



FILED VIA EMAIL TO [COMMENTS@LOWIMPACTHYDRO.ORG](mailto:COMMENTS@LOWIMPACTHYDRO.ORG)

April 23, 2021

Shannon Ames, Executive Director  
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**RE: Azischohos Hydroelectric Project FERC No. P-4026- “Azischohos Project Comments from American Whitewater”**

Dear Shannon:

American Whitewater (AW) files the following comments on the Low Impact Hydropower Institute’s (“LIHI”) Pending Application for the proposed LIHI certification of Brookfield Renewable’s Azischohos project on the Magalloway River in western Maine. For full disclosure AW is a participant in the ongoing FERC relicensing of this Project in collaboration with the Appalachian Mountain Club<sup>1</sup> and draws these comments in part from our participation in the ongoing FERC relicensing. As background American Whitewater participated in the negotiation of and was a signatory to the August 28, 1998, Upper Androscoggin River Storage Projects Settlement Agreement (“1998 SA”)<sup>2</sup>, which addressed some of the interrelationships between this storage Project and the initial FERC license issued for the Upper Dam and Middle Storage Dam Developments that were licensed in 2002 as FERC Project No. P-11834. That Settlement, through an Azischohos license amendment, established basic fishery and whitewater flow releases for the Azischohos Project, since all three of these projects are operated as an integrated headwater storage system. The ‘1998 SA’ established fishery and whitewater flows from Upper and Middle Dams storage to the Rapid River branch of the Androscoggin River. Azischohos Dam primarily provides storage on the Magalloway River branch (ca. one-

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<sup>1</sup> The Appalachian Mountain Club to prevent a potential conflict of interest due to it being on the LIHI board of directors determined it was not appropriate for it to submit comments on this LIHI application.

<sup>2</sup> This Settlement Agreement is included in the Applicant’s LIHI Certification Application at Section 7.0 - Supporting Documentation.

third of this basins combined storage), and generates 5.3 MW of power in a daily cycling mode. The Rapid and Magalloway River each flow several miles before entering The Umbagog National Wildlife Refuge, which encompasses Lake Umbagog that is currently undergoing relicensing as FERC Project No. P- 3133 (Errol Dam). All these Projects are owned by Brookfield Renewable.

American Whitewater's position is LIHI should not certify this Project at this time for both procedural and substantive reasons. Consideration for LIHI certification following the issuance of a new FERC license and ME DEP 401 Water Quality Certification scheduled for 2025 is more appropriate and possibly may resolve some of the following concerns.

### **I. This Application should be denied on procedural grounds.**

This Applications challenges recommendations in the revised LIHI Handbook 2nd Edition – Revision 2.04, April 1, 2020 on multiple accounts.

A. The LIHI Handbook at 4.5.1 states “Facilities undergoing FERC Licensing states: *If a new application for LIHI Certification is received for a facility that is currently in, or approaching FERC licensing, relicensing, or exemption, and a new license or exemption is expected to be issued during the term of LIHI Certification, LIHI will advise the applicant to delay application until they have completed that proceeding. The applicant will also be advised to delay application if the facility is subject to an ongoing amendment or rehearing proceeding that may affect the LIHI criteria.*”

This facility is undergoing relicensing that was initiated on March 30, 2020 as required by FERC, with an expiration date of March 30, 2025 for its current 40-year license. This LIHI Application was submitted on December 9, 2020, a time after the Applicant had started its required FERC relicensing process. This Application should not be certified by LHI at this time as there are numerous contested issues between the agencies and stakeholders with the Applicant on study requests and project impacts. The filings by all parties are readily accessible on FERC's Aziscohos Project web site.

Furthermore, the environmental impacts of the Aziscohos Project have not been addressed since 1985, except for the before mentioned '1998 SA' terms that marginally modified this Project's reservoir release schedule. The current license for this project was issued before the Electric Consumers Protection Act<sup>3</sup> (ECPA) enacted by Congress

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<sup>3</sup> The ECPA requires the FERC to give equal consideration to developmental and non-developmental values in the hydro licensing process. Developmental values include power, irrigation, and flood control, while non-

in 1986. The '1998 SA' addressed reservoir drawdown limits for the Richardson and Mooselookmeguntic Lakes, but did not address the much larger drawdowns in Aziscohos Lake and their impacts, with exception of a loon floating nesting program to compensate for the fact that loons rarely can successfully nest on Lake Aziscohos due to the extreme annual drawdowns (typical 20-30 feet, maximum 45 feet). There are no drawdown restrictions, other protections for this reservoir lake, or compensating mitigation and enhancement for ongoing impacts. Drawdown impacts to the reservoir under current operations are well documented in a July 2003 FERC filing by the Aziscohos Lake Preservation Committee (2003 report by ESC Marin "*Impacts Associated with Extensive Lake Level Drawdown at Aziscohos Lake - Wilson Mills, Maine* (2003)<sup>4</sup> " and are the subject of the ongoing FERC relicensing process. The ESC Marin Report is the best available science to date on reservoir impacts. The 2011 Water Quality Report cited in the Applicant's application at page 43 is not complete, nor up to date. More importantly this LIHI Application is silent on the fact that since 2006, the Maine DEP has listed Aziscohos Lake in the state's 303 D list of impaired waters as Category 4-C: "Lakes With Impairment not Caused by a Pollutant", with "Aquatic Life" listed as the impaired use due to draw-down.

B. The Applicant failed to properly notify numerous parties of its LIHI Application as required in the LIHI Handbook (LIHI Handbook at Appendix B.4 .C. "*Current stakeholder contacts that are actively engaged with the facility.*". The Applicant listed three "current stakeholders", The Rangeley Lakes Heritage Trust, Aziscohos Lake Preservation Council, and the Conservation Law Foundation Maine. The latter organization has not been involved in recent hydroelectric licensing for several years now. Ironically (why?) the Applicant failed to notify organizations of this LIHI Application that are actively engaged in the ongoing FERC relicensing of this Project, including Trout Unlimited, Appalachian Mountain Club and American Whitewater". The Applicant had contact information for all three of these organizations and knew they "*are actively engaged with the facility*". American Whitewater only learned about this LIHI Application through notification by others.

## **II. This Application should be denied on substantive grounds.**

A. Failure to meet LIHI's Water Quality criteria.

Trout Unlimited has already filed with LIHI documentation as to why this Project fails to meet LIHI's Water Quality criteria. For brevity's sake AW herein adopts Trout Unlimited's filing. In addition AW notes that the littoral zone impacts due to the massive

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developmental values include the protection of fish and wildlife and their habitat and spawning grounds, energy conservation, recreation, and other features of environmental quality.

<sup>4</sup> This report can be accessed at [http://sunfishmedia.com/Aziscohos/ImpactStudy\\_2001.pdf](http://sunfishmedia.com/Aziscohos/ImpactStudy_2001.pdf)

annual dewatering of the littoral zone likely fails ME DEP standards for impoundments. Maine Water Quality Standards for lakes, ponds, and riverine impoundments “to determine attainment of the designated use ‘habitat for fish and other aquatic life’ is determined as follows. Using a depth of twice the mean summer Secchi disk transparency, determined from the Trophic State Study or historic DEP data, as the bottom of the littoral zone, the volume and surface area dewatered by the drawdown will be calculated to determine if at least 75% of the littoral zone remains watered at all times. Alternatively, studies of fish and other aquatic life communities, including freshwater mussels, may be conducted to demonstrate that the project maintains ‘structure and function of the resident biological community’ despite a drawdown that results in less than 75% of the littoral zone remaining watered at all times.” Current operations typically see annual drawdowns in the 20-30-foot range with maximum drawdowns to 45 feet (occurred in the 1980s following licensing). Based on the best available data to date in the Applicant’s Preliminary Application Document to FERC, the average secchi disc reading for Lake Aziscohos is ca. 16 feet (therefore the littoral zone is ca.  $2 \times 16 = 32$  feet). The ESC Marin Report mentioned prior developed the best bathymetric data available to date and calculated that an annual drawdown of 10 feet, 20 and 30 feet would respectively result in the dewatering of 30%, 40% and 60% of the total lake bottom. Ongoing typical annual 20-30 foot drawdowns then fail the ME DEP “at least 75% of the littoral zone remains watered at all times” standard based on a twice secchi disc defined littoral zone of 32 feet (i.e. based on full pond, then annual 20+ foot drawdowns reduces the littoral zone surface area to less than 75% watered at all times).

The Application also fails to acknowledge in its LIHI Application, though brought up in the ongoing relicensing, that low oxygen measurements at depth were recorded as far back as the 1930’s when Cooper (1940) documented that dissolved oxygen concentrations in the hypolimnion during summer stratification were favorable in each of the Rangeley Region lakes studied **except** for Lake Aziscohos. Project operations are likely a major factor in the depleted hypolimnion oxygen at levels problematic for smelt and salmon, an issue now being studied during FERC relicensing.

C. The Application fails the Recreation criteria for the reservoir.

Criterion Standard Supporting Information H 2 is “*The facility demonstrates compliance with resource agency recommendations for recreational access or accommodation (including recreational flow releases), or any enforceable recreation plan in place for the facility.*”

*Agency Recommendation:*

- *Document any comprehensive resource agency recommendations and enforceable recreation plan that is in place for recreational access or accommodations.*
- *Document that the facility is in compliance with all such recommendations and plans.*

The Applicant states in its LIHI Application that for this 15-mile long reservoir “*The Impoundment zone contains a Picnic area on the south shore of Aziscohos Lake on Boat House Road off Route 16. “Roadside Picnic Area” signs on Route 16 north and south of Boat House Road alert motorists to the site’s location, and a large sign at the entrance to the parking area identifies the site as an Aziscohos Station Recreation Area. The gravel parking area provides capacity for approximately 10 vehicles. The site contains six tables (two covered), grills, and two concrete vault toilets. A footpath leads from the site to the shoreline.*

*In addition to the FERC-approved Project recreation sites, the Licensee maintains a boat launch on Aziscohos Lake just northeast of the dam **for use by Lincoln Plantation residents**. The site offers a courtesy dock and roadside parking. The ramp consists of a paved approach and concrete plank ramp. Access to the site is gated. Signage at the site identifies facility use rules. Boater barriers are deployed annually for public safety purposes. Boater barriers are deployed annually for public safety purposes.”*

What the Applicant in its Application fails to acknowledge is that there are no public boat launch sites on this reservoir that guarantees public boating access to the general public for the tenure of the current (or future licenses), all reservoir (lake) access is for fee at a private campground, and at an ad hoc site on BayRoot Wagner’s private property, with no guarantee of their tenure or remaining accessible to the general public. Providing access for Lincoln Plantation residents only is not public access. This lack of reservoir public boating access is an issue the State of Maine has raised as needing further study and resolution in the ongoing FERC relicensing of this project<sup>5</sup>.

D. Fish Passage: The Applicant’s Application at page 16 states “*There is no upstream or downstream fish passage at the project and no requirements for such in the Project license. Many areas within and around the Aziscohos Project support principal coldwater fisheries for native Brook Trout and wild*

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<sup>5</sup> ME Bureau of Parks and Lands (BPL) July 28, 2020 Study Request filing with FERC on this Project.

*Landlocked Salmon. These fisheries, though previously supplemented by stocking, are currently supported by natural reproduction only, and are popular with anglers. MDIFW has implemented several management practices in Aziscohos Lake to improve salmonid growth and condition, including liberalized bag limits on Landlocked Salmon.”*

What the Application fails to acknowledge is that due to the major reservoir’s drawdowns (20-30 feet annually) during the refill period in the spring that the principal food source for game fish, smelt, may have considerable difficulty some/many years in gaining access to their reservoir tributary spawning habitat. In the late summer-fall when reservoir brook trout and Atlantic salmon spawn, they also may have great difficulty in accessing their reservoir tributary streams due to the lake being down ten plus feet in many years during late-summer-fall spawning periods. These issues are being examined in the current FERC licensing.

The following picture is an example of an Aziscohos Reservoir brook trout spawning tributary (Meadow Brook) during their spawning period (Sept. 27, 2020) with a 10+ foot drawdown, which is a typical reservoir level and still going lower during this species spawning period. Spawning access under these conditions is nil. Most other spawning tributaries are similar, and these conditions also occur typically in the spring during the smelt spawning period.



In summary this LIHI Application should not have been submitted at this time due to ongoing FERC relicensing, and the representations in this LIHI Application are not

always entirely accurate. Reconsideration for LIHI certification may or may not be appropriate following FERC's issuance of a new license in 2025, and the State of Maine's issuance of an updated 401 Water Quality Certification at that time.

American Whitewater appreciates your consideration of our comments.

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