6 in the project boundary because it contains recreation facilities that provide public access to the project bypassed reach; (4) staff do not recommend including upgrades to ArtPark in the license because this facility's primary purpose is performing arts and not access to project lands and waters; and (5) staff recommend including the proposed new tribal exhibit at the Power Vista in the license because the exhibit would be part of a project recreation facility.

Section 401 of the Clean Water Act (CWA) requires an applicant for a federal license or permit for an activity that may result in a discharge into navigable waters to provide to the licensing or permitting agency a certification from the state in which the

discharge originates that any such discharge will comply with certain sections of the CWA. On January 31, 2006, the New York DEC issued a certification for the Niagara Project, with conditions consistent with the proposed action (HIP fund, HERF, and recreation facility improvements). The certification also includes a land acquisition fund that is not part of the proposed action. The certification conditions would be included in any license issued for the project. As such, the composite alternative includes these conditions along with the other staff-recommended measures.

Section 10(j) of the Federal Power Act (FPA) requires the Commission to include license conditions based on recommendations provided by the federal and state fish and wildlife agencies. Under section 10(j), Interior recommends the provisions of sections 4.1.2 (HIP fund) and 4.1.3 (HERF) of the Relicensing Agreement. Both of these conditions are included in the composite alternative.

Under the no action alternative, the project would continue to generate an average 13.7 million MWh annually, with an annualized net benefit of \$543.5 million (\$39.67 mills/kWh). This is a calculated value based on market prices, not the actual prices at which most of the project's power and energy are sold, which are substantially below market value. In contrast, the proposed action as set forth in the Relicensing Agreement would add annualized costs totaling \$8.1 million, with project generation of 13.7 million MWh and an annualized net benefit of \$539 million (39.34 mills/kWh). The staff alternative would result in project generation of 13.7 million MWh and an annualized net benefit of \$540.4 million (39.44 mills/kWh). The composite alternative would result in project generation of 13.7 million MWh and an annualized net benefit of \$539.1 million (39.35 mills/kWh).

The environmental measures included in the Relicensing Agreement, with the recommended staff modifications would improve water quality, protect and enhance fish and terrestrial resources, improve public use of recreational facilities and resources, and protect and maintain historic resources within the area affected by the operation of the project.

Based on our independent analysis of the project, including consideration of all relevant economic and environmental concerns, we conclude that the staff alternative would be best adapted to a comprehensive plan for the proper use, conservation, and development of the Niagara River. Nevertheless, we acknowledge the mandatory nature of the certification conditions and any license issued for this project would have to include all of the measures in the certification.

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