

CONNECTICUT RIVER DOWNSTREAM FISH PASSAGE

NEW ENGLAND POWER COMPANY

CONNECTICUT RIVER ATLANTIC SALMON COMMISSION

U.S. FISH AND WILDLIFE SERVICE

NATIONAL MARINE FISHERIES SERVICE

STATES OF CONNECTICUT, MASSACHUSETTS, NEW HAMPSHIRE, AND VERMONT

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, is made and entered into this 26th day of July, 1990, among New England Power Company ("the Company"), a Massachusetts Corporation; the Connecticut River Atlantic Salmon Commission ("the Salmon Commission"), an interstate Commission chartered by and composed of the member States of New Hampshire, Vermont, Connecticut, and Massachusetts and the Congress of the United States (P.L. 98-138); the U.S. Fish and Wildlife Service (FWS), an agency of the Department of the Interior; the National Marine Fisheries Service (NMFS), an agency of the U.S. Department of Commerce; the Connecticut Department of Environmental Protection; the Massachusetts Division of Fisheries and Wildlife; the New Hampshire Fish and Game Department; and the Vermont Fish and Wildlife Department. The FWS and NMFS are together herein "the Services". The foregoing State fishery management agencies are together herein "the States".

WHEREAS, the Company holds licenses which shall expire on April 30, 2018, from the Federal Energy Regulatory Commission (hereinafter "FERC") for the following hydroelectric Projects

located on the Connecticut River: Vernon Project, L. P. No. 1904, Vernon, Vermont-Hinsdale, New Hampshire ("Vernon"); Bellows Falls Project, L. P. No. 1855, Rockingham, Vermont-Walpole, New Hampshire ("Bellows Falls"); and Wilder Project, L. P. No. 1892, Hartford, Vermont-Lebanon, New Hampshire ("Wilder"); (Vernon, Bellows Falls, and Wilder, collectively the "Projects"); and

**WHEREAS**, the Salmon Commission includes State appointed citizens, representatives of participating States' fishery management agencies, and representatives of the Services, and is charged with managing the Atlantic salmon resource in the Connecticut River; and

**WHEREAS**, the States, the Services, and the Salmon Commission have as a common goal to ensure that downstream fish passage systems are constructed at all barriers and hazards to migration of anadromous fishes in the Connecticut River Basin, and that such systems not cause mortality, injury, or delay to the anadromous fish using them, and further that such systems be monitored to assess the contribution made toward attainment of this common goal; and

**WHEREAS**, the Company wishes to cooperate with the States, the Services, and the Salmon Commission in ensuring downstream fish passage at the Projects; and

**WHEREAS**, the Company has in the past cooperated with the States, the Services, and the Salmon Commission in promoting the restoration of anadromous fishes to the Connecticut River, and has made significant expenditures to construct and operate upstream

fishway systems for anadromous fishes at the Projects; and

**WHEREAS**, the States, the Services, and the Salmon Commission have expended significant resources to restore anadromous fishes in the Connecticut River; and

**WHEREAS**, all parties wish to cooperate for the successful restoration of anadromous fishes to the Connecticut River by providing downstream fish passage systems for the out-migration of anadromous fishes from the River in accordance with the schedules set forth in Articles I and II below; and

**NOW, THEREFORE**, in consideration of the premises and mutual promises contained herein, the Parties agree to the following:

#### ARTICLE I

##### PASSAGE DATES

The Company agrees to provide downstream passage systems for Atlantic salmon and fish from the family clupeidae at Vernon, and for Atlantic salmon at Bellows Falls and Wilder by April 1994. Downstream passage systems may include physical facilities, spillage plans and reasonable operational modifications. The Salmon Commission, upon petition by the Company, may extend the dates for providing said passage systems at any or all of the Projects subject to the conditions of Article V herein.

ARTICLE IISCHEDULE NECESSARY TO MEET PASSAGE DATESA. Overall Schedule

The Company will follow the schedule of activities which is outlined below:

VERNON

- \* Through Spring 1990      Physical model testing
- \* Spring 1990              Study and identify alternative systems. Conduct radio-tagged fish studies.
- \* Summer 1990              Install and operate Vernon "fish pipe"
- \* 1991                        Evaluate alternative systems with radio-tagged fish studies
- \* 1992-1993                 Engineer and design preferred system
- \* Spring 1993                \*\*Issue a notice to proceed with construction of preferred system
- \* April 1994                 Operate preferred system and monitor passage
- \* 1994-1996                 Evaluate effectiveness and modify facility as necessary

BELLOWS FALLS

- \* Through Spring 1990      Physical model testing
- \* 1990 - 1992                Evaluate alternative systems with radio-tagged fish studies
- \* 1992 - 1993                Engineer and design preferred system
- \* Spring 1993                \*\*Issue a notice to proceed with construction of preferred system
- \* April 1994                 Operate preferred system and monitor passage
- \* 1994-1996                 Evaluate effectiveness and modify facility as necessary

WILDER

- \* 1991 - 1993                Evaluate alternative spillage with radio-tagged fish
- \* 1993                        Develop spillage plan
- \* April 1994                 Implement spillage plan and monitor passage
- \* 1994-1996                 Evaluate effectiveness and modify spillage plan as necessary

\*\* The issuance of a notice to proceed in this agreement means, notification of the selected contractor to proceed with construction as described and defined in the agreed on contract.

B. Construction at Vernon and Bellows Falls

The Company agrees to begin the physical construction of downstream fish passage systems at Vernon and Bellows Falls during the Spring of 1993. The Company agrees to complete construction of the fish passage systems in time for them to be operational during the Atlantic salmon downstream migration period beginning April 1994.

C. Wilder Operational Plan

The Company agrees to develop a spillage plan in time for it to be operational during the Atlantic salmon downstream migration period beginning April 1994.

**ARTICLE III**

**COOPERATION AMONG THE PARTIES**

A. General Considerations

The parties agree to cooperate in the implementation of the terms of this Agreement.

B. Review and Assistance

In order to ensure that downstream fish passage systems at the Projects are provided in accordance to the schedule contained in Article II.A., the Company agrees to provide requests for assistance and reviews in a timely manner. The primary obligation for obtaining applicable permits and licenses shall be the Company's responsibility. The States, the Services, and the Salmon Commission will cooperate with the Company in a manner consistent with applicable State and Federal laws and policies regarding the Company's application for any permit or license necessary to provide said fish passage systems, and agree to provide review, comments, or advice to the Company in a timely manner.

C. Agency Consultation and Review

Consultation and review reasonably requested by the Company according to the terms of this Article will be provided to the Company by the States, the Services, and the Salmon Commission at no cost to the Company.

D. Submittal to FERC

The parties shall submit this Agreement to the FERC upon its execution.

E. Anti-Deficiency Provision

This Agreement does not bind the Services and the States to expend funds in any fiscal year in excess of appropriations made by their respective legislative bodies or administratively allocated for the purpose of this Agreement.

ARTICLE IV

REPORTS BY THE COMPANY

Upon execution of this Agreement the Company shall submit written quarterly progress reports to the Salmon Commission, the States and the Services, with particular reference to whether the work is on schedule.

ARTICLE V

MODIFICATION OF TIME LIMITS

The parties may, by mutual written agreement, modify any time limit in this Agreement. Approval of such modifications shall not be withheld by any party in the event of: (1) floods, war, acts of God, natural disasters, fires, environmental orders, equipment failure, strikes, shortages of fuel and materials, and similar events beyond the control of the Company, or (2) the need for construction of a separate downstream fish passage facility at

Wilder; provided that the time which the Company would otherwise be required to complete construction of any of the downstream fish passage systems shall be extended for a reasonable period of time relevant to the facts and circumstances on a case-by-case basis. Additionally, approval of such modification of time limits shall not be withheld whenever all of the parties are in agreement that all downstream fish passage systems under consideration cannot achieve the expected results at any of the Projects based upon testing and study conducted according to the terms of this Agreement.

## ARTICLE VI

### OPERATION AND MAINTENANCE

#### A. Responsibility for Operation and Maintenance

To ensure the successful operation of downstream fish passage systems provided pursuant to this Agreement, the Company shall be responsible for the effective operation and maintenance of those facilities.

#### B. Periods of Operation

The downstream fish passage systems provided at Vernon pursuant to this Agreement will be operated throughout the periods of downstream migration for Atlantic salmon and clupeids. The downstream passage systems provided at Bellows Falls and Wilder pursuant to this Agreement will be operated throughout the periods of Atlantic salmon downstream migration. The operating schedules shall be determined annually by the Salmon Commission after consultation with the Company. The Company may petition the Salmon Commission in writing for changes to the operations schedule based on operations experience or other related data.

## ARTICLE VII

### ADDITIONAL CONSTRUCTION

The downstream fish passage systems at the Projects will be designed in accordance with design plans developed by the Company in cooperation with the States, the Services, and the Salmon Commission, and it is the expectation of all parties that such systems will accommodate the downstream passage at the Projects of the fish species for which they were designed. The States, the Services, and the Salmon Commission agree they will not seek construction of different or additional downstream fish passage systems at the Projects for a ten year period following commencement of system operation, except that said parties retain such rights during said period and thereafter for replacement of systems destroyed or damaged by acts of God or similar events and for reasonable minor modifications. However, any party may initiate negotiations to seek modification of the fish passage facilities at these projects when new technology has been developed which allows for a cost effective and significant improvement in fish passage capabilities at these projects.

## ARTICLE VIII

### NOTICES

All notices relating to this Agreement (including all reports) shall be in writing and shall be deemed to have been properly given if mailed by first class mail addressed in the following manner:



If to the Company: New England Power Company  
 25 Research Drive  
 Westborough, Massachusetts 01582  
Attention: Director, Environmental  
 Affairs

If to the Services: Regional Director  
 United States Department of Interior  
 Fish and Wildlife Service  
 One Gateway Center, Suite 700  
 Newton Corner, Massachusetts 02158

and:

Director, Northeast Region  
 National Marine Fisheries Service  
 One Blackburn Drive  
 Gloucester, Massachusetts 01930

If to New Hampshire: Executive Director  
 New Hampshire Fish and Game Dept.  
 2 Hazen Drive  
 Concord, New Hampshire 03301

If to Vermont: Director of Fisheries  
 Vermont Dept. of Fish and Wildlife  
 103 South Main Street  
 Center Building  
 Waterbury, Vermont 05676

If to Massachusetts: Director  
 MA Division of Fisheries & Wildlife  
 100 Cambridge Street  
 Boston, Massachusetts 02202

If to Connecticut: Chief, Bureau of Fisheries & Wildlife  
 CT Dept. of Env't. Protection  
 State Office Building  
 Hartford, Connecticut 06115

If to Salmon Commission: Executive Assistant  
 Connecticut River Atlantic Salmon  
 Commission  
 P. O. Box 71  
 Turners Falls, Massachusetts 01376

Or such other address as any party may from time to time designate by notice in writing to the other parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives and officers all as of the date set forth above.

NEW ENGLAND POWER COMPANY

BY:

Lydia M. Pastuszek  
 LYDIA M. PASTUSZEK  
 Vice-President

July 26, 1990

Date

CONNECTICUT RIVER ATLANTIC SALMON COMMISSION

BY:

David F. Egan  
 DAVID F. EGAN  
 Chairman

July 26, 1990

THE CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:

Robert A. Jones  
 ROBERT A. JONES  
 Chief, Bureau of Fisheries and Wildlife

July 26, 1990

MASSACHUSETTS DIVISION OF FISHERIES AND WILDLIFE

BY:

Wayne F. MacCallum  
 WAYNE F. MACCALLUM  
 Director

July 26, 1990

NEW HAMPSHIRE FISH AND GAME DEPARTMENT

BY:

Donald A. Normandeau  
 DONALD A. NORMANDEAU, Ph.D  
 Executive Director

July 30, 1990

VERMONT FISH AND WILDLIFE DEPARTMENT

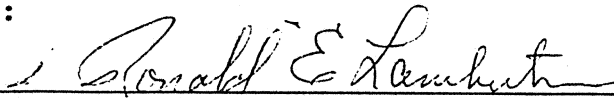
BY:

Timothy Van Zandt  
 TIMOTHY VAN ZANDT  
 Commissioner

August 6, 1990

## U. S. FISH AND WILDLIFE SERVICE


BY:

  
\_\_\_\_\_  
RONALD E. LAMBERTSON  
Regional Director

July 26, 1990  
Date

## NATIONAL MARINE FISHERIES SERVICE

BY:

  
\_\_\_\_\_  
RICHARD G. SEAMANS, JR.  
Acting Management Division Chief  
for Regional Director

July 26, 1990

cc: L. M. Pastuszek, Concord  
G. P. Sardi  
M. E. Slade  
H. W. Sullivan, Lebanon