



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

May 27, 2014

Dana Hall, Deputy Director
Low Impact Hydropower Institute
PO Box 194
Harrington Park, NJ 07640

RE: Carry Falls Hydroelectric Project (FERC #2060), Upper Raquette River Hydroelectric Project (FERC #2084), Middle Raquette River Hydroelectric Project (FERC #2320), and Lower Raquette River Hydroelectric Project (FERC #2330) Recertification as Low Impact

Dear Ms. Hall:

The U.S. Fish and Wildlife Service (Service) has reviewed the May 16, 2014, Notice of Application for Recertification (LiHi Application) issued by the Low Impact Hydropower Institute (LiHi) for the Raquette River Hydroelectric Projects identified above. Brookfield Renewable Energy Group (Brookfield) is the applicant for recertification.

The Raquette River begins in the Adirondack Mountains and flows into the St. Lawrence River in St. Lawrence County, New York. The Service approved the original certification of these four projects as low-impact, as well as the recertification. The Service does not object to an additional 5-year recertification provided that Brookfield is in full compliance with all license conditions, particularly the eel ladders required for upstream passage as indicated below.

The LiHi Application filed by Brookfield is incorrect and incomplete under Section C: Fish Passage and Protection. The original Offer of Settlement (Settlement) signed by Brookfield, the Service, and other stakeholders in 1998 which was used as the basis for the license issued to Brookfield's predecessor by the Federal Energy Regulatory Commission (FERC) in 2002, did not include any requirements for upstream fish passage. The Settlement and the license both required fish protection and downstream passage facilities for a variety of fish species.

Section C.1 in Brookfield's LiHi Application states that American eels (*Anguilla rostrata*) get as far upstream as Hannawa Falls without passage structures. Although some eels have been found that far upstream, very few eels can successfully navigate around the dams on the lower Raquette River without the use of eel ladders. These dams essentially represent blockages to the use of historic habitat by American eels. Therefore, Section C.1 is not entirely correct.

Section C.2 also makes several inaccurate statements. This section describes a 2002 Settlement Agreement that "...supersedes previous prescriptions issues [sic] by USDO I in 1999." As indicated above, the Settlement was signed in 1998, not 2002. The Service, via the Department of the Interior, submitted 10(j) license conditions in 1999. We did not prescribe any fishways, but we reserved our authority to prescribe fishways in the future. Brookfield's predecessor, Niagara Mohawk Power Corporation, identified what they believed to be inconsistencies

between the Settlement language and the Service's 10(j) language. The license articles resolved these perceived inconsistencies. There were no additional settlements or prescriptions that superseded any Service prescriptions.

Section C.2 also states that upstream passage for anadromous or catadromous fish species was not a management objective at the time of the Settlement. Although this statement is accurate, the LiHi Application fails to indicate that management for upstream passage of American eel became a management goal during the 2006 license amendment proceedings. The FERC issued an *Order Amending License and Accelerating Fish Protection and Downstream Passage Schedule* on December 5, 2006. This order required the installation of eel ladders at all four developments of the Lower Raquette River Project by the end of 2009. Brookfield filed their *Final Eel Passage Plan* on December 14, 2007.

Section C.3 is also incomplete as it focuses only on Atlantic salmon (*Salmo salar*) and does not discuss the catadromous American eel. In particular, Section C.3.b of the LiHi Application is intended to address the following question:

“If a Resource Agency Recommended [sic] adoption of upstream and/or downstream fish passage measures at a specific future date, or when a triggering event occurs (such as completion of passage through a downstream obstruction or the completion of a specified process), has the Facility owner/operator made a legally enforceable commitment to provide such passage?”

While Brookfield indicated that this section is “Not Applicable,” it actually addresses the 2006 Amendment which Brookfield should address in this section, since they made “legally enforceable commitment(s)” to provide such passage.

In Section C.4, the LiHi Application again describes conditions as they existed at the time of the 1998 Settlement, not as they exist in 2014. This section needs to be updated.

Section C.7 is also outdated. This section should describe all of the downstream fish passage and protection facilities that have been installed, and the scheduled dates of installation for those that have not yet been installed but are due to be installed prior to December 2019. Section C.7 also misstates the priorities of the Service and other stakeholders during the 1998 Settlement. The statement that “...fish protection structures were not viewed by the parties as a high priority...” is incorrect. These structures were considered to be a high priority, but, with 13 sites needing structures, we recognized that they needed to be phased in over time. The resulting schedule was established through an overall settlement negotiation and did not reflect a low priority for these structures.

Brookfield should update the entire LiHi Application to reflect current conditions, not those that existed at the time of the 1998 Settlement or the original application to LiHi. In addition, they should provide photo-documentation that demonstrates that all of the eel ladders have been successfully installed and are operating as designed. Finally, Brookfield should indicate which fish protection and downstream passage facilities have been completed and which are yet to be completed (along with proposed installation dates).

We appreciate the opportunity to review Brookfield's LiHi Application. The Service has no objections to a 5-year extension of certification provided that the application is properly updated and that Brookfield remains in compliance with all license requirements (as amended),

particularly the fish protection and passage requirements. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,

Annexed. Secord

for David A. Stilwell
Field Supervisor

cc: NYSDEC, Watertown, NY (D. McDonald, L. Ambeau)
NYSDEC, Albany, NY (W. Little)
FWS, Hadley, MA (C. Orvis, A. Hoar))