

155 FERC ¶ 62,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power Massachusetts, LLC

Project No. 2334-055

ORDER MODIFYING AND SUSPENDING LICENSE ARTICLES 403 AND 404

(Issued May 16, 2016)

1. On March 30, 2016, Essential Power Massachusetts, LLC, licensee for the Gardners Falls Project No. 2334, filed a request to discontinue operation of the downstream fish passage facilities required by Article 403 and 404 of the project license.¹ The project is located on the Deerfield River in Franklin County, Massachusetts. The project does not occupy federal lands.

REQUIREMENTS AND BACKGROUND

2. License Article 403 requires the licensee to file, for Federal Energy Regulatory Commission (Commission) approval, detailed design drawings of the proposed downstream fish passage facilities together with a plan and schedule to construct and install the facilities. The licensee is required to prepare the design drawings and schedule after consultation with the U.S. Fish and Wildlife Service (FWS) and the Massachusetts Division of Fisheries and Wildlife (Massachusetts DFW). In addition, the Article requires that the facilities operate April 1 through June 15 and from September 15 to November 15 each year.

3. License Article 404 requires the licensee to file, for Commission approval, a plan to monitor the effectiveness of the permanent downstream fish passage facilities required by Article 403 and associated operational flows to safely and efficiently pass Atlantic salmon smolts down the Deerfield River past the Gardners Falls Project. The licensee's plan was approved by order dated June 1, 2001² and the as-built drawings under Article 403 were approved by the Commission on November 1, 2002.

¹ Order Issuing New License (79 FERC ¶ 61,007), issued April 4, 1997.

² Order Approving Final Downstream Fish Passage Effectiveness Report and Recommended Modifications (95 FERC ¶ 62,225).

LICENSEE'S REQUEST

4. In its filing, the licensee requested to discontinue operation of the downstream fish passage facilities approved in Article 403, suspend monitoring of the facilities required in Article 404, and delete Exhibit F drawings F-8 through F-18 from its project license. On May 6, 2016, Commission staff requested that the licensee clarify if downstream facilities would actually physically be removed from the project, necessitating deletion of certain Exhibit F drawings. In response, the licensee stated that facilities would not physically be removed and would therefore rescind its request to delete the aforementioned Exhibits.³

CONSULTATION

5. The licensee's filing indicates that it was notified by the Massachusetts DFW on February 24, 2016, that it was no longer necessary for hydroelectric project owners on the Deerfield River to operate downstream fish passage facilities at their projects for Atlantic salmon smolts beginning in 2016. In its letter, it stated that the Massachusetts Atlantic salmon restoration effort ended in 2013 and that it expected any Atlantic salmon fry to smolt and out-migrate after two years in freshwater (2015). The FWS concurred with the Massachusetts DFW's comments and the licensee's request on March 24, 2016.

CONCLUSION

6. Articles 403 and 404 were intended to support Atlantic salmon restoration efforts in the Deerfield River. The resource agencies agree that the efforts are not likely to provide any measureable benefit without continued stocking efforts and that the two years should have provided sufficient time for any fish stocked in 2013 to smolt and out-migrate. In the event that the Massachusetts DFW reinitiates Atlantic salmon restoration efforts in the future, the Commission reserves the right to reinstate Articles 403 and 404. For these reasons, the licensee's request to discontinue operation of downstream fish passage facilities and suspend the requisite effectiveness monitoring is reasonable and therefore, should be approved.

³ Email communication on May 9, 2016 with the licensee and Joseph Enrico, Commission staff.

The Director orders:

(A) Essential Power Massachusetts, LLC's (licensee) request, filed with the Federal Energy Regulatory Commission (Commission) on March 30, 2016, to suspend the requirements of Articles 403 and 404 of the license for the Gardner Falls Hydroelectric Project No. 2334, as modified in paragraph B, is approved.

(B) The Commission reserves the right to reinstate Articles 403 and 404 based on fishery management information provided by the licensee, the U.S. Fish and Wildlife Service or the Massachusetts Division of Fisheries and Wildlife.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 CFR § 385.713 (2015). The filing of a request for hearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Thomas J. LoVullo
Chief, Aquatic Resources Branch
Division of Hydropower Administration
and Compliance