

Low Impact Hydropower Institute

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July 9, 2004

TO: LIHI Governing Board

cc: LIHI Advisory Panels
Gabriela Goldfarb, Application Reviewer

FROM: Fred Ayer, LIHI Executive Director

SUBJECT: Recommendation regarding the application for certification of the Pawtucket Hydroelectric Project, Blackstone River, Rhode Island

ISSUE

Should the Governing Board certify the Pawtucket Hydroelectric Project as a Low Impact Hydropower Facility?

RECOMMENDATION

The Governing Board should certify the Pawtucket Hydroelectric Project because it meets the Low Impact Hydropower Certification Criteria.

DISCUSSION

I have reviewed the application, and the Application Reviewer's report. I concur with the Application Reviewer's determination that the Pawtucket Hydroelectric Project, located on the Blackstone River in Rhode Island, meets the Low Impact certification criteria. The following is a discussion of the technical or policy issues raised by the application or the Application Reviewer's report.

River Flows Criterion

I identified no unusual technical or policy issues in addressing these criteria.

Water Quality Criterion

I identified no unusual technical or policy issues in addressing these criteria.

Fish Passage Criterion

The Pawtucket Project offers us an interesting look at anadromous restoration activities and fish passage requirements driven primarily by state agencies rather than federal. As you may recall, the LIHI Board discussed some aspects of this case last September at our annual meeting. Because fish restoration programs have a propensity to be equal parts emotion and fact, I have attempted to list what I believe to be the facts:

- In 2002, the Rhode Island Department of Environmental Management (RIDEM) completed a *Blackstone River Fisheries Restoration Plan* (“restoration plan” or “plan”) which had been developed with the involvement of the multi-stakeholder Blackstone River Fish Restoration Steering Committee.
- Charlie Rosenfield, manager of the Pawtucket Project, has been an active participant in the steering committee.
- A foundational document to the restoration plan is a study commissioned by RIDEM and done by the University of Rhode Island (URI), which makes the case for restoration (i.e., historic records of anadromous fish in the Blackstone River).
- Charlie Rosenfield has taken exception to the URI study and has prepared a critique, which he has shared with other steering committee members.
- Both the URI study and Mr. Rosenfield’s critique are appendices to the restoration plan.
- The goal of the restoration plan is to restore self-sustaining populations of shad and river herring to the Blackstone River basin.
- There are no fish passage facilities on the Blackstone River in Rhode Island.
- The *Blackstone River Fisheries Restoration Plan* is complete but has not been implemented.
- According to the state, the restoration plan has not been implemented due to lack of funds.
- The Pawtucket Hydroelectric Project operates under a FERC exemption, Standard Article 2 of the exemption requires “compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources” as contained in “any letters of comment of these agencies.”
- The U.S. Fish and Wildlife Service (USFWS) submitted a letter of comment that says that the project will be required to provide “fish passage facilities and any other appropriate project modifications... when the Rhode Island Division of Fish and Wildlife implements a plan for restoring anadromous fish to the Blackstone River.”
- Pawtucket LLC accepted the terms and conditions outlined in the FERC exemption when they acquired the Pawtucket Project from its original owner, Blackstone Valley Electric Company in 1999.
- Both RIDEM and USFWS have stated that the Pawtucket Project is in compliance with all existing resource agency requirements.
- The Rhode Island agency staff said that the Pawtucket Hydroelectric project, like the two other hydroelectric facilities on the lower Blackstone River, are significant for their historical value, important as viable small businesses in an economically depressed region, and positive in their generation of climate friendly energy.

- RIDEM expressed support for certification conditional to continued cooperation of the facility with the Department's plans to restore anadromous fish passage on the lower Blackstone River
- USFWS wants the applicant to submit to LIHI evidence of Pawtucket's commitment to provide fish passage when required in the future.
- The Applicant's response to questions regarding their commitment to future requirements is "We are in compliance with our exemption obligations and intend to be."

Based on these facts, I agree with the Application Reviewer's conclusions for the following reasons:

- Article 2 of the FERC exemption obligates Pawtucket LLC to be in "compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources" as contained in "any letters of comment of these agencies." USFWS submitted such comment requiring "fish passage facilities and any other appropriate project modifications...when the Rhode Island Division of Fish and Wildlife implements a plan for restoring anadromous fish to the Blackstone River."
- RIDEM has not implemented the plan they completed in 2002 and have neither required nor requested the Pawtucket Project to install fish passage.
- Both state and federal agencies support Low Impact certification for the Pawtucket Project and verify Pawtucket's cooperation with their requests to date.
- The exemptee has a very positive compliance record according to both state and federal agencies.
- Until the state requires the Pawtucket Project to install fish passage and the Applicant refuses to do so, I believe they are in compliance.

While the Applicant and state and federal agencies are at odds on whether there were historic anadromous fish populations in the Blackstone River, that debate and difference of opinion, I believe, should not affect LIHI's ability to certify this project. It seems to me that this issue remains hypothetical until the fish passage plan is implemented, the state asks Pawtucket to provide fish passage, and Pawtucket either refuses or agrees. At this point in time, the applicant is in the same position as a number of other LIHI certified who have signed settlement agreements and accepted FERC orders to provide future fish passage based on anticipated need or population triggering mechanism.

Watershed Criterion

I identified no unusual technical or policy issues in addressing these criteria.

Threatened and Endangered Species Criterion

I identified no unusual technical or policy issues in addressing these criteria.

Cultural Resources Criterion

I identified no unusual technical or policy issues in addressing these criteria.

Facilities Recommended for Removal

I identified no unusual technical or policy issues in addressing this criterion.

Public Comments and Appeal Period

There were two public comments and I am comfortable in the way that the application reviewer handled them in her report...