

Memorandum

To: Patricia McIlvaine, Acting Executive Director, LIHI
From: Jeffrey Cueto, P.E.
Date: December 17, 2012
Re: Newton Falls Hydroelectric Project – LIHI Certificate #32
Recertification Request

This memorandum contains my recommendation for recertification of the Newton Falls Hydroelectric Project (Project), located on the Oswegatchie River, in the town of Clifton, New York and owned by the Brookfield Power. LIHI originally granted certification on February 29, 2008, with an effective date of November 2, 2007. LIHI did not place the recertification application on public notice.

I. Recertification Standards.

Part V of LIHI's Certification Handbook (Updated December 2011) regarding Applications for Recertification ("Recertification Standards") provides that a "request for renewal of a previously-issued LIHI certification ("re-certification") will be granted at the conclusion of the term of the existing certification if re-certification is desired by the certificate holder, and so long as (1) there have been no "material changes" at the facility that would affect the certification and (2) LIHI's certification criteria have not been revised since the previous certification was issued by LIHI."

The Recertification review criteria also provide that "[i]f the Application Reviewer can definitively determine from the submitted application materials, a review of the LIHI file containing the past certification decision(s), any public comments received during the application process, and any limited reviewer-initiated questioning by LIHI of the applicant and/or third parties, that the answer to both questions above is "no," the Application Reviewer will recommend re-certification approval to LIHI's Executive Director, and there will be no further application review."

II. No further application review is recommended.

I reviewed the materials submitted by Brookfield Power in support of its application. I also read the original LIHI reviewer report (January 31, 2008) and several documents contained in the FERC website eLibrary. Based on this information, I concluded that it is not necessary to directly solicit input from resource agencies and licensing stakeholders.

In my opinion, the aforementioned materials are sufficient to support a conclusion that a recertification decision can be made based on this Intake Review and that a Full Review is unwarranted.

III. There have been no “material changes” at the facility that would affect the certification.

In accordance with the Recertification Standards, “material changes” mean non-compliance and/or new or renewed issues of concern that are relevant to LIHI’s criteria. I find that there are no instances of significant non-compliance or new or renewed issues of concern.

The Project was relicensed on August 13, 2003 based in part on a Settlement Agreement of May 2002. The license incorporates the terms of a state water quality certification issued on December 20, 2002. The Project consists of an upper and a lower development. The upper development dam impounds a 5,930-acre reservoir, the Oswegatchie River Reservoir.

Flow

The license sets forth requirements for maximum reservoir fluctuations, conservation flows, and flow and water level monitoring/record keeping. The impoundment for the lower development extends upstream to the tailrace of the upper development. Both facilities maintain a minimum flow of 20 cfs in the bypass, and the lower development maintains a minimum flow of 100 cfs below its tailrace.

At the time LIHI granted certification, Brookfield Power had not yet completed the installation of the monitoring system for the lower development; the reviewer report indicated that completion was expected later in 2008. According to a letter dated November 4, 2008 from FERC to Brookfield Power, the licensee had completed the downstream fish passage measure (a notched sluiceway) in November 2007, but had not installed a downstream staff gage and developed a flow rating in order to enable verification of the 20 cfs minimum release.

FERC completed an environmental inspection at the site on September 21, 2011, and the report is available at FERC eLibrary. The report noted that the 20 cfs upper development bypass minimum flow was being released via a recently installed downstream fish passage slide gate at the dam. The report did not identify any environmental-compliance issues. Neither did I find any significant compliance issues during my review of documents in eLibrary. However, I could not find documentation of the installation of a staff gage and development of a flow rating at the downstream development. By email of December 11, 2012, Brookfield confirmed that this work had not been completed to date (despite LIHI’s prior understanding that this work would be completed in 2008). Since this is an apparent non-compliance issue related to the LIHI flow and passage criteria, I recommend that recertification be subject to the following condition:

Brookfield Power shall install, and develop a flow rating for, a staff gage or monument in the bypassed reach of the lower development and shall provide the rating to the resource agencies and FERC as provided for in FERC's Article 404 letter of November 4, 2008, a copy of which is attached. Confirmation of completion shall be filed with LIHI by December 1, 2013.

Fish Passage

There are no requirements to provide upstream passage. Downstream fish movement is accommodated by sluices at each of the dams and bypass minimum flow requirements.

Threatened and Endangered Species Protection

The common loon, a species of concern in NYS, uses the upper development reservoir. With limited land mobility, loons nest close to the shoreline, and the nesting success is extremely susceptible to water level fluctuations (either nest isolation due to drawdowns or nest flooding). Although loons do not appear to have specifically been considered in the licensing nor in the prior LIHI review, the settlement agreement and license limit drawdowns to 0.5 foot from May 1 – July 15, affording some protection to nesting.

IV. LIHI's certification criteria have not been revised since the original certification became effective.

It is my understanding that LIHI's criteria, or the Board's interpretation of one or more criterion, that are applicable to the circumstances the Project have not changed in meaningful ways since the date of the original certification.

V. Conclusion.

In light of the above, I recommend recertification of the Newton Falls Hydroelectric Project effective November 2, 2012, subject to the condition related to Article 404 compliance.

Attchmts: email from 12/11/12
 FERC Article 404 letter

From: Daoust, Daniel [mailto:Daniel.Daoust@brookfieldrenewable.com]
Sent: Tuesday, December 11, 2012 11:26 AM
To: Jeffrey Cueto
Cc: Kulpa, Sarah; Murphy, Steven P
Subject: RE: Newton Falls LIHI recertification - lower development flows

Jeff,

I was unable to find any record of the fish flow monument or gage being placed to date,

BREG has a preliminary mark set for the down-stream min flow visual gage.

Still an open action item to the best of my knowledge

DGD

From: Jeffrey Cueto [mailto:ompompanoo@aol.com]
Sent: Thursday, December 06, 2012 11:16
To: Daoust, Daniel
Subject: Newton Falls LIHI recertification - lower development flows

Dan –

According to the attached documents, Brookfield was to have provided NYSDEC and the FWS with rating information for flows released through the fishway at the lower development and reported back to FERC on completion of the gaging system work by August 31, 2009. Please send me documentation showing this work was completed.

My understanding is that the dam sluice was being operated starting in 2008 but that there was no way to verify that 20 cfs was being released.

Thanks.

Jeff

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