

Source should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(I) Absent a request to be heard within the period set forth in Ordering Paragraph (H) above, Edison Source is hereby authorized, pursuant to section 204 of the FPA, to issue securities and to assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Edison Source, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(K) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Edison Source's issuances of securities or assumptions of liabilities. \* \* \*

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 12, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

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or to protest the blanket approval of issuances of securities or assumptions of liability by EESC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EESC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EESC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 9, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

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the vicinity of the projects. If the Commission accepts the staff's conclusions regarding navigability, the likely outcome will be a Commission determination that the projects are not required to be licensed pursuant to Section 23(b)(1) of the Federal Power Act (FPA). Because this determination may affect the resolution of matters at issue in the relicensing proceedings, all parties and interested persons are being given notice of the pending jurisdictional inquiry and an opportunity to comment on the navigability report. Comments may be filed within 30 days of the above date.

#### Jurisdiction

The Commission recently explained its licensing jurisdiction as follows:<sup>1</sup>

Under the FPA, the Commission has two types of licensing jurisdiction: permissive and mandatory. Permissive licensing is authorized rather than required, and is governed by Section 4(e) of the FPA.

Mandatory licensing is governed by Section 23(b)(1) of the FPA, which prohibits the unlicensed construction and operation of certain hydroelectric projects. Thus, it is possible for a voluntary applicant to obtain a license under Section 4(e) of the FPA for a project that would not require a license under Section 23(b)(1).

Under Section 23(b)(1) of the FPA, a license is required for a hydroelectric project if it: (1) is located on "navigable waters of the United States"; (2) occupies lands or reservations of the United States; (3) uses the surplus water or water power from a government dam; or (4) is located on a non-navigable Commerce Clause stream, affects the interests of interstate or foreign commerce, and has undergone construction or major modification after August 26, 1935.<sup>2</sup> If those conditions are not met, Section 4(e) of the FPA would permit licensing of a hydroelectric project in response to a voluntary application if the project is located on a Commerce Clause water.

The Commission staff has determined that the Messalonskee Stream projects would not be located on federal lands or make use of a government dam.

Therefore, if licensing is required depends on whether conditions (1) or (4) above are met.

Regarding (4) above, the Commission staff has concluded that the Messalonskee Stream projects are located on a non-navigable Commerce Clause stream within the meaning of Section 23(b)(1) of the FPA.<sup>3</sup> Because

<sup>1</sup> Swanton Village, Vermont, 70 FERC ¶ 61,325 at pp. 61,992-93 (1995) (citations omitted). See Cooley v. FERC, 843 F.2d 1464, 1471 (D.C. Cir. 1988), cert. denied, 109 S.Ct. 327 (1988).

<sup>2</sup> See Farmington River Power Co. v. Federal Power Commission, 455 F.2d 86 (2d Cir. 1972).

<sup>3</sup> The Messalonskee Stream flows into the navigable Kennebec River. It is well-settled that Commerce Clause streams include the headwaters and tributaries of navigable rivers. See 70 FERC ¶ 61,325 at p. 61,994.

#### [Docket No. ER96-1731-000]

### Engineered Energy Systems Corporation; Notice of Issuance of Order

August 16, 1996.

Engineered Energy Systems Corporation (EESC) submitted for filing a rate schedule under which EESC will engage in wholesale electric power and energy transactions as a marketer. EESC also requested waiver of various Commission regulations. In particular, EESC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EESC.

On August 8, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard

#### [Project Nos. 2555; 2556; 2557; 2559]

### Kennebec Water District and Central Maine Power Company; Notice of Availability of Navigability Report for the Messalonskee Stream, Request for Comments, and Notice of Pending Jurisdictional Inquiry

August 16, 1996.

Kennebec Water District and Central Maine Power Company filed applications for subsequent licenses to continue operating Automatic Project No. 2555, Union Gas Project No. 2556, Rice Rips Project No. 2557, and Oakland Project No. 2559. The projects are located on the Messalonskee Stream near the city of Waterville, Kennebec County, Maine. As part of its review of these relicensing applications, the Commission staff is investigating the jurisdictional status of the projects and has prepared a navigability report for the Messalonskee Stream. The navigability report concludes that the Messalonskee Stream is not navigable in