

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

City of Lawrence,
Conservation Law Foundation, Inc.,
Groundwork Lawrence, Inc.,
Lawrence CommunityWorks, Inc.,
60 Island Street, LLC,
Everett Mills Real Estate, LLC,
GES Realty LLC, and
Pacific Mills Acquisition LLC,

Docket No. P-2800-____

Complainants,

v.

Essex Company, LLC,

Licensee.

COMPLAINT FOR ENFORCEMENT OF LICENSE OBLIGATIONS

Pursuant to Section 306 of the Federal Power Act (“FPA”),¹ Complainants hereby respectfully request that the Federal Energy Regulatory Commission (the “Commission” or “FERC”), issue an order enforcing the several provisions of the license issued for the Lawrence Hydroelectric Project (FERC No. 2800) (the “Project”) that require Licensee Essex Company, LLC (referred to herein, along with its corporate predecessors, as “Licensee”) to, *inter alia*, (a) avoid any adverse impact to the historic project works known as the North and South Canals (the “Canals”), (b) duplicate their historic operation as water conveyances (including as the

¹ 16 U.S.C. § 825e (authorizing any person to apply by petition for Commission action against any other person alleged to be in contravention or violation of any statute, rule, order or other law administered by the Commission). *See also* 18 C.F.R. § 385.206 (2012) (Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission).

Project's only spillways), (c) maintain and perpetuate the cultural and historic character of the area in which the Canals are located, (d) protect them from the degradations of pollution, and (e) enhance the public availability and enjoyment of their cultural and historical character. In particular, Complainants request that the Commission enforce Articles 17,18, 19, 20, 29, 32, and 43, application Exhibit R (which the Commission incorporated into the Project license in Ordering Paragraphs (B) and (D)), Exhibit W (which Licensee incorporated into Exhibit R), and related requirements found in part 12 of the Commission regulations.

I. INTRODUCTION AND SUMMARY

Long before any application for a hydroelectric project was ever filed, the North and South Canals were respectively listed on the National Register of Historic Places (the "Register") and eligible for listing, *see* Appendix A hereto.² In granting the Project license, the Commission acknowledged the Canals' listing status and identified the Canals as extraordinary cultural resources of major historic significance. The Commission described how the Canals had "been in existence for more than a century," and noted that the Canals were, by "the turn of the century," responsible for growing the complex of textile mills located in Lawrence, Massachusetts into "the largest in the world." Order Issuing Major License and Authorizing Negotiations for Sale of Securities, 5 FERC ¶ 61,202, at 61,442 and n.7 (Dec. 4, 1978) (hereinafter,

² Appendix A hereto contains the forms by which the Massachusetts Historical Commission nominated the North and South Canals for listing on the Register, after surveying their historical and architectural significance. The property adjacent to the North Canal was separately listed on the Register as the "North Canal Historic District" in 1984 and subsequently expanded in 2009. Appendix A also includes the 2009 nomination form, into which the Massachusetts Historical Commission integrated new information and changes into the text of the original nomination. The Project boundary also encompasses the Great Dam across the Merrimack River, which is likewise listed on the Register.

“Order Issuing Major License”).³ Moreover, the North and South Canals had historically operated as the only spillways for the Great Dam across the Merrimack River, and the Commission accepted Licensee’s specification that the North and South Canals would be Project 2800’s only spillways.

The Commission therefore included the above-enumerated license requirements ((a)-(e)) to not only protect the North and South Canals, but also enhance the public enjoyment of their cultural and historic significance. Despite the Commission’s clear directions, Licensee has violated and continues to violate each of these license requirements, with the consequence being that these historic structures have severely deteriorated. Further deterioration is to be expected if the situation is not rectified. The Canals are also littered with trash and overgrown trees, shrubs, and weeds. Vegetation sprouts from masonry canal walls. And Licensee has substantially lowered Canal water levels, both causing structural deterioration and exposing that deterioration to public view. This blights the urban landscape of Lawrence, Massachusetts, instead of perpetuating the cultural and historic character of the Canal areas, as the Project license requires.

The condition of the Canals is also a matter of infrastructure integrity. For example, Canal waters have leaked into abutting properties, damaging neighboring buildings, and have created multiple sinkholes, including in the well-trafficked pavement that the canal wall was supporting. The North and South Canals are also the only spillways for the Project, but their deteriorated state raises serious questions regarding reduction of their capacities to far less than their design specifications. As such, it also raises serious questions regarding the ability of the Canal spillways to contribute meaningfully to dam integrity and their capability to control

³ For ease of reference, Complainants have collected the documents cited from the FERC Docket No. P-2800 at <https://tinyurl.com/n48tyka>. Within the collection, the Order Issuing Major License can be found at <https://tinyurl.com/l38a4op>.

potential downstream flows without damage to or flooding of abutting properties, and also without damage to the historic Canals themselves.

The current Licensee for the Lawrence Hydroelectric Project is the Essex Company, LLC (hereinafter, “Essex” or “Licensee”), a subsidiary of Enel Green Power S.p.A. (an Italian multinational renewable-energy corporation headquartered in Rome), which operates in this country through its Enel Green Power North America, Inc. subsidiary (collectively, “Enel”). Enel purchased the historic Essex Company and its affiliated co-licensee Lawrence Hydroelectric Associates (together merged into current licensee Essex), thereby assuming the various obligations of the Project license that protect the North and South Canals. However, Enel and Essex have persistently neglected the crucial license obligations, as described further in this Complaint and graphically depicted in the pictures attached hereto in Appendix B.

For example, to preserve and protect the North and South Canals, Article 29 of the license requires Licensee “to avoid any adverse impact on identified historical structures of the project.” Order Issuing Major License, at 15 (emphasis supplied). The Commission also specifically incorporated, as a license requirement, Exhibit R of the license application, in order to bind Licensee to its commitment to “maintain and perpetuate the cultural and historic character of the area” and operate the Project “in a manner which will duplicate the historical operation of the dam and canals.” Original Exhibit R at 1 (incorporated into the Project license in Ordering Paragraphs (B)(ii) and (D)). See Order Issuing Major License, 5 FERC ¶ 61,202, at 61,444-45.⁴ The Commission also identified Article 32 as protective of the historic operations of

⁴ Exhibit R represented that “the historic/educational potential of man-made resources within the project area” was the first of three “primary considerations” upon which Licensee based its application. Exhibit R at 1. The original Exhibit R can be found in the collection of documents cited from Docket P-2800 at <https://tinyurl.com/koflgvx>. In 1992, Licensee submitted a revised Exhibit R that specifically reiterated its continued commitment to “maintain and perpetuate the

the North and South Canals. Article 32 requires adherence to a Project flow regime that benefits the Canals' water levels and flows.

Essex and Enel have violated and continue to violate these license requirements. Licensee has not “avoid[ed] any adverse impact” to the North and South Canal Project works (Art. 29). For example, Licensee has maintained very low water levels in both canals. This has subjected historic wooden structures to the slow destruction of rot and decay, such that most of the headgates, penstocks, and related canal infrastructure are in moderate to extreme disrepair, contributing to flooding and potential structural damage of adjacent buildings. Historic stone and masonry structures have likewise been adversely impacted by significant decay, having been subjected to, for example, accelerated erosion from repeated freeze/thaw cycles and destructive infiltration stimulated by invasive vegetation. This includes the walls of the Canals, which are deteriorating throughout and have collapsed at numerous locations. The situation has only been compounded by inadequate maintenance and general neglect that independently constitutes a failure to “avoid any adverse impact.”⁵

cultural and historic character of the area” and operate the Project “in a manner which will duplicate the historical operation of the dam and canals.” Revised Exhibit R at 1-2. Revised Exhibit R can be found at <https://tinyurl.com/ydbwee38>. In 1995, the Commission again incorporated Licensee’s commitment as a license requirement. *See* Order Approving Revised Exhibit R (Aug. 1, 1995). The Commission’s orders adopting revised Exhibit R can be found at <https://tinyurl.com/yd8rhwo6>. Moreover, both the original and revised versions of Exhibit R specifically incorporate Exhibit W of the Project application, for its discussion of the “portion of the project area [that] is of historical significance due to its role in the establishment and growth of the City of Lawrence.” Exhibit R at 1 & n.1. Exhibit W, in turn, which can be found at <https://tinyurl.com/mcfgr8r>, discusses the historical significance of the “North and South Canals, [which] were an integral part of the growth of Lawrence’s textile industry.” Exhibit W at 1.

⁵ By definition, the license prohibition against “any adverse impact” prohibits, *inter alia*, “neglect of a property which causes its deterioration.” 36 C.F.R. § 800.5(a)(2)(vi) (implementing Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (formerly cited as 16 U.S.C. § 470f), discussed in Order Issuing Major License, 5 FERC ¶ 61,202, at 61,442).

These deteriorated conditions have caused leakages, including into adjacent properties, and further deterioration is expected if conditions are not rectified. These conditions also raise serious questions regarding the ability of the Canals to handle the spillway flows Licensee has specified as necessary to the integrity and safe operation of the Project. Licensee has identified the necessary spillway flow capacity of the North Canal to be as much as 4,000 cfs and of the South Canal to be as much as 2,000 cfs. *See* Report on Flow to be Released from Project Works – Article 32 of License, at 4 (Figure 2).⁶ Upon information and belief, Licensee is not maintaining the spillway capacity it has specified, by reason of the deterioration described above. Only proper repair of these water retaining structures will allow them to operate as Licensee has specified and as prudence requires.

Additionally, all of this decay and continuing deterioration undermines “the cultural and historic character of the area” that Licensee is required to “maintain and perpetuate.” Exhibit R, at 1. The substantially lowered Canal water levels also violate the license requirement to “duplicate the historic operation of the . . . canals” (*id.*), as does the lack of adequate maintenance.

Essex and Enel are also violating other license requirements that the Commission specified to further require Licensee to protect the historic North and South Canals and adjoining areas against potentially harmful environmental impacts. For example, the Commission included standard Articles 19, 20, and 43 that require that Licensee “be responsible for, and shall take reasonable measures to prevent soil erosion . . . and any form of water or air pollution” (Art. 19), “clear and keep clear . . . and . . . dispose of all unused . . . brush, refuse, or other material

⁶ The Report on Flow to be Released from Project Works – Article 32 can be found in the collection of documents cited from Docket P-2800 at <https://tinyurl.com/1859trs>.

unnecessary for the purpose of the project” (Art. 20), and “protect[] and enhance[e] the scenic, recreational, and other environmental values of the project” (Art. 43). Essex and Enel have nonetheless allowed the soil erosion forbidden by Article 19—portions of the banks of the North and South Canals have been allowed to collapse and remain in this state of disrepair, and sinkholes have developed in canal-adjacent areas. Licensee has also allowed unruly vegetation to sprout from Canal walls and on the dewatered banks of the Canals, notwithstanding the Article 20 requirement to “clear and keep clear” brush that is unnecessary to the production of hydroelectric power. And unsightly refuse litters the waters of the North and South Canals, their banks, and the Project areas adjacent thereto, which is inconsistent with both the license prohibition against “any form of water or air pollution” (Art. 19) and its affirmative obligation that Licensee “clear and keep clear . . . and . . . dispose of all . . . refuse” (Art. 20). By disregarding standard environmental protections that the Commission included in the Project license, Licensee has seriously compromised the historic North and South Canals and the adjacent areas, rather than “protecting and enhancing the scenic, recreational, and other environmental values of the project” as required in Article 43.

As for enhanced public availability through meaningful recreational amenities, standard Article 18 requires Licensee to “allow the public free access, to a reasonable extent, to project waters and adjacent public lands for the purpose of full public utilization of such lands and waters for . . . outdoor recreational purposes.” Licensee has not provided such access to large portions of the Project area. Licensee has fenced off locations on and adjacent to Project lands that present ready opportunities for public access and outdoor recreational activities without compromise of hydroelectric generation; for example, a triangle of vacant waterfront land behind a historic canal gatekeeper’s carriage house (known as Lawrence’s historic “Carriage House”)

that lies at the scenic tip of an island in the Merrimack River with an attractive riverside view across from the Great Dam. Moreover, for some of the Project areas where the public is allowed the required access, Licensee has failed to provide adequate safety railings to protect visitors from falling into the water. *Cf.* 18 C.F.R. §12.42 (requiring that “licensee must install, operate, and maintain any . . . barriers . . . that may reasonably be necessary or desirable protect the public in the use of project land”).

Further, standard Article 17 and Exhibit R (as amended in 1995) requires Licensee to (a) renovate a historic Carriage House, including handicap accessibility, (b) outfit it with a multi-media slide presentation and stage interpretative programs, (c) provide a parking area that is also handicap-accessible, (d) supply trash receptacles and flush-style sanitary facilities, (e) publicize the existence of these amenities through area signage and sidewalk markings directing people to the Carriage House, and (f) provide free public tours of the Carriage House. While the Licensee does allow tours of the Carriage House, they are not advertised, are by appointment only, and are difficult to schedule. And Licensee has violated the other requirements to publicize the existence of the Carriage House exhibits and make the Carriage House readily accessible. For example, Licensee has removed all signage from the Carriage House itself, including one that stated “Welcome,” and replaced it with a sign on the fence in front with the inhospitable message, “Authorized Vehicles Only.” This has effectively thwarted public accessibility – even local teachers from making class field trips.

In sum, Licensee has been operating the Project in continued violation of Articles 17,18, 19, 20, 29, 32, and 43, application Exhibit R (incorporated into the Project license in Ordering Paragraphs (B) and (D)), Exhibit W (which Licensee incorporated into Exhibit R), and related requirements found in part 12 of the Commission regulations. Complainants do not lightly

invoke the Commission’s jurisdiction seeking enforcement of these provisions. As further described in Section III.A below, Complainants are a collection of municipal, civic, public interest, and commercial organizations that are committed to working together to implement community-based programs to benefit the cultural and economic vitality of Lawrence, Massachusetts community-wide. Complainants consider Enel an important member of the Lawrence community—and especially so given its purchase of the historic Essex Company that was originally chartered by the Massachusetts legislature, founded the City of Lawrence, and in the past had historically contributed substantially to the city’s economic growth.

However, despite years of discussions and negotiations, Licensee is still violating the licensing obligations that protect the historic North and South Canals. Indeed, while continuing to negotiate with Licensee to end the license violations, Complainants and others have made many substantial and constructive contributions towards the economic vitality of this area by developing attractive public amenities bordering on the Project area. Licensee has reacted not by making the contributions required by the license, but by pursuing license amendments that withdraw requirements to supply public amenities within the Project area.⁷

⁷ Other contributions Enel has made underscore the importance that Enel abide by the license requirements directed at preserving the Canals and perpetuating the Canal areas as cultural, recreational, and historical attractions. For example, recognizing the importance of the North Canal National Historic District to the vitality of the City of Lawrence, Enel has granted easements necessary for three development projects in Lawrence’s North Canal area: (a) the Union Crossing project, spearheaded by Complainant Lawrence CommunityWorks, Inc., in conjunction with Complainants City of Lawrence and Groundwork Lawrence, Inc., (b) the Ferrous Site Park project, developed by Complainant Groundwork Lawrence, Inc., in conjunction with Complainant City of Lawrence, and (c) the Gateway project, developed by Complainant City of Lawrence, in conjunction with Complainant Groundwork Lawrence, Inc. These projects are intended to contribute to the North Canal area as a cultural and historic attraction, but that status is undermined by Licensee’s violations of the Project license conditions discussed herein.

The consequence of Licensee's persistent neglect has been to hamper the process of civic investment and growth that otherwise is marking Lawrence, Massachusetts. The historic North and South Canals occupy the core of the Lawrence urban landscape, and therefore their continued poor conditions and lack of maintenance holds the whole City back. There is also a serious concern as to whether the disrepair of the Canals renders them unfit to function as spillways at the capacity that Licensee's specified as necessary for the safe operation of the Project. Complainants therefore request that the Commission issue an order enforcing the license requirements discussed herein.⁸

II. COMMUNICATIONS

Communications regarding this Complaint should be sent to the following persons:

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Similarly, Enel has contributed \$30,000 to the Lawrence History Center for digitizing construction documents from the 1840s. However, the Commission did not find it sufficient to preserve only the images of the historic Lawrence project works. It instead required Licensee to, *inter alia*, maintain the North and South Canals "to avoid any adverse impact" to (Art. 29) and perpetuate the cultural and historic significance of the North and South Canal areas.

⁸ In the alternative, Complainants are requesting that the Commission appoint a settlement judge or other official to aid in their discussions with Licensee towards a negotiated resolution.

III. PARTIES

A. Complainants

The following is a description of the Complainants in this action. As a result of the Licensee's lack of compliance with the requirements of its Project license, as described below, Complainants, their members and/or board members, and the Lawrence community have experienced injuries and harms including, but not limited to, property damage, diminution in property values, frustration of economic development opportunities, reduced business opportunities, frustration of purpose, aesthetic blight, diminishment of recreational opportunities, impaired quality of life, impaired public infrastructure, threats to personal and public safety, exposure to harmful pollution, and related public health risks. These harms are of the types that are not readily reducible to a monetary figure. Complainants estimate a monetary impact of at least \$10,000,000 from Licensee's license violations.

1. Complainant the City of Lawrence is a historic mill town and a city in Essex County, Massachusetts on the Merrimack River with a population of over 80,000. The Mayor of the City of Lawrence is Daniel Rivera.

The Project is wholly located within the municipal boundaries of the City of Lawrence, and the City of Lawrence owns land adjacent to the Project. The City of Lawrence is concerned with the negative impacts the Project has had and continues to have on public infrastructure, the economic development of Lawrence, its infrastructure (historic and otherwise), and the public's use and enjoyment of the lands and the surrounding areas within the municipality.

The City of Lawrence was an intervenor in the Project's original license proceeding, through its then-Mayor L. P. LeFebre. The Commission recognized that the City of Lawrence was greatly "concerned with the possible impacts the hydroelectric facility may have upon the

public's use and enjoyment" of lands within and adjacent to the Project boundary and wanted "to ensure that the Lawrence Hydroelectric Project will be operated in a manner which duplicates the historical operation of the canals." Order Issuing Major License, at 5. The same concerns are encompassed within the current Complaint.

2. Complainant Conservation Law Foundation, Inc. ("CLF") is a regional, environmental, 501(c)(3) non-profit membership organization dedicated to the use of law, science, and the market to create solutions that preserve natural resources, build healthy communities, and sustain a vibrant economy for the benefit of all people in New England. CLF operates advocacy centers in Massachusetts, Vermont, New Hampshire, Maine, and Rhode Island, and its principal place of business is located at 62 Summer Street in Boston, Massachusetts 02110. CLF is concerned with the negative environmental, recreational, historic, and economic impacts of the hydroelectric facility as currently operated. CLF has members who reside in eastern Massachusetts and Southern New Hampshire including Lawrence and the Merrimack Valley.

3. Complainant Groundwork Lawrence, Inc. ("GWL") is a 501(c)(3) non-profit organization that empowers residents of Lawrence, Massachusetts and creates the building blocks of a healthy community through open space improvements, fresh food access programs, youth initiatives, and educational programming. GWL has a principal place of business at 50 Island Street in Lawrence, Massachusetts 01840, adjacent to North Canal. GWL is concerned with the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence. GWL is an affiliate of Groundwork USA. GWL has both board members who reside in Lawrence, MA and property rights along the North Canal.

4. Complainant Lawrence CommunityWorks, Inc. (“LCW”) is a nonprofit community development corporation working to transform and revitalize the physical, economic, and social landscape of Lawrence, Massachusetts. LCW has a principal place of business at 168 Newbury Street in Lawrence, Massachusetts 01841. LCW owns and operates two properties adjacent to the North Canal. LCW is concerned with the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence, as well as the negative impact the condition of the North Canal has on the value and utility of its properties next to the canal. LCW has close to six thousand members in Lawrence, Massachusetts. LCW is an affiliate of NeighborWorks America.

5. Complainant 60 Island Street, LLC (“60 Island Street”) is a limited liability company organized under the laws of the Commonwealth with a principal place of business at 60 Island Street in Lawrence, Massachusetts 01840. 60 Island Street owns the 60,000 square foot landmark property at 60 Island Street along North Canal and provides space to over fifty businesses. 60 Island Street is concerned with the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence, as well as the diminished value of its property next to the North Canal as a result of the condition of the canal. For example, the basement of 60 Island Street’s building has been subjected to flooding associated with canal water seepage.

6. Complainant Everett Mills Real Estate, LLC (“Everett Mills”) is a limited liability company organized under the laws of the Commonwealth which owns and manages the Everett and Stone Mills, jointly known as the Everett Mills, on the North Canal in Lawrence, Massachusetts. Everett Mills is a 650,000 square foot business center situated on the North Canal that currently provides professional office space to businesses, nonprofits, social service organizations, an educational institution, light manufacturing, warehousing, and distribution.

Everett Mill's principal place of business is located at 15 Union Street in Lawrence, Massachusetts 01840. The penstock of Everett Mills collapsed in 2005, and although the resulting damage has now been rectified, Everett Mill remains concerned with the potential for future damage. It is also concerned for the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence, as well as the diminished value of its property adjacent to the North Canal as a result of the condition of the canal.

7. Complainant GES Realty, LLC ("GES Realty") is a limited liability company organized under the laws of the Commonwealth and the owner of 56 Island Street in Lawrence, Massachusetts, a 20,000 square foot restored mill situated along the North Canal, which was converted into a community theater and arts building and provides gallery and studio space. GES Realty's principal place of business is at 60 Island Street in Lawrence, Massachusetts 01840. GES Realty is concerned with the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence, as well as the diminished value of its property next to the North Canal as a result of the condition of the canal.

8. Complainant Pacific Mills Acquisition, LLC ("Pacific Mills") is a limited liability company organized under the laws of the Commonwealth with a principal place of business at 300 Canal Street in Lawrence, Massachusetts 01840. Pacific Mills is the owner of the 455,504 square foot Building No. 1 of the Pacific Mills Industrial Complex at 300 Canal Street in Lawrence, Massachusetts along the North Canal, which provides space to 55 commercial businesses. Pacific Mills is concerned with the negative environmental, recreational, historic, and economic impacts of the Project on the City of Lawrence, as well as the diminished value of its property next to the North Canal as a result of the condition of the canal. For example, the

basement of one of Pacific Mills' former buildings has been subjected to flooding associated with canal water seepage.

B. Licensee

The Commission granted License No. 2800 in 1978 to the predecessors of current Licensee the Essex Company, LLC (hereinafter, "Essex"), a domestic limited liability corporation and indirect subsidiary of Enel Green Power S.p.A. (an Italian multinational renewable-energy corporation headquartered in Rome), which operates in this country through its Enel Green Power North America, Inc. subsidiary (collectively, "Enel"). Licensee Essex is the successor in interest to both of the original joint licensees of the Lawrence Hydroelectric Project, the Essex Company and Lawrence Hydroelectric Associates (LHA). Essex has accepted from these two original joint licensees assignment of the water rights, flowage rights, and easements required to operate the Project, as well as the obligations of Project License No. 2800.

The Essex Company was originally a domestic profit corporation chartered by the Massachusetts legislature. It was converted into the Essex Company, LLC on March 30, 2015. The principal place of business of the Essex Company, LLC is One Tech Drive, Suite 220 in Andover, Massachusetts 01810.

Until 2011, LHA consisted of two partners: Crosby Drive Investments, Inc. (7.5%) and the Essex Company (92.5%), both of which were owned by Enel since at least 1986. Between 2011 and 2015, LHA was owned by two partners: Enel (7.5%) and the Essex Company (92.5%). On March 30, 2015, when the Essex Company was converted into the Essex Company, LLC, LHA was merged into the Essex Company, LLC.

IV. REQUEST FOR ENFORCEMENT

Licensee is operating the Lawrence Hydroelectric Project in violation of license Articles 17,18, 19, 20, 29, 32, and 43, application Exhibit R (incorporated into the Project license in Ordering Paragraphs (B) and (D)), and related requirements found in part 12 of the Commission regulations. Complainants respectfully request that the Commission issue an order enforcing these obligations.

A. Licensee Is Violating the Special License Requirements That the Commission Included To Protect the Historic North and South Canals.

It is not surprising that the Commission included a number of special requirements in the Lawrence Hydroelectric Project license to protect the North and South Canals and adjacent Project areas. The North and South Canals stand in testament to the important mid-19th century period in the industrial and architectural history of the United States. That is when the Massachusetts Legislature chartered the Essex Company to harness the Merrimack River's water power to nurture a then-nascent textile industry. The North and South Canals were constructed by the Essex Company's lead engineer, Charles Storrow (later to be the first mayor of Lawrence, Massachusetts, after the Essex Company founded Lawrence), to both serve as the only spillways for the Great Dam across the Merrimack River and feed power to a large complex of textile mills that the Essex Company planned for the adjacent area. These Canals successfully safeguarded the dam and also proved themselves to be a vital ingredient that propelled not just the planned mills, but also the entire economy of New England and the United States.

Licensee, however, is violating each of the special license requirements that the Commission included in the Lawrence Hydroelectric Project license to protect, maintain, and perpetuate the historically significant North and South Canals. We discuss each in turn below.

1. Licensee Is Violating The Article 29 Requirement To “Avoid Any Adverse Impact On Identified Historical Structures Of The Project.”

Article 29 of the license requires Licensee to “cooperate with the Massachusetts Historical Commission in order to avoid any adverse impact on identified historical structures of the project.” Order Issuing Major License, 5 FERC ¶ 61,202, at 61,445 (<https://tinyurl.com/l38a4op>). The Commission identified both the North and South Canals as historical structures of the Project. Order Issuing Major License, Order Issuing Major License, 5 FERC ¶ 61,202, at 61,442.

Licensee has violated Article 29 by failing to avoid adverse impact to the North and South Canals. Further deterioration is to be expected if the situation is not rectified.

For example, Licensee has exposed historic Project works to elements destructive to both wooden and masonry structures and earthen embankments by substantially lowering the water levels in both canals. Examples of the resulting adverse impacts on the Canal walls and embankments are included within the photographs attached hereto in Appendix B. Historic stone and masonry elements have been subjected to both repeated freeze/thaw cycles, which has accelerated erosion, and invasive vegetation, which has damaged the walls. As a result, Canal walls are collapsing at numerous locations. Indeed, by adversely impacting the Canals’ fundamental water retaining structures, Licensee has contributed to the seepage of Canal water into abutting properties, causing the water damage that has occurred in a number of properties. The same conditions also have the potential to contribute to degraded structural support for other private buildings and adjacent public infrastructure.

Licensee’s adverse impacts have extended to other identified historic infrastructure at the North and South Canals. For example, as depicted in Appendix B, the Lower Locks infrastructure on the North Canal is in state of poor repair and in need of maintenance and

refurbishment. Indeed, most of the head gates, penstocks, and related infrastructure within the Licensee's control are in moderate to extreme disrepair. Likewise, Licensee's substantial lowering of water levels in the Canals has exposed the penstocks and related wooden structures owned by abutters and caused them to deteriorate as well. The Everett Mill penstocks and associated structures, the Duck Mill and Washington Mills penstocks, and a penstock in front of 250 Canal Street have all been adversely impacted. The adverse impact of Licensee's substantial lowering of Canal water levels has thus also violated the license requirement (discussed below) that Licensee "maintain and perpetuate the cultural and historical character of the area." It has dried out and caused the deterioration of historic penstocks and other wooden structures, necessitating that their owners in many cases replace the deteriorated historical infrastructure or remove that infrastructure entirely and fill in the resulting holes, at considerable expense.

Licensee has likewise adversely impacted the Canals' earthen embankments, which have also collapsed at numerous locations after licensee substantially lowered the water levels in the Canals and persistently neglected the repair and maintenance of the embankments. Included within Appendix B are pictures that depict Licensee's adverse impacts on Canal embankments.

Finally, Licensee has also failed to otherwise appropriately maintain the North and South Canals, which has also contributed to the deterioration and thus independently constitutes the prohibited "adverse impact." *See* 36 C.F.R. § 800.5(a)(2)(vi) ("neglect of a property which causes its deterioration" constitutes "adverse impact" under the National Historic Preservation Act of 1966, which the Commission discussed in the Order Issuing Major License, 5 FERC ¶ 61,202, at 61,442).

2. Licensee Is Violating The Exhibit R Requirements To “Maintain And Perpetuate The Cultural And Historic Character Of The Area” and Operate The Project “In A Manner Which Will Duplicate The Historical Operation Of The Dam And Canals.”

The Commission incorporated as a license requirement Exhibit R of the license application, binding Licensee to its commitment to both “maintain and perpetuate the cultural and historic character of the area” and operate the Project “in a manner which will duplicate the historical operation of the dam and canals.” Exhibit R at 1-2 (<https://tinyurl.com/koflgvx>). *See* Order Issuing Major License, 5 FERC ¶ 61,202, at 61,444-45 (Ordering Paragraphs (B)(ii) and (D)).⁹ The Commission reiterated in the text of its Order that “[t]he project will be operated in a manner that duplicates the historical operation of the . . . canals.” *Id.*, 5 FERC ¶ 61,202, at 61,442. Subsequently, in 1992, Licensee repeated its very same commitments, *see* Revised Exhibit R, at 1, which was again accepted in 1995. *See* Order Approving Revised Exhibit R (Aug. 1, 1995), *amended in* Order Amending Order Approving Revised Exhibit R (Sept. 8, 1995). (Revised Exhibit R can be found at <https://tinyurl.com/ydbwee38>, and the Commission’s orders accepting it can be found at <https://tinyurl.com/yd8rhwo6>).

Licensee has been violating and continues to violate these license requirements. The debris and decay discussed above fails to “maintain and perpetuate the cultural and historic character of the area.” Rather than maintaining the area’s historic character, Licensee has neglected it, and if the situation is not rectified, it could lead to its destruction rather than it

⁹ Specifically, the Commission stated in Ordering Paragraph (D) that “Exhibits J and R designated and described in Paragraph (B) above, are hereby approved and made a part of the license,” and Paragraph (B) designated and described Exhibit R of the Project license application, including its “7 pages of text.” The first page of the 7 pages of Exhibit R text state Licensee’s commitment to “maintain and perpetuate the cultural and historic character of the area” and operate the Project “in a manner which will duplicate the historical operation of the dam and canals.” That page also specifically incorporates by reference Exhibit W of the Project license. *See* Exhibit R at 1 and n.1.

perpetuation. That is contrary to Licensee’s application commitment to operate the Project “in a manner which preserves the integrity of the old facilities” and “insures continued operation of the existing hydro works for the life of the project,” specifically including the Canals:

The existing hydro works, which include the . . . North and south Canals, were an integral part of the growth of Lawrence’s textile industry. The project concept . . . combines the use of 130-year old facilities with new facilities . . . in a manner which preserves the integrity of the old facilities . . . [which] can continue to serve their intended purpose [T]he project . . . insures continued operation of the existing hydro works for the life of the project and contributes to the economic revitalization of the old industrial area.

Exhibit W at i-ii. *See also id.* at 35 (Project “optimizes use of existing hydro works . . . which have served the needs of the Lawrence area since 1848”).

Several particulars exemplify Licensee’s neglect and failure to maintain and perpetuate the cultural and historic character of the area. Licensee specifically committed that “canal banks in this area will be stabilized,” Exhibit W at 41, but as discussed above, Licensee has allowed the banks of the Canals to deteriorate and decay. Likewise, the degradation of canal masonry discussed above contravenes Licensee’s repeated commitment that the North Canal would “remain intact” and that the South Canal would be maintained to “its original integrity.” Exhibit W at i-ii & 1-2. And Licensee committed that, “[f]ollowing construction, the area will be discreetly landscaped by Applicant, to complement and enhance the historic appearance of the Essex Company works.” Exhibit W at 49. *See also id.* at 42 (specifying “[r]outine maintenance activities, such as care of landscape plants [and] grass mowing” in order to “contribute to and upgrade visual quality of the area and integrity of the surrounding historic sites”).¹⁰ To the contrary, Licensee has not installed discrete landscaping to enhance the North and South Canal areas, but has instead generally neglected regular vegetation management. Unsightly and

¹⁰ Exhibit W can be found at <https://tinyurl.com/mcfgr8r>.

invasive trees, shrubs, weeds, and other vegetation sprout indiscreetly, *see* Exhibit C-3, including from masonry Canal walls (which are being damaged thereby), *see* Exhibit C-8. The generally unmanaged vegetation detracts from and downgrades the visual quality of the area, and also undermines not only the appreciation of the Canals' cultural and historical significance, but also the structural integrity of the infrastructure itself.¹¹

Ironically, the current conditions are akin to what the applicant identified as the highly negative consequences if the Project were terminated or abandoned:

The aesthetic aspects of the project area would be adversely affected by termination and abandonment. Grassed areas would be overgrown. Project structures, particularly the wood frame north and south gatehouses would quickly appear dilapidated. Termination would also close the area to public access

Exhibit W at 46. Licensee pledged to the Commission that “the future of the Essex Company works is assured through the life of the Federal Energy Regulatory Commission license,” *Id.* at 61, but conditions instead approach those anticipated upon termination or abandonment.

Licensee stated a specific purpose underlying its commitments in these regards: to “contribute to economic revitalization of the old industrial area” by both “enhancing the character of the . . . surrounding historic area” and giving “the public . . . greater opportunities to view the historic resources of the Essex Company works, an opportunity that is assured through the granting of the license.” Exhibit W at i-ii, 1-2 and 35. *See also id.* at 52 and 47 (“No irretrievable loss of cultural resources will occur, but each resource will be maintained and enhanced. . . . Measures to enhance the environment essentially evolve from Applicant’s intent

¹¹ Licensee also committed that “all” recreation facilities provided pursuant to the Exhibit R recreation plan would “acknowledge[s] . . . the historic significance of water resource development activities by the Essex Corporation in the Lawrence area.” Exhibit W at 8. Among the recreation plan deficiencies discussed below is the lack of signage providing such historic acknowledgment.

to preserve the historic integrity of the Essex Company's works and to provide the public with greater opportunities to experience the historic significance of such works."). These "beneficial effects of the project" have been withheld and/or significantly undercut by Licensee's failure to adhere to its commitment that "Applicant's personnel . . . would be responsible for maintaining the existing Essex Company facilities." *Id.* at 11.¹² Licensee fully anticipated that deterioration and decay would not only fail to preserve "the cultural and historic character of the area," but also detract from the efforts of the Lawrence community to achieve full economic revitalization of the abutting historic areas, as "[d]eterioration of the Essex Company facilities would also tend to downgrade other facilities along the canals" *Id.* at 61. And that is exactly what has occurred. Rather than enhancing their historic attraction, the present condition of the North and South Canals blight the Lawrence urban landscape, dishonoring Licensee's original commitment to "mak[e] a major contribution towards revitalization of the whole area." *Id.* at 46.

The current state of decay and continuing deterioration also fails to "duplicate the historic operation of the . . . canals" (Exhibit R at 1). With respect to the North Canal, its engineering has "proven very efficient and unique," with one notable feature being that "[s]eepage is minimal." Exhibit W at A1-3 and A1-6; *see also id.* at A1-7 ("the construction of the North Canal represented the latest state of the art in civil engineering . . . [w]ith its carefully designed surface area, slope, bottom covering and wasteway" that "never required more than minimum maintenance from 1848 to the present. No significant repairs have ever been necessary . . ."). However, as noted above, current conditions have allowed seepage into properties abutting the

¹² For example, Licensee committed to "[f]requent equipment inspections and the analysis of historic and new data" to "help determine the necessity of overhauls." Exhibit W at 11. Upon information and belief, Licensee has neither scheduled frequent inspections of the North and South Canal infrastructure nor analyzed historic operations of the canals to determine the necessity of overhauls of the Essex Company's historic canal facilities.

North Canal, and the canal itself now requires significant repairs. Because the North Canal historically had been “maintained by The Essex Company . . . in good running order,” *id.* at A1-7, the current state of deterioration and decay fails to duplicate historical operation.

The South Canal and its associated structures likewise “represent important industrial sites which document the rise of industrialism and, indeed, the town of Lawrence,” according to a report from the Peabody Museum (hereinafter, the “Peabody Report”) that Licensee attached as Appendix 4 to Exhibit W of Licensee’s application. Peabody Report, at 46.¹³ According to this report, the South Canal and its associated structures “represent important industrial sites which document the rise of industrialism and, indeed, the town of Lawrence.” It found both that the South Canal was “very picturesque because of the facing of large granite blocks,” and that “the integrity of the [South] canal” was itself particularly “valuable . . . [f]rom a cultural resource standpoint.” *Id.* at 46-48. The current condition of the South Canal is not picturesque, however, and its integrity has been compromised by disrepair and decay of its granite blocks.

In addition, as discussed above and further below, Licensee has lowered Canal water levels substantially below their historical water levels and flow levels. The low Canal water levels have caused and continue to cause deterioration, as discussed above. This deterioration appears to have degraded the Canals such that they are no longer able to carry the spillway capacity Licensee represented in its original licensee documents as necessary for safe operation of the Project.

¹³ As Appendix 4 to Exhibit W, the Peabody Report is reproduced within <https://tinyurl.com/mcfgr8r> (reproducing Exhibit W).

3. Licensee Has Failed To Adhere to The Mode of Operation Required By Article 32.

In its Order Issuing Major License, the Commission explained Article 32's importance to the historical watering of the North and South Canals. The Commission determined that the terms of the license required that "[t]he project will be operated in a manner that duplicates the historical operation of the . . . canals," Order Issuing Major License, 5 FERC ¶ 61,202, at 61,442 (<https://tinyurl.com/l38a4op>), and that Article 32 provided for such operation. According to the Commission, because it had included Article 32, it did not need to include a further special article that had been requested by certain municipal intervenors, including Complainant the City of Lawrence to "ensure that the Lawrence Hydroelectric Project will be operated in a manner which duplicates the historical operation of the dam and canals of the Essex Company." *Id.*¹⁴

Licensee has not abided by the Article 32 protection of the historical watering of the North and South Canals. First, the Canal water levels are below what had been maintained under the historical operation.¹⁵ The historical high water level of the canal minimized the need for maintenance. Licensee, in contrast has substantially lowered the Canal water levels, exposing historic structures to the elements and substantially hastened their decay. This deterioration is expected to continue unless the historic structures are appropriately repaired and the historic water levels are restored.

¹⁴ The requested special article would have "restrict[ed] Licensee's ability to alter the project's mode of operation," but the Commission determined it was redundant and thus unnecessary because "the operation of the Lawrence Hydroelectric Project would be carried out pursuant to Article 32 of this license. We would approve a change only after public notice and an opportunity for hearing. We believe that these procedures are adequate to protect the concerns of" the municipal intervenors. Order Issuing Major License, 5 FERC ¶ 61,202, at 61,442.

¹⁵ Pictures of the Canal's historic water level are included in Appendix B.

Second, “the original and legislated intent of the Essex Company was to furnish water to industrial customers along the North and South Canals,” and the Licensee has specified operating procedures “to operate this project in a manner which will continue to provide process water to industries along the North and South Canals.” Exhibit W at 1 and 10

(<https://tinyurl.com/mcfgr8r>). “Process water requirements on the North Canal are 1,100,000 gallons per day and 510,000 gallons per day on the south Canal.” *Id.* at 42. Thus, Exhibit H to the Licensee’s application (entitled “Proposed Operation of the Project”) stated how continued historic operation of the Canals would continue exactly these historic process water flows: “During . . . project operation, sufficient flow will be maintained in the canals to provide for the process water needs of the remaining water users. . . . Process water requirements on the North Canal are 1,100,000 gallons per day and 510,000 gallons per day on the south Canal.” Exhibit H at 2 (also noting that unlike spillway discharge, canal process water “is not returned directly to the river”). Complainants aver, upon information and belief, that the daily watering of the North and South Canals fall below these stated volumes, and could not provide the stated flows until proper repair of water retaining structures.

Third, in addition to historic process water flows, Licensee has also not maintained the historic spillway capabilities of the North and South Canals. The Canals had historically spilled unused millpower water into the Merrimack, and Exhibit H to the license application reflects historic operation by specifying the spillway flow capacity for these structures as 3,500 CFS and 800 CFS, respectively. *See* Table 1 of Exhibit H (<https://tinyurl.com/mqheupp>). *See also* Exhibit W at 43-45 & Table 3-1 (<https://tinyurl.com/mcfgr8r>). Licensee later reiterated the spillway flow capacity of the North Canal as “3-4000 CFS” on Figure 2 of the “Report on Flow to be Released from Project Works – Article 32 of License (<https://tinyurl.com/l859trs>). South

Canal spillway capacity was increased to “1-2000 CFS.” Complainants aver, upon information and belief, that Licensee is not maintained the specified spillway capacity, by reason of the deterioration described above, and proper repairs are required to restore these structures to even the lowest of the indicated spillway capacities. Regardless of other license requirements, the Commission should order Licensee to rectify the Canals’ deterioration such that safe and adequate spillway capacity protects dam operations and the population of Lawrence’s dense urban core. *Cf.* 18 C.F.R. § 12.5 (requiring that licensee “must use sound and prudent engineering practices in any action relating to . . . operation, maintenance, use, repair, or modification of a water power project or project works”).

B. Licensee Is Violating The Standard License Articles That Protect The Historic North and South Canals Against Potentially Harmful Environmental Impacts.

In addition to violating the special license requirements that protect the historic North and South Canals and govern their operations and maintenance, Licensee is also violating the standard license articles that were intended to protect these historic amenities from the degradation of pollution, soil erosion, sinkholes, and trash, and also enhance their public use and enjoyment. We discuss each of these violations below.

1. Licensee Is Violating the Article 19 Requirement To “Prevent Soil Erosion” And “Any Form Of Water Or Air Pollution.”

Article 19 of the license requires that 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.” Licensee, however, continues to violate Article 19. It continues to allow portions of the banks of the North and South Canals to collapse and remain in this state of disrepair. In addition, unsightly refuse litters the waters of

the North and South Canals, their banks, and the adjacent project areas, which is inconsistent with the license prohibition against “any form of water or air pollution.”

Soil Erosion & Sinkholes: Licensee has failed to prevent, and also to take reasonable measures to remedy, soil erosion along the banks of the North and South Canals. For example, in several locations, canal walls have collapsed, are collapsing, or are in extreme disrepair, allowing soil erosion into the canal. Examples are depicted in Appendix B.

In some locations, lack of soil erosion control measures has led to sinkholes on or adjacent to Project lands. Depicted in Appendix B are examples of sinkholes at the North Canal wall. However, the area of concern is not limited to the North Canal itself, as the erosion could extend under adjacent traffic-carrying streets. An example is included within Appendix B: water filtrating through the North Canal wall created a sinkhole on the land between North Canal and Canal Street (specifically, at the western corner of Canal Street and the bridge connecting Canal Street and Island Street) very near the confluence of a pedestrian walkway, roadway, bridge, and traffic control signal support anchor. Licensee did not address this sinkhole (it was the Massachusetts Department of Transportation (“MassDOT”) that eventually addressed this particular incident), and Appendix B includes examples of other sinkholes that have occurred. Upon information and belief, sinkholes appears to be a recurring problem.

Water Pollution: Licensee has failed to prevent, and also to take reasonable measures to remedy, water pollution and refuse disposal in the North and South Canals. For example, large quantities of solid waste and refuse including, but not limited to, household trash, food packaging, bottles, cans, sporting equipment, lumber, are present in the North Canal and South

Canals. Such waste and refuse contribute to a condition of water pollution in Canal waters and obstruct the waterway.¹⁶

Such waste and refuse are evident from the banks of both the North and South Canals. Examples are pictured in Appendix B. For example, a notable collection point for waste and refuse are the Lower Locks of the North Canal, a wooden and steel structure that includes a walkway/bridge, a series of gates that can be raised or lowered to change the water level in the canal, and a spillway. Rather than outfitting this structure with a trash collecting boom or other device that can be periodically cleared and maintained, Licensee simply allows trash to accumulate.

Trash thus accumulates in the Canals but Licensee has never undertaken a complete, professional cleanup (although it has proven itself capable of doing so, by cleaning up the portion near Ferrous Park just before officials came to attend the park's 2016 opening ceremony, *see* <http://www.mass.gov/eea/pr-2016/opening-of-ferrous-park-in-lawrence.html>). During a volunteer cleanup event in October 2004, volunteers removed approximately ten tons of accumulated trash and debris from a six hundred foot long section of the North Canal bed. Another volunteer cleanup event in October 2011 was confined to a limited area. Volunteers removed further large items, including discarded shopping carts and bicycles. Appendix B includes pictures of the trash and debris that volunteers have removed.

¹⁶ According to the Clean Water Act, “[t]he term ‘pollutant’ means . . . solid waste . . . , garbage . . . , municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). *See also The Clean Water Act and Trash Free Waters*, United States EPA, <https://www.epa.gov/trash-free-waters/clean-water-act-and-trash-free-waters> (“Trash is a pollutant. Trash in waters can prevent beneficial uses, degrade habitats and harm wildlife, and may endanger people's health. Although many jurisdictions may not have recognized trash as a traditional pollutant like mercury or sediment, water bodies around the U.S. have been listed as being impaired for trash and/or floatables and debris.”)

2. Licensee Is Violating the Article 20 Requirement To “Clear And Keep Clear” and “Dispose Of All Unused . . . Brush, Refuse, Or Other Material Unnecessary For The Purpose Of The Project.”

Article 20 of the license requires the Licensee to “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 alternation [*sic*] of the project works.” Licensee, however, has allowed abandoned structures and unused material unnecessary for the Project to remain in Canal waters in various locations. For example, as depicted in Exhibit B, deteriorating pylons of a former wooden pier remain in and around the North Canal.

Licensee has also allowed unruly vegetation to sprout on the dewatered banks of the North and South Canals, notwithstanding Licensee’s responsibility to “clear and keep clear” brush that is unnecessary to the production of hydroelectric power. And the trash that litters the Canals, their banks, and the adjacent project lands violates the affirmative obligation to “clear and keep clear . . . and . . . dispose of all . . . refuse” and other obstructions. For example, trees, brush, and other vegetation are growing through, and protruding from, canal walls in numerous locations. In addition, these materials severely damage the Canal walls as they grow. Examples of such conditions at both the North and South Canals are depicted in Appendix B.

Finally, Article 20 requires Licensee to undertake “all clearing of the lands and disposal of the unnecessary materials . . . in accordance with appropriate Federal, State, and local statutes and regulations,” but Licensee is in violation of several such regulations. These include, but are not limited to:

1. *City of Lawrence Ordinance 8.08.200(A)*: “[T]he owner or person in control of any premises within the city shall at all times maintain said premises, sidewalks, alleys, street, and places adjoining the premises free of trash, refuse, rubbish or debris.”
2. *City of Lawrence Ordinance 8.08.220(A)*: Unlawful for “the owner or any other person to deposit or allow to be deposited any construction or building material or debris...upon any private property or upon any public way, street, sidewalk, alley or other public property.”
3. *City of Lawrence Ordinance 9.08.030*: “No person shall store in open, nor shall the owner or person in control of any premises within the city permit to be stored in open, any dismantled, partially dismantled, inoperative, wrecked, junked truck or motor vehicle of any kind, or any worn, cast-off or discarded material ready for destruction or collected for storage or conversion to some use.” *See, e.g.,* Exhibit C-32.
4. *City of Lawrence Ordinance 12.04.060(c)*: “[A]ny person dumping snow at any public location which has not been designated as a dumping area by the director of the department of public works shall be punished.” On information and belief, unauthorized snow dumping in North and South Canals and on Project lands has occurred on a few occasions.
5. *City of Lawrence Ordinance 8.20.70(D) and (G)*: “Weeds, grass and shrubs shall be kept trimmed and from becoming overgrown” and “All yards, courts, or lots shall be kept free of accumulations of trash, garbage, waste, rubbish, refuse, junk, and other noxious or offensive materials or substances which may cause a fire hazard or may act as a breeding place for vermin or insects.”

6. *Code of Massachusetts Regulations, 310 C.M.R. 19.014(2)*: “No person shall dispose or contract for the disposal of solid waste at any place in Massachusetts which has not been approved by the Department.”

For the reasons set forth above, Licensee has failed to satisfy these regulations.

3. Licensee Is Violating the Article 43 Requirement To “Protect[] And Enhance[E] The Scenic, Recreational, And Other Environmental Values Of The Project.”

Article 43¹⁷ identifies the substantial “interest of protecting and enhancing the scenic, recreational, and other environmental values of the project,” and recognizes the importance of “shoreline aesthetic values,” maintenance “in a good state of repair,” and compliance with “State and local health and safety regulations.” Licensee, however, has negatively impacted the scenic and environmental values associated with the North and South Canals by failing to keep the waters, embankments, and access roads aesthetically pleasing, in good repair, and in accord with local ordinances.

Shoreline Aesthetic Values: Vegetation along the banks of the North and South Canals and on adjacent Project lands is unsightly and overgrown. Examples are shown in Appendix B. The Canal waters also are not maintained with regard to aesthetic values. Instead, as described above, Licensee has substantially lowered Canal water levels and allowed litter to accumulate unabated.

Good State of Repair: As discussed above, the condition of the banks, walls, and related infrastructure of the North and South Canals is unsightly and structurally poor, likely resulting in a lack of structural support of adjacent public infrastructure and private buildings and in several

¹⁷ Current Article No. 43 replaced prior Article No. 35 with standard language. *See* <https://tinyurl.com/138a4op>.

places causing water damage through seepage into abutting properties. Likewise, as discussed, most of the head gates, penstocks, and related infrastructure within the Licensee's control are in moderate to extreme disrepair. Pictures are included within Appendix B.

C. Licensee Has Failed To Abide By the Article 18 Requirement To Reasonably “Allow The Public Free Access” To “Project Waters And Adjacent Public Lands.”

Standard Article 18 requires Licensee to “allow the public free access, to a reasonable extent, to project waters and adjacent public 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” as long as “consistent with proper operation of the project” and protective of “life, health, and property.” Licensee, however, has not provided such access to large portions of the Project area, going so far as to fence off locations on and adjacent to Project lands that present ready opportunities for public access and outdoor recreational activities.

There are many locations on and adjacent to public project lands that present ready opportunities for public access and outdoor recreational activities but the public is not provided any or only insufficient access. For example:

1. Behind the Carriage House, there is a triangle of vacant land at the tip of the island.

This land is currently overgrown and fenced off but could be a magnificent area for picnicking and passive recreation, with views across the Dam and the Merrimack River.

2. Lawrence residents and visitors currently utilize the North Canal for recreational fishing. While anglers can make use of certain bridges over the canal, Licensee has failed to safely and clearly make other suitable Project lands available for fishing

purposes, including, but not limited to, areas close to the Lower Locks and along the Merrimack River.

For areas where the public is allowed the required access, Licensee has failed to provide adequate safety railing to protect the public from falls into the water, posing an unacceptable and unnecessary risk to public safety. *Cf.* 18 C.F.R. §12.42 (requiring that “licensee must install, operate, and maintain any . . . barriers . . . that may reasonably be necessary or desirable . . . to protect the public in the use of project land”). For example:

1. The walkway crossing the Lower Locks lacks any canal-facing railing to protect pedestrians from falling into the Canal, which is ridden with trash and refuse at this location.
2. Throughout the North Canal, there are numerous locations where railings intended to protect pedestrians and guardrails intended to prevent errant vehicles from falling into the Canal are no longer sufficiently protecting the public because they are in disrepair, structurally unsound, or missing. In some instances these barriers do not comply with the minimum installation height required by the MassDOT Construction Standard Details.¹⁸ Examples are included in Exhibit B.
3. On the South Canal, as well, there are numerous locations where bridge railings intended to protect pedestrians from falling into the Canal are no longer protecting the public because the railings are not present, in disrepair, or structurally unsound. Examples are also included in Exhibit B.

¹⁸ *See* <http://www.massdot.state.ma.us/Portals/8/docs/construction/ConstStandardDetails2012March.pdf> (specifying a minimum of 27¾ inches).

D. Licensee Has Violated Article 17 and Exhibit R of the License Application by Failing to Provide Reasonable Recreational Facilities.

Standard Article 17 requires Licensee to “construct, maintain, and operate ... reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, considering the needs of the physically handicapped.” Licensee has failed to comply with Article 17 of the license by failing to construct, maintain, and operate reasonable recreational facilities. Licensee has failed to construct or provide any access roads, wharves, launching ramps, beaches, picnic/camping areas, public ways, sanitary facilities, or utilities to recreational facilities. Nor has Licensee sufficiently considered the needs of the physically handicapped.

Moreover, Licensee has demonstrated a repeated failure to comply with its Recreation Plan obligations. After the New York Region raised Licensee’s failure to implement the requirements of the original Recreation Plan that it had submitted with its license application, Licensee sought and obtained a license amendment that considerably contracted the commitments Licensee would undertake in its recreation plan. *See*

<https://tinyurl.com/md5s2pw>.¹⁹ Having narrowed the range of recreational amenities available to the public, it is all the more important that Licensee meet those remaining reduced commitments, but Licensee has not.

¹⁹ Discussed below is Licensee’s noncompliance with the obligation of its “Final Revised Recreation Plan,” to distinguish between the present version and earlier versions. However, Licensee never fully complied with earlier versions. For example, the FERC New York Regional Office addressed Licensee’s non-compliance with the original recreation plan in an August 7, 1991 letter that detailed several significant examples of ongoing non-compliance. Licensee had not constructed a picnic area or comfort station, as required, nor had they provided access to the North Canal Gatehouse. *See* <https://tinyurl.com/ycuww6b4>. Additionally, Licensee never provided a parking area adjacent to the powerhouse facility to serve visitors, constructed a new walkway, or provided tours of the North Canal gatehouse area.

Licensee's Final Recreation Plan obligates it to renovate the North Canal Carriage House ("Carriage House"), provide a parking area, sanitary facilities, trash receptacles, hand railings, public ways, public interpretive programs and signs, a multi-media slide presentation, conduct tours of the Carriage House, and paint markings and provide signage to direct people to the Carriage House. Licensee has failed, and is continuing to fail, to provide these public recreational amenities in any meaningful fashion. For example:

1. Licensee has not provided a parking area to the public.²⁰
2. Licensee has not constructed or provided any sanitary facilities anywhere in the Project area.
3. Licensee has not constructed or maintained any public ways.
4. Although the Carriage House was eventually renovated, Licensee did not open it to the public until several years after the Final Revised Recreation Plan was approved. Even then, Licensee has not made available to the public in any meaningful fashion. As described below, Licensee has removed all signage from the Carriage House, does not keep it staffed during normal business hours, fails to display its very limited opening hours, does not inform the public that it is available only with a prior appointment, and fails to disclose that it can be visited only after arranging for a private tour.

²⁰ In the Final Revised Recreation Plan, Licensee indicated that it planned only to provide on-site handicapped parking. To satisfy the remaining parking requirements, Licensee indicated that it would arrange for visitor parking for both private and public vehicles on land owned by the Commonwealth of Massachusetts. The proposed plan would utilize the cul-de-sac off of Broadway on the Southerly side of the Merrimack River. Licensee indicated that it would obtain an easement from the Department of Environmental Protection to allow it to provide pavement markings and signage to instruct the public as to parking, the route to the primary exhibit area and points of interest along the way. See <https://tinyurl.com/y7rtwarr>. Upon information and belief, an easement was never obtained and pavement makings and signage were never installed.

5. Because of the lack of signage or other advertisement, few members of the public are aware that the Carriage House exists as a publicly available historical amenity. For example, there is no exterior signage that refers to the building as historic, as a visitor center, or as housing public education exhibits. To be sure, Licensee had affixed signage on the front of the Carriage House prior to the inspection documented in the New York Regional Office's Environmental and Public Use Inspection Report dated August 23, 2000 – that report clearly shows signage on the front of the Carriage House, including a “Welcome” sign. *See* <https://tinyurl.com/mmjsymd>. However, Licensee removed all such signage after the 2000 inspection, as documented by picture of the Carriage House attached to the New York Regional Office's Environmental Inspection Report dated February 28, 2007. *See* <https://tinyurl.com/mmbm5yc>. The one sign now in the vicinity of the Carriage House (on a chain link fence at the foot of a driveway) is distinctly inhospitable: it states “Authorized Vehicles Only,” warning visitors away and suggesting that there is no public amenity beyond.
6. Likewise, Licensee provides no signage or other advertising to inform the public of the availability of Carriage House tours (or any other kind of publicly available tour). Although inadequate, there had previously been a sign at the powerhouse – inadequate because it referenced the availability of tours but made no mention whatsoever of the Carriage House (*see* picture included in Appendix B). But even that inadequate sign was removed and replaced with a sign in 2017 that identifies the project owner but makes no reference to any kind of tour at all.

7. Licensee has not heated the Carriage House, and therefore it has never been open or available to the public on any basis during the winter months. Only during one winter (in or around 1998) was the Carriage House exhibit temporarily moved to the Lawrence Heritage State Park.
8. Licensee has never sufficiently staffed the Carriage House, and never kept it staffed during normal business hours, despite Licensee's commitment in a March 8, 1995 letter to the FERC in support of its proposal to amend Exhibit R that "The Carriage House will be staffed during normal business hours." (<https://tinyurl.com/ydbwee38>).
9. Licensee has not properly maintained the Carriage House exhibit, upon information and belief, which as a result have suffered a loss of functionality (e.g., the interactive computer program no longer works).
10. Licensee has installed no markings or signage to direct people to the Carriage House. Nor has Licensee installed the "Static and interactive exhibits (educational as well as entertaining) . . . along the route to it," despite Licensee's commitment in its March 8, 1995 letter to the FERC in support of its proposal to amend Exhibit R. (<https://tinyurl.com/ydbwee38>).
11. Licensee has not installed trash receptacles outside the Carriage House.

Licensee is thus in violation of its current recreation plan requirements. However, in the view of Complainant the City of Lawrence, the most appropriate relief is not confined to an order that Licensee now comply with the 1995 plan. That is because, in the ensuing 22 years, the recreational needs of the area have increased significantly. The population of the City of Lawrence has grown over fifteen percent since 1995, from less than 69,000 to 80,000. In addition, in 2005, a new Lawrence train station was built in the City of Lawrence in the vicinity

of the historic South Canal area. That has both substantially increased the presence of residents, workers, and the public in general in the Project area, opening it up considerably for visits from more people. Moreover, since 1995, 545 housing units have been added to the North Canal area alone. Another 304 residential units are currently under construction, with another 452 units currently in pre-development planning. Likewise, 199 new residential units have been added to the South Canal area since the 1995 recreational plan was developed, with another 56 currently under construction.

In sum, the 1995 Final Revised Recreation Plan has not been implemented, but even if it had been, it is the view of Complainant the City of Lawrence that the 1995 Final Revised Recreation Plan is now insufficient to meet the requirement of Article 17. The Commission should therefore order compliance with the 1995, and Complainant the City of Lawrence is also requesting that the commission exercise the right it reserved to require additions to the recreation plan to meet the needs of the public. Reasonable additional recreational facilities in the Project area would include the following:

1. Parking facilities, including handicapped parking, at or near the Carriage House.
2. Installation of appropriate signage and sidewalk markings at and with regard to the Carriage House.
3. Repairing, updating, upgrading, and adding a heating system to the Carriage House and exhibit.
4. Opening up the Carriage House to the public around the year without the need for an appointment, and advertise the availability of tours.
5. Opening up to the public and maintaining the triangle of vacant land behind the Carriage House.

6. Maintenance of the towpath on the southern side of the North Canal.
7. Enhanced maintenance of the greenway and pedestrian walkway along the northern side of the North Canal.
8. Upgrading the existing bridge linking the park at old Canal Street Bridge over the Spicket River to the Ferrous Site Park (including landscaping and seating at the Lower Locks of North Canal).
9. Installing picnic tables and trash receptacles along the northern side of the North Canal, at the towpath, at the Lower Locks, and at the Carriage House.
10. Providing sanitary flush-style facilities at various locations of the Project area, including at the Carriage House.
11. Landscaping upgrades to improve accessibility of the Great Stone Dam viewing area under the rail bridge next to the O'Leary Bridge.
12. Installing and maintaining a multi-use recreational path connecting the South and North Canals over the rail bridge and multi-use recreational paths along the northern and southern sides of the Merrimack River below the dam.
13. Ensuring that all recreational facilities in the Project area are handicapped accessible and consistently maintained.

V. RELIEF

Complainants hereby respectfully request that the Commission issue an order requiring Licensee to comply with the above-described terms and conditions of its license and issue a civil penalty of \$21,916 for each day each above-described violation of its license has and continues to persist.²¹ In particular, in addition to the civil penalty, Complainants respectfully request that

²¹ 16 U.S.C. § 823b(a) and (c) and 18 C.F.R. § 385.1602(b)

the Commission include in its order requirements that the Licensee provide the following relief, as well as any additional relief the Commission may deem necessary:

1. Fund a complete structural and aesthetic evaluation of the entire length of the North and South Canals and adjacent areas, conducted by independent consultants of Complainants' choosing with input from Enel;
2. Repair or replace all canal walls, head gates, penstock areas, and associated infrastructure that are in a state of disrepair;
3. Return the North and South Canals to their historic water and flow levels, after appropriate repair of water retaining structures;
4. Conduct a comprehensive and professional cleanup of the Lower Locks area, the canal beds of the North and South Canals, and the areas adjacent thereto;
5. Conduct a comprehensive and professional landscape project along the North and South Canals including, but not limited to, the removal of excess vegetation along the Canal wall, selection of erosion control plantings, and incorporation of native, low maintenance plantings, and develop, fund, and implement an ongoing vegetation maintenance plan at the Licensee's sole expense and subject to Commission approval and enforcement.
6. Develop, fund, and implement an ongoing maintenance plan at the Licensee's sole expense and subject to Commission approval and enforcement addressing all North and South Canal infrastructure, waters, and adjacent Project lands, including all appropriate preventative measures, infrastructure, and inspections to ensure full compliance with the terms of the FERC license, City of Lawrence Ordinances, Massachusetts laws and regulations, and federal laws and regulations;

7. Open up for public use the triangle of vacant land behind the Carriage House, the unused land on 454 North Canal Street, and the Lower Locks;
8. Make areas close to the Lower Locks and along the Merrimack River safely and clearly available for fishing purposes;
9. Install adequate safety railings on the walkway crossing the Lower Locks, as well as repair the various safety railings and guard rails that have fallen into disrepair along both the North and South Canals;
10. Require additions to the Exhibit R precreation plan to meet the additional recreational needs of the public, as Complainant the City of Lawrence requests in Section IV.D above.²²

VI. RESOLUTION

Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), Complainants request the appointment of a settlement judge. The issues presented in this complaint are not pending in any other existing Commission proceeding or in any other forum in which the Complainants are a party.

Pursuant to Rule 206(b)(6), Complainants state that the issues presented are not pending in an existing Commission proceedings or a proceeding in any other forum in which the Complainants are a party.

²² To implement the request of Complainant the City of Lawrence, the Commission should also order that (a) community listening meetings be convened, with the assistance of an independent trained facilitator, to ascertain the exact extent of the need for additional improvements and recreational access to the North and South Canals, with such meetings being open to the public and advertised in local newspapers at least thirty days in advance, and (b) Licensee fund and implement all further reasonable improvements recommended through the community listening meetings described above.

Pursuant to Rule 206(b)(9), Complainants state that the Enforcement Hotline, Dispute Resolution Service and tariff-based dispute resolution services were not used, but informal dispute resolution procedures in the form of negotiations and other discussions were employed in an effort to resolve the present dispute. No process has been agreed upon for resolving the Complaint. Complainants believe that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the dispute. Therefore, as an alternative to Commission enforcement, Complainants request Commissioner-supervised ADR, or that the Commission appoint a settlement judge or other ADR official to aid in their discussions with Licensee towards a negotiated resolution.

Pursuant to Rule 206(b)(11), Complainants state that they know no reason why the standard processes will not be adequate for expeditiously resolving this Complaint.

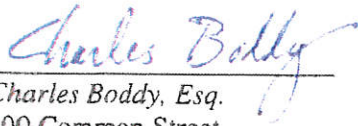
VII. SERVICE AND NOTICE

In accordance with Rule 206(c), the Complainants have served a copy of this complaint upon the Licensee simultaneously with its filing.

VIII. CONCLUSION

For the foregoing reasons, Complainants respectfully request that the Commission: (1) issue a civil penalty of \$21,916 for each day each violation of its license has and continues to persist, (2) order Licensee to comply with the terms and conditions of its FERC license, including the specific relief as specified in Section V above, and (3) order any additional relief deemed appropriate.

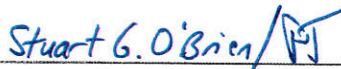
Respectfully submitted,



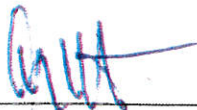
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Dated: June 7, 2017

CERTIFICATE OF SERVICE

I, Phelps Turner, hereby certify that on June 7, 2017 this document, with attached appendices, was served on the respondent licensee Essex Company, LLC, a subsidiary of Enel Green Power S.p.A., which operates in the United States through its Enel Green Power North America, Inc. subsidiary, by electronic mail to the recipients listed below, pursuant to Rules 206(c) and 2010 of the Commission's Rules of Practice and Procedure.

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