

REVIEW OF APPLICATION FOR RE-CERTIFICATION OF THE MEDWAY PROJECT BY THE LOW IMPACT HYDROPOWER INSTITUTE

Prepared by:
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I. INTRODUCTION AND OVERVIEW

This report reviews the application for re-certification submitted on December 4, 2015 by Black Bear Hydro Partners, LLC (BBHP), an indirect subsidiary of BBHP Renewable Energy Group, for the Medway Project (FERC No. 2666). The Medway Project is a run-of-river hydroelectric generating facility located on the West Branch of the Penobscot River in Medway, Maine. The Medway Project was one of several hydropower facilities incorporated into the Lower Penobscot River Basin Comprehensive Settlement Accord (“Agreement”), a settlement agreement which represented a collaboration of the licensee numerous state and federal agencies, the Penobscot Indian Nation (PIN) and several non-governmental organizations, to restore 11 species of sea-run fish, while rebalancing hydropower generated on the Penobscot River and several tributaries. The agreement was signed on June 25, 2004. As part of this Agreement two mainstream dams were removed and a fish bypass installed at a third dam.

The Medway Hydroelectric Project (the “Project”) received a license (P-2666) from the Federal Energy Regulatory Commission (FERC) on March 3, 1999. In June 2004, an application was FERC for an amendment incorporating the upgrades at this site pursuant to the Agreement, which was issued on April 18, 2005. The Medway Project license was transferred to Black Bear Hydro Partners, LLC by FERC order dated September 17, 2009. BBHP became a subsidiary of BBHP Renewable Energy Group in November 2013.

Initial LIHI certification of the Medway project became effective date June 1, 2010, with an expiration date of June 1, 2015, which was extended through the completion of this review. The Medway project has been owned and operated by the same entity, BBHP, since initial certification by LIHI. The original certification review was prepared by Patricia McIlvaine. This initial report can be found here: <http://lowimpacthydro.org/lihi-certificate-65-ferc-no-2666-medway-hydroelectric-project/>. There were no conditions associated with the certification.

II. RECERTIFICATION STANDARDS

Chapter 2, Section 2.25 of the Low Impact Hydropower Institute (LIHI)’s Certification Handbook (Updated April 2014) 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, 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 process also states that if no information is missing from the Re-Certification application package, and if the Application Reviewer has determined that there are no material changes or changes in LIHI's criteria, than the project is eligible for recertification action by the Executive Director.

III. ADEQUACY OF THE RECERTIFICATION APPLICATION

The initial review of the materials submitted on December 4, 2015, in support of application for recertification of the Medway Hydroelectric Project indicated that additional information, primarily documentation supporting some statements made in the application, was needed to complete the recertification review.

A revised application with additional supporting documentation was received June 6, 2016. A few additional documents were provided in response to two specific questions after this date. As part of the review process, I also reviewed the LIHI file containing the original certification and FERC's public information file on the Project. The application was posted for comment by LIHI; no comments were received by the deadline of February 12, 2016. A review of the application indicated that consultation with the key resource agencies and the Penobscot Indian Nation (PIN) on key issues is regular and current, and that no significant issues appear to exist. Therefore, I determined that no additional outreach to these entities was needed to complete this review.

In my opinion, the materials now in LIHI's possession are sufficient to make a recertification recommendation.

IV. ASSESSMENT OF LIHI'S CRTIERIA FOR CHANGES

LIHI has revised its certification criteria and published a new Handbook dated March 7, 2016. However, facilities that have applied for recertification on or before December 31, 2015, are to be evaluated using the April 2014 version of LIHI's Certification Handbook. As this application was received December 4, 2015, the Medway Project was evaluated pursuant to the April 2014 criteria and Handbook.

It is my understanding that LIHI's April 2014 criteria being applied to this recertification, or the Board's interpretation of one or more criteria, that are applicable to the circumstances of the Medway Project have not changed in meaningful ways since the date of the original certification.

V. ASSESSMENT FOR MATERIAL CHANGES AT THE FACILITY

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. This are defined as:

(a) Non-compliance: Since receiving its last certification from LIHI, the certificate holder/applicant has not implemented, or has delayed implementing, or has done an inadequate job of implementing obligations at or near the facility that are of relevance to LIHI's criteria. These obligations could be in the form of terms and conditions of license(s), settlement agreements, resource agency recommendations or agreements, LIHI conditions of certification including annual notifications, agreements with local municipalities or other third parties or similar relevant obligations; or

(b) New or renewed issues of concern that are relevant to LIHI's criteria: Since receiving its last certification from LIHI, either new issues of concern and relevance to LIHI's criteria have emerged that did not exist or were not made known to LIHI at the time of certification, or there continues to be ongoing problems with previously known issues that appeared to LIHI to be resolved or on the road to resolution at the time of certification but in fact are not resolved, and are ongoing at the time of the recertification application. If a new license, settlement agreement, prescription, biological opinion or other similar regulatory decision has been made since the original recertification, these documents will be evaluated to determine if new or renewed issues have been raised.

As noted in the original LIHI certification report, there was a potential for additional capacity to be installed during the term of that certification. Based on current data provided, the new generation has not yet been installed.

A Biological Opinion and Incidental Take Statement (BO/ITS) was issued August 3, 2012 for the suite of BBHP owned hydropower projects in the Penobscot River basin, which included the Medway Project. Species included the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon, shortnose sturgeon, and the GOM and New York Bight DPSs of Atlantic sturgeon. This document, as well as the Species Protection Plan (SPP) and annual reports for these species were also reviewed. Issuance of these documents was not considered a material change.

Compliance Status

My recertification assessment of the Project included review of BBHP's compliance with the FERC License, Water Quality Certificate (WQC), the BO/ITS and the LIHI certification condition, during the period of LIHI certification: June 1, 2010 through June 30, 2016.

BBHP, in their application to LIHI, certified that they have operated in compliance with their FERC License, the WQC and the BO/ITS. This was supported by review of the documents provided, including notes from meetings with USFWS and the state fishery agencies, and documents found in FERC's eLibrary. The following conclusions were found regarding the Medway Project during this period:

- No minimum flow non-compliance or headpond limit excursions events were reported
- Past sediment studies and fish tissue sampling for mercury and PCBs requested by the Penobscot Indian Nation due to possible water quality issues, were determined to no longer be required by the Maine Department of Environmental Protection. No other water quality concerns were identified.

- The 2013 Species Protection Plan (SPP) which covers the Medway Project details that the West Branch above the Medway Project is managed for resident fisheries, and not Atlantic salmon or other anadromous fish. Fishery management decisions by resource agencies and current restoration plans have not required passage above Medway Dam. Annual consultation is held with the agencies and PIN on SPP activities for all Penobscot River Projects.
- A telemetry array indicated in the SPP and March 27, 2014 FERC Order was installed at Medway for the 2015 Atlantic salmon study (to determine if salmon are attracted to the Medway tailrace and delayed), but very few tagged salmon were released to the river above the upstream Milford Project, and no salmon were detected at Medway by the array during the study.
- Required annual meetings are held with National Marine Fisheries Service (NMFS), Maine Department of Marine Resources (MDMR), Maine Department of Environmental Protection (MDEP), Maine Department of Inland Fish and Wildlife (MDIFW), Penobscot Indian Nation (PIN) and the U.S. Fish and Wildlife Service (USFWS) to discuss American eels and alosines (i.e., river herring and American shad). I reviewed the notes from the January 2016 meeting, at which 2015 qualitative studies were discussed, along with future plans for more studies and possible enhancements, for example, to the upstream eel passage structure. No concerns were raised by the agencies. All agencies were in attendance except MDIFW.
- Pursuant to the settlement agreement. FERC license and WQC, BBHP is no longer required to make annual payments to the Contingent Mitigation Fund.
- Regarding endangered and threatened species, as noted above, restoration of Atlantic salmon and other anadromous species is not currently planned for Medway. Therefore, the SPP notes that the Biological Order and Incidental Take Statement issued in 2012 for the BBHP Penobscot River includes Medway, but does not have specific requirements at this time for Medway. This SPPP states that should state, PIN, or federal resource agency plans and available resources change in the future, and passage of Atlantic salmon, Atlantic Sturgeon or shortnose sturgeon at the Medway Dam was desired, BBHP would be required to initiate additional consultation under the ESA, to which BBHP has agreed. Canada Lynx (*Lynx Canadensis*) and Northern Long-eared Bat (*Myotis septentrionalis*) are federally threatened species that may be in the area, although no critical habitat for either species is found at the project.
- Regarding state species, when contacted in April 2016, the Maine Natural Areas Program stated they did not expect any impacts would occur from continued operation to a known area relatively nearby containing Orono Sedge (*Carex oronensis*), a state threatened plant species. Three state-threatened mussel species: yellow lamp mussel, tidewater mucket and brook floater were reported in the general vicinity of the Project, but the MIFWS stated “It is not known what effects, if any, the operations of the project may have on any of these species.” Typically, such mussels can be impacted if they become dry due to significant draw-down of the impoundment. A condition is suggested to address this possible concern.
- It appears that the required contact with the Maine State Historic Preservation Office (SHPO)’s office has been made when modifications are made at the facility. One project, development of a snowmobile trail, has occurred since 2011. No cultural resource issues have been found by the SHPO for this project.

New/Renewed Issues of Concern

There were no new or ongoing issues of concern found for the Project.

VI. CONCLUSION

In light of the above, I recommend recertification of the Medway Hydroelectric Project for an additional five-year period with the condition noted below.

The Owner shall proactively contact the MIFWS a minimum of 30 days prior to any planned drawdown of the impoundment that would expose a significant portion of the river bottom, to determine if any special measures are needed to ensure no, or minimal impact occurs to state-threatened mussels that may be in the impoundment. The Owner shall work with the MIFWS to implement appropriate measures should they be needed. The Owner shall advise LIHI of any such events, including the results of any activities conducted to minimize such impacts. Such notification shall be provided as part of the annual compliance statement to LIHI.