



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner
 February 24, 2015

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a Lease Agreement, pursuant to RSA 481:8, with Steels Pond Hydro, Inc. for the operation of a hydroelectric power production facility at the state-owned Steels Pond Dam in Antrim. The lease shall have a term of 50 years from the date of Governor and Council approval. The estimated revenue from rent over the term of the lease is \$900,000 to be deposited in the following account:

<u>Account Name</u>	<u>Account No.</u>
Dam Maintenance Fund	03-44-44-442010-3817

EXPLANATION

The proposed lease has been developed pursuant to RSA 481:8. Under this statute DES is directed to lease state-owned dams to developers or operators of hydropower production facilities, if the Governor and Council issue written orders under RSA 481:7 determining that the projects would be of public use and benefit.

On December 23, 1981, the Governor and Council issued a written order, pursuant to RSA 481:7, directing the New Hampshire Water Resources Board (the Board), the predecessor agency to DES, to proceed with the leasing of the state-owned Steels Pond Dam for hydropower production. After soliciting and evaluating competing proposals from hydropower developers, the Board selected Steels Pond Hydro, Inc. to redevelop and produce hydropower at Steels Pond Dam, and on September 21, 1983, the Governor and Council approved a lease with Steels Pond Hydro, Inc. On October 18, 1983, the Federal Energy Regulatory Commission (FERC) issued jointly to the State of New Hampshire and Steels Pond Hydro, Inc. an Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less for the Steels Pond Project, which is required to allow hydropower production at the site.

Following approval of the lease, Steels Pond Hydro, Inc. reconstructed the facilities needed for hydropower generation at the dam, and began generating power on December 21, 1984. However, in 2009 Steels Pond Hydro, Inc. began defaulting on the lease by failing to pay rent to the state, failing to pay real estate taxes due to the Town of Antrim under the lease, and failing to maintain the leased premises in good condition and repair. In addition, on June 13, 2012, Public Service of New Hampshire, to whom Steels Pond Hydro, Inc. sold the power it generated, terminated its Interconnection Agreement with Steels Pond Hydro, Inc. and removed its meter from the powerplant for non-compliance with the Agreement. As a result, DES terminated the lease with Steels Pond Hydro, Inc.

On November 13, 2013, Contoocook Hydropower, LLC, acquired the shares of Steels Pond Hydro, Inc. for the purpose of resuming hydropower operation at Steels Pond Dam as Steels Pond Hydro, Inc., to maintain the exemption from licensing issued by FERC for the Steels Pond Project. As part of the acquisition, they also acquired the property of Steels Pond Hydro, Inc., which includes the land where most of the powerhouse is located, and paid all back taxes owed on the land to the Town of Antrim. Contoocook Hydro, LLC currently leases the Davis Dam from the Town of Hopkinton, and has successfully operated a hydropower facility at that dam since 2008.

DES Web site: www.des.nh.gov

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DES proposes to enter into a new lease with the reconstituted Steels Pond Hydro, Inc. for use of the state's dam and water rights at Steels Pond Dam for the production of hydropower. The terms of the lease are similar to those of the other nine leases that DES has with hydropower developers and operators at other state-owned dams around the state.

Pursuant to RSA 481:8 II, the term of the lease is 50 years from the date of Governor and Council approval. Under the terms of the lease, Steels Pond Hydro, Inc. is responsible for maintaining the dam in good condition at its own cost and expense, as well as for performing all of the obligations imposed by the terms of the FERC exemption. Steels Pond Hydro, Inc., will pay the state rent based on a percentage of the revenue it receives from the electrical power produced at the facility, less any state-imposed fees and real estate taxes or payments in lieu of taxes. The percentage increases over the term of the lease in recognition of the initial costs that Steels Pond Hydro, Inc. must incur in restoring hydropower production at the project. For the first 10 years of the lease, the rent will be 5% of the Adjusted Gross Revenue; for years 11 through 20, the rent will be 10% of the Adjusted Gross Revenue; and for years 21 through 50, the rent will be 20% of Adjusted Gross Revenue. The hydropower plant should be capable of producing 3,000,000 kilowatt-hours of energy per year. Based on the current average price for energy, anticipated revenue to the state from this lease is approximately \$6,000 per year for the first 10 years, \$12,000 per year for years 11 through 20, and \$24,000 per year for the remainder of the lease. In accordance with RSA 481:32, the revenue received from this lease shall be deposited in the State Dam Maintenance Fund for the repair and reconstruction of state-owned dams.

The lease has been reviewed by the Attorney General's Office for form, substance and execution. We respectfully request your approval.



Thomas S. Burack
Commissioner

LEASE AGREEMENT

This Lease, made this _____ day of _____, 2015, is by and between the New Hampshire Department of Environmental Services, an agency of the State of New Hampshire (hereinafter called the “Department” or “Lessor”) with a principal address of 29 Hazen Drive, Concord, New Hampshire, and Steels Pond Hydro, Inc., a registered New Hampshire corporation having a principal place of business at 581 Quaker Street, Henniker, New Hampshire 03242 (hereinafter called the “Lessee”).

WITNESSETH:

WHEREAS, Revised Statutes Annotated Chapter 481:8 and action by the Governor and Executive Council of the State of New Hampshire (the “Governor and Council”) on the 23rd of December, 1981 authorized the New Hampshire Water Resources Board (the “Board”) to lease the Steels Pond Dam, in the Town of Antrim, New Hampshire; and

WHEREAS, the Governor and Council and the Board determined that the use of the Steels Pond Dam for redevelopment and production of hydroelectricity is beneficial to and in the best interest of the State; and

WHEREAS, after soliciting and evaluating competitive proposals from hydropower developers, the Board selected Steels Pond Hydro, Inc. to redevelop and produce hydropower at Steels Pond Dam; and

WHEREAS, the Board and Steels Pond Hydro, Inc. entered into a lease on September 21, 1983, the day on which the Governor and Council (a) determined that the proposed project would be of public use and benefit and within the authority conferred upon the Board, and (b) approved the execution of this Lease by the Board; and

WHEREAS, on October 18, 1983, the Federal Energy Regulatory Commission (“FERC”) issued jointly to the Board and Steel Pond Hydro, Inc. an Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less for the Steels Pond Project No. 3265; and

WHEREAS, by Chapter 202, Laws of 1986, the Board was abolished, and its public corporation functions were assumed by the new Water Resources Council (the “Council”) on January 2, 1987; and

WHEREAS, pursuant to Chapter 112 of the Laws of 2009, the Council was abolished, and all rights, responsibilities and obligations of the Council were granted to the Department; and

WHEREAS, on November 13, 2013, Contoocook Hydropower LLC, acquired the majority of the shares of Steels Pond Hydro, Inc. to resume hydropower operation at Steels Pond Dam as Steels Pond Hydro, Inc., co-exemption holder with the Department of the exemption from licensing issued by FERC for the Steels Pond Project; and

WHEREAS, the Department and Steels Pond Hydro, Inc. have agreed to enter into this Lease;

NOW THEREFORE, for and in consideration of the mutual covenants, conditions and agreements herein contained and for other good and valuable consideration, the parties hereto agree follows:

1. DEFINITIONS. For the purposes of this Lease, the following terms shall be defined as follows:
 - (a) Premises. The entire real property at the Steels Pond Dam as set forth in a quitclaim deed from Public Service Company of New Hampshire to the State of New Hampshire as recorded in Book 1921, Page 234, Hillsborough County Registry of Deeds, together with (i) the water rights at Steels Pond Dam, and all other rights and easements necessary to carry out the purposes set forth in this Lease; (ii) any civil works, structures, and improvements thereon; and (iii) the Facility as defined below.
 - (b) Facility. All structures adapted to the production of hydroelectric power located on the Premises including the spillway, intake structures, abutments, penstocks and all existing features. The term Facility includes the civil works as constructed or reconstructed under the terms of this Lease. Where appropriate Facility is referred to as Facilities.
 - (c) Project. The operation of the hydroelectric power generating Facilities.
 - (d) Improvements. All real property, buildings, structures, equipment and other improvements acquired, installed, constructed or reconstructed on the Premises by the Lessee.
2. AMENDMENT OF DEFINITIONS. Lessee and Lessor may make, by written amendments to this Lease, such adjustment in the definition of the Facility and the Premises as may subsequently be found necessary to achieve the purposes of this Lease.
3. PURPOSES. This Lease is being executed in order to provide for the operation of a hydroelectric power production facility at the Steels Pond Dam. Lessee's use of the Premises and other areas permitted under this Lease shall be limited to these purposes and such other purposes as may be permitted or required by FERC's regulations and the terms of exemption from licensing issued jointly to the Lessor and Lessee. Such operation shall be carried out so as to achieve maximum permissible power output and shall be consistent with the express purposes for which the Steels Pond Dam was acquired by the State of New Hampshire; with the conditions of the permits, including the FERC exemption from licensing, issued in connection therewith; and with this Lease.
4. COOPERATION. Within the scope of their respective obligations hereunder, the Lessor and Lessee shall cooperate to achieve the purposes of this Lease. Such cooperation shall include, but not be limited to: (a) keeping the other party reasonably informed as to all matters relating to the achievement of the purposes of this Lease and (b) the performance of the parties' obligations under this Lease.

5. EFFECTIVE DATE AND TERM.

- (a) The Lessor hereby leases to the Lessee all of Lessor's property interest in the Premises, as defined in Section 1.
- (b) Unless sooner terminated as provided herein, the term of this Lease is fifty (50) years from the effective date of this Lease or upon the termination or surrender of the FERC exemption for the Premises, whichever event occurs first in time.
- (c) This Lease and all obligations on the part of the parties shall become effective on the date the Lease is approved by the Governor and Council. The term of the Lease shall commence with the effective date of this Agreement as stated herein. The Lessee shall not have use and/or occupation of the Premises, as defined in RSA 72:23,I, until the date the Facility first enters commercial operation as defined in Section 12(a)(v).
- (d) Upon expiration or termination of this Lease, title to the Improvements may be transferred to the Lessor, as provided in Section 7, infra.
- (e) The Lessee may request that the current term of this Lease be extended at any time by the parties to accommodate financings necessary for repairs and/or improvements for the continued operation of the Project.

6. RELATED RIGHTS AND OBLIGATIONS IN THE PREMISES.

- (a) In addition to possession of the Premises, the Lessee shall have the right to:
 - (i) construct, reconstruct, and repair at its own expense and cost, all Facilities necessary for the production of electrical energy
 - (ii) use the water made available by Lessor pursuant to Lessor's water rights and FERC exemption for the production of electrical energy;
 - (iii) make use of such areas within the boundaries of the Premises as may be necessary in constructing, reconstructing and repairing any part of the Facility and planning therefore.
- (b) The Lessor shall:
 - (i) grant to the Lessee and to its power purchasers easements or other rights in property and public ways owned and controlled by Lessor in order to permit necessary utility services to be supplied to the Facility; and
 - (ii) permit the interconnections necessary for the sale and delivery of the electric power generated by the Facility, provided always that all installations shall be in accordance with the reasonable requirements of the Lessor with respect to appearance, safety, and public convenience.

- (c) Lessee shall operate the Facilities located on the Premises consistent with:
- (i) the terms of the FERC issued exemption from licensing, which will lie with the Facility; and
 - (ii) with any other licenses and permits issued in connection with the Facility.
- (d) The Lessor reserves the right to enter any part of the Premises at reasonable times for the purposes of inspecting any of the Facilities, assuring compliance with the FERC imposed conditions, where required, and to undertake any necessary activities to avoid the loss of the FERC exemption. Lessor's right to enter and inspect shall be absolute and unquestioned.
- (e) Lessor may delegate to Lessee any or all obligations relating to the hydroelectric Facility, including those imposed by the FERC exemption. Lessee shall follow any written instructions issued by Lessor for any obligations delegated to Lessee that may differ from, or be in addition to, the requirements of the FERC exemption or other licenses or permits issued in connection with the Facility. Nothing contained in any delegation pursuant to this subparagraph shall be construed to relieve Lessee of the duty to perform all of the obligations imposed on the Lessee by the terms of the FERC exemption.
- (f) Lessor and Lessee shall have right to pass over any existing or subsequently constructed or acquired existing access roads to the Facilities and the Premises. Lessee shall be responsible for the proper maintenance and repair of the road suitable for the purpose of maintaining and operating the Project.
- (g) Lessor and Lessee agree to add to this Lease the plans and specifications, which have been required to be filed with FERC, of any Improvements or buildings constructed or reconstructed under the terms of this Lease in order that the descriptions of the Premises and the Facility shall remain as accurate as possible consistent with the requirements of FERC's regulations governing exempted hydroelectric projects.
- (h) Lessor agrees to accept a donation of properties owned separately by Contoocook Hydro Inc. and Steels Pond Hydro, Inc., which are identified in Exhibit B, provided that written documentation is provided that all real estate taxes on the properties are paid in full and that there are no liens or other encumbrances on the properties. The donation shall be made by title transfer using quitclaim deeds for each separate parcel identified in Exhibit B. Transfer shall occur within 360 days from the effective date of this agreement unless modified in accordance with the terms of Paragraph 25. Upon recordation of the title transfers, the Premises subject to this agreement shall include the transferred properties.

7. TITLE TO IMPROVEMENTS.

- (a) Title shall remain solely in the Lessee to any Improvements erected or previously erected on the Premises by the Lessee any equipment or other items installed or previously installed on

the Premises by the Lessee and/or its predecessors-in-interest, and any alteration made thereto by the Lessee and/or its predecessors-in-interest, during the term of this Lease.

- (b) If, for any reason, this Lease shall terminate or expire, the Lessee covenants and agrees to transfer title to all real property acquired, constructed or installed on the Premises by the Lessee and/or its predecessors-in-interest, including but not limited to, the real property necessary or convenient to hydroelectric production, located below the Steels Pond Dam, the powerhouse, located thereon, the buildings, the penstocks, structures and any equipment integral to the structural integrity of the Steels Pond Dam or to the powerhouse located downstream of the Steels Pond Dam, to the Lessor, subject to all liens conveyed to any bank, lending institutions or other lender.
- (c) If, for any reason, this Lease shall terminate or expire, the Lessor shall have one hundred and eighty (180) days from the effective date of the termination or expiration of this Lease, to purchase any or all of the personal property located on the Premises, including, but not limited to, generating electrical, control and transmission equipment, machinery, furnishings and furniture. The purchase price of said personal property shall be based on then current fair market value of said personal property, as determined by a qualified independent appraiser, mutually acceptable to both parties hereto, and said appraisal shall be binding on both parties. Lessor may exercise this option by giving Lessee written notice of the Lessor's intent to purchase any or all of the personal property items within the time period prescribed above.
- (d) In the event Lessor does not exercise or only partially exercises its option to purchase said personal property, Lessee shall have one hundred and eighty (180) days from the expiration of Lessor's option time, to remove or dispose of said property. Any personal property not so removed or disposed of by the Lessee shall remain on the Premises and become the property of the Lessor.
- (e) All buildings, structures and equipment integral to the structural integrity of the Premises or the powerhouse located downstream of the Steels Pond Dam, shall be left in suitable repair, reasonable wear and tear excepted.

8. QUIET POSSESSION.

- (a) The Lessor covenants and warrants that:
 - (i) it has full rights and lawful authority to enter into this Lease for the full term set forth and for any renewal or extension hereof; and
 - (ii) all legal requirements for the execution hereof have been complied with.
- (b) The Lessor further covenants and warrants that if the Lessee shall perform all of the obligations set forth herein, then the Lessee shall have and enjoy, during the term and any

extension hereof, the quiet and undisturbed possession of the Premises, and the appurtenant rights thereto, for the use herein described.

9. LICENSES, PERMITS, CONSTRUCTION.

- (a) The Lessee shall make application on the Lessor's behalf for all necessary and appropriate certificates, permits, and approvals from local, state and federal agencies; and the Lessor agrees to fully cooperate and assist the Lessee therewith.
- (b) At the earliest convenient opportunity, the Lessee shall submit its plans for any construction, reconstruction, or repair to be performed after the effective date of this Lease to the Lessor for the Lessor's approvals, which shall not be unreasonably withheld, and the Lessee shall not proceed with construction, reconstruction, or repair until the Lessor has approved such plans. Lessor's review shall be confined to that necessary to protect the Premises from damage, and to discharge the Lessor's contractual and statutory obligations. The Lessor shall respond to the Lessee within thirty (30) days from the date of receiving the plans except for any proceedings held pursuant to New Hampshire RSA Chapter 482 as to which the time limits allowed therein shall be applicable.

10. CONSTRUCTION. Lessee shall be held responsible for all damages caused by its construction activities to the Lessor's Facilities, including, but not limited to, gates and gatelifting mechanisms, concrete abutments and upstream facilities, water lines, sewer lines, and boxes protecting water lines, including all labor, materials, and equipment costs involved in repairs.

11. DOCUMENTS. In the event this Lease is terminated at any time, Lessee will make available to Lessor copies of all studies, reports, or other documents prepared by or on behalf of Lessee in connection with the Facility and the Premises.

12. RENT.

(a) Definitions: for the purposes of this Section, the following terms shall be defined as follows:

- (i) Gross Revenue (hereinafter "GR"). Income received by the Lessee from electrical power, including energy and capacity, produced by the Facility at the Premises, as well as any income received by the Lessee for the potential power, including energy and capacity, that could be produced by the Facility at the Premises.
- (ii) Adjusted Gross Revenue (hereinafter "AGR"). GR less Annual Tax Deduction.
- (iii) Annual Tax Deduction. The annual sum of:
 - 1. real estate taxes and/or assessments (or payments in lieu thereof pursuant to RSA 362-A:6, as amended) assessed against the Premises and paid by Lessee in accordance with Section 13 of this Lease, plus

2. any taxes, fees, or other charges imposed by the State of New Hampshire or any of its agencies with respect to the operation of the Facility for the generation of hydropower and paid by Lessee (excluding, for this purpose, any payments to be made by Lessee pursuant to a Water User Contract developed pursuant to RSA 481:8, as amended).
 - (iv) Semi-annual Rent Payment. The rent payment to be made by Lessee to Lessor for the semi-annual rental periods, the first of which begins on January 1 and runs through June 30 of each year, and the second of which begins July 1 and runs through December 31 of each year.
 - (v) Commercial Operation. The date on which the Lessee first sells, and delivers electrical power from the Facility to a purchasing party.
- (b) Upon commencement of rental payments pursuant to subparagraph (c) below, Lessee covenants and agrees to pay Lessor semi-annual rent of:
- (i) Five Percent (5%) of AGR for years one (1) through ten (10), inclusive;
 - (ii) Ten Percent (10%) of AGR for years eleven (11) through twenty (20), inclusive, and
 - (iii) Twenty Percent (20%) of AGR for years twenty-one (21) through fifty (50), inclusive.
- (c) Rent shall be payable hereunder as of the date the Facility first enters Commercial Operation. Lessee shall pay semi-annual rent payments twice a year. The semi-annual rent payment for the period from January 1 through June 30 shall be due on the first day of August next following the end of the semi-annual rental period, and for the period from July 31 through December 31, the semi-annual rent payment shall be due on the first day of February next following the end of the semi-annual rental period.
- (d) At the time that semi-annual payments are made under subparagraph (b) hereunder, Lessee shall submit reasonable documentary evidence satisfactory to the Lessor of the AGR defined in subparagraph (a)(ii).
- (e) Up to 50% of the Rental Payments due for any given year may be deferred for 12-months if those payments are applied towards emergency repairs to the Facility or repairs and improvements are ordered to be made by FERC.

13. TAXES AND ASSESSMENTS. The Lessee shall be responsible for all real estate taxes assessed for and with respect to the Premises (including assessments for betterments or Improvements for all tax periods fully or partially included in the term of this Lease), or, at Lessee's option, any payments in lieu thereof pursuant to RSA 362-A:6-a as amended. The Lessee shall also be responsible for payment of the Annual Dam Registration Fee required under RSA 482:8-a. During the term of this Lease, Lessee shall be responsible for and promptly pay all taxes, charges, fees, payments in lieu of

taxes and assessments imposed on Lessee or Lessor in connection with Lessor's ownership of the Premises, with the Lessee's lease of the Premises; with Lessee's construction, reconstruction or repair of the Premises; or with Lessee's operation and use of the Premises. The term "promptly" in the previous sentence shall be interpreted to mean "no later than the due date." In accordance with RSA 72:23, I, Lessee shall pay all properly assessed real and personal property taxes no later than the due date. Also in accordance with RSA 72:23, I, failure of the Lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this Lease Agreement by the Lessor. The foregoing shall not deprive the Lessee of the right to contest or review all such taxes by appropriate administrative or legal process provided by law.

14. UTILITIES. Lessee shall promptly pay, as and when the same become due, all charges for water, sewer, heat, electricity, and other services furnished to the Premises or used by Lessee in connection therewith during the terms of this Lease.

15. REPAIRS AND MAINTENANCE.

- (a) Lessee shall, at all times during the term of this Lease, and at Lessee's own cost and expense, keep and maintain in good condition and repair, all parts of the Premises, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.
- (b) Lessee shall be responsible for complying with all directives from FERC, as well as any directives resulting from dam safety inspections as conducted by Federal or State agencies.
- (c) Subject to the provisions set forth in Paragraph 7, supra., upon the expiration or termination of this Lease, Lessee shall quit and surrender the Premises in good condition and repair, ordinary wear and tear excepted.
- (d) Lessee shall have the right, at its own expense, to construct on the Premises such Improvements and to make such alterations to the Premises and the structures and Improvements thereon as Lessee shall determine to be proper in connection with the operation of the Premises, provided that the same shall be in compliance with all applicable federal, state and local laws to the extent that they are applicable to a hydroelectric project issued an exemption from licensing by FERC.
- (e) Lessee shall, at all times during the term of the Lease, and at its own expense, keep and maintain in repair and good and safe condition, all existing structures and Improvements and those erected on the Premises by Lessee. Lessee shall use all reasonable precaution to prevent waste, damage or injury to the Premises.

16. ASSIGNMENT AND SUBLETTING. Lessee may, with the Lessor's prior written consent, said consent not to be unreasonably withheld, assign its interest in the Premises and this Lease Agreement; provided that any such resulting assignee shall have agreed with Lessor to accept and perform all of the terms, covenants and conditions of this Lease, and that the assignee agrees to comply with and be bound by said term, covenants and conditions. Any request for assignment must be accompanied by sufficient documentation to demonstrate, to the satisfaction of the Lessor, that the proposed assignee has the

financial stability and the ability to operate the Facility. Lessor agrees to respond to any written request for assignment of this Lease within sixty (60) days from the receipt thereof. No assignment of this Lease shall release the Lessee as the primary obligor. In the case of any transfer or assignment of this Lease, the same shall be evidenced in writing and duly recorded in the appropriate Registry of Deeds in which the Project is located.

17. INSURANCE. During the entire term of this Lease, the Lessee shall, at its sole expense and for the mutual benefit of the Lessee and Lessor, obtain and maintain in force the following types of insurance in the amounts:

- (a) Workers Compensation Insurance covering employees of the Lessee from loss or damage because of liability under the Workers Compensation Act.
- (b) Comprehensive General Liability Insurance against all claims of bodily injury, death or property damage of not less than \$2,000,000 in aggregate and \$1,000,000 per occurrence.

The policies described above shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than ten (10) days after written notice thereof has been received by the Lessor. Certificates of insurance demonstrating that the required policies are in effect shall be filed with the Lessor within the (10) days after execution of the Lease, and shall thereafter be renewed or replaced as necessary. The policies described in (b) and (c) above shall list the State of New Hampshire as an additional insured.

18. INDEMNIFICATION. Lessee does hereby agree to defend, indemnify, and hold harmless the Lessor, its officers, employees and agents, from and against any and all claims, losses, actions, damages, liabilities, penalties and expenses (including without limitation legal fees), against the Lessor, its officers, employees or agents, by or on behalf of any person, arising out of or alleged to have arisen out of, any occurrence in, upon and/or at the Premises occasioned by or resulting from: (i) the occupancy or use by Lessee of the Premises or any part thereof; or (ii) by any act or omission of Lessee, its agents, contractors or employees. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Lease.

19. DAMAGES. If the Premises or Improvements shall be damaged, in whole or in part, by fire, flood, acts of terrorism, war, or other casualty, then:

- (a) The rent herein before reserved, or a just and proportionate part thereof according to the nature and extent of the damage sustained, shall be suspended or abated upon the mutual consent of Lessor and Lessee until the damage shall have been repaired and the Premises restored substantially to its condition at the time of the damage and the production of hydroelectricity resumes.
- (b) If the Premises or Improvements are, by such damage, rendered unsuitable for Lessee's continued operation of a hydroelectric project, then this Lease may be terminated by Lessee.

Any such election is to be made in writing within ninety (90) days after such damage or destruction occurs, and this Lease shall terminate in accordance therewith as of the date of such damage or destruction.

- (c) In the event that such damage or destruction occurs, and this Lease is not terminated, as aforesaid, then the terms and conditions of this Lease shall remain unaltered, provided the parties hereto may, by mutual agreement, negotiate the amount of rent payable under this Lease.

20 DAM FAILURE. Notwithstanding the provisions of Paragraphs 6(d) and 19, *supra*, in the event of an imminent or actual failure of the Dam, the Lessor has the right to immediately enter the Premises for the purpose of inspecting the Dam and making all necessary repairs.

21. LESSOR'S REPRESENTATIONS. Lessor represents and warrants to Lessee that this Lease has been duly authorized by all necessary action on the part of the Lessor's governing body.

22. LESSEE'S REPRESENTATIONS. Lessee represents and warrants to Lessor that this Lease has been duly authorized by all necessary action on the part of the Lessee.

23. DEFAULT - LESSEE'S RIGHT TO CURE - TERMINATION - RESTORATION. The Lessee shall be in default of this Lease if:

- (a) The Lessee fails to pay the rent when due under Paragraph 12 of this Lease;
- (b) The Lessee neglects or fails to pay the real estate taxes (or payments in lieu thereof) or other assessments payable pursuant to Paragraph 13 of this Lease once the same becomes due and payable;
- (c) The Lessee neglects or fails to perform any of the covenants, terms, provisions, or conditions of this Lease;
- (d) The estate hereby created shall be taken on execution or by other process of law;
- (e) A receiver, guardian, conservator, trustee in involuntary or voluntary bankruptcy, or similar officer is appointed to take charge of all or any substantial part of the Lessee's property by a court of competent jurisdiction; or
- (f) Proceedings are commenced to dissolve or liquidate Lessee.

In the event there is a default by the Lessee, the Lessor shall give Lessee written notice of such default. After receipt of such written notice, the Lessee shall have fifteen (15) days in which to cure any monetary default and sixty (60) days in which to cure any non-monetary default, provided Lessee shall have such extended period as may be required beyond the sixty (60) days if the nature of the cure is such that it reasonably requires more than sixty (60) days and Lessee commences the cure within the sixty (60) day period and thereafter continuously and diligently pursues the cure to completion. The Lessor may not maintain any action or effect any remedies for default against the Lessee unless and until

Lessee has failed to cure the same within the time periods provided in this paragraph. The failure of the Lessee to act to cure the default within the specified time periods shall be just cause for termination of this Lease.

24. LESSEE'S RIGHT TO TERMINATE LEASE. The Lessee shall have the unilateral right to terminate this Lease at any time by giving one hundred and fifty (150) day written notice to the Lessee of the exercise by the Lessee of this option. Upon the termination of this Lease under this option, Lessee agrees to pay an amount equal to one (1) year's annual rent payment based on the average of the annual rent payments during the previous three (3) years.

The Lessee, upon termination of this Lease, shall, within ninety (90) days of termination, remove, from the Premises, all of its personal property not installed on the Premises and repair any damage caused by its use of the Premises or the removal of its personal property, reasonable wear and tear excepted.

25. AMENDMENTS. This Lease may only be modified or amended by mutual agreement in writing, signed by the Lessor and Lessee.

26. MISCELLANEOUS PROVISIONS.

- (a) Mechanics' Liens. The Lessee agrees to promptly discharge or cause to be discharged (either by payments or the filing of a necessary bond) any mechanic's, materialman's or other liens as may be placed against the Premises, any buildings, structures, Improvements thereon, which liens may arise out of any payment due for labor, services, materials, supplies, or equipment which may have been furnished to or for the Lessee, its contractors and subcontractors.
- (b) Interest and Attorney's Fees. In the event that Lessee is in default for failure to pay any rental installment due hereunder, Lessee agrees that interest shall be due until the same is paid, said rate to accrue from the date of default at an interest rate equal to the then current prime rate, plus two (2) points. Lessee shall pay to the Lessor a reasonable attorney's fee in the event the Lessor employs an attorney to collect any rents due hereunder and secures a judgment in connection with said rent.
- (c) Notice of Lease. The Lessor agrees to execute a Notice of this Lease, substantially in the form of Exhibit A, which Lessee shall record in the Hillsborough County Registry of Deeds.
- (d) Headings. The headings of this Lease are for purposes of reference only, and shall not limit or define the meaning thereof.
- (e) Lease Running with the Land. The covenants, terms, conditions, provisions and understandings in this Lease shall be construed as running with the land and are binding upon and inure to the benefits of the respective successors and assigns of the parties herein.
- (f) Exhibits. Each exhibit to this Lease shall be incorporated into this Lease. If any exhibit referred to in this Lease is not attached hereto at the time of execution of this Lease, or if any such exhibit is incomplete, such exhibit may be later attached or completed by mutual

consent of the parties evidenced by their respective initialing of such exhibits, and such exhibits shall be deemed part of this Lease.

- (g) Entire Agreement. This Lease embodies the entire agreement and understanding between the parties hereto, and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (h) Waiver. No assent by either party, whether express or implied, to a breach of a covenant, condition or obligation of the other party, shall act as a waiver to a right of action for damages as a result of such breach, nor shall it be construed as a waiver of any subsequent breach of the same or any other covenant, condition or term of this Lease.
- (i) Renewal. This Lease may be renewed at the option of the Lessee upon the approval of the Lessor and the Governor and Council, on a year-to-year basis or longer, not exceeding the original Lease term. This renewal option shall be exercised in writing no later than one hundred and twenty (120) days before the expiration of the Lease term.
- (j) Severability. If any of the terms of this Lease, or application thereof is invalid or unenforceable, the remainder of this Lease and any application of such terms shall not be affected thereby.
- (k) Governing Law. This Lease shall be governed by the laws of the State of New Hampshire as the same exists as of the date of this Lease.
- (l) Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be postage pre-paid return receipt requested:

- (i) If to the Lessor: State of New Hampshire
Department of Environmental Services
P.O. Box 95
Concord, NH 03302-0095
Attention: James W. Gallagher, Jr., P.E.
Administrator, Dam Bureau
(or duly appointed successor)

With copy to: New Hampshire Attorney General
33 Capitol Street
Concord, New Hampshire 03301

or at such other address as the Lessor from time to time may have designated by written notice to Lessee. Such notice shall be deemed properly given upon the posting in the United States mail.

- (ii) If to the Lessee: Steel Pond Hydro, Inc.
c/o Contoocook Hydro LLC
113 Bartlett Road
Plainfield, Vermont 05667

or at such other address as the Lessee from time to time may have designated by written notice to Lessor. Such notice shall be deemed properly given upon the posting in the United States mail.

- (m) Counterparts. This Lease may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- (n) Certificates. A certificate of authority from the Lessee to execute and be bound by this Lease, together with a Certificate of Registration with the New Hampshire Secretary of State as required by RSA 5:18-a, shall be attached hereto.

27. SHORTAGE CRISES. Pursuant to the provisions of RSA 481:8, III, as amended, in the event of a shortage crisis, as determined by the Governor and Council, in either the water resources of the State of New Hampshire or the capacity to fulfill the electrical requirements of the State of New Hampshire, the Governor and Council may suspend the terms of this Lease, to the extent that hydroelectric power generated by the Facility is provided outside of the State of New Hampshire, in order to fulfill the needs and requirements of the citizens of the State of New Hampshire.

28. EXECUTION. Pursuant to RSA 481:6-c, nothing in this Lease shall be deemed to authorize the levy and sale by virtue of execution, of any property owned by the Lessor; nor shall anything in this Lease be deemed to authorize the issuance of execution or other judicial process against property owned by the Lessor.

29. COMPLIANCE WITH THE LAW. The Lessee shall comply promptly with all laws, regulations, rules, requirements, and orders of State, Federal or other public authority, local board of fire underwriters and similar organizations having jurisdiction which are applicable to the Premises.

30. SOVEREIGN IMMUNITY. This Lease does not abridge or limit, nor shall it be interpreted as abridging or limiting, the sovereign or official immunity to which the Lessor and its representatives and agents are lawfully entitled.

31. COMPLIANCE WITH FERC. Lessee shall be responsible for satisfying any obligations with regard to FERC requirements and regulations.

32. THIRD PARTIES. The parties hereto do not intend to benefit any third parties, and this Lease shall not be construed to confer any such benefit.

The following Exhibits are attached hereto and incorporated herein by reference:

“A” Notice of Lease

“B” Properties Owned Separately by Contoocook Hydro Inc. and Steels Pond Hydro, Inc. to be Donated to Lessor

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES**

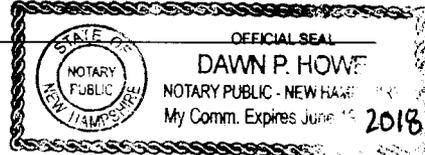
By: Thomas S. Burack
Thomas S. Burack
Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on February 12, 2015, by Thomas S. Burack, in his capacity as Commissioner of the Department of Environmental Services.

Dawn Howe
NOTARY PUBLIC/JUSTICE OF PEACE

My Commission expires:



STEELS POND HYDRO, INC.

By: Lori Barg
For and on behalf of Steels Pond Hydro, Inc.
Lori Barg, President

STATE OF VERMONT

COUNTY OF WASHINGTON

This instrument was acknowledged before me on November 24, 2014, by
Lori Barg, in her capacity as President of Steels Pond Hydro, Inc.

Carol Smith
NOTARY PUBLIC/JUSTICE OF PEACE

My Commission expires: 2/10/2015

Approved as to form, substance and execution

Date 2/18/15

By: Cliff A. C. C.
Office of NH Attorney General

Approved by Governor and Council

Date _____

Agenda Item No. _____

EXHIBIT "A"

Notice of Lease

NOTICE OF LEASE

Notice of the following Lease is hereby given in accordance with the provisions of the New Hampshire Revised Statutes Annotated, Chapter 477, Sections 7 and 7-a:

LESSOR: **STATE OF NEW HAMPSHIRE**, Department of Environmental Services, having a mailing address of P.O. Box 95, Concord, New Hampshire 03302-0095

LESSEE: **STEELS POND HYDRO, INC.**, a registered New Hampshire corporation with its principal office at 581 Quaker Street, Henniker, New Hampshire 03242

DATE OF EXECUTION: _____, 2015

DESCRIPTION: The Leased Premises consist of the entire real property at the Steels Pond Dam in Antrim, New Hampshire, as set forth in a quitclaim deed from Public Service Company of New Hampshire to the State of New Hampshire as recorded in Book 1921, Page 234, Hillsborough County Registry of Deeds, together with (i) the water rights at Steels Pond Dam and all rights and easements necessary to carry out the purposes set forth in the Lease; (ii) any civil works, structures, and improvements thereon; and (iii) all structures adapted to the production of hydroelectric power located on the Premises including the spillway, intake structures, abutments, penstocks and all existing features.

TERM: Fifty (50) years

DATE OF COMMENCEMENT OF TERM: The Lease shall become effective on the date the lease is approved by the Governor and Executive Council of the State of New Hampshire.

RIGHTS OF EXTENSION OR RENEWAL: The Lease may be renewed at the option of the Lessee upon the approval of the Lessor and the Governor and Council, on a year-to-year basis or longer, not exceeding the original Lease term.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as an instrument under seal on the dates indicated below.

LESSOR:

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

By: _____
Thomas S. Burack
Commissioner
Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on _____, 2015, by
Thomas S. Burack, in his capacity as Commissioner of the Department of Environmental Services.

NOTARY PUBLIC/JUSTICE OF PEACE
My Commission expires: _____

LESSEE:

STEELS POND HYDRO, INC.

By: _____
For and on behalf of Steels Pond Hydro, Inc.
Lori Barg, President
Date: _____

STATE OF VERMONT
COUNTY OF WASHINGTON

This instrument was acknowledged before me on _____, 2015, by
Lori Barg, in her capacity as President of Steels Pond Hydro, Inc.

NOTARY PUBLIC/JUSTICE OF PEACE
My Commission expires: _____

EXHIBIT "B"

**Properties Owned by Contoocook Hydro, Inc. and Steels pond Hydro, Inc. to be donated to
the State of New Hampshire in Accordance with Paragraph 6(h)**

Properties Owned by Contoocook Hydro, Inc. and Steels pond Hydro, Inc. to be donated to the State of New Hampshire in Accordance with Paragraph 6(h)

1. Parcel deeded from the Public Service Company of New Hampshire to Steels Pond Hydro on 10/7/1983, and recorded in Book 3085, Page 647 in the Hillsborough County registry of Deeds. Parcel 214-103 on Town of Antrim Tax Maps. The parcel is approximately 1.1 acres in size.
2. Parcel deeded by Warranty Deed from Carl Erickson to Contoocook Hydro LLC on 12/20/13, and recorded in Book 8630, Page 0558 in the Hillsborough County Registry of Deeds. Parcel ID 214-041 in the Town of Antrim Tax Maps. The parcel is approximately 4.2 acres in size.

CERTIFICATE OF VOTE

At a duly authorized meeting of the Board of Directors of Steels Pond Hydro Inc. (the "Company"), held on November 15th, 2014, it was VOTED that Lori Barg, the shareholder, agent and President of the Company, shall be and hereby is authorized to execute contracts and bonds in the name of and on behalf of the Company; and such execution of any contract or obligation in the Company's name on its behalf by such officer under seal of the Company, shall be valid and binding upon this Company.

I hereby certify that I am the clerk of the Company and that Lori Barg is the duly elected officer as stated above of the Company. This vote has not been amended or rescinded and remains in full force and effect as of the date signed below.

2/17/15
Date


Secretary: Brice Simon

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that STEELS POND HYDRO, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on March 7, 1983. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 23rd day of December, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/28/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Avid Insurance Agency, Inc. 425 New Karner Rd. Albany NY 12205-	CONTACT NAME: PHONE (AC, No, Ext): (518) 869-8106 FAX (AC, No): (518) 869-8525 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Steels Pond Hydro Contocook Hydro LLC 113 Bartlett Road Plainfield VT 05667-9658	INSURER A: Central Insurance	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	Y	CLP9580493	04/18/2014	04/18/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMPRO AGG \$ 2,000,000
						GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC
	AUTOMOBILE LIABILITY		N/A			COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS					\$
	<input type="checkbox"/> NON-OWNED AUTOS					\$
	UMBRELLA LIAB		N/A			EACH OCCURRENCE \$
	EXCESS LIAB					AGGREGATE \$
	DED					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N/A			WC STATU-TORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Subject to the conditions and exclusions of the policies. Liability coverage provided for Steels Pond Hydro, Town of Antrim, NH.

CERTIFICATE HOLDER (603) 271-1961 (603) 271-2982 James Gallagher, Chief Engineer State of New Hampshire NH DES P.O. Box 95, 29 Hazen Drive Concord NH 03302-0095	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Roger Saddleire</i>
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**WORKERS COMPENSATION AND EMPLOYERS LIABILITY
INSURANCE POLICY**



AR INFORMATION PAGE

175 Berkeley Street Boston, MA 02116

Issued by **LM INSURANCE CORPORATION** **27243**

Policy Number **WC5-31S-605823-014** Issuing Office **016C**
NEW BUSINESS NEW Issue Date **07-02-14**
Account Number **1-605823** Sub Account **0000**

1. Insured and Mailing Address
STEELS POND HYDRO INC

1003 HEBERT RD

WILLIAMSTOWN, VT 05679

Status **03 - CORPORATION**

Other workplaces not shown above: **SEE ITEM 4. PREMIUM- EXTENSION OF INFORMATION PAGE**

2. Policy Period: The policy period is from **06-13-2014** to **06-13-2015** 12:01 A.M. standard time at the Insured's mailing address.

3. Coverage

A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: **NH**

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	\$	100,000	each accident
Bodily Injury by Disease	\$	500,000	policy limit
Bodily Injury by Disease	\$	100,000	each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26A

D. This policy includes these endorsements and schedules: **SEE EXTENSION OF INFORMATION PAGE**

4. Premium: The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Classifications	Code Number	Premium Basis Total Estimated Annual Remuneration	Rate per \$100 of Remuneration	Estimated Annual Premium
See Extension of Information Page				
Minimum Premium	\$	1,000 (NH)	Total Estimated Annual Premium \$	1,003
Premium will be billed	ANNUAL			

Producer **0004-018397**
NOYLE W JOHNSON GROUP
PO BOX 279
MONTPELIER VT 05601