



March 29 2016

VIA E-FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N. E.
Washington, DC 20426

Suspension of Fish Passage Requirement
Gardners Falls Project – FERC No. 2334

Dear Secretary Bose:

Essential Power Massachusetts, LLC (EP) (formerly Consolidated Edison Energy Massachusetts, Inc.) received a new license for the Gardners Falls Project on April 4, 1997 (79 FERC ¶ 61,007). Article 404 required the Licensee develop a plan to monitor the effectiveness of permanent downstream fish passage facilities. In a subsequent order, dated June 14, 2001, the Commission approved a final downstream fish passage effectiveness report and recommended modifications (95 FERC ¶ 62,225). While the ordering paragraphs did not specifically modify the project description but the order described the facility as:

“The approved downstream fish passage facility consists of a minimum flow/fish passage gate and floating louver to guide downstream migrating fish to the gate.”

By order dated November 1, 2002, the Commission approved as-built fish passage drawings, Exhibit F-8 through F-16 (FERC Nos. 2334-2014 through 2022).

On February 24, 2016, Massachusetts Division of Fisheries & Wildlife (MDFW) notified EP (Attached) that with ending of the Massachusetts Atlantic salmon restoration program in 2013 and sufficient time for smolts to have left the Deerfield River system, there is no reason for Deerfield hydropower project owners to continue operation of downstream smolt passage facilities. Further MDFW states that it will support petitions to FERC to amend project licenses/exemptions to reflect these changes. By email dated March 24, 2016 (Attached), the US Fish and Wildlife Service (USFWS) provided concurrence with MDFW.

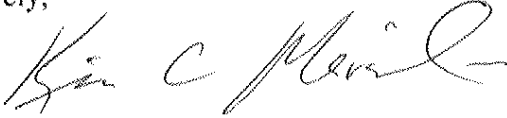
In order to address MDFW's stipulation for minimum flows, the minimum flow/fish passage gate will continue to be operated to provide minimum flows to the downstream reach.

Based upon MDFW's correspondence and USFWS concurrence, EP respectfully requests that the Commission approve discontinuation of operation of the downstream fish passage facilities

and delete from the project Exhibit F drawings F-8 through F-18, approved in the November 1, 2002 order.

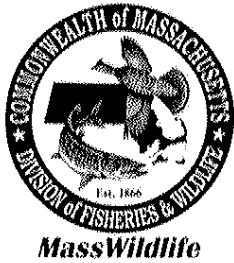
If you have any questions or require additional information regarding this filing, please contact me at 413.730.4271 (email: kim.marsili@essentialpowerllc.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Kim C. Marsili". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kim Marsili
Station Manager

cc: Thomas J. LoVullo (via email) – DHAC, Branch Chief - Aquatics
John Bahrs, VP. PGS. Essential Power LLC™
Gerald Adamski, Director of Compliance Essential Power LLC™

*Commonwealth of Massachusetts*

Division of Fisheries & Wildlife

Jack Buckley, Director

February 24, 2016

Deerfield River Project (FERC No 2323)

Gardners Falls Project (FERC No 2334)

RE: Atlantic Salmon downstream fish passage protection

Deerfield River Project Owners,

To protect Atlantic Salmon the Division requires hydroelectric dams in the basin to operate downstream passage measures for salmon smolts. These measures were incorporated into the Federal Energy Regulatory Commission (FERC) permits for these projects and are enforced by FERC.

The MA Atlantic Salmon restoration project ended in 2013. The last Atlantic Salmon fry were stocked in Massachusetts in the spring of that year. Deerfield River Atlantic Salmon typically smolt after two years in freshwater. Therefore most of those fry have smolted and left the system in the spring of 2015. As a result, the Division expects very few salmon smolts migrating downstream in spring of 2016. Given this, the Division does not believe there is any reason to continue to mandate the operation of smolt specific downstream passage measures beginning in 2016.

In cases where flow through the downstream bypass facility is part of a project's required minimum flow accommodations will need to be made to replace this flow from another source if the downstream bypass is closed.

The Division will support petitions to FERC to amend project Licenses/Exemptions to reflect these changes.

Please call me if you have any questions.

Caleb Slater
Anadromous Fish Project leader
(508) 389-6331

www.mass.gov/masswildlife

Division of Fisheries and Wildlife

Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish and Game

Kim Marsili

From: Warner, John <john_warner@fws.gov>
Sent: Thursday, March 24, 2016 11:55 AM
To: Kim Marsili
Cc: Chris Tomichek (Chris.Tomichek@KleinschmidtGroup.com); Andy Qua (Andy.Qua@KleinschmidtGroup.com); Nicholas Hollister
Subject: Re: Downstream fish passage termination support request

Kim - I thought I had replied - sorry. We concur with MDFW on fish passage needs for Atlantic salmon smolts at Gardners Falls -- JW

On Thu, Mar 24, 2016 at 11:41 AM, Kim Marsili <Kim.Marsili@essentialpowerllc.com> wrote:

Mr. Warner,

Just checking in to see if you can support the request below. A positive response via email is sufficient. Thank you

Kim Marsili

Station Manager

Essential Power Massachusetts LLC

15 Agawam Ave

West Springfield Ma. 01089

Office Phone 413 730 4721

Cell Phone 413 627 9960

From: Kim Marsili
Sent: Thursday, March 10, 2016 3:08 PM

To: John.Warner@fws.gov

Cc: Chris Tomichuk (Chris.Tomichuk@KleinschmidtGroup.com); Andy Qua (Andy.Qua@KleinschmidtGroup.com); Nicholas Hollister

Subject: Downstream fish passage termination support request

Mr. Warner,

Attached is a letter I received from the MDFW stating that they will not be mandating the operation of downstream fish passage at our Gardners Falls facility. The letter also goes on to state the MDFW will support petitions to FERC to amend project Licenses/Exemptions to reflect the change.

Essential Power Massachusetts will be contacting FERC and requesting an amendment to our License. It would be very helpful if the USFW would respond back to this email in favor of our request to suspend operation of the downstream fish passage (i.e., stop installing the fish louvers) at our Gardners Falls Station.

Any assistance with this matter is appreciated.

Kim Marsili

Station Manager

Essential Power Massachusetts LLC

15 Agawam Ave

West Springfield Ma. 01089

Office Phone 413 730 4721

Cell Phone 413 627 9960

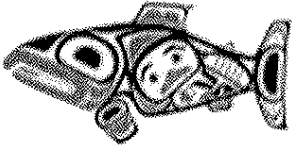
From: Slater, Caleb (FWE)

Sent: Wednesday, February 24, 2016 2:48 PM

To: 'Kim Marsili' (kim.marsili@naea.com); 'john_ragonesi@transcanada.com'

Subject:

Please see attached...



Caleb Slater, PhD

Anadromous Fish Project Leader

Massachusetts Division of Fisheries and Wildlife

1 Rabbit Hill Road

Westborough, MA 01581

508-389-6331

www.mass.gov/masswildlife

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John P. Warner
Assistant Supervisor, Migratory Fish/Hydropower
New England Field Office, U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, NH 0330-5087
phone: 603-223-2541, Ext. 6420
fax: 603-223-0104

Document Content(s)

FERC GardnersFalls DS Fish Passage.PDF1

155 FERC ¶ 62,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power Massachusetts, LLC

Project No. 2334-055

ORDER MODIFYING AND SUSPENDING LICENSE ARTICLES 403 AND 404

(Issued May 16, 2016)

1. On March 30, 2016, Essential Power Massachusetts, LLC, licensee for the Gardners Falls Project No. 2334, filed a request to discontinue operation of the downstream fish passage facilities required by Article 403 and 404 of the project license.¹ The project is located on the Deerfield River in Franklin County, Massachusetts. The project does not occupy federal lands.

REQUIREMENTS AND BACKGROUND

2. License Article 403 requires the licensee to file, for Federal Energy Regulatory Commission (Commission) approval, detailed design drawings of the proposed downstream fish passage facilities together with a plan and schedule to construct and install the facilities. The licensee is required to prepare the design drawings and schedule after consultation with the U.S. Fish and Wildlife Service (FWS) and the Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW). In addition, the Article requires that the facilities operate April 1 through June 15 and from September 15 to November 15 each year.

3. License Article 404 requires the licensee to file, for Commission approval, a plan to monitor the effectiveness of the permanent downstream fish passage facilities required by Article 403 and associated operational flows to safely and efficiently pass Atlantic salmon smolts down the Deerfield River past the Gardners Falls Project. The licensee's plan was approved by order dated June 1, 2001² and the as-built drawings under Article 403 were approved by the Commission on November 1, 2002.

¹ Order Issuing New License (79 FERC ¶ 61,007), issued April 4, 1997.

² Order Approving Final Downstream Fish Passage Effectiveness Report and Recommended Modifications (95 FERC ¶ 62,225).

LICENSEE'S REQUEST

4. In its filing, the licensee requested to discontinue operation of the downstream fish passage facilities approved in Article 403, suspend monitoring of the facilities required in Article 404, and delete Exhibit F drawings F-8 through F-18 from its project license. On May 6, 2016, Commission staff requested that the licensee clarify if downstream facilities would actually physically be removed from the project, necessitating deletion of certain Exhibit F drawings. In response, the licensee stated that facilities would not physically be removed and would therefore rescind its request to delete the aforementioned Exhibits.³

CONSULTATION

5. The licensee's filing indicates that it was notified by the Massachusetts DFW on February 24, 2016, that it was no longer necessary for hydroelectric project owners on the Deerfield River to operate downstream fish passage facilities at their projects for Atlantic salmon smolts beginning in 2016. In its letter, it stated that the Massachusetts Atlantic salmon restoration effort ended in 2013 and that it expected any Atlantic salmon fry to smolt and out-migrate after two years in freshwater (2015). The FWS concurred with the Massachusetts DFW's comments and the licensee's request on March 24, 2016.

CONCLUSION

6. Articles 403 and 404 were intended to support Atlantic salmon restoration efforts in the Deerfield River. The resource agencies agree that the efforts are not likely to provide any measureable benefit without continued stocking efforts and that the two years should have provided sufficient time for any fish stocked in 2013 to smolt and out-migrate. In the event that the Massachusetts DFW reinitiates Atlantic salmon restoration efforts in the future, the Commission reserves the right to reinstate Articles 403 and 404. For these reasons, the licensee's request to discontinue operation of downstream fish passage facilities and suspend the requisite effectiveness monitoring is reasonable and therefore, should be approved.

³ Email communication on May 9, 2016 with the licensee and Joseph Enrico, Commission staff.

Project No. 2334-055

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The Director orders:

(A) Essential Power Massachusetts, LLC's (licensee) request, filed with the Federal Energy Regulatory Commission (Commission) on March 30, 2016, to suspend the requirements of Articles 403 and 404 of the license for the Gardner Falls Hydroelectric Project No. 2334, as modified in paragraph B, is approved.

(B) The Commission reserves the right to reinstate Articles 403 and 404 based on fishery management information provided by the licensee, the U.S. Fish and Wildlife Service or the Massachusetts Division of Fisheries and Wildlife.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 CFR § 385.713 (2015). The filing of a request for hearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Thomas J. LoVullo
Chief, Aquatic Resources Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

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