

## **APPENDIX 7**

### **Union Gas Hydroelectric Project Fish Passage and Protection**

## Appendix 7

### Union Gas Hydroelectric Project Fish Passage and Protection

Maine Department of Inland Fisheries and Wildlife maintains a successful brown trout fishery below the project and it was determined in the October 12, 2000 amendment to the Project's FERC License No. 2556, attached as Appendix 2-2, that maintaining a minimum flow of 15 cfs at all times would provide suitable habitat enhancement for brown trout in the Union tailrace.

In 2010 a proposal was made, at the request of the Maine Department of Marine Resources (MDMR), to address the lack of upstream and downstream passage for American eel, the only diadromous species that have historically used Messalonskee Stream (see Appendix 7-1). The Union Gas and Rice Rips projects have a fully operational upstream passages completed and approved by the MDMR. Initial site location for upstream American eel passage at the Oakland facility has occurred this year. Testing the upstream passage options will occur in 2016 with final installations expected in subsequent years.

As a condition of issuance, the FERC License requires the Union Project to comply with any subsequent terms and conditions that Federal and State fish and wildlife agencies determine appropriate for the project. The FERC reserved the right to revoke the license if any term or condition of the license is violated.

**APPENDIX 7-1**

**Letter from Messalonskee Stream Hydro, LLC to Maine Dept. of Marine Resources  
Dated September 10, 2010**

**MESSALONSKEE STREAM HYDRO, LLC**  
c/o ESSEX HYDRO ASSOCIATES, L.L.C.  
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BOSTON, MASSACHUSETTS 02108 USA

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**September 10, 2010**

**Ms. Gail Wippelhauser  
Marine Resource Scientist  
Maine Department of Marine Resources  
#172 State House Station  
Augusta, ME 04333**

**Re: Messalonskee Stream American eel passage**

**Dear Ms. Wippelhauser,**

As you are aware, on May 9<sup>th</sup>, 2010 Messalonskee Stream Hydro, LLC ("MSH") applied to the Low Impact Hydropower Institute ("LIHI") for certification as a low impact hydropower facility. As part of the application process, on June 7, 2010 you were contacted by my colleague Mr. Stephen Hickey in regards to the adequacy of MSH's Union Gas, Rice Rips and Oakland hydro station's ("the MSH stations") fish passage facilities (see Appendix 1). As we have discussed, please find below our proposal to address your concerns regarding the lack of upstream and downstream passage for American eel, the only diadromous species that have historically used Messalonskee Stream.

MSH proposes to work cooperatively with the Maine Department of Marine Resources ("MDMR") and the United States Fish and Wildlife Service ("USFWS") to address eel passage at the MSH stations.

In regards to upstream passage of American eel, MSH proposes to first address the Union Gas hydro station, the furthest downstream station on the Messalonskee Stream. In the spring of 2011 MSH would work with MDMR to determine the optimum location for installation of an eel ramp based upon an investigation of the tailrace area and observations of elver behavior. MSH then would install the ramp as early as is feasible on a best efforts basis. MSH suggests that MDMR install and maintain a trapping and counting box similar to that maintained at the Benton Falls project to assess the actual upstream eel migration in 2011 and subsequent years. MSH, MDMR, and USFWS would monitor American eel passage rates at the facility and assuming a successful run at the Union Gas project and the installation of upstream American eel passage at Automatic Station, the next upstream hydro station owned by the Kennebec Water District, MSH would then propose to work with MDMR and USFWS to design and install upstream eel passage facilities at the Rice Rips and Oakland projects.

With respect to downstream eel passage MSH proposes to provide MDMR and USFWS with project drawings showing details of each of the three project intakes. MSH then will work with the agencies to determine appropriate measures that need to be

taken to assure reasonable downstream eel passage. Such measures, if necessary, might include limited nighttime operation or modified bypass flow regimes during critical migration times. It is expected such measures would begin to be implemented in the fall of 2011.

You will note that MSH has provided Mr. Fred Ayer a copy of this letter that we hope responds to your July 13<sup>th</sup> comments regarding the adequacy of fish passage at the Messalonskee Stream Hydro projects.

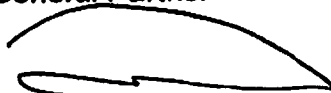
If you have any questions, please give either Steve Hickey or me a call (617-367-0032) or send an e-mail, [sih@essexhydro.com](mailto:sih@essexhydro.com) or [tarpey@massgravity.com](mailto:tarpey@massgravity.com).

Very truly yours,

MESSALONSKEE STREAM HYDRO, LLC

By: Concord Hydro Associates  
Sole Member

By: Essex Hydro Associates, L.L.C.  
General Partner



Thomas A. Tarpey  
Executive Vice President

Cc: F. Ayer  
J. Warner

## **APPENDIX 8**

### **Description of Watershed Protection**

## Appendix 8

### Union Gas Hydroelectric Project

#### Description of Watershed Protection

As was previously mentioned, the primary watershed area for the Messalonskee projects is the Messalonskee Lake that is impounded by the Lord's South dam located in the village of Oakland, Maine. The Messalonskee Lake has a total drainage area of 177 square miles. From the Messalonskee Lake to the limits of the watershed, the landscape is forested and rural with small towns scattered throughout. The bedrock of the Messalonskee Lake watershed is made up of a mixture of sand, silt, clay, gravel and granite. All of the land in the immediate vicinity of the Union Gas dam is urban in character, developed and privately owned.

The watershed area formed by the Union Gas dam impoundment extends approximately 1.5 miles upstream from the Project to the Automatic dam. The Union Project has a gross reservoir volume of 30 acre-feet. The 200-foot boundary zone extending around the Union impoundment is highly developed, bordered by a steep gradient and is comprised of land occupied by commercial buildings and residential homes (see Appendix 8-1).

The flows below the Union Gas hydroelectric project (the "Union project") have minimal effect on shoreline erosion due to the predominantly granite and gravel substrates in the tailrace areas. There has been minimal colonization of exposed shorelines by emergent plants within the 200-foot boundary area due to the inhospitable landscape and steep slopes along 60% of the shoreline.

The Union project is required per Article 408 of its FERC license issued on July 28, 1999 to operate within the guidelines of a Waterfowl Management Plan developed in conjunction with and periodically reviewed by the Maine Department of Inland Fishers and the U.S. Fish and Wildlife Service (see Appendix 8-2)

As a condition of issuance, the FERC License requires compliance with any terms and conditions that the Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. There have been no deficiencies noted by any agency with jurisdiction for the plant.

## **APPENDIX 8-1**

### **Union Gas Impoundment**

## UNION GAS IMPOUNDMENT



**APPENDIX 8-2**

**FERC Order Modifying and Approving Waterfowl Management Plan  
Issued May 17, 2000**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

FPL Energy Maine Hydro LLC )  
Project No. 2556-018

ORDER MODIFYING AND APPROVING WATERFOWL  
MANAGEMENT PLAN

(Issued May 17, 2000)

On October 27, 1999 and May 1, 2000, FPL Energy Maine Hydro LLC (FPL Energy), licensee for the Mesalonskice Project filed a Waterfowl Management Plan (plan), pursuant to license Article 408 for the project issued July 28, 1999.<sup>1</sup> The project facilities are located on Mesalonskice Stream, a tributary of the Kennebec River, in Kennebec County, Maine.

BACKGROUND

Article 408 requires the licensee to file for Commission approval, within three months of license issuance, a plan that would describe the methods to implement the wetland assessment and wildlife monitoring outlined in the "Mesalonskice Lake Waterfowl Management Plan" filed with the Commission on June 30, 1993. The plan shall provide a basis for determining trends in waterfowl use and wetland habitat at Mesalonskice Lake. The plan shall specify, at a minimum: (a) the methods to be used to assess the status and trends in the quantity of wetlands in Mesalonskice Lake; and (b) the methods to be used to monitor waterfowl, wetland bird, and black tern use of the Mesalonskice Lake wetlands. The plan shall also include a schedule for conducting and reporting the periodic assessment of the Mesalonskice Lake wetlands and associated wildlife use. The periodic assessment shall be conducted at an interval of every five years through the term of the license, as set forth in the June 30, 1993 "Mesalonskice Lake Waterfowl Management Plan." After completing each assessment, the licensee shall file a report with the Commission that includes, at a minimum, the periodic assessment results, and any recommendations for the modifications of project operations or the implementation of other measures to enhance waterfowl habitat, as might be appropriate. The plan shall be developed after consultation with the Maine Department

See Order Issuing New License, 88 FERC ¶ 61,122 (1999).

Project No. 2556-018

of Inland Fisheries and Wildlife (MDIFW) and the U.S. Fish and Wildlife Service (FWS).

PROPOSED PLAN

FPL Energy proposes to assess habitat conditions for waterfowl, wetland birds, and black terns; qualitatively assess the trends in the status of these bird populations; identify management strategies if a significant project-caused decline in populations is observed. Every five years, beginning January 31, 2001, the licensee proposes to file its comprehensive monitoring reports based on survey findings. Surveys will be conducted by boat, plane, and/or on foot by qualified biologists at Mesalonskice Lake. In addition, the licensee will conduct an inventory of the wetlands (greater than or equal to 1 acre) around Mesalonskice Lake. Water level records will be maintained for the project and used in the assessment. Field surveys of waterfowl and wetlands will be conducted every five years, while aerial photography of wetlands will be conducted every ten years. Common loons will be the focus of the waterfowl survey, due to their sensitivity to water level fluctuations. The licensee will survey territorial loon pairs, nesting pairs, and their nesting success rate and productivity. Surveys will be conducted on a weekly basis from ice-out through mid-July and on a periodic basis through late summer to document nesting success and chick survival. The licensee will investigate the causes of nesting failure and assess the effects of the current operating regime on waterfowl nesting success and productivity.

Surveys for wetland birds will be conducted concurrent with waterfowl surveys from early May to mid-June. The licensee will follow the methodologies outlined in "General Protocol for Marsh Bird Playback Surveys in Maine."

The licensee will survey black tern primary nesting areas and critical habitats in order to estimate breeding pairs and population size. Surveys will be conducted on a weekly basis during the breeding season, from May through July, and monthly thereafter until migration occurs. Nests will be checked to document nesting success, predation, and disturbance. In addition, the licensee will assess if project operations or changes in habitat are affecting current populations.

The licensee will submit draft reports of the survey findings to the FWS and MDIFW for a minimum 30-day review and comment period. Final reports will be sent to the Maine Department of Environmental Protection and the Commission by January 31 following the year of the assessment. The reports will include recommendations for project-related measures necessary to protect waterfowl nesting and/or black tern usage.

AVOINCE COMPLAINTS AND LICENSURE RESPONSES

In accordance with Article 40B, FPL Energy provided draft copies of the plan in PWS and MWDIFW for their review. By letter dated November 29, 1999, the PWS PWS and MWDIFW provided the following recommendations: (1) use contemporary aerial photography for each wetland inventory, and incorporate quality assurance/quality control (QA/QC) procedures into the plan to ensure consistent results; (2) conduct an assessment of the impact of project water level management during each wetland assessment; (3) assess all life stages of common loon nests that use the project area, including conducting weekly field observations from early May until mid-July and bi-weekly observations from mid-July until the end of August in order to document nest failure, observed disturbances, and cause of egg and chick mortality; (4) conduct field observations from early May until the end of August (using some frequency as common loon surveys for black terns; and (5) repeat the initial baseline survey protocol for each five year assessment for common loon and black tern, and use QA/QC procedures.

In a letter dated December 7, 1999, the MWDIFW provided the following recommendations: (1) wetland mapping should identify wetlands that are less than or equal to 1 acre; (2) wetlands should be mapped and black terns should be monitored during the breeding period nesting season. In addition, water levels should be monitored throughout the breeding season to determine if increasing water levels are contributing to nest failure/brood mortality; (3) utilize standardized playback surveys to document the presence of nesting birds; and (4) coordinate black tern surveys with Dr. Schellin to complement ongoing studies.

The licensee has adopted the agency recommendations identified above, except as outlined below. First, the licensee has proposed to conduct aerial photography every ten years rather than every five, as recommended by FWS, because stable water level management should not result in large-scale changes to the wetland area. Second, the licensee proposes to map wetlands that are greater than or equal to 1 acre, as modified from the initial proposal to map only wetlands greater than 5 acres. Third, the licensee stated that it would conduct weekly surveys from late summer to mid-July and "periodic checks" from mid-July until late summer to document loon chick survival. However, no future interval for the "periodic checks" is given. Fourth, the licensee proposed to conduct weekly black tern surveys during May, June, and July and monthly thereafter. Finally, the licensee did not state that, for the period five year assessment, it would repeat initial baseline survey protocol for common loons and black terns.

DISCUSSION AND RECOMMENDATIONS

We agree with the licensee that conducting wetland field surveys every five years and aerial mapping every ten years is sufficient to monitor the status of wetlands in Massachusetts Lake. Because water levels are maintained at a relatively constant level year-around (a maximum of 0.5 to 1 foot fluctuation year-around is permitted), measurable changes in existing wetlands would not be expected to occur. However, if significant changes were detected, the licensee would conduct an assessment of the impact of the current water level regime on wetlands.

In addition, we generally agree with the licensee's proposal to map only wetlands that are greater than or equal to 1 acre. The purpose of wetland mapping for this project is to monitor trends in wetland habitat. Therefore, we believe that mapping wetlands that are 1 acre size or greater should be adequate to monitor the status of wetland composition and quantity in Massachusetts Lake.

For the common loon and black tern surveys, we believe the licensee should conduct weekly surveys from late summer to mid-July, as proposed. Although MWDIFW recommended that surveys be conducted every 2-3 days during the breeding/nesting season, it is not clear that the frequency of survey frequency would provide more accurate information. Therefore, we do not recommend increasing survey frequency at this time.

FPL Energy should follow the recommendations of the FWS, by conducting bi-weekly surveys from mid-July until the end of August, in order to evaluate breeding success and survival of young. In addition, the licensee should use the initial baseline survey protocol for both the common loon and black tern surveys to ensure consistency in the collection of data, analysis, and interpretation of data.

The Waterfowl Management Plan, filed by FPL Energy on May 1, 2000, satisfies the requirements of License Article 40B, implementation of this plan should adequately collect data to provide a basis for determining trends in waterfowl use and wetland habitat in Massachusetts Lake. Therefore, this plan, as modified with our recommendations, is approved.

The Waterfowl

(A) The Waterfowl Management Plan, filed by FPL Energy on May 1, 2000, pursuant to Article 40B for the Massachusetts Project, as modified by redacting paragraph (B), is approved.

(13) The common loon and black tern surveys shall repeat the initial baseline survey protocol for each of the licensee's periodic five year assessments, beginning in 2005. When conducting its periodic five year assessments, FPI, Energy shall conduct bi-weekly surveys for the period of mid-July until the end of August for the common loon and black tern.

(C) The licensee shall file the baseline data survey report to the Commission by January 31, 2001. Subsequently, every five years the licensee shall file monitoring reports to the Commission by January 31, 2006, 2011, 2016, 2026, and 2031. The filings shall include survey results, the need (if any) to provide protection measures, including changes in project operations, for waterfowl nesting and black tern usage, and any comments from the U.S. Fish and Wildlife Service and Maine Department of Inland Fisheries and Wildlife. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the report with the Commission. If the licensee does not adopt an agency recommendation, the filing shall include the licensee's reasons, based on project-specific information.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of this order, pursuant to 18 C.F.R. §385.713.

*Walter Springer*  
Walter E. Springer  
Director  
Division of Hydropower Administration  
and Compliance

## **APPENDIX 9**

### **Union Gas Hydroelectric Project Description of Threatened and Endangered Species Protection**

## Appendix 9 Union Gas Hydroelectric Project

### Description of Threatened and Endangered Species Protection

There are no federally listed threatened or endangered species that occur in the vicinity of the Union Gas project other than occasional transient bald eagles and peregrine falcons. Requests will be submitted to the Maine Department of Inland Fisheries and Wildlife and U.S. Fish and Wildlife Service for a comprehensive list of all threatened or endangered species in the Waterville, ME region but it is believed at this moment that there are no known nesting sites or vegetation in the vicinity of the project that are adversely impacted by the facility.

As mentioned in Appendix 8, the watershed area naturally protects fish and wildlife by its topography and lack of public access. Of the avian species currently listed on the Maine list of threatened or endangered species, bald eagles and peregrine falcons have been spotted in the area but have no known nesting sites in the vicinity of the project.

As a condition of its FERC license (“the License”), measures were included to protect waterfowl and fishery resources on which bald eagles and peregrine falcons feed, primarily in the Messalonskee Lake watershed area. Article 408 of the Messalonskee Project’s license, as amended, requires the MSH project to file baseline survey data to the FERC by January 31, 2006, 2011, 2016, and 2031 (see Appendix 8-2). The filings shall include survey results, the need (if any) to provide protection measures, including changes in project operations for waterfowl nesting and black fern usage, and any comments from the U.S. Fish and Wildlife Service and Maine Department of Inland Fisheries and Wildlife.

The FERC License requires compliance with any terms and conditions that the Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The Union project operates within FERC and Federal or State Fish and Wildlife Agency guidelines. The project’s License is subject to termination if the facility is found to be out of compliance.

## **APPENDIX 10**

### **Union Gas Hydroelectric Project Cultural Resources**

## Appendix 10

### Union Gas Hydroelectric Project

#### Cultural Resources

The Messalonskee Project is required to maintain an archaeological site-monitoring program that was first undertaken in 2000 to assess whether Precontact period archaeological resources reported within the Messalonskee Project were being impacted by the ongoing operation of the Messalonskee Project. The Maine Historic Preservation Commission indicated that as of May 26, 2015 none of the sites that had been identified as requiring monitoring had shown evidence of emergency erosion status in the last few monitoring reports (see Appendix 10-1).

The Messalonskee Project is required to submit its next archaeological report by the end of 2017.

**APPENDIX 10-1**

**Letter from Maine Historic Preservation Commission  
Dated May 26, 2015**



PAUL R. LEPAGE  
GOVERNOR

MAINE HISTORIC PRESERVATION COMMISSION  
55 CAPITOL STREET  
65 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333

EARLE G. SHETTLEWORTH, JR.  
DIRECTOR

May 26, 2015

Mr. Stephen Hickey  
Messalonskee Stream Hydro, LLC  
c/o Essex Hydro Associates, LLC  
55 Union St., 4<sup>th</sup> Floor  
Boston, MA 02108

Re: FERC 2556, Messalonskee Stream Hydro, archaeological site monitoring

Dear Mr. Hickey:

Based on the photographs included in the archaeological site monitoring report, received here May 21<sup>st</sup>, we concur with your findings of continued relative stability of the shorelines of the six monitored site (53.42, 53.41, 53.30, 52.26, 37.1 and 37.16). None of the sites requires emergency archaeological attention at this time.

Sincerely,

Arthur Spiess, PhD  
Senior Archaeologist

[arthur.spiess@maine.gov](mailto:arthur.spiess@maine.gov)

## **APPENDIX 11**

### **Union Gas Hydroelectric Project Recreation**

Appendix 11  
Union Gas Hydroelectric Project  
Recreation

The Union Gas facility is in Compliance with the recreational access, accommodation and facilities conditions of its FERC License issued on July 28, 1999. Article 412 requires monitoring of the recreational needs and facilities at the Project every six years in conjunction with and on the same time frame as the FERC Form 80 compliance requirements. FERC Form 80 was filed on April 1, 2015 but several errors in the data collection process were discovered and the Union Gas facility was granted an extension of time by the FERC until April 1, 2016 to submit a corrected Form 80. (See Appendix 11-1)

Article 41 states:

*“Within three month of issuance, the licensee shall prepare a plan to monitor recreational use of the Oakland development to determine whether the existing access facilities and the new facilities required in Articles 409, 410, and 411 are meeting public use demands without harm to wetlands and wildlife. The plan shall provide for monitoring the effects of recreational use at the development and filing a monitoring report concurrently with the Form 80 recreational reporting, starting the with Form 80 report in 2004.*

*Every six years during the term of the license, the licensee shall file with the Commission, a report on the monitoring results along with the required Form 80, Recreation Report. The report shall include: (1) annual recreation use figures; (2) a discussion of the adequacy of the licensee’s recreation facilities at the development to meet recreation demand; (3) a description of the methodology used to collect and study all data; and (4) where there is need for additional facilities, a recreation plan proposed by the licensee to accommodate recreation needs at the development. The licensee shall allow for a minimum of 30 days for the entities to comment and to make recommendations prior to filing the report and Form 80 with the Commission.*

*The licensee shall prepare the recreation use-monitoring plan after consulting with the Main Department of Inland Fisheries and Wildlife, U.S. Fish and Wildlife Service, National Park Service, and Maine Department of Conservation (“commenting agencies”)... The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission for approval. If the licensee does not adapt a recommendation, the filing shall include the licensee’s reasons, based on development-specific information.”*

In accordance with the Order Modifying and Approving Recreation Plan issued by the FERC on June 26, 2000 (see Appendix 11-2) and per the terms of Articles 409, 410 and 411 of the License the Union project is required to maintain a boat ramp downstream of the powerhouse tailrace. Per the 2009 Recreation Monitoring Report, (see Appendix 11-3), no picnicking, camping, swimming, or hunting activity was recorded at the Union Gas site and no additional access facilities have been required by the Commission or any commenting agency.

**APPENDIX 11-1**

**FERC Order Granting Extension of Time  
Dated October 5, 2015**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Messalonskee Stream Hydro, LLC

Project No. 2556-049

ORDER GRANTING EXTENSION OF TIME

(Issued October 5, 2015)

1. On September 23, 2015, Messalonskee Stream Hydro, LLC (licensee) requested an extension of time to file the 2015 recreation monitoring report required by article 412 of the license for the Messalonskee Project (FERC No. 2556).<sup>1</sup> The project consists of four developments on Messalonskee Stream, a tributary of the Kennebec River, in Kennebec County, Maine.

2. Article 412 requires the licensee to monitor recreation use of the project in accordance with a Commission-approved recreation monitoring plan, and file a report with the Commission on the monitoring results.<sup>2</sup> Article 412 originally required that the report be filed every six years concurrent with FERC Form No. 80 (Form 80).<sup>3</sup> An order issued by Commission staff in 2003 changed the due date for the recreation report to six months after the due date of the Form 80.<sup>4</sup>

3. On September 23, 2015, the licensee requested an extension of time to file its 2015 recreation monitoring report, due October 1, 2015. The licensee states that data collection errors discovered during Form 80 preparation prompted it to begin collecting new data, with the intent of submitting new data to the Commission by April 1, 2016. The licensee states that consulting agencies were informed of the errors and of its intent

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<sup>1</sup> Order Issuing New License (88 FERC ¶ 61,122), issued July 28, 1999.

<sup>2</sup> Order Approving Recreation Monitoring Plan (91 FERC ¶ 62,214), issued June 21, 2000.

<sup>3</sup> Form 80 is a report on the recreational use of project lands and waters required by the Commission's regulations. *See* 18 C.F.R. § 8.11 (2015).

<sup>4</sup> Order Amending Articles to Change Reporting Schedule (104 FERC ¶ 62,117), issued August 12, 2003.

Project No. 2556-049

- 2 -

to collect new data. The licensee also states that consulting agencies were provided a recreation use monitoring plan for comment.

4. Extending the 2015 recreation monitoring report's due date by one year would ensure that the licensee's report contains accurate data, which may better inform the licensee's evaluation of recreation facility adequacy. Therefore, the licensee's request to extend the filing date for the recreation monitoring report to October 1, 2016 is reasonable and should be granted. The licensee is reminded that article 412 requires it to monitor recreation use in accordance with a monitoring plan approved by the Commission. Beyond adjusting the timeframe for data collection, if any significant modifications are proposed to the monitoring plan approved by the Commission in 2000, the licensee must seek the Commission's approval of those modifications.

The Director orders:

(A) The deadline for Messalonskee Stream Hydro, LLC to file its 2015 recreation monitoring report for the Messalonskee Project (FERC No. 2556) is extended until October 1, 2016.

(B) 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. § 825f (2012), and the Commission's regulations at 18 CFR § 385.713 (2015). The filing of a request for rehearing 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.

Robert J. Fletcher  
Chief, Land Resources Branch  
Division of Hydropower  
Administration and Compliance

## **APPENDIX 11-2**

### **FERC Order Modifying and Approving Recreation Plan**

91 FERC ¶ 62,226

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

FPL Energy Maine Hydro LLC

Project No. 2556-022, -023, & -024

ORDER MODIFYING AND APPROVING RECREATION PLAN

(June 26, 2000)

On March 29 and April 17, 2000, FPL Energy Maine Hydro LLC (FPL Energy), licensee for the Messalonskee Project, FERC No. 2556, filed a recreation plan (plan) pursuant to articles 409, 410, and 411 of the license. The Messalonskee Project, located on Messalonskee Stream, a tributary of the Kennebec River, in Kennebec County, Maine, was licensed on July 28, 1999.<sup>1</sup>

BACKGROUND

Article 409 requires the licensee to file, for Commission approval, a recreation plan identifying existing recreation development and providing the following recreation enhancements for the Oakland development: (1) a picnic and day-use area on the south shore of Messalonskee Lake outlet on land leased to the State of Maine; (2) a gravel parking area for 5 to 6 vehicles and a footpath from the parking area to the picnic and day-use area; (3) an extended footpath for walking and shorefront activities; (4) management of the recreational facilities at the site; and (5) interpretive signs at the Oakland dam. The licensee was to prepare the plan after consultation with the Maine Department of Conservation (MDOC), U.S. Fish and Wildlife Service (FWS), and Natural Resource Conservation Service (NRCS). The Commission reserved the right to make changes to the plan.

Article 410 requires the licensee to file, for Commission approval, a plan identifying existing recreation development and providing the following recreation enhancements for the Rice Rips development: (1) designating the corridor between the Oakland and Rice Rips developments as a greenbelt or multi-use area on the east side of Messalonskee Stream and the Rice Rips impoundment from the Oakland dam to Rice Rips dam; (2) a parking area; and (3) carry-in boat access to the Rice Rips impoundment.

<sup>1</sup> 88 FERC ¶ 61,122 (1999)

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along the licensee's access drive. In addition, the town of Oakland provides an informal carry-in boat site in this area.

Article 410 requires the licensee to designate the corridor between the Oakland and Rice Rips developments as a greenbelt or multi-use area on the east side of Messalonskee Stream and the Rice Rips impoundment from the Oakland dam to Rice Rips dam. The licensee is currently trying to acquire land in this area from Central Maine Power Company in order to develop a 200-foot wide greenbelt area. No formal trails are proposed to be developed at this time.

Second, a gravel parking area for 5 to 6 vehicles would be developed on the access road to the Rice Rips powerhouse. This parking area would be located immediately off Rice Rips Road, where much of the existing informal parking presently occurs. Construction of this parking area would occur within one year of Commission approval.

Third, the licensee was required to develop a carry-in boat access to the Rice Rips impoundment. The licensee is attempting to negotiate with the town of Oakland to use an existing carry-in access site to satisfy this license requirement. If negotiations are unsuccessful, an alternate final location would be identified and developed. The licensee will file the final location and design of the carry-in access facilities by July 31, 2000.

#### Article 411

In the vicinity of the Union Gas development, the following public facilities exist: (1) a junior high school nature trail, maintained by the city of Waterville; (2) a parking lot for angler access, owned and maintained by Maine Department of Transportation; and (3) a boat launch on the Kennebec River in Waterville, maintained by the city of Waterville and licensee. In addition, several unimproved sites in the area are used for fishing.

Article 411 requires the licensee to provide fishing access for people with disabilities by constructing: (1) parking facilities on a level area near the Union Gas powerhouse; (2) a platform for bank fishing downstream of the tailrace; and (3) an access route from the parking lot to the platform. The licensee has indicated that they intend to postpone design and construction of such facilities until a fishery resource develops and a demand exists to justify construction of this facility.

as part of its Form 80 recreational monitoring, to re-assess the need and opportunities to develop more formal pedestrian access to this area for multiple uses beginning in 2004.

We agree with the licensee that it would be more prudent to re-assess the need for formal pedestrian access to this area after the regional business park plan is developed. Therefore, we recommend that the licensee re-evaluate the need to develop formal pedestrian access to this area as part of its Form 80 recreational monitoring. In compliance with license article 412, the first results of the re-evaluation should be filed by March 31, 2004. Subsequent results should be filed in conjunction with the Form 80 due in 2009, 2015, 2021, 2027, and 2033.

If it is determined that formal pedestrian access is needed, a plan should be developed to provide, but need not be limited to: (1) final site plans for the facilities; (2) erosion and sediment control during construction; (3) an implementation schedule; and (4) protections for wetlands and wildlife when the recreational enhancements are implemented. This plan should be filed concurrent with the results of the licensee's Form 80 recreational monitoring.

The plan should be prepared in consultation with MDEP, MDOC, FWS, and the town of Oakland. The licensee should allow the agencies at least 30 days to comment and address any comments in the filing, including why any comment was not incorporated. If an agency does not comment, the licensee shall include its letter of request in the filing.

We also recommend that the licensee file a revised exhibit G identifying the boundary of the greenbelt within 12 months of the date of this order.

- b. Gravel parking area for 5 to 6 vehicles developed on the access road to the Rice Rips powerhouse.

FWS recommended that the Rice Rips parking area be completed for use by the 2001 spring fishing season. The licensee responded that the parking lot would be completed within 12 months of Commission approval, pending the receipt of all appropriate state and local permits. Given the limited amount of construction needed to complete the parking area, we recommend that the licensee complete the parking lot for use by the spring 2001 fishing season.

Because most of the consulted agencies agreed that the development of these facilities should be postponed, and FWS agreed that it may be more appropriate to develop the facilities at an alternate site, we believe that the licensee's proposal to re-evaluate construction under Form 80 is appropriate. Re-evaluation as part of its Form 80 recreation monitoring would allow the licensee time to re-evaluate the need for fishing access and to investigate alternative sites which could be utilized in the project area. Therefore, we recommend that the licensee re-evaluate the need for fishing access for people with disabilities at the Union Gas development as part of its Form 80 recreational monitoring, beginning in 2004. The first results of the re-evaluation should be filed by March 31, 2004. Subsequent results should be filed in 2009, 2015, 2021, 2027, and 2033 in compliance with license article 412.

If it is determined that such access is needed, a plan should be developed to provide, but need not be limited to: (1) final site plans for the facilities; (2) discussion of how the needs of the disabled were considered in the planning and design of each recreation facility; (3) erosion and sediment control during construction; (4) an implementation schedule; and (5) protections for wetlands and wildlife when the recreational enhancements are implemented. This plan should be filed concurrent with the results of the licensee's Form 80 recreational monitoring.

The plan should be prepared in consultation with MDEP, MDOC, FWS, city of Waterville, Waterville Conservation Committee, and NRCS. The licensee should allow the agencies at least 30 days to comment and address any comments in the filing, including why any comment was not incorporated. If an agency does not comment, the licensee shall include its letter of request in the filing.

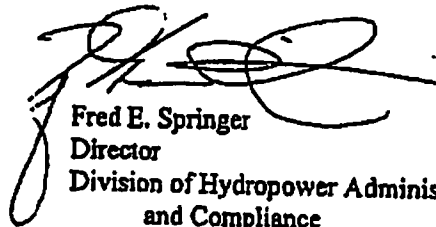
## CONCLUSION

The recreation plan meets the requirements of articles 409, 410, and 411, with the modifications discussed in this order. The March 29, 2000 recreation plan proposing the article 409 facilities and the parking area facilities of article 410 are approved. The licensee should file supplemental recreation plans, for Commission approval, to address the remaining facilities. These facilities include: (1) the design of formal pedestrian access in the corridor between the Oakland and Rice Rips development on the east side of Messalonskee Stream and the Rice Rips impoundment from the Oakland dam to Rice Rips dam; (2) the location and design of a carry-in boat access to the Rice Rips impoundment; and (3) the location and design of a fishing access for people with disabilities near the Union Gas powerhouse.

The plans should be prepared in consultation with MDEP, MDOC, and FWS. The pedestrian access plan should also be prepared in consultation with the town of Oakland. The fishing access plan should also be prepared in consultation with the city of Waterville, Waterville Conservation Committee, and Natural Resource Conservation Service. The licensee should allow the agencies at least 30 days to comment and address any comments in the filing, including why any comment was not incorporated. If an agency does not comment, the licensee shall include its letter of request in the filing.

(E) The licensee shall complete construction of the Rice Rips parking area for use by the spring 2001 fishing season.

(F) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.



Fred E. Springer  
Director  
Division of Hydropower Administration  
and Compliance

**APPENDIX 11-3**

**FERC Order Approving Recreation Monitoring Report  
Issued February 9, 2004**

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Washington, D. C. 20426**

**OFFICE OF ENERGY PROJECTS**

Project No. 2556-049 – Maine  
Messalonskee Stream Project  
Messalonskee Stream Hydro, LLC

Mr. Arthur Hagood, Vice-President  
Messalonskee Stream Hydro, LLC  
C/o Maine Renewables, LLC  
191 Main Street  
Annapolis, MD 21401

**November 12, 2009**

**Subject: Recreation Monitoring Report, Article 412**

**Dear Mr. Hagood:**

This refers to your September 29, 2009, filing of recreation monitoring report (report) pursuant to article 412 of the license for the Messalonskee Stream Hydroelectric Project (FERC No. 2556).<sup>1</sup> The report covers the three hydroelectric generation developments (Oakland, Rice Rips, and Union Gas) and one storage development (Messalonskee Lake) that comprise the project.

Article 412 of the project license required that within three months of the effective date of the license, the licensee is to create a plan to monitor recreational use of the Oakland, Rice Rips, and Union Gas developments to determine whether existing and new access facilities were meeting public use demands without harm to wetlands and wildlife. The order approving the recreation monitoring plan for the Messalonskee Project was issued on June 21, 2000. Every six years a report is to be filed in conjunction and in the same time frame as the FERC Form 80. An order issued August 12, 2003, changed the due date for the monitoring reports to September 30 to make them consistent with the reports for the licensee's other projects.<sup>2</sup>

The monitoring report should include the following information: (1) annual recreation use figures; (2) a discussion of the adequacy of the recreation facilities; (3) a discussion regarding the need for additional recreation facilities at the project site; (4) if there is a need for additional facilities, a recreation plan; and (5) documentation of

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<sup>1</sup> 88 FERC ¶ 61,122 (July 28, 1999)

<sup>2</sup> See Order Amending License Articles to Change Reporting Schedule, 104 FERC ¶ 62,117 (2003).

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consultation with a specific description of how the agencies' comments are accommodated by the report.

The Order Modifying and Approving Recreation Plan issued June 26, 2000, required the licensee to reevaluate the need for fishing access for people with disabilities at the Union Gas development during the Form 80 recreation monitoring.<sup>3</sup> The results of the monitoring are to be included with the report pursuant to article 412.

The licensee is to prepare the report after consultation with the U.S. Fish and Wildlife Service (FWS), the Maine Department of Conservation (MDOC), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and the National Park Service (NPS). The licensee is to include with the plan documentation of consultation, copies of comments and recommendations, and specific descriptions of how the agencies' comments are accommodated by the plan. A minimum of 30 days is required for the agencies to comment and to make recommendations before filing the plan with the Commission.

You report that the recreation studies were last completed for the Messalonskee Project in 2002; this effort covered the spring, summer and fall seasons. Wintertime usage was not studied in 2002 because winter use was not considered a substantial recreational activity related to Messalonskee Stream area. Both the 2002 and 2008-2009 studies used calibrations and spot counts to develop recreation use estimates that appropriately characterized annual, peak and seasonal usage at each of the project's four developments: Messalonskee Lake, Oakland, Rice Rips, and Union Gas.

The 2002 recreation study serves as the basis for the updated 2008-2009 recreation figures and capacity use estimates for the Messalonskee Project. During the 2008 spring, summer and fall recreation seasons, a more limited field study effort was undertaken, consisting of spot counts at facilities at each of the project's developments. The 2008-2009 study was expanded to include recreation activity that occurs during the winter months, with additional spot counts. Traffic counters and calibration counts were conducted for new or altered facilities. New data for the Messalonskee Project were collected from April 15, 2008 through February 15, 2009.

The report shows that the data was collected using four methods. Spot counts were conducted during the recreation season (March-October) at least twice during the week and once each weekend. Spot counts recorded number of vehicles, boats, and people at a facility. Calibration counts occurred at the same places as spot counts, but for time periods ranging from one to three hours. An employee recorded number of people,

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<sup>3</sup> 91 FERC ¶ 63,226

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observed activities, number of vehicles, time in and time out. Traffic counts were conducted using mechanical traffic counters designed to record the number of vehicles accessing boat ramps during six hour increments. Finally, your staff interviewed several people that live and work in the area to determine percent capacity use as observed by those individuals.

At the Messalonskee Lake, the Belgrade Boat Launch was closed to the launching of trailer pulled boats in 2007. The launch remains open as a hand carry launch. A new boat launch was constructed on the East side of the lake. The new launch was designed with parking for 7 vehicles with trailers and one ADA space for vehicle and trailer.

At the Oakland Development the trailhead for the newly constructed Messalonskee Stream Trail is located at the Oakland dam. The trail is considered part of the Rice Rips Development.

On July 15, 2005 the Commission issued an Order approving non-project use of project lands and waters at the Rice Rips Development. This order approved the development of a recreational hiking trail. The three-mile-long Messalonskee Stream trail was constructed in 2006 and was opened to the public in 2007. The Town of Oakland currently maintains the trail.

At the Union Gas Development there have been no new recreation facilities or improvements made to the existing recreation facilities since studies were last performed in 2002. However, it is reported that the area above the dam has changed in character since the previous study. Reconstruction of the Union Gas dam has impounded the naturally riverine area above the dam and created a headpond.

The data revealed that summer is the most popular time for recreation use at all of the project developments. Boating and swimming are the most popular activities. Messalonskee Lake and the Oakland development have four recreation areas. The most highly used at around 75% of capacity are the Oakland and Belgrade Boat Launches. The MDOC day-use park and the tailwater fishing area are used between 20 and 25% of capacity. Fishing is the most popular activity at the Oakland development and at Messalonskee Lake.

Fishing and sightseeing were the dominant activities at the Messalonskee Lake Development, with 37 percent and 25 percent, respectively, of recreationists participating in these activities. Swimming (18 percent) and boating (11 percent) were other popular activities at the Messalonskee Lake Development. Since swimming tends to only occur during the warmer months, a higher proportion of recreationists are inherently involved in swimming in the summer. Picnicking (6 percent) and "other" activities (3 percent) were

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recorded for less than one-tenth of the recreationists. No camping, hunting, or snowmobiling was recorded at the development.

Fishing was the dominant activity at the Oakland Development, with 83 percent of recreationists participating in this activity. The only other activity type recorded at the development was sight-seeing (17 percent). No boating, picnicking, camping, swimming, or hunting activity was recorded at this development.

Sightseeing was the primary activity recorded most frequently at the Union Gas Development, with 53 percent of the recreationists participating in this activity. Fishing and boating were also popular activities observed at the Union Gas Development, with 30 percent and 13 percent, respectively, of recreationists participating in these activities. Picnicking was observed much less often, with only 3 percent of recreationist engaged in this activity. No camping, swimming, hunting, snowmobiling, or "other" activities were recorded at the facilities.

Fishing and sightseeing were found to be the dominant activities at the Rice Rips Development, with 50 percent and 26 percent, respectively, of recreationists participating in these activities. Boating (12 percent) and "other" activities (12 percent) were also popular activities at the Rice Rips Development. No picnicking, camping, swimming, or hunting was recorded at the development.

The need for handicap-accessible fishing access at the Union Gas development has been reevaluated. Data collected for this report show that there appears to be little angling interest in the area below the powerhouse. None of the consulting agencies have expressed a need for the fishing access. Furthermore, you are unaware of any improvements of fishery resources in this area. Therefore, based on these findings, you do not propose installing a fishing platform at this time, and will continue to evaluate the need for one as part of its FERC Form 80 recreational monitoring.

You propose no changes or additions to the Messalonskee Lake and Oakland, Rice Rips, and Union Gas Developments. You believe the data shows that are adequate existing recreation facilities, parking and a new trail to Messalonskee Stream (located adjacent to the highway bridge downstream of the project) that supplies access for new bank fishing.

You report that overall observed usage at the Messalonskee Lake Development was considerably lower in 2008-2009 than in 2002. Exceptionally rainy conditions are believed to have impacted the typical usage levels at the development; for this reason capacity estimates for all facilities currently available are assumed to have remained the same from 2002 to 2008.

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Based on field observations, overall usage at the Oakland Development was during the 2008-2009 recreation season was very similar to that observed in 2002. Therefore, capacity estimates for all facilities currently available are assumed to have remained the same from 2002 to 2008. The historic site that was previously classified as *Other* recreational resource type has been now identified as *Interpretative Display* for the current update.

Usage observed at the Rice Rips Development was considerably lower in 2008-2009 at the four access sites that were open in 2002. Exceptionally rainy conditions are believed to have impacted the typical usage levels at the development; for this reason capacity estimates for all facilities currently available are assumed to have remained the same from 2002 to 2008. Hunting has been omitted from the 2008-2009 facility capacity, since the activity was not observed in either 2002 or 2008. The hiking trail is a new recreation resource type for data collection, added since the 2002 study.

Based on field observations, usage at the Union Gas Development was considerably lower in 2008-2009 at the three access sites that were addressed during both recreation surveys. Exceptionally rainy conditions are believed to have impacted the typical usage levels at the development; for this reason capacity estimates for at the facilities are assumed to have remained the same from 2002 to 2008.

You believe a handicap-accessible fishing platform at the Union Gas development is not needed at this time based on the low use of the site in general. Commission staff agrees that the current recreation facilities are adequate, and you should reevaluate the need for the fishing platform during data collection for the next monitoring report. None of the other sites are in need of improvements or expansion based on the data collected for the report.

You also reported that on April 4, 2008 you initiated consultation with appropriate resource agencies and interested parties regarding this recreation monitoring study. The following parties received the initial consultation letter: MDOC, MDIFW, NPS, and the FWS. No comments were received.

On August 28, 2009, a draft recreation monitoring report was sent to the parties designated in article 412 of the Messalonskee Project license. The following parties received the report: MDOC, MDIFW, NPS, and the FWS. Again, no comments were received.

Your September 29, 2009 filings fulfill the reporting requirements for article 412 at the Messalonskee Stream Hydroelectric Project. Thank you for your cooperation. The

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next recreation monitoring report is due on or before September 30, 2015. If you have any questions regarding this matter, you may contact me at 678-245-3084

Sincerely,

Lorance W. Yates  
Environmental Protection Specialist  
Division of Hydropower  
Administration and Compliance