

## BRUNSWICK FISHWAY CONTRACT

This agreement, made and concluded at Augusta, Maine, this 29th day of December, 1977, by and between the State of Maine, by and through its Department of Marine Resources, hereinafter called the Department, and the Central Maine Power Company, a corporation organized and existing under the laws of Maine and having its principal office in the City of Augusta, County of Kennebec and State of Maine, hereinafter called the Company:

### WITNESSETH THAT:

WHEREAS, the Company proposes to rebuild and redevelop a hydro-electric project to be known as the Brunswick Project on the Androscoggin River in the towns of Brunswick and Topsham, Maine and is preparing applications for appropriate permits and approvals for said project, and

WHEREAS, pursuant to Title 12 M.R.S.A. Section 3709, the Commissioner of the Department of Marine Resources, upon certain conditions, has the authority to require, in the public interest, that the owner of a dam construct a fishway in his dam, and

WHEREAS, upon receipt of written notice from the Company that it intends to construct a dam, the Commissioner of Marine Resources, pursuant to Title 12 M.R.S.A. Section 3709, has determined that the Brunswick Project is located in tidewater, which tidewater and associated waterway is historically or presently frequented by alewives, shad, salmon, sturgeon or other

anadromous fish species, and that the construction of a fishway is necessary, and

WHEREAS, the Commissioner has required the Company to build a fishway and in consultation with the Company has determined the specific plans and the description of the fishway he proposes, has specified how and where such fishway shall be provided and the times it shall be kept open, and has prepared an anadromous fishery management plan for the use of the Company and the Department, and

WHEREAS, the parties agree that this Agreement shall constitute the written order of the Commissioner of Marine Resources as required by Title 12 M.R.S.A. Section 3709(6),

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, it is agreed that:

1. Except as provided below, the Company shall build and complete at its proposed Brunswick Project on the Androscoggin River in the towns of Brunswick and Topsham, Maine, a fishway as shown on drawings and specifications prepared by Charles T. Main, Inc. of Boston, Massachusetts, in consultation with the United States Fish and Wildlife Service and the Maine Department of Marine Resources, and attached to this agreement as Exhibit A and hereby incorporated herein [hereinafter described as the fishway]. While the fishway design is believed to be based on sound limnological, salt water fisheries-management, and engineering practices, neither the Department nor the Company warrant that the fishway will operate as planned and neither will in any way be liable to the other for any failure of the fishway to function as designed. The

Company shall have no liability for any adverse environmental effects resulting from the operation of the fishway.

2. Beginning when the fishway is completed, and ready for operation the Company hereby grants unto the Department the exclusive right, license, and easement to operate the fishway with all rights of ingress and egress to the fishway as are necessary to its operation and inspection and in general as necessary for conducting fishway resource management.

3. The Company and the Department shall each designate a liaison officer who shall represent it in all matters concerning the design and construction of the fishway. New liaison officers may be appointed by either party after written notice to the other. The Company shall provide the Department liaison officer with copies of all relevant correspondence, memos and reports, and other written materials that relate to the design and operations of the fishway. The Company will consult with the Department's liaison officer concerning the fishway during the design and construction phase of the Brunswick Project. The Company shall obtain approval from the Department for any changes to the fishway design as found in the drawings and specifications for the fishway attached hereto as Exhibit A.

4. The Company shall permit on-site inspections by representatives of the Department during construction. For purposes of safety and convenience, these inspections will be during daylight working hours and will be coordinated by the Company with its construction management representatives.

5. The Department agrees to operate the fishway in accordance with the Fisheries Management Plan, attached hereto as Exhibit B, and in a generally effective manner to increase the spawning area for natural propagation of shad, Atlantic salmon, alewives and other anadromous and migratory fish. The Department agrees to use all reasonable efforts to provide adequate personnel, equipment and economic resources to fulfill this obligation, but shall not be obligated to do so except where specific appropriations or other revenues are available.

Where services required by this agreement must be terminated for lack of appropriation or other revenues, the Department will provide 90 days written notice.

6. For the protection of the Department and the Company and their respective employees, the Department shall at its sole expense secure and maintain in force during the term of this contract an Automobile Comprehensive Liability Insurance policy naming the Department and the Company as insured. The Automobile Comprehensive Liability Insurance policy will have limits of Three Hundred Thousand Dollars (\$300,000) for each occurrence. The policy will cover the Department's vehicles and employees and those employees of the Company that operate the Department's vehicles. Prior to its entering on the premises to operate the fishway or otherwise, the Department will provide to the Company a certificate as evidence of such insurance coverage. The certificate of insurance will not be cancelled while the agreement is in effect without 30 days prior written notice to the Company.

The Department will secure and maintain in force, during the performance of work under the term of this contract Workmen's Compensation Insurance, for its employees including Employers' Liability Insurance with limits of liability as high or higher than the Maine statutory limits. Prior to its entering on the premises to operate the fishway or otherwise, the Department will provide evidence of such Workmen's Compensation Insurance coverage.

7. Operation of the fishway to meet the Fisheries Management Plan is the sole responsibility of the Department. Failure of the Department to operate the fishway, in accordance with the Fisheries Management Plan or otherwise, will create no obligation or responsibility in the Company to operate the fishway.

8. Because of the many uncertainties associated with a project of this magnitude, including obtaining timely regulatory approvals and meeting other obligations to the public, the Company reserves the right to cancel or reschedule construction of the Brunswick Project for any reason it deems appropriate. Upon cancellation of the project by the Company, all rights and obligations under this contract for both parties shall terminate.

9. The Department will operate the fishway in a reasonable, safe and prudent manner to protect and maintain the property of the Company. Representatives, agents and employees of the Department shall follow any reasonable security and safety procedure the Company may prescribe.

10. The Department will provide the Company with an annual report which specifies the number of each species which pass through the fishway.

11. Except as provided below, the Company will be generally responsible for any major maintenance and repair of the fishway and its attendant expense. The responsibility of the Company includes cleaning the racks and screens of debris when necessary to maintain adequate head and associated flows and the repair of damaged or worn fishway equipment and structures. Upon any written notice (or oral notice during an emergency) the Company will make any necessary repairs to the fishway. The Company, in consultation with the Department, agrees to develop a routine maintenance plan for the fishway. The Department agrees to conduct routine maintenance tasks it agrees to include within the plan. The Department will be liable to the extent permitted by law for any maintenance or repair which results solely from its negligence in performing maintenance tasks it has agreed to conduct in the maintenance plan.

The Department will be responsible for all costs and expenses associated with the implementation of the Fisheries Management Plan. This will include all costs and expenses associated with its employees and operating personnel such as salary and overhead and the cost of trucks and other equipment and supplies required to fulfill the Fisheries Management Plan. The Company will provide electricity as required for fishway lights, pumps, hoists and counting station heat.

12. In general, when the fishway is operating the Company agrees to provide a reasonable water flow to the fishway to allow

for its proper operation. Under the present fishway design, it is contemplated that a flow of 30 cubic feet a second (cfs) will be provided when the hydroelectric unit is not operating and 100 cfs when the hydroelectric unit is operating or water is spilling over the dam. No flow will be required when the Company is notified by the Department that the fishway is not operating.

Because of emergency conditions, such as those which require maintenance or other immediate response, the Company will not guarantee these flows at all times. When disruption of flow for maintenance or other activities is within its control, the Company shall coordinate the disruption with the Department to minimize the adverse affect on the fishery resources and the operation of the fisheries management plan.

13. If the dam or fishway are substantially destroyed and the Company decides not to repair the dam or fishway, all rights and obligations under this contract shall terminate for both parties, including the right, license and easement granted in Section 2. To the extent permitted by law, the Company agrees it will not maintain a barrier to the passage of anadromous fish.

Breach of Contract

14. The parties agree that the Company, and any agents, employees and contractors of the Company, in the performance of this agreement shall act in an independent capacity and not as officers, or employees or agents of the State of Maine or any agency thereof, and they further agree that the Department, its agents, employees and contractors in the performance of this agreement shall act in an independent capacity and shall not be construed as agents or employees of the Company.

15. Upon completion of the fishway, the Company shall provide the Department with two copies of the as built plans including shop drawings and specifications. These will also include any instructions, manuals and similar materials that pertain to installed mechanical, electrical or other devices necessary for the operation of the fishway facility.

16. The parties recognize that this agreement and the attendant rights and obligations are subject to all necessary Federal, State and local approvals, licenses, permits, and authorizations.



IN WITNESS WHEREOF, Central Maine Power Company has caused this agreement to be signed by its Vice President and the State of Maine, by and through its Department of Marine Resources, has caused this Agreement to be signed by its Commissioner, both duly authorized, as of the date first above written.

CENTRAL MAINE POWER COMPANY

By *C. M. [Signature]*  
Its Vice President

STATE OF MAINE, BY AND THROUGH ITS  
DEPARTMENT OF MARINE RESOURCES

By *Conrad C. Cook*  
Commissioner

APPROVED AS TO FORM

*Dec 30 1977*

*Thomas J. Braskey Jr.*  
Assistant Attorney General  
State of Maine