UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York State Electric and Gas Corporation Project No. 2835-026-NY

NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT

(April 9, 2008)

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47879), the Office of Energy Projects has reviewed the proposed Whitewater Access Plan for the Rainbow Falls Project, located on the Ausable River in the Clinton and Essex Counties, New York, and has prepared an Environmental Assessment (EA).

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's website at http://www.ferc.gov using the "eLibrary" link. Enter the docket number (P-2835) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Any comments should be filed by May 27, 2008, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1-A, Washington, D.C. 20426. Please reference the project name and project number (P-2835) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "eFiling" link. For further information, contact Gina Krump at (202) 502-6704.

Kimberly D. Bose,
Secretary.

ENVIRONMENTAL ASSESSMENT
WHITEWATER ACCESS PLAN

Rainbow Falls Project
FERC Project No. 2835-026

New York

Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance
888 First Street NE
Washington, D.C. 20426

April 2008

ENVIRONMENTAL ASSESSMENT

FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF ENERGY PROJECTS
DIVISION OF HYDROPOWER ADMINISTRATION AND COMPLIANCE

Project Name: Rainbow Falls Project
(FERC Project No. 2835-026)

1.0 APPLICATION

Application:	Whitewater Access Plan
Date Filed:	May 23, 2007
Applicant:	New York State Electric and Gas Corporation
Water body:	Ausable River
Town:	Ausable Chasm
County and State:	Clinton and Essex Counties, New York

2.0 PURPOSE AND NEED FOR ACTION

On August 18, 2004, the Commission issued a license to New York State Electric and Gas Corporation (NYSEG or licensee), for the Rainbow Falls Project.[1] The Rainbow Falls Project is a run-of-river project located immediately upstream of the point where the Ausable River flows into Ausable Chasm; a narrow, steep-walled chasm about two miles long. Immediately downstream from the project's powerhouse and outside the project boundary, the river flows over approximately a dozen falls or rapids within the upper portion of the chasm, providing a half-mile of Class IV/V whitewater boating run. The Ausable Chasm Company (ACC) is a seasonal recreation business that provides Class II to III whitewater boating in the middle and lower portions of the chasm. The project has never provided public access to Ausable Chasm. During the relicensing proceeding, the feasibility of whitewater boating in upper Ausable Chasm and whether access for such boating should provided by the project was a point of contention. The Commission determined that whitewater boating in the upper chasm is feasible, but required additional analysis of the issue.

Article 414 required NYSEG to prepare a study plan for further evaluation of the potential for whitewater boating access at the project and evaluate the contentious issues raised during relicensing. On June 24, 2005, the Commission

[1] See Order Issuing New License, issued August 18, 2004 (108 FERC ¶ 62,168) and Order on Rehearing, issued December 22, 2004 (109 FERC ¶ 61,360).

approved the study plan; which requires, among other things, the licensee to file a report on the results of the study, including: (1) an estimate of the potential demand for whitewater boating in the upper chasm in terms of annual visits; (2) a proposal and cost estimate for providing and maintaining access to the upper chasm for whitewater boating that minimizes or avoids potential conflicts with other chasm users; and (3) a proposal to limit, continue, or not allow whitewater access at the project based on the results of the study.

3.0 DESCRIPTION OF STUDY PLAN

The purpose of the study plan was to determine whether to allow whitewater access at the project based on a range of flow levels, the anticipated level of demand, and the effects of the resource on other recreation uses. The licensee's whitewater access plan represents the results of the study and its' proposal for providing public access to the Ausable Chasm. The licensee prepared the plan and study results in consultation with appropriate agencies and entities. The plan entails descriptions of the study area, objectives, methodology, schedule, and reporting formats, and an analysis of proposed and alternative options to provide access. NYSEG scheduled five whitewater study events on June 25, July 10, July 24, September 24, and October 22, 2005 in an effort to capture a range of naturally occurring flows, including one study event after ACC's rafting season and one study event during the peak salmon fishing season. Whitewater boaters who participated in these events are as follows:

Table 1. Summary of Study Events

Date	Flow - Start/End (cfs)	Number of Participants
June 25	576 - 570	28
July 10	2,820 - 2520	0
July 24	286	14
September 24	173	7
October 22	1,020 - 982	0

The participants rated the difficulty of each rapid, as well as, the entire study area. The study area entails the 3.4 mile distance between the project's powerhouse (put-in site) and the take-out site at the Route 9 Bridge, including the 2-mile long chasm (See Figure 1). The participants rated the study area as a Class III to Class IV+ run with flows from 173 cfs to 576 cfs. The boaters indicated that the put-in and take-out locations are adequate. The participants determined the whitewater run to be navigable at the study events flows. Participants also rated the overall whitewater challenge and the overall whitewater experience for all

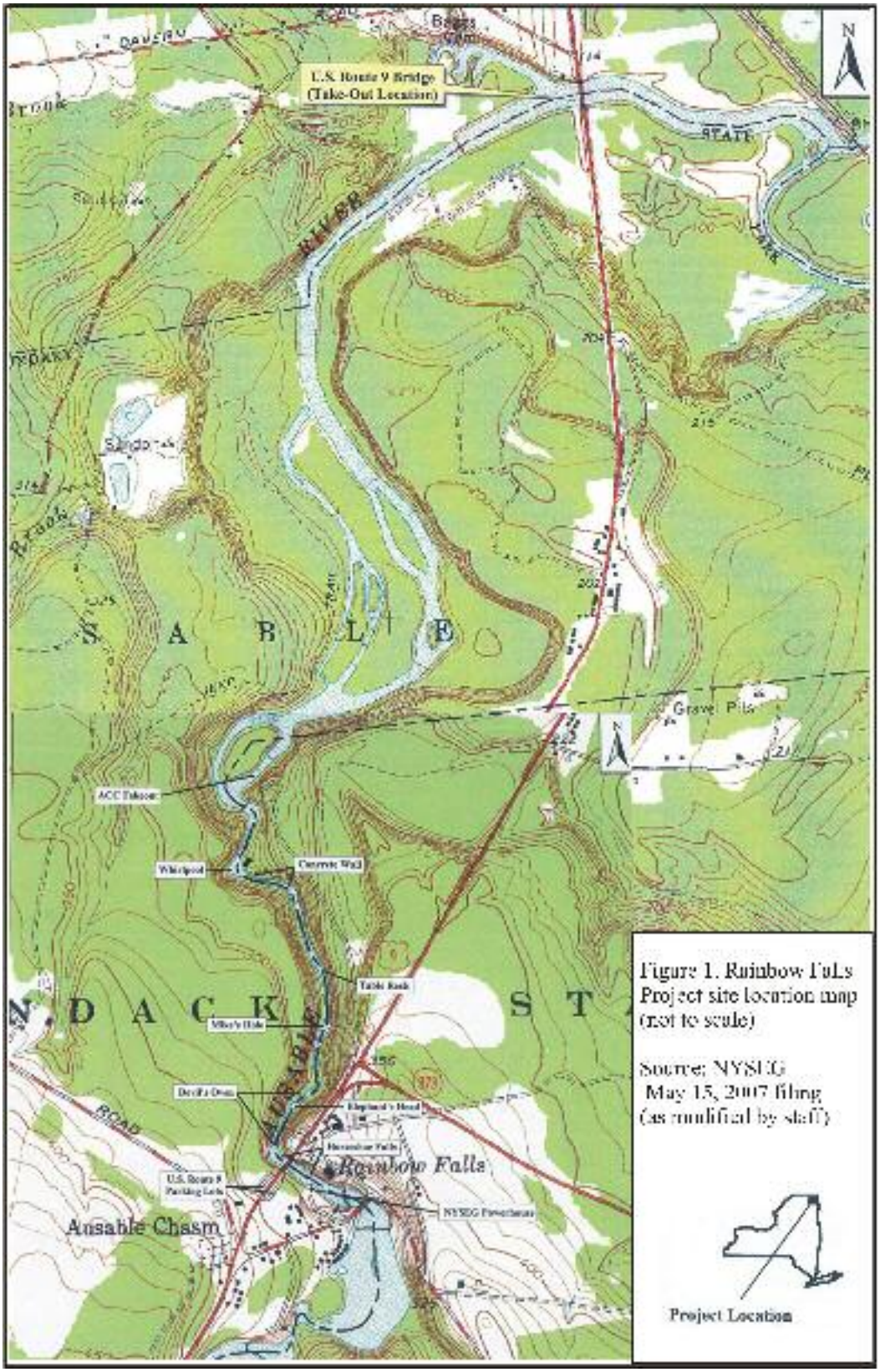

Figure 1 – Rainbow Falls Project Map showing key locations along the Ausable River.

study events as slightly to moderately acceptable, respectively.[2] The licensee's proposed and alternative actions for whitewater access are discussed in the following sections.

4.0 PROPOSED ACTION AND ALTERNATIVES

The licensee identified seven options for whitewater access at the project, based on the study results and input from the consulted parties and study participants. These options propose whitewater access to varying degrees and varying capital and maintenance costs, and range from Option 1, the proposed action, which prohibits all access, to Option 7 which allows year-round unlimited access. These options are discussed further below.

4.1 Proposed Action (Option 1)

The licensee proposes to continue to prohibit public access at the project for whitewater boating. Under this scenario, no new infrastructure would need to be installed because the fencing systems are functional and provide adequate site security, and no additional staffing would be needed to operate the access point. As a result, there would be no additional capital, operation, or maintenance costs. NYSEG states that its proposal is based on the relatively low demand for whitewater boating in the area, high initial and long-term recurring costs required for providing access to the river, liability concerns, and safety concerns for boaters and other river users in the study area.

4.2 Action Alternatives (Options 2-7)

Options 2 through 7 provide for varying degrees of whitewater access at the project. These options are listed in the following table.

[2] This rating only includes the June 25, July 24, and September 24 study events. The July 10 and October 22 events did not have any participants.

Table 2. Action Alternatives for Whitewater Access [3]

Option	Access Period	Expected Natural Flow (cfs)	Capital Cost	Annual Maintenance Cost	Comments
2	July 1 - September 30	<500	$85,000	$10,000	Provides 92 days of access per year
3	June 1 - October 31	<950	$85,000	$12,900	Provide 122 days of access per year
4	Every weekend; 2 sessions: **a)** Last weekend in May to last weekend in June; **b)** Second weekend in September to second weekend in October	<950	$85,000	$7,850	Provide 10 weekends of access per year; Flow is high end of optimal flow
5	Three weekend events each year – 1 each spring, summer, fall	400 - 950	$61,000	$2,750	Provide 3 weekends of access per year; Events would fall within period of optimal flow
6	May 1 - October 31	500 - 1,375	$85,000	$17,100	Provide 184 days of access per year; Flows are high during May
7	365 days a year	282 - 2,511	$85,000	$28,150	Provide 365 days of access per year; Flows are high from March - May

[3] In response to the Commission staff's April 19, 2007 letter, the licensee included in its plan, an interim measure to provide whitewater access at the project during the staff's review of the plan. The licensee identified an interim access proposal similar to Option 4, with minor modifications to the site, and the right to prohibit interim access for public safety and security reasons. At this time, no whitewater access is provided at the site.

5.0 CONSULTATION AND COMMENTS

5.1 Consultation on Proposed Plan

Prior to filing the application, NYSEG consulted with the Adirondack Mountain Club (ADK), American Whitewater (AW), ACC, New York State Department of Environmental Conservation (NYDEC), New York State Council and Lake Champlain Chapter of Trout Unlimited (TU), and U.S. Fish and Wildlife Service (FWS).

By letter dated April 13, 2007, the FWS states that the plan adequately addresses the issues related to allowing whitewater access to the project. Additionally, the FWS states it has no position regarding whether whitewater boating should be allowed since it does not impact fish or wildlife resources.

By letter dated April 13, 2007, AW provided comments on the methodology of the study, the licensee's interpretation of the study results, and the suitability of the various access options identified in the plan. In general, AW strongly disagrees with NYSEG's study result interpretations and its proposal to continue to prohibit whitewater boating access at the project. AW contends the licensee's proposal is not justified and states that the study results support unlimited whitewater boating access at the project. AW also requests suitable parking spaces be provided at the project powerhouse. The licensee's final plan filed with the Commission includes its responses to AW's comments. As appropriate, these comments and the licensee's responses are discussed further in the environmental impacts section of this document.

On May 21, 2007, ACC offered comments on the plan and the potential impacts if access is granted. ACC states that it fully supports the study and recommends not allowing access at the project. In general ACC has concerns regarding safety, economic impacts, trespassing, carrying capacity, actual demand, and the need for year-round access.

5.2 Public Notice

On June 15, 2007, the Commission issued a public notice soliciting comments, motions to intervene and protests for the whitewater access plan with a deadline of July 15, 2007. On August 16, 2007, the Commission extended the comment date to September 31, 2007. The Commission received over 100 comment letters from individuals regarding whitewater access at the project. The vast majority of comments received were in support of unrestricted whitewater access at the project.

On July 9, 2007, TU submitted comments to the Commission regarding the plan. TU states that spawning sites in the waters of the Ausable River below the dam are vital to the restoration and protection of Atlantic salmon, which typically spawn in the months of October and November within the watershed, and that Option 2 would avoid conflict with the salmon. TU states that other options could work if they do not include access during the months of October and November, and that Option 7 is totally unrealistic due to winter weather conditions and safety on the river. TU also states that the safety related comments of the licensee, ACC, and local government officials must be given consideration. Finally, TU states that most of the riparian area that kayakers would have to traverse is privately owned and, regardless of which option is chosen, private land owners have land rights and are entitled to enforce them.

By letter dated July 6 and July 21, 2007, ADK responded to the study plan stating that it does not think that the study results leads to the licensee's recommendation of restricting access. ADK has concerns regarding the licensee's interpretation of the study results regarding flow, demand, and safety. ADK states that the Ausable River is navigable and the public has a right to access it for recreational purposes.

By letter dated August 20, 2007, the Essex County Fish and Game League (League) states that allowing access at the project would put unnecessary risk on its volunteer rescue workers during an emergency event.

On June 29, July 24, and July 30, 2007, AW, TU, and the League submitted motions to intervene to be party to the proceeding.

6.0 ENVIRONMENTAL ANALYSIS

In this section we describe the affected environment and discuss the environmental and recreational effects of providing whitewater access at the project under the proposed action and action alternatives.

6.1 Affected Environment

6.1.1 General Project Description

The Rainbow Falls Project is located on the Ausable River in the townships of Ausable and Chesterfield, in Clinton and Essex Counties, New York. The City of Burlington, Vermont, lies about 20 miles southeast of the project. The project is located 5.5 miles upstream of Lake Champlain and in the northeastern corner of Adirondack State Park at Rainbow Falls, just upstream of the Ausable Chasm (chasm). The chasm, located 1/3 mile downstream of the falls, is 20 to 50 feet

wide, approximately 150 feet deep, and two miles long. The river, beginning at the project powerhouse, flows over approximately a dozen falls or rapids within the chasm. There is a main road, U.S. Route 9, which crosses over the chasm twice near the powerhouse and near an existing take out point located about 3.4 miles downstream of the powerhouse. A road that crosses the river at the project (Chasm Road) leads to lands downstream owned by ACC, a seasonal recreation business (late May to November) that provides river rafting and a walking tour through the chasm; as well as a variety of other recreational activities.

The Rainbow Falls Project consists of a concrete dam with a 345-foot-long spillway; a reservoir with a surface area of 17 acres at the normal pool elevation of 307.0 feet mean sea level; a 260-foot-long power canal; a rack house containing trash racks, trash rack rake, long sluice and low-level gate; two 400-foot-long, 6-foot-diameter steel penstocks; a powerhouse containing two vertical turbine generator units with a total installed capacity of 2.640 kilowatts (kW); and a 200-foot-long, 2.3-kilovolt (kV) transmission line. The project is remotely operated in a run-of-river mode, with inflows into the reservoir equaling outflows from the powerhouse. There is currently security fencing that separates the gate house and powerhouse from the access road. From the access road there is gravel road that leads to the powerhouse. The project boundary encompasses the impoundment, project works and facilities (See Figure 2).

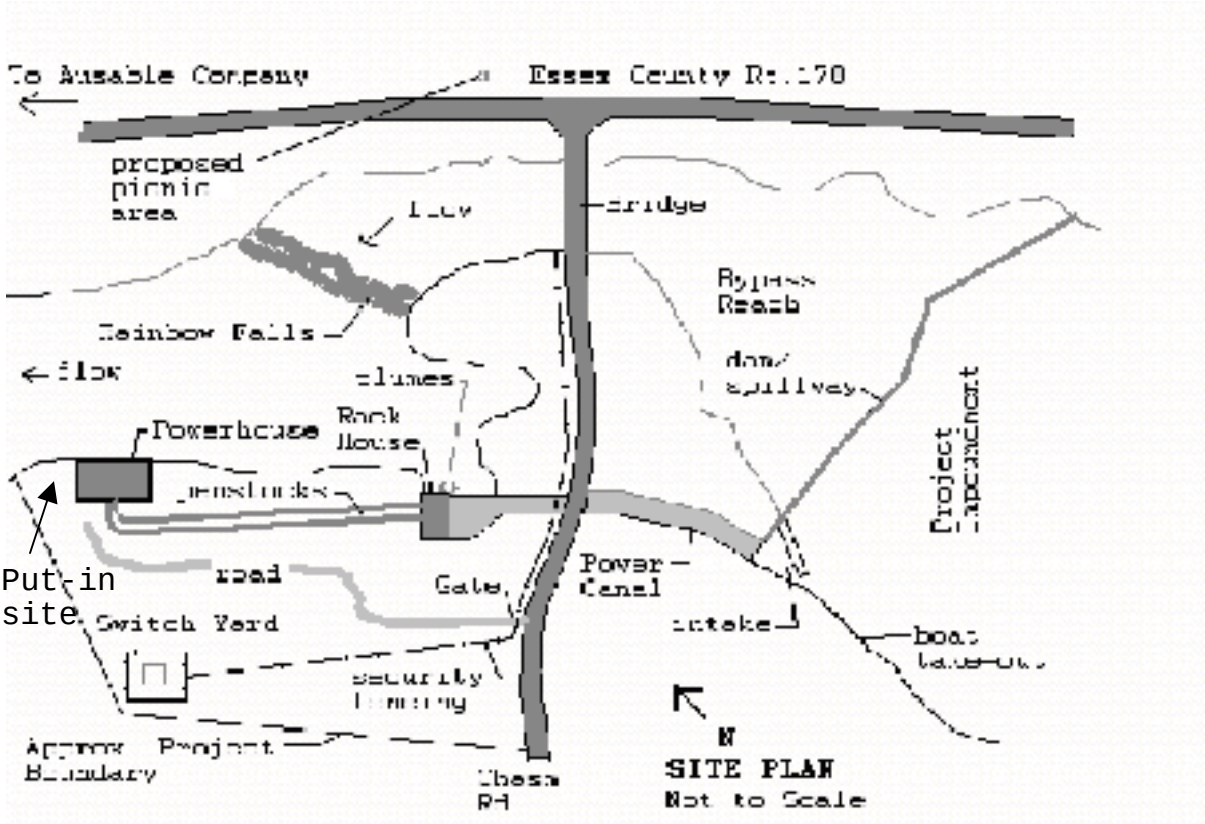

Figure 2 - Rainbow Falls Project Site Plan (Source: NYSEG, as modified by staff).

The project area does not support any unique or significant terrestrial resources. Whitetail deer, small mammals, waterfowl, and various species of songbirds are the most common species that use the project area. No federally-listed rare, threatened or endangered species have been identified at the project. A Phase I Cultural Resources Survey Report, conducted in 2000, indicates that no archaeological sites within the project boundary, including the Rainbow Falls plant, are eligible for listing in the National Register of Historic Places.

The fishery below the project is classified as a warm/coolwater fishery, consisting primarily of species from the minnow and sunfish families. The river can support a seasonal coldwater fishery and rearing habitat for trout and salmon and reaches downstream of the project are heavily fished and managed by the NYDEC as trout and salmon fisheries. No fishing is allowed at the project tailrace or in the chasm downstream of the tailrace because of the limited project lands, steep topography, and private access restrictions by ACC, who owns lands on both sides of the chasm downstream of the powerhouse.

The total drainage area at the project is 502 square miles. Water quality in the project is considered good. The average annual flow of the Ausable River at the project is approximately 350 cfs; the 90% exceedance flow is approximately 150 cfs.[4] Monthly average flows peak in April, and are lowest in August. For the month of August, the 95% exceedance flow is approximately 115 cfs. The hydraulic capacity of the two turbine generators is 412 cfs (206 cfs per unit); the minimum flow needed for generation is about 60 cfs. The USGS records indicate that a maximum flood on record occurred on November 9, 1996. The total calculated flow was 37,000 cfs 15 miles upstream of the project area. The flood was contained within the spillway abutment at the dam.

6.1.2 Recreation Resources

NYSEG does not permit recreational access to project lands other than the impoundment, because of safety and access concerns due to the topography and limited area available. The project boundary is approximately 50 feet downstream of the powerhouse. Other than Rainbow Falls itself there are no whitewater features within the project boundary downstream of the project. The river flows from the powerhouse to about a half-mile downstream (upper chasm), are suitable for Class IV+ whitewater boating. The lower chasm offers a half-mile Class II/III run through ACC property. The ACC run is a 0.25-mile-long guided raft trip. The

[4] Based on data from the U.S. Geological Survey (USGS) gaging station 04275500 at Ausable Forks, NY for the years 1916-1968 and 1991-1997.

lower portion of the reach from the ACC take-out site to the Route 9 bridge take-out site is not considered whitewater.

The ACC owns the riverbanks downstream of the project site and fencing encompassing the property restricts access. The ACC cites liability concerns as the reason not to allow boaters access to the riverbanks due to the steep terrain. Recreation opportunities currently available downstream of the project are limited to ACC facilities during the months of May through November. These facilities include two campgrounds, a foot trail bordering the river, restaurant, gift shop, and raft trips. The ACC's raft trips start about mid-chasm and end at the end of the chasm.

In addition, public access areas located within a few miles of the project include the state-operated Ausable Marsh Wildlife Management Area, Ausable Point Campground, and the Ausable Point State Beach. The Ausable Marsh Wildlife Management Area located at the U.S. Route 9 Bridge, is currently used for access to the river for fishing and kayak touring on Lake Champlain. NYSEG states that there are numerous whitewater boating resources areas within 150 miles of the project area. AW states that the upper chasm provides a high quality whitewater run that could provide rare summer and fall boating opportunities.

The project powerhouse area is about two acres and is enclosed within a locked gate to prevent the public from gaining access to the substation, power canal, rackhouse, penstock, and powerhouse (see Figure 2). An existing informal put-in area lies just below the powerhouse. However, this put-in is not currently being used and was made available only for study participants. NYSEG considers the area dangerous because the put-in is directly adjacent to the plant tailrace area where there is turbulent water.

In addition, the licensee states the lack of available parking near the put-in location is a primary factor that limits the number of whitewater boaters and that any parking allowed on project property could pose a security risk. Most of the consulted parties state that parking should be provided and suggest that limited parking is available on project property. Other parking opportunities in the general vicinity include 50 parking spaces at two Route 9 lots and space for about 12 cars along Old State Road; an access road leading to the project entrance.

6.2 ENVIRONMENTAL IMPACTS

In this section we analyze those resources affected by the proposed action and action alternatives. Given that the project would continue to operate in a run-of-river mode and there will be no changes to the project structures or flows, and no substantive ground-disturbing activities, there would be no impacts on fishery,

terrestrial, or cultural resources as well as threatened and endangered species, and geology and soils. For these reasons, the focus of our analysis is on the effects of the proposed action and action alternatives on recreation resources.

In its August 18, 2004 license order, Commission staff determined that whitewater boating at the project is feasible, but noted that there was some uncertainty regarding the effects of and demand for such whitewater boating access. The purpose of the required study is to provide an evaluation of these issues and assist the Commission in determining whether, or to what extent, boating access in the upper Ausable Chasm should be provided at the project.

The required study evaluated demand, carrying capacity, effects on other users, safety, range of suitable flows, and operation and maintenance costs associated with whitewater boating access to the upper chasm. The study included five whitewater run events. Data was collected through questionnaires by study participants and recreational users, and observations made by the study team. In general, the study participants found access to the river adequate and, on average, the whitewater run in the upper chasm moderately acceptable, based on a variety of boating characteristics.

Based on the study and its findings, licensee identified the proposed action and six action alternatives as possible options for whitewater boating access at the project. The study's evaluation criteria and related issues are further discussed below, as well as, their relationship to the proposed action and action alternatives.

6.2.1 Demand

Based on the study results, the licensee provides a rough estimate of potential demand for whitewater boating in the upper chasm. Demand for whitewater boating was evaluated by defining the potential user group, using information gained from the study participants, and estimating the frequency at which individuals of the group would visit the area. Eighty-nine individuals registered for the study, forty-two individuals participated in one or more study events, and twenty-two participants submitted Overall Evaluation Forms. Based on this information the whitewater boater group was defined as Class IV and V kayakers living an average of 150 miles from the chasm. Based on user group information and responses to the questionnaire, the licensee estimates 100 individuals would use the site about twice a year, resulting in 200 boating visits a year. The licensee notes that several of the participants provided comments generally supporting the estimated demand for boating visits. These participants indicated that given the short run at the site, boaters would not likely travel a great distance to use it, and that the reach may receive more use in the summer months, when it provides boating opportunities not found at that time on other rivers in the

northeast. Overall the licensee states that this use estimate represents a relatively low demand for whitewater boating in the upper chasm.

In its comments, ACC states that the study participation shows little demand for access to the river and that those who did participate appeared unimpressed with the river's features (length of run and flow dependent). ACC also states that if usage were high, it would cause conflicts between river users.

In its comments, AW states that it disagrees with the licensee's conclusion that demand for whitewater boating is low. AW states that NYSEG made many assumptions regarding demand usage and that its demand estimates are without merit. AW states that many rivers near the Ausable Chasm receive significantly more use than was estimated by the licensee and it contends that the study shows demand will be consistent and moderate. AW also suggests low participation in the study was due to the study flows being too high; the study itself being too controlled; and/or participants being limited to one run per study, therefore discouraging participation.

While, the study events did not attract a significant number of participants, the study results indicate that, overall, whitewater boating in the Ausable Chasm reach was acceptable to the participants and would attract whitewater boaters. The participants also noted that the river reach offers a unique experience and future trips would occur if access were open. In addition, the Commission received over 90 individual comment letters in support of allowing whitewater access at the project. These comments all indicate that demand and interest for high quality, high difficulty river runs is strong and recommend the Commission allow public access at the project for boating opportunities. Many of the comments also suggest the Commission allow unlimited access, but in general the summer months were the most preferable. In conclusion, we find there is demand for whitewater boating in the project area.

The proposed action would preclude whitewater boating access at the site and thus would not meet demand for such boating opportunities in the area. Options 2, 4, and 5 would provide access ranging from a few days to three months, but are not likely to meet overall demand for whitewater boating opportunities in the area. Options 3, 6, and 7 provides for whitewater boating access ranging from five months, primarily during summer, to year-round access and would meet most, if not all demand for such access.

6.2.2 Effects on Other Users

The study documented the numbers of recreational users present within the study area during the five scheduled study dates, as well as, interactions between

users and the effects of whitewater boating on these other recreational users. During the five study dates, over 1,200 recreational users visited the area excluding the study participants. The majority of these other recreationists were ACC patrons, including rafters, tubers, and trail walkers, who occupied the middle and lower chasm areas. Additional downstream recreationists included anglers. During the actual study events; afternoons on June 25, July 24, and September 24, 2005; a total of 42 kayakers (study participants), 60 ACC trail walkers, 20 rafters, and 94 tubers were observed. Two anglers were also reported to be present downstream of ACC's take-out site. During the study events, no substantive interaction was recorded between whitewater boaters, rafters, tubers, ACC trail walkers, or anglers. Questionnaires filled out by rafters and tubers indicated that these users were "satisfied" to "very satisfied" with their recreation experience.

In addition, the study evaluated the physical and social carrying capacities of whitewater boating in the upper chasm. The physical carrying capacity considered the number of runs a day and availability of parking in the study area. The social carrying capacity focused on identifying the maximum number of boats and the time interval between boats that could run the river at one time without negatively affecting the quality experience by whitewater boaters and other river users, and considered the responses to the post-run evaluation form. The study determined the physical carrying capacity is approximately 903 paddlers a day and the social carrying capacity is approximately 537 paddlers a day.

The licensee states the reason no conflicts occurred during the study event was due to the coordination efforts during each event, the ACC altering their rafting operation to accommodate the study, and the limited number of participants. The licensee further states that crafts vying for the limited space in the narrow chasm would likely result in bumping and encroachments. Therefore, while no conflicts occurred during the study events, the potential exists for conflicts in the future.

The licensee also identifies specific potential safety issues. During the study events a large number of spectators gathered on ACC trails to observe the whitewater boaters. The licensee suggests that this situation cause congestion along the trails and bridges and could be a possible safety issue for ACC patrons. The licensee also notes that during October 22 study event, in which no whitewater boaters participated, no anglers were observed, despite it coinciding with the approximate peak of salmon fishing season. As such, interactions between whitewater boaters and anglers could not be observed. The licensee states there is a potential for interference between whitewater boaters and anglers during the salmon fishing season (late April to early May and early October to early November), given that a large number of anglers would likely congregate on the river if conditions are favorable. The licensee also states that it is possible that

no conflicts would occur. Further, the licensee states there is a potential for conflict between whitewater boaters and rafters and tubers along a narrow stretch of river at ACC's launching site and take-out site. Specifically, the licensee contends that boaters may interfere with raft and tube launching. Finally, the licensee contends that during peak tourist season overcrowding of the river is potentially harmful to all river users. The licensee concluded that the level of conflict and interaction is directly proportional to the number of river users.

TU states that whitewater boating at the take-out site would adversely impact peak spawning of Atlantic salmon and has the potential to conflict with anglers. TU supports Option 2, which occurs outside the spawning season. However, the FWS states that it does not foresee any impacts on fish and wildlife resources since no specific releases for whitewater boating are proposed. ACC states that allowing whitewater access could be detrimental to their business. ACC contends that negative media coverage due to an accident would result in decreased visitation that would have a negative affect on the company. ACC also states it would have to hire security to prevent trespass by whitewater boaters, which is a financial cost (estimated $200,000/yr.). In addition, ACC states that access would mean congestion and an unwelcome experience for their patrons, as well as those paddling through the area.

AW states that the licensee's portrayal of carrying capacity is strange and biased. AW states that if recreational capacity is exceeded it would be inappropriate to limit boating without limiting other users equitably. AW and ADK also state that while conflicts cannot be avoided, it is not unexpected and therefore should not be a problem or a reason to restrict whitewater access. AW states that there was no evidence of conflicts with other recreationists during the study and that Class IV to V boaters who would use the river are highly skilled at maneuvering around obstacles, including any tubers, rafters, and anglers in the area.

Regarding ACC's comments, AW contends ACC's scenario of how a boater's death on the river would have an adverse impact on its business is very unlikely to happen and lacks merit. AW also states ACC should not be able to monopolize the river, which is a public resource. AW states the river poses no greater risk than any other Class IV river and states that it is not unusual that a run would pass through commercial private property. AW also questions ACC's contention that it would need to hire security guards, if paddlers were allowed to pass by its lands.

The study found that during the study events, no substantive interactions occurred between whitewater boaters and other recreation users. During the study events, ACC's rafters and tubers rated the quality of their experience as

satisfactory to very satisfactory and rated their interactions with the kayakers as friendly. The licensee contends that there is a potential for conflicts between whitewater boaters and other recreation users during the peak tourist season, directly proportional to the number or river users. ACC and TU also contend that there is a potential for conflicts with ACC patrons and anglers during the peak salmon fishing season.

Based on the study, the licensee estimated 200 boaters would visit the study area for whitewater boating each year. This number of boaters is far less than the estimated physical and social carrying capacities. Given this information, it is unlikely that the estimated carrying capacities would be reached in any given year. While there is always a potential for conflicts between recreation users sharing the same stretch of river, the study results do not suggest potential conflicts exist between users would be significant. As such, it is unlikely that the expected whitewater boating use of the study area would have a substantial impact on rafters, tubers, ACC trail walkers, and anglers, under normal circumstances. Regarding potential impacts on salmon spawning, we agree with the FWS that no impacts would occur, given that no substantial construction or changes in river flows are proposed as part of any whitewater boating access at the project.

Regarding ACC concerns about the affects of whitewater boating on its business, it is unlikely that the presence of whitewater boaters on the river would have any economic impact on ACC's business. The study found that there were no substantial interaction between boaters and ACC patrons. As discussed further in section 6.2.4 of this document, all whitewater boating poses some risk, including the risk that although rescue may be required, it might not occur. The fact that there may be risk involved with whitewater boating does not obviate a licensee's responsibility to provide recreational opportunities in accordance with area needs. Further, ACC's contention that it would need to hire security guards to protect its lands from whitewater boaters is questionable. While ACC may choose to hire such protection, it appears to be an extreme security measure. As discussed further below, whitewater boating in the study area does not, in itself, appear to justify such an expense.

The proposed action of restricting public access would maintain current conditions, and thus create no effects, positive or negative on other users of the river. However, whitewater boating opportunities would continue to be precluded. Each action alternative would create some possibility of interactions with other users. The action alternatives would allow boating during the season of optimal flow, which also corresponds to ACC's peak tourist season, so the possibility of interaction is greater. While limiting whitewater boating in the study area, under various action alternatives, would reduce the likelihood of potential conflicts

between boaters and other recreation uses, no such conflicts between users were documented in the study.

6.2.3 Trespass on ACC Property

During the study, the licensee coordinated with the ACC to allow scouting on its lands by the study participants. Both banks of the Ausable River between the put-in and take-out locations are privately owned; mostly by the ACC, so study participants entered the water just below the powerhouse on NYSEG property and exited the water at a take-out location on state-owned lands. The licensee states that many participants stated that scouting the rapids from above river level is an important and valuable pre-run activity. The licensee states that this would cause safety issues if boaters are not allowed to scout the flow and river conditions before entering the water. The licensee contends scouting is necessary in order to avoid safety risks and therefore there is potential for boaters to trespass onto ACC lands.

In its comments, ACC agrees with the licensee and states that it is impossible to scout the river without trespassing their property or by purchasing admissions to their park. In its comments, AW says ACC has a monopoly on a public river and wants to keep it that way, and that it offers no compelling reason for continued closure of the river to boater access. AW also states that trespassing onto ACC lands for scouting purposes is not needed. AW states that trespass is not necessary to scout the river.

The Class IV+ boaters that would use this reach are highly skilled and able to maneuver the river under a variety of conditions. These experienced, knowledgeable boaters would be able to retrieve enough information in advance regarding flows and runs that would make scouting above the high water mark and on ACC property unnecessary. On the water these boaters are able to scout from the riverbank below the high water mark. Additionally, if scouting above the river is preferred, boaters have the option to pay the ACC entrance fee to scout from its lands. However, from a safety viewpoint, it is important that boaters feel they have the option of accessing the riverbank. In such cases, boaters would need to abide by state laws. Determining the legality of this access, however, is beyond the scope of this EA. We note that the EA for the license cites a New York State court case regarding the legality of river access.[5] This case supported full use of the subject river by boaters, including necessary portage.

[5] See Adirondack League Club, Inc. v. Sierra Club, 92 NY2d 591 (1998); Atlanta School of Kayaking, Inc. v. The Douglasville-Douglas County Water and Sewer Authority, 981 F.supp. 1469 (N.D. Ga 1997). See also pages 35 – 36 of

Regarding trespass concerns, the proposed action would not allow whitewater boating access at the site and therefore there would be no concern of trespassing. Option 5 would provide access during a scheduled event for which the licensee would provide security for the area so trespassing is not likely a significant concern. Options 2, 3, 4, 6 and 7 provide access ranging from a few weekends to year-round. While trespassing by inexperienced boaters is possible, we find that the experienced boaters who would be using this stretch of the river, would not likely need to trespass on ACC property.

6.2.4 Whitewater Access and Safety

The study assessed the safety of whitewater boating in the study area through an analysis of study participant responses to post-run evaluation forms. The participants found public access to the river feasible and flow levels suitable for advanced Class IV+ boaters. Based on the questionnaire responses, the range of suitable flow is 200 cfs to 1,400 cfs and the range of optimal flow is 400 cfs to 950 cfs. During the study events, no safety-related incidents were noted on or off-water and no injuries were observed or reported; however two noteworthy mishaps occurred during the July 24 event. These incidents involved the ejection of two whitewater canoeists within specific rapids; who were immediately self-rescued or rescued by other boaters. The boaters involved in these incidents did not consider it dangerous. In addition, some participants commented about existing debris (steel I beams and rebar) in the river at the Mike's Hole rapids; describing it as either an eye sore or a safety concern. Further, responses to the questionnaires found that ACC rafters and tubers rated their interaction with the study participants between "not-unsafe" to "slightly unsafe." Following the September 24th event, the study participants noted that inexperienced kayakers might be at risk if they attempt to do the run on their own. Overall, the study participants rated safety in the reach as moderately acceptable.

The licensee refers to the International Scale of River Difficulty when evaluating the safety of Class IV+ rapids.[6] According to the scale, running Class IV rapids poses a moderate to high risk of boater ejection, and such water conditions may make self-rescue difficult. The study noted that the steep chasm

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Environmental Assessment (EA) for the license for the Rainbow Falls Project, issued April 2, 2004.

[6] American Whitewater. 1998. Safety Code of American Whitewater. AW web page, accessed by FERC on January 28, 2008. http://www.americanwhitewater.org/content/Wiki/safety:start.

wall makes exiting the river and rescue attempts difficult for both the boater and rescue worker. Therefore, it is the boater's risk when entering the water knowing that rescue may not be a possibility. Further, the licensee believes allowing whitewater access would be disregarding the safety of the local volunteer response teams. Finally, the licensee raises a concern about pedestrian safety in the vicinity of the downstream Route 9 bridge take-out site, stating that while roadside parking is possible, boaters would need to walk on the road with their equipment for a considerable distance; posing a risk of being hit by passing vehicles.

In addition, the licensee states that any measure for providing whitewater boating access at the powerhouse would require new security upgrades and infrastructure improvements to provide safe access to the river. The licensee states these improvements would include modifying the existing security fencing around the project site, installing fencing to restrict access to the power canal, establishing a separate gated entranceway for boaters, upgrading the rackhouse and powerhouse entrance doors, relocating and/or further protection of existing electrical conduits and piping, construction of a small launch area at the river's edge, and the installation of various signage. The licensee states that no new parking areas would be constructed at the site due to the very limited space on its property and boaters would need to park at existing state-operated lots near the Route 9 Bridge and other public parking areas. The licensee states that the put-in area would be dangerous because the site is adjacent to the tailrace area where there is turbulent water. The licensee also states that it would need to have the ability to limit access during planned and unplanned construction and maintenance activities such as emergencies, homeland security matters, and when it is deemed unsafe for public access.

The ACC fully supports NYSEG's proposal and states that the stretch of river in question in very short, filled with hazards, and accessibility for any rescue operations is difficult at best. The ACC also argues that the put-in location is deceptive and would encourage many to attempt to run the river without the required experience. If this should happen, there is no exit from the river and paddlers will be forced to ride the entire river and risk their lives due to lack of portability in most locations. TU states that unlimited access is totally unrealistic given the safety factors and winter weather conditions. Finally, the League states that whitewater boating would put unnecessary risk on its rescue workers in the event of any kind of emergency involving these boats.

In its letter, ADK states that regular paddlers fully understand the danger of winter conditions on a river and therefore restricting access based on a calendar is foolish. AW states that there is no reason to believe that the chasm is any less safe than any other Class IV run, or that any fatality or serious accident will occur in this reach of the river. Additionally, AW asserts that while accidents are possible,

public access to resources is not banned to prevent accident or search and rescue operations. AW also questions the licensee's estimated security upgrades and infrastructure improvements and associated construction and maintenance costs to provide safe access to the river. AW states that fencing could be designed to provide adequate security for the project and still allow continuous public access and that there is adequate space for parking on the licensee's property.

In the EA for the project license, Commission staff recognized whitewater boating access may present safety, liability and security concerns, and noted that these issues are not uncommon at hydro projects. It is the Commission's policy that "licensees whose projects comprise land and water resources with outdoor recreational potential have a responsibility for the development of those resources in accordance with area needs to the extent that such development is not inconsistent with the primary purpose of the project."[7] Additionally, in the Commission's order on rehearing for the project license, the Commission found that "All whitewater boating poses some risk, including the risk that rescue may be required. The fact that there may be risk involved with whitewater boating or other recreational activities does not obviate a licensee's responsibility to provide recreation opportunities in accordance with area needs."[8]

In its comments, the League raised concerns about putting rescue personnel unnecessarily at risk during emergency rescue of whitewater boaters in the chasm. We do not expect rescue agencies to take unnecessary risks to perform emergency rescues in the chasm. Boaters participating in boating opportunities at the project should be highly skilled and, as discussed below, would be informed that the reach is for expert boaters only, the river is classified as a Class IV+ river, and that they enter at their own risk therefore rescue may not be possible.

To address safety issues, the license EA states that the licensee could install a flow gage and locked entrance to prevent access when conditions are not advisable (high water flows, winter icing conditions, etc). The EA also determined that potentially dangerous facilities such as the power canal, rack house, etc. could be separately fenced, railings and stairways could be provided near the powerhouse, and the licensee could install and lock entrance fencing during times when site access is not advisable. The current position of the security fencing restricts access to the road leading the powerhouse and parking lot. This fence could be moved to the other side of the access road, while still

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[7] Order No. 313, Recreational Development at Licensed Projects, 34 FPC 1546 (1965).

[8] See Order on Rehearing, issued December 22, 2004, 109 FERC ¶ 61,360.

accommodating security measures for the project facilities and necessary access to the road and parking lot for the boaters (See Figure 2). While the put-in parking lot at the powerhouse is small, it does not need to be expanded because boaters usually drop off at the put-in location and park at nearby off-site parking areas. The license EA also suggests the installation of warning and directional signage and flow gaging equipment at the site.

No significant safety incidents occurred during the study. Overall, the study participants found the safety risk of whitewater boating in the chasm moderately acceptable and ACC tubers and rafters did not report any safety problems with study participants. As noted above, licensees have certain responsibilities to provide recreation opportunities at its project despite some safety, liability, and security risks. Measures could be implemented to address most of these concerns. Informational and warning signs could be installed at the access site indicating the river difficulty and that boaters can enter at their own risk would help deter those who may not be experienced boaters or knowledgeable about the river conditions. The installation of an upstream flow gage could help inform boaters of the conditions prior to entering the river and, with advanced research and knowledge, skilled boaters should know what to expect in a Class IV+ river without needing to scout. Further, to address roadside pedestrian safety concerns, additional parking options could be explored. Based on our review of available information, there is sufficient land at the site to provide limited parking for boaters. This should be sufficient for most boating access, since we expect many boaters will use it as a drop-off point and not leave multiple vehicles at the site. Although it was not identified as a significant safety concern, the existing debris in the river at Mike's Hole rapids could be removed or, as an alternative, signage at the project's access site could inform boaters of the presence of such debris and how to best avoid it. Finally, we recognize that it would be appropriate to close the access site during project emergencies and project maintenance activities in the immediate area to address safety and security concerns.

Access to the river at the put-in location was provided through special accommodation made by the licensee for the purpose of the study. The proposed action would not allow whitewater access at the project; therefore, safety and security would not be an issue. Options 2,3,4,5 and 6 would provide access only during certain times of the year ranging from a few weekends to five months when flows are of optimal range. Providing access only during the optimal flow range would minimize the safety concerns regarding dangerous flow levels while benefiting public access. Option 7 offers year-round whitewater access and, thus the greatest safety risks, including during the winter months (November-May) when flows were shown to be the highest, ranging from 900 cfs to 2500 cfs. As noted, the licensee may, at times, restrict access to the site, as necessary.

In its plan, the licensee identified two alternative sites to provide whitewater access to the Ausable River: (1) a parcel of land owned by the State of New York between the eastern Route 9 parking lot and the powerhouse and (2) the site of an abandoned steel stairway located on ACC property. The licensee states that access from these lands would require the cooperation of the property owners, and although the sites' have sufficient room for parking, substantial access improvements would be required. While access to the river from these locations may be possible, acquisition and development of these alternative sites could be difficult and costly, and would provide a more limited whitewater run than the project put-in site due to their downstream location.

6.2.5 Implementation and Maintenance Costs

The licensee's application includes an estimate of the costs of constructing and maintaining various whitewater boating access facilities near the powerhouse. River access improvements would include modifying the existing security fencing around the project site, installing fencing to restrict access to the power canal, establishing an additional stairway and separate gated entranceway for boaters, upgrading the rackhouse and powerhouse entrance doors, relocation and/or protection of existing electrical conduits and process/sanitation piping, the construction of a small launch area at the river's edge just downstream of the powerhouse tailrace, and the installation of information and safety signage throughout the project. The licensee states that no new parking areas would be constructed at the site. The licensee estimates a one-time capital improvement cost for the above improvements, except for Option 5, of $85,000. Option 5 would cost an estimated $61,000, because there would be no security improvements associated with this alternative. The licensee states that this cost includes expenses related to engineering, consultation, construction, and project management for the infrastructure improvements.

Regarding maintenance of the access site, the licensee states that providing boater access will require personnel to travel approximately 20 miles each way at a cost of $175 per 3-hour trip for labor and vehicle expenses. During each trip, personnel would generally open and close pedestrian access, perform security related functions, and perform various maintenance activities (trash disposal, snow removal, etc.). The licensee would also need to fund and coordinate the maintenance and removal of a portable restroom facility near the rackhouse. The licensee estimates annual maintenance costs for the above improvements for each of the action alternatives would range from $ 2,750 to $28,150.[9]

[9] See Table 2 of this document for a summary of the cost estimates associated with each alternative.

The ADK and AW question the licensee's cost estimates for capital improvements and ongoing costs. Both entities state that many of the facilities proposed are either not needed or not well thought out. Furthermore, ADK and AW state that a concrete launch structure at the edge of the river is not needed and it is more preferable to have a small platform that would adjust to varied flows AW states that given the overestimated cost of the launch platform, it questions the cost estimates of the other facility improvements.

The EA for licensing states that potentially dangerous facilities such as the power canal, rack house, etc. could be separately fenced, railings and stairways could be provided near the powerhouse, and the licensee could install and lock entrance fencing during times when site access is not advisable (high water flows, winter icing conditions, etc.). The EA also suggests the installation of warning and directional signage, periodic debris clean-up, temporary or seasonal restrooms, and off-site parking nearby. The EA states that the cost of these improvements at the project would not be a significant, and it estimates they could be provided for about $ 2,025.00 per year for installation and maintenance. The EA also notes that additional management and oversight costs are difficult to determine at this time and would depend on when and how often the access area is open and whether any additional support facilities are provided.

The proposed action would not incur any capital or operation and maintenance costs because access would not be provided. Alternative actions 2 through 7 would require the licensee to incur capital costs ranging from $61,000 to $85,000 and operation and maintenance costs from $2,750 to $28,150. The construction and maintenance costs associated with whitewater boating access facilities at the project would depend, in part, upon the actual improvements provided and the actual security modifications required. We believe that the estimated costs associated with these measures could be reduced, if access improvements were kept to a minimum and if ways to minimize the necessary security modifications were examined and implemented. Specifically, it appears that some of the access improvements identified above may not be necessary and that the relocation of the site's existing security fencing may eliminate the need for some of the other security modifications noted above, including the need for licensee personnel to visit the site on a daily basis to open and close an access gate for boaters.

The Federal Power Act identifies public recreational benefits as a project purpose. In this regard, the Commission evaluates the recreational resources of a licensed project and seeks the ultimate development of such resources consistent with the needs of the area to extend such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public

recreational development are to be included as a project cost. In accordance with the Federal Power Act and as may be required by the Commission, the licensee is expected to incur reasonable costs associated with providing whitewater boating opportunities at the project.

7.0 CONCLUSION

This section summarizes Commission staff's findings on the study results, and the licensee's whitewater boating access plan, and identifies the staff's recommendations for requiring whitewater boating access at the project.

The licensee has certain responsibilities to provide recreation opportunities at its project in accordance with area needs. The Commission recognizes that whitewater boating poses some safety, liability, and security risks and notes that such risks are not uncommon for hydropower projects. Based on our analysis, we see no reason why full access can not be provided at the project. In this regard, we recommend that whitewater boating access at the project be provided under Option 7 (year-round access) with certain conditions to address safety/security issues, as further discussed below. This option, as modified by staff, provides for full whitewater boating opportunities at the project consistent with the licensee's responsibilities under its license; and would best meet demand for such a use while at the same time, have negligible to minimal adverse effects on other recreation users.

We find there is demand for whitewater boating access at the project and that the upper chasm provides a high quality whitewater run for experienced boaters. The run would also provide whitewater boating opportunities during certain times of the year when other whitewater boating resources in the region do not have optimal flows for boating, particularly during the summer months. In addition, we find that whitewater boating access at the project would not result in any substantial conflicts between whitewater boaters and other recreation users. While we recognizes the potential risks of emergency rescue in the event of a boating accident in the chasm, the fact that there may be risk involved does not obviate a licensee's responsibility to provide recreation opportunities in accordance with area needs. Also, we do not expect rescue agencies to take unnecessary risk in emergency situations and that boaters must recognize that a rescue may not occur. However, the risk of a serious boating accident in the chasm is no different than the risks associated with similar advanced whitewater runs in the region. Such risks can be reduced through the implementation of appropriate safety measures, including informational and warning signage describing the difficulty of river run, the boater expertise needed, and that boaters enter at their own risk. Further, the licensee can install a flow gage to inform

boaters of flow conditions, and close the access site in the event of extreme weather conditions.

In addition, we note that the presence of whitewater boaters in the chasm is unlikely to have any economic impact on ACC's business and that any trespass issues involving ACC lands need to be addressed at the state or local level. Further, we find that whitewater boating access at the project can be provided at a reasonable cost and that such costs could be minimized by providing limited improvements and modifying existing security measures to reduce or eliminate the need for new security measures and frequent site visits by licensee personnel.

Regarding the various options considered for whitewater boating access, we find that Option 1, the proposed action, would preclude all public whitewater access at the project. This option would not meet demand for whitewater boating in the chasm and any potential whitewater boating opportunities in the area would be lost. Under this option, current recreation uses and activities would likely continue and the above-noted affects of whitewater access on other recreation users, safety and security, and the licensee's implementation and maintenance costs would not occur.

Options 2 through 7 would provide for whitewater boating access at the project to varying degrees and meet demand accordingly. Options 4 and 5 provide very limited access and would do little to meet demand. Options 2, 3, and 6, provide access for a 3, 5 and 6 month period, respectively, in the summer and/or early fall months, when demand is expected to be the highest. These three options would meet demand during part of the year. Finally, Option 7 provides year-round access at the site and would meet demand for whitewater boating access throughout the year.

Overall, we conclude that providing whitewater access at the project for experienced boaters would not result in significant conflicts between boaters and other recreation users or represent a significant safety/security risk. Based on the timing and duration of whitewater boating access under the various options, the degree of potential safety and security risks and potential conflicts may differ. Option 5 would present the least risk due to its limited and controlled access. Options 2, 3, 4, and 6 would pose a greater risk than Option 5 due to their longer access period during the summer months when recreation use of the chasm would likely be higher. Finally, Option 7 would have similar risks as Options 2, 3, 4, 6, during the summer months, as well as, a continued risk during the winter months when flows are generally higher and weather conditions are, at times, less conducive for whitewater boating.

Under Option 7, as modified by staff, we recommend the licensee develop, in consultation with FWS, ACC, AW, ADK, NYDEC and TU, an implementation plan to provide year-round whitewater access at the project. The plan should be filed for Commission approval and include improvements that provide for safe access and use of the site, and addresses safety and security issues. Specifically, the plan should include provisions to install: (1) appropriate safety and informational signage; (2) trash receptacles; (3) temporary restroom facilities; (4) a boat launch platform at the put-in site just below the powerhouse; (5) a stream gage that is accessible to boaters and provides real-time flow data; and (6) a parking area at the put-in site to accommodate a small number of whitewater boaters' vehicles. Further, the plan should contain provisions to modify the existing security fencing so that the access road is available to boaters while still securing necessary project infrastructure, and implement other appropriate safety and security modifications.

The above safety signage should indicate that the river reach is classified as Class IV+, and should only be used by experienced boaters. The safety signage should also indicate that boaters enter at their own risk and boater rescue may not occur. Additional signage should indicate that trespassing onto ACC or other private property is prohibited and any trespass is subject to state and local law. Informational signage should include access availability and boater use information, and a map of the chasm showing the major rapids, put-in and take-out locations, ACC put-in location, off-site parking areas, and other key points at the chasm.

The plan should also include provisions for the construction, operation, and maintenance of the access site facilities, including of the entitie(s) responsible and implementation schedules. In addition, the plan should contain provisions to periodically review whitewater boating use at the site and in the chasm, in cooperation with interested parties, to assess whether any new or significant safety or security issues have resulted from such usage and, what, if any modifications or additional measures are needed to address such issues. The results of this periodic review and any proposed changes should be filed with the Commission.

Based on the information and analyses contained in this EA, we find that approval Option 7, with staff’s modifications, would not constitute a major federal action significantly affecting the quality of the human environment.

8.0 REFERENCES

FERC. 2004. Environmental Assessment; Rainbow Falls Project No. 2835-000-NY. Division of Hydropower Licensing, Office of Energy Projects, Washington, D.C. April 2, 2004.

9.0 LIST OF PREPARERS

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Document Content(s)