

APPENDIX 7
Oakland Hydroelectric Project
Fish Passage and Protection

Appendix 7

Oakland Hydroelectric Project

Fish Passage and Protection

There is no available evidence supporting historic presence of anadromous species in any portion of Messalonskee Stream. 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 Oakland 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 Department of Marine Resource
Dated September 10, 2010

MESSALONSKEE STREAM HYDRO, LLC

c/o ESSEX HYDRO ASSOCIATES, L.L.C.
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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 9th, 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 13th 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, sjh@essexhydro.com or 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
Oakland Hydroelectric Project
Description of Watershed Protection

Appendix 8

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 Lord's South dam is urban in character, developed and privately owned.

The watershed area formed by the Lord's South dam impoundment extends approximately 0.4 miles upstream from the Project to the Messalonskee Lake dam. The Oakland Project has a gross reservoir volume of 50 acre-feet. The 200-foot boundary zone extending around the eastern side of the Lord's South dam impoundment is bordered by a steep gradient and is undeveloped. The western side of the impoundment is comprised of land occupied by residential houses (see Appendix 8-1).

The flows below the Oakland hydroelectric project (the "Oakland 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 Oakland 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
Oakland Hydroelectric Project
Watershed Area Map

Oakland Hydroelectric Station Watershed



APPENDIX 8-2
Oakland Hydroelectric Project
FERC Order Modifying and Approving Waterfowl Management Plan
Issued May 17, 2000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 2556-018

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

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 Messalonskee Project filed a Waterfowl Management Plan (plan), pursuant to license Article 408 for the project issued July 28, 1999.¹ The project facilities are located on Messalonskee 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 "Messalonskee 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 Messalonskee 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 Messalonskee Lake; and (b) the methods to be used to monitor waterfowl, wading bird, and black tern use of the Messalonskee Lake wetlands. The plan shall also include a schedule for conducting and reporting the periodic assessment of the Messalonskee 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 "Messalonskee 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

¹ See Order Issuing New License, 88 FERC ¶ 61,122 (1999).

PROPOSED PLAN

FPL Energy proposes to assess habitat conditions for waterfowl, wading birds, and black terns; qualitatively assess the trends in the status of these bird populations; and 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 Messalonskee Lake. In addition, the licensee will conduct an inventory of the wetlands (greater than or equal to 1 acre) around Messalonskee 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 wading 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 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.

AGENCY COMMENTS AND LICENSEE'S RESPONSES

In accordance with Article 40B, P.L. Tracy provided draft copies of the plan in FWS and MDEW for their review. By letter dated November 29, 1999, the FWS provided the following recommendations: (1) use contemporary aerial photographs 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 investigations 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 and effect mortality; (4) conduct field observations from early May until the end of August to ensure consistent quality assurance/quality control (QA/QC) procedures; (5) repeat the initial baseline survey protocol for each five year assessment for common loon and black tern, and use QAVC procedures.

In a letter dated December 7, 1999, the MDEW provided the following recommendations: (1) wetland mapping should identify wetlands that are less than or equal to 1 acre (2) the common loon and black tern surveys should be completed during the breeding season to determine if management practices are monitored throughout the breeding season. In addition, water levels should be documented (throughout the breeding season to determine if management practices are monitored) to ensure fallow/breed mortality; (3) utilize standardized playback surveys to document the presence of nesting birds; and (4) coordinate black tern surveys with Dr. Nye's in cooperation with 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 areas. Second, the licensee proposed to map only wetlands greater than 5 acres. Third, the licensee stated that it would conduct weekly surveys from late July and "periodic checks" from mid-July until late summer to document loon nesting. However, no time 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 its periodic 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 (maximum of 0.5 m in 1 foot fluctuation year-round) it is recommended, whenever 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 the project is to monitor trends in wetland habitat. Therefore, we believe that maintaining wetlands that are 1 acre size or greater should be adequate to monitor the status of wetland conditions and quality in Massachusetts Lake.

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

First, 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 nesting 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 P.L. Tracy on May 1, 2000, outlines 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, the plan, as modified with our recommendations, is approved.

The District Director:

(A) The Waterfowl Management Plan, filed by P.L. Tracy on May 1, 2000, pursuant to Article 40B for the Massachusetts Project, as modified by wetland mapping (B), is approved.

(B) 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 in 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.

Michael Ruppell

Michael E. Springer

Director

Division of Hydropower Administration
and Compliance

APPENDIX 9
Oakland Hydroelectric Project
Description of Threatened and Endangered Species Protection

Appendix 9

Oakland 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 Oakland project other than occasional transient bald eagles and peregrine falcons. Requests are being 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 Oakland, 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 Oakland facility 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. There have been no deficiencies noted by any agency with jurisdiction for the Oakland project.

APPENDIX 10
Oakland Hydroelectric Project
Cultural Resources

Appendix 10

Oakland Hydroelectric Project

Cultural Resources

The Oakland facility 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
Maine Historic Preservation Commission Letter Accepting Site Monitoring Report
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., 4th 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 21st, 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

APPENDIX 11-1
FERC Order Granting Extension of Time to Submit Recreation Monitoring Report
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).¹ 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.² Article 412 originally required that the report be filed every six years concurrent with FERC Form No. 80 (Form 80).³ 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 80.⁴
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

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

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

³ 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).

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

Project No. 2556-049

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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. § 8251 (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
Dated June 26, 2000

91 FERC ¶ 63,226

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, 1999.¹

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.

¹ 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.

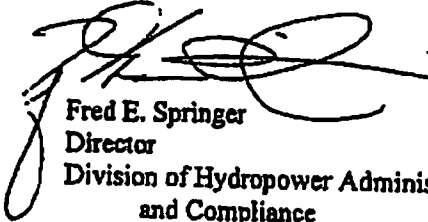
CONCLUSION

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

*cc:Whitaker, Patton, Peluso, Wiloy, Campbell
Reference Notebook File: Mess. ENG 10-4-8*

UNITED STATES OF AMERICA 106 FERC ¶ 62, 135
FEDERAL ENERGY REGULATORY COMMISSION

FPL Energy Maine Hydro LLC

Project No. 2556-049

ORDER APPROVING RECREATION MONITORING REPORT
PURSUANT TO ARTICLE 412

(Issued February 19, 2004)

On September 30, 2003, FPL Energy Maine Hydro LLC (licensee) filed a Recreation Monitoring Report (report) pursuant to article 412 of the license for the Messalonskee Hydroelectric Project¹, FERC Project No. 2556. There are three hydroelectric generation developments (Oakland, Rice Riaps, and Union Gas) and one storage development (Messalonskee Lake) that comprise the project. The project is located on the Messalonskee Stream in Kennebec County, Maine.

BACKGROUND

Article 412 of the project license required that within three months of the effective date of the license, the licensee shall create a plan to monitor recreational use of the Oakland, Rice Riaps, 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, 2003², changed the due date for the monitoring reports to September 30 to make them consistent with the reports for the licensee's other projects. 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 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

¹ Order Issuing New License (Major Project) 88 FERC ¶ 61,122 (1999)

² Order Amending License Article to Change Reporting Schedule 104 FERC ¶ 62,117 (2003)

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at the Union Gas development during the Form 80 recreation monitoring. The results of the monitoring are to be included with the report pursuant to article 412. The order also required the licensee to designate a "greenbelt" or multiple use area along the Rice Riaps development improvement pursuant to article 410 of the project license. The recreation monitoring report should contain an update on the land designation. Subsequent to the filing of the recreation monitoring report the licensee has filed information for the completion of the requirements associated with article 410. Therefore, this issue will be addressed in a separate order.

The licensee shall 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 shall 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.

DESCRIPTION OF REPORT

The recreation monitoring report includes recreational use figures, methodology of data collection, a discussion on the facilities' adequacy, a reevaluation of the need for fishing access for people with disabilities at the Union Gas development, an update on the "greenbelt" at the Rice Riaps development, and documentation of consultation.

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. Winter and nighttime collection did not occur. 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, 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, the licensee interviewed several people that live and work in the area to determine percent capacity use as observed by those individuals.

At the Messalonskee Lake and Oakland developments only summer data was collected. Traffic counters were installed at the Oakland and Belgrade Boat Ramps. At the Rice Riaps development data was collected in the spring, summer, and fall. No traffic counters were used since there are no boat ramps at this site. At the Union Gas

³ Letter filed December 19, 2001. Pending approval.

development summer and fall counts were taken, and spring was assumed to be the same as fall. During the summer season, a traffic counter was in use at the Waterville Boat Ramp.

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.

The Rice Rips development has one recreation area with a parking lot. The fishing area in the bypass is used at about 15% of capacity. Fishing is the most popular activity at the development.

At the Union Gas development a nature trail maintained by the City of Waterville is not regularly monitored by the licensee because it is outside the project boundary. Those interviewed for the purpose of collecting data believe that the trail does not receive much use and parking may be an issue. The tailrace fishing area receives low to moderate use. The Waterville Boat Launch is mostly used in the spring fishing season at about 20% of capacity. Sight-seeing is the most popular activity at the development.

The licensee has included as part of the report an update on the recreation facilities at the developments. Of importance is that at the Belgrade Boat Launch at Messalonskee Lake has been closed for use unless state inspectors are onsite in order to control the spread of milfoil, an invasive species. The MDIFW is experimenting with herbicides, but believes this precaution is necessary until matters are fully resolved.

The need for handicap-accessible fishing access at the Union Gas development has been reevaluated by the licensee. 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. Therefore, based on these findings, the licensee does 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.

AGENCY CONSULTATION

On April 16, 2002, the licensee submitted a preliminary consultation letter to FWS, MDOC, MDIFW, City of Waterville, NPS, and the Town of Oakland. No comments were received regarding the initial consultation letter. A copy of the draft monitoring report was sent to the above agencies and to the Maine Department of Environmental Protection (MDEP) and the Maine State Historic Preservation Officer (SHPO). A separate letter concerning the agreement between the licensee and the Town of Oakland and the Rice Rips carry-in boat access was also sent to all of the above-mentioned agencies. FWS provided written comments concurring with the methods and results in the report.

The MDOC replied with a comment about a graph label used in the report. MDOC suggested clarifying winter use data by writing "winter not sampled", deleting the winter label, or having the label read "Winter <X%". The licensee deleted the winter label and clarified in the report that winter data was not collected.

The SHPO responded to the letter concerning the Rice Rips carry-in boat access. No effects on historical resources should occur from the construction of the carry-in.

DISCUSSION AND CONCLUSION

The plan fulfills the requirements of article 412. The boat launches at Messalonskee Lake appear to be the most popular recreation sites; however, they are not close to reaching capacity. The licensee should continue to monitor the situation at the Belgrade Boat Launch and alert the Commission if the site is forced to close entirely. It is understood that invasive species must be controlled; however, the licensee has the responsibility to provide the public with access to the impoundment.

The licensee believes 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 the licensee 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. The recreation monitoring report should be approved. The next recreation monitoring report is due on or before September 30, 2009.

The Director orders:

(A) The recreation monitoring report filed September 30, 2003, pursuant to article 412 of the project license is approved.

(B) 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.

John E. Estep
Division of Hydropower Administration
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104 FERC ¶ 62,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

FPL Energy Maine Hydro LLC

Project Nos. 2519-044,
2528-066, and 2556-047

ORDER AMENDING ARTICLES TO CHANGE REPORTING SCHEDULE

(Issued August 12, 2003)

On June 20, 2003, FPL Energy Maine Hydro LLC, licensee for the North Gorham, Cataract, and Messalonskee Hydroelectric Projects, filed a request for a permanent article amendment concerning the schedules for filing reports on the results of recreation monitoring, as required by the licenses for these projects.¹ The articles require the licensee to monitor annual recreation use of the project areas to determine whether existing recreation facilities are meeting recreation demand. The North Gorham Project is located on the Presumpscot River in the Cumberland County, the Cataract Project on the Saco River in York County, and the Messalonskee Project on the Messalonskee Stream in Kennebec County, all in Maine.

The articles require that reports on the monitoring results be filed in conjunction with the FERC Form 80.² The licensee states that it needs additional time following the Form 80 filing to analyze and accurately describe the monitoring results for the North Gorham and Cataract Projects. It requests a permanent amendment of the articles to allow 6 months after the Form 80 is due to file its reports on the monitoring results for these two projects. In order for the data analysis and reporting for the Messalonskee Project to be consistent with the other two projects, the licensee requests that the April 1, 2004, deadline for that project be changed to September 30, 2003.

The reasons advanced by the licensee in support of the requested changes in due date are reasonable and justify the changes. The additional time will allow the licensee to

¹65 FERC ¶ 62,154 (1993), article 407; 47 FERC ¶ 62,296 (1989), article 407; and 88 FERC ¶ 61,122 (1999), article 412, respectively. The licensee's request to extend the due date for all three projects until September 30, 2003 was approved by *Order Granting Extension Of Time To Report Results Of Recreation Monitoring* issued July, 17, 2003.

²Form 80's are due April 1 of every sixth year, e.g., April 1, 2003 and April 1, 2009. Article 412 establishes April 1, 2004, as the deadline for the first Form 80 and monitoring report for the Messalonskee Project.

File: Cataract 086-9
No. Gorham Cor 6-9
Messalonskee
Cor 6-9

Project Nos. 2519-044 et al

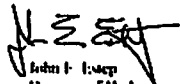
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more accurately analyze the monitoring results and to determine if existing recreational facilities are adequate.

The Director orders:

(1) The deadlines for filing the reports on the results of recreation use monitoring, as required by article 407 of the licenses for Project Nos. 2519 and 2528, and by article 412 for Project No. 2556, are changed to six months after the due date of the Form 80 for each project.

(2) 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. 385.71.


John F. Lopez
Director of Hydroelectric
Administration and Compliance