MEMORANDUM

To: Shannon Ames
From: Stephen Byrne
Date: April 28, 2021

Subject: Recertification Recommendation - Automatic Project, LIHI #72

This memo contains my recommendation for recertification of the Automatic Hydroelectric Project (Project), a 0.8 MW facility located on the Messalonskee Stream in Waterville, Maine. The Project was initially certified by LIHI as "low impact", with one condition, effective February 11, 2011, for a five-year period, expiring on February 11, 2016 under the 1st Edition Handbook. In 2017 the Project was recertified by LIHI under the 2nd Edition Handbook with three conditions and an expiration date of February 11, 2021 which was extended to June 30, 2021. The Project was acquired by Messalonskee Stream Hydro, LLC (MSH or the Applicant) from Kennebec Water District on September 23, 2019.

1. Recertification Standards

LIHI developed a streamlined application format for projects that have previously been certified under the 2nd Edition Handbook to facilitate review in accordance with Handbook Section 6.1. Similar to the recertification process that was used in the 1st Edition Handbook, the current review verifies the information submitted, considers any public comments received, and assesses whether there have been any material changes at the facility or in the LIHI Handbook that affect compliance with the LIHI Criteria.

a) Adequacy of the Recertification Application Package

The application package was submitted on February 23, 2021. The initial review found the application to be complete, that no material changes have occurred at the Project during the current certification term, and that no material changes have occurred in the Handbook since the last recertification. Therefore, only a Stage I review is required, and the application was posted on February 23, 2021 for the 60-day public comment which closed on April 24, 2021. No public comments were received, and the available materials made it unnecessary to reach out to agencies or stakeholders for clarification of any aspect of the application.

In my opinion, the materials now in LIHI's possession are sufficient to make a recertification recommendation and no Stage II review is needed.

b) There have been no "material changes" at the facility that would affect the certification.

In accordance with the recertification standards, "material changes" mean non-compliance, operational changes, and/or new or renewed issues of concern relevant to the LIHI Criteria.

Compliance Status

My assessment of the Project included review of the recertification materials, the last recertification application and review report, annual compliance statements submitted during the current certification term, and FERC's public records during the same period.

The current Certificate includes the following three conditions:

- **Condition 1**: *The Owner shall complete water quality sampling during summer 2017 under a study plan approved in advance by the Maine Department of Environmental Protection (MDEP) and consistent with the MDEP's Lakes, Ponds, and Impoundments Trophic State Study and Rivers and Streams Temperature and Dissolved Oxygen Study protocols. A copy of the final study plan shall be filed with LIHI within 30 days of MDEP approval. The results of the study report shall be filed with MDEP and LIHI by December 31, 2017. If the Automatic Project is determined to be causing, or contributing to, a violation of water quality standards, then a remediation proposal, including an implementation schedule, shall be developed in consultation with MDEP and filed with LIHI by April 1, 2018. If the project is found not to be causing or contributing to violations of water quality standards, then the Owner shall file review comments/recommendations from MDEP by the same date*.
- **Condition 2**: *The Owner shall continue to operate and maintain safe, timely, and effective upstream passage facilities for American eel at Automatic dam in coordination with the Maine Department of Marine Resources (MDMR) and the U.S. Fish and Wildlife Service.*
- **Condition 3**: *In the Owner's Annual Compliance Statements, the Owner will update LIHI on the status of downstream eel passage at the site. The Owner will notify LIHI within 45 days if MDMR determines there is a sufficient number of eel present in the river to conduct the studies needed to determine the best location to install downstream passage. A summary of those study results, along with a MDMR-approved plan and schedule for downstream eel passage installation, shall be included in that year's Annual Compliance Statement*

By letter dated April 23, 2019, Maine DEP reviewed water quality data collected by the then-licensee Kennebec Water District, during summer 2017 per Condition 1 above and

commented that while two sample dates contained chlorophyll-a samples that exceeded the department's criterion, such high readings were likely not representative of impoundment conditions and that the department supported the LIHI certification of the Project. As such, Condition 1 was deemed satisfied in 2019.

Regarding Condition 2, the upstream eel passage facility has been operated each year and is annually inspected by the Maine Department of Marine Resources and the US. Fish and Wildlife Service. In its 2019 annual compliance letter to LIHI, Kennebec Water District states that modifications were made to the entrance ramp of the upstream passage facility and approved by the Maine Department of Marine Resources. This review finds that Condition 2 is no longer needed to ensure compliance with upstream eel passage requirements given ongoing operations and inspections.

Regarding Condition 3, the Applicant has provided a status update in each annual compliance letter to LIHI. To date, Maine Department of Marine Resources has not provided a specific requirement or request for a passage assessment. Additionally, beginning in 2020 the first four projects on the Messalonskee Stream upstream of the confluence with the Kennebec River, including the Automatic Project, have implemented operational shutdowns between September 1st and October 30th from 6pm to 2am to promote downstream American eel passage. Based on the number of eels trapped, measured, and released at the most downstream dam (the Union Gas dam, LIHI #58) in 2020, the joint operational shutdowns appear to have a yielded a variety of sizes and a more accurate representation of eels in the Messalonskee Stream. This review finds that Condition 3 is no longer needed to ensure compliance with downstream eel passage given ongoing operations.

A search of the FERC elibrary from January 1, 2016 to present revealed reports of failure of the prior owner to file a FERC Form 80 recreation reports for 2015 and 2009, and failure to file recreation monitoring reports for 2015, 2009, and 2004. The reports were subsequently filed in May of 2016 and FERC closed the issue in a letter dated November 18, 2016.

<u>New/Renewed Issues of Concern</u>

No other changes have occurred at the facility which affect the LIHI criteria and no issues of concern were identified. The application included the following updated information:

- There was a two-week drawdown in July 2019 that was approved by resource agencies prior to the event. The Applicant states that any future drawdowns would also be coordinated with resource agencies prior to implementation.
- Correspondence from Maine Department of Inland Fish and Wildlife to the Applicant states that black terns are the only state listed species associated with the

Messalonskee Stream Projects (Union Gas Project, Automatic Project, Rice Rips Project, and Oakland Project). Black terns nest in the summer in the Messalonskee Lake Impoundment upstream of the Oakland Project. By letter dated February 11, 2021, US Fish and Wildlife Service informed the Applicant that the federally-threatened Northern long-eared bat and the federally-endangered Atlantic salmon should be considered in an effects analysis for the Project. A consistency letter, also dated February 11, 2021, was generated by the Applicant using the US Fish and Wildlife Service's IPaC system stating that based on Project operations and characteristics, any take of the Northern long-eared bat that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted. Regarding Atlantic Salmon, US Fish and Wildlife stated during the previous LIHI recertification of the Union Gas Project (LIHI #58, and the most downstream project on the Messalonskee Stream) that passage of Atlantic salmon into the Messalonskee Stream was not desirable. The agency has not stated otherwise since.

This review discovered a Maine Pollutant Discharge Elimination System Permit and Maine Waste Discharge License from the Department of Environmental Protection, Bureau of Land and Water Quality issued on June 10, 2019 for the upstream Rice Rips Hydroelectric Project[1]. The Department concluded in the permit that water quality standards in the receiving water (the Rice Rips downstream reach/Automatic impoundment reach) would be protected and maintained and that the receiving water quality would not be lowered below the classification which the Department expects to adopt in accordance with state law. Additionally, discharge will be subject to effluent limits that require application of best practicable treatment. Further, the Department issued an April 23, 2019 letter (Appendix 1 of the recertification application) confirming the validity of the Automatic Project's water quality certification and in support of LIHI recertification. The Applicant provided a link to the State Impaired Waters List which demonstrates no river impairments in the Project reaches.

c) LIHI's certification criteria have not materially changed since the previous certification was issued in 2016.

The LIHI Criteria have not materially changed from the original 2nd Edition Handbook issued in 2016 to the current Revision 2.04 issued April 1, 2020.

2. Conclusion

Based on the above, I recommend recertification for a five (5)-year term with no conditions.

[1] https://www3.epa.gov/region1/npdes/permits/2019/finalme0001252permit.pdf.