

**BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION
APPLICATION FOR LICENSE FOR MAJOR PROJECT –
EXISTING DAM**

Cannonsville Hydroelectric Project

FERC Project No. 13287



VOLUME 3

Appendix E-1: Correspondence Log

City of New York



**Environmental
Protection**

February 2012

DEP- New York City Department of Environmental Protection
 NMFS- National Marine Fisheries Service
 NYSDEC- New York State Department of Environmental Conservation
 FERC- Federal Energy Regulatory Commission
 PFBC- Pennsylvania Fish and Boat Commission
 PDEP- Pennsylvania Department of Environmental Protection

Date	Type of Correspondence	To	From	Regarding
5/19/2009	Letter	Service List	Mark Wamser, Gomez and Sullivan	Request for Information for use in developing Pre-Application Document (PAD)
11/2/2009	Letter	Anthony Fiore	Diane Rusanowsky, NMFS	Endangered and Threatened Species, Fish and Wildlife Coordination Act Species, Essential Fish Habitat
8/13/2009	PAD, NOI	FERC, Service List	Kevin Lang, Couch White	Filing of the Notice of Intent (NOI) PAD
8/13/2009	Letter	FERC, Service List	Kevin Lang, Couch White	Request to use the Traditional Licensing Process (TLP)
8/14/2009	Letter	Kevin Lang, Couch White	David Sampson, NYSDEC	NYSDEC has no objections to using TLP
8/18/2009	Letter	Kevin Lang, Couch White	David Stillwell, USFWS	USFWS has no objects to using TLP
8/24/2009	Letter	FERC	Morgan Lyle, Public	Opposes DEP's use of TLP
8/27/2009	Letter	FERC	Fred Nelson, Public	Opposes DEP's use of TLP
8/28/2009	Letter	FERC	Thomas Axtell, Town of Deposit, NY	Opposes DEP's use of TLP
8/30/2009	Letter	FERC	Edward Smith, Public	Opposes DEP's use of TLP
8/31/2009	Letter	FERC	Town of Blenheim	Opposes DEP's use of TLP
9/2/2009	Letter	FERC	Robert Hornovick, Town of Colchester	Opposes DEP's use of TLP
9/3/2009	Letter	FERC	Peter Bracci, Town of Delhi	Opposes DEP's use of TLP
9/4/2009	Letter	FERC	Earl VanWormer, Schoharie County	Opposes DEP's use of TLP
9/8/2009	Letter	FERC	William Wellman, NY State Trout Unlimited	Petition to Intervene
9/10/2009	Letter	FERC	David Fanslau, Sullivan County	Opposes DEP's use of TLP
9/11/2009	Letter	FERC	John Bonacic, NY State Senator	Opposes DEP's use of TLP
9/11/2009	Letter	FERC	Mark Hartle, PFBC	PFBC recommends Integrated Licensing Process
9/18/2009	Letter	FERC	John Zimmerman on behalf of: Friends of the Upper Delaware, North Delaware River Watershed Conservancy, Aquatic Conservation	Opposes DEP's use of TLP

Date	Type of Correspondence	To	From	Regarding
			Unlimited	
10/21/2009	Letter	Kevin Lang, Couch White	Jeff Wright, FERC	FERC approves use of TLP
10/23/2009	Letter	Senator John Bonacic	Jeff Wellinghoff, FERC	Response to Senator John Bonacic
11/24/2009	Letter	FERC	Kevin Lang, Couch White	Notification of Joint Meeting, Information Meetings and Site Visits
12/15/2009		FERC, Service List	Kevin Lang, Couch White	Site visit of Cannonsville, Neversink and Pepacton Developments during the day Informal Public Meeting held at Sullivan County Community College during the evening
12/16/2009		FERC, Service List	Kevin Lang, Couch White	Joint Meeting held in Kingston, NY in the morning Site visit of Schoharie Development during the day Informal Public Meeting held at Schoharie County Building during the evening
1/7/2010	Letter	FERC	Harold Roeder, Upper Delaware Council	Opposes DEP's use of TLP
1/11/2010	Letter	FERC	Andrew Boyar, Town of Highland	Opposes DEP's use of TLP
2/5/2010	Email	Steve Patch, USFWS Kent Sanders, NYSDEC Larry Wilson, NYSDEC Norm McBride, NYSDEC Robert Angyal, NYSDEC Michael Flaherty, NYSDEC David Sampson, Esq., NYSDEC	Anthony Fiore, DEP	Transmittal of Draft Study Plans
2/8/2010	Meeting Minutes	Present: Anthony Fiore, DEP John Vickers, DEP Robie Craig, Esq, DEP Jeff Helmuth, DEP Tom Baudanza, DEP Michael Usai, DEP Robert Principe, DEP Linda Geary, Esq, DEP Tom Sullivan, Gomez and Sullivan Mark Wamser, Gomez and Sullivan		Meeting to discuss Draft Study Plans- timing of study, level of effort, and methodology

Date	Type of Correspondence	To	From	Regarding
		Kevin Lang, Couch White Steve Patch, USFWS Kent Sanders, NYSDEC Larry Wilson, NYSDEC Norm McBride, NYSDEC Robert Angyal, NYSDEC Michael Flaherty, NYSDEC David Sampson, Esq., NYSDEC		
2/10/2010	Letter	FERC	Kevin. Lang, Couch White	Filing of Transcripts from Public Meetings and Joint Meeting
2/12/2010	Letter	Anthony Fiore, DEP	David Stilwell, USFWS	Review of NOI and PAD and Initial Study Requests
2/12/2010	Letter	Anthony Fiore, DEP	Kent Sanders, NYSDEC	Study Requests
2/19/2010	Letter	Anthony Fiore, DEP	John Hines, PDEP	Study Requests
4/13/2010	Email	Mark Wamser, Gomez and Sullivan	Kent Sanders, NYSDEC	No need to evaluate Indiana Bat and Bog Turtles
6/15/2010	Email	Kent Sanders, NYSDEC Norm McBride, NYSDEC Steve Patch, USFWS	Anthony Fiore, DEP	Transmittal of Revised Study Plans
7/1/2010	Email	Anthony Fiore, DEP	Kent Sanders, NYSDEC	Comments on Revised Study Plans
8/4/2010	Email	Steve Patch, USFWS Kent Sanders, NYSDEC Larry Wilson, NYSDEC Norm McBride, NYSDEC Robert Angyal, NYSDEC Michael Flaherty, NYSDEC David Sampson, Esq., NYSDEC Mark Woythal, NYSDEC	Anthony Fiore, DEP	Transmittal of Entrainment Report
8/23/2010	Meeting Minutes	Anthony Fiore, DEP DEP Linda Geary, NYC Law Dept Thomas DeJohn, DEP Jason George, Gomez and Sullivan Mark Danvetz, DEP Mark Wamser, Gomez and Sullivan Robert Principe, DEP Craig Arnold, Gomez and Sullivan Robie Craig, DEP Legal Tom Sullivan, Gomez and Sullivan		Discussion on Entrainment Report, and Revised Study Plans

Date	Type of Correspondence	To	From	Regarding
		Tom Baudanza, DEP Kevin Lang, Couch White Sangu Iyer, DEP Garrett Bissell, Couch White Jeff Helmuth, DEP Kent Sanders, NYSDEC Mike Flaherty, NYSDEC Larry Wilson, NYSDE Norm McBride, NYSDEC Mark Woythal, NYSDEC Steve Patch, USFWS		
9/8/2010	Email	Steve Patch, USFWS Kent Sanders, NYSDEC Larry Wilson, NYSDEC Norm McBride, NYSDEC Robert Angyal, NYSDEC Michael Flaherty, NYSDEC David Sampson, Esq., NYSDEC Mark Woythal, NYSDEC	Anthony Fiore, DEP	Transmittal of Addendum to Entrainment Report
9/15/2010	Letter	Anthony Fiore, DEP	David Stillwell, USFWS	No further comments on Entrainment Report or Addendum to the Entrainment Report
9/24/2010	Letter	Anthony Fiore, DEP	Kent Sanders, NYSDEC	Comments on Entrainment Report and Addendum to the Entrainment Report
10/19/2010	Letter	Kent Sanders, NYSDEC Larry Wilson, NYSDEC Norm McBride, NYSDEC Robert Angyal, NYSDEC Michael Flaherty, NYSDEC David Sampson, Esq., NYSDEC Mark Woythal, NYSDEC	Anthony Fiore, DEP	Letter responding to NYSDEC's September 24, 2010 letter regarding Entrainment Study
12/8/2010	Letter	Anthony Fiore, DEP	Kent Sanders, NYSDEC	No fisheries surveys are needed so long as releases are made according to the FFMP.
7/11/2011	Email	Stakeholders	Anthony Fiore, DEP	Invite email and agenda for a meeting to discuss the study reports.
7/19/2011	Letter	Susan Greene, National Marine Fisheries Service	Mark Wamser, Gomez and Sullivan Engineers, P.C.	Request final determination on Essential Fish Habitat
7/20/2011	Email	Anthony Fiore, DEP	Douglas Mackey, Office of Parks Recreation and Historic	Comments on Hartgen's Cultural Resources Report

Date	Type of Correspondence	To	From	Regarding
			Preservation	
7/21/2011	Meetings	Stakeholders	DEP	Day meeting in Kingston, NY and evening meeting in Walton, NY were held to discuss the study reports.
8/3/2011	Letter	Kevin Lang, Couch White	David Stillwell, USFWS	Comments on Entrainment Report
7/31/2011	Email	Anthony Fiore, DEP	Susan Kross, Public (Ellenville)	Questions on Proposed Project
8/8/2011	Email	Susan Kross, Public (Ellenville)	Anthony Fiore, DEP	Responses to Questions on Proposed Project
8/11/2011	Letter	David Stillwell, USFWS	Kevin Lang, Couch White	Addressed comments raised by USFWS in the Entrainment Report
9/12/2011	Transcripts	Stakeholders	DEP	Transcripts of 7/21/2011 meetings in Kingston and Walton, NY
9/20/2011	License Applications	Stakeholders	DEP	Draft License Applications were filed.
11/21/2011	Letter	FERC	NYSDEC	Petition to Intervene
12/14/2011	Letter	DEP	US Department of the Interior	Comments on the Draft License Application
12/19/2011	Letter	DEP	NYSDEC	Comments on the Draft License Application
12/19/2011	Letter	DEP	Delaware County Board of Supervisors	Comments on the Draft License Application
12/20/2011	Email	DEP	FERC	Comments on the Draft License Application
1/11/2012	Letter	Matt Maraglio, NY, Division of Coastal Resources	Mark Wamser, Gomez and Sullivan Engineers	Inquiry as to whether Project falls under Coastal Zone Management Act
1/23/2012	Letter	Mark Wamser, Gomez and Sullivan Engineers	Matt Maraglio, NY, Division of Coastal Resources	Reply to inquiry as to whether Project falls under Coastal Zone Management Act
2/16/2012	Meeting	NYSDEC	DEP	Meeting to discuss NYSDEC comments on the Draft Applications

NOTE: While other correspondence may have been received this log includes only such correspondence that relates to the Cannonsville Project.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Boulevard
Flushing, New York 11373

Steven W. Lawitts
Acting Commissioner

May 19, 2009

Re: West of Hudson Hydroelectric Project, FERC No. 13287

Dear Sir/Madam:

The New York City Department of Environmental Protection (NYCDEP) filed a preliminary permit application with the Federal Energy Regulatory Commission (FERC) on September 15, 2008 to develop the West of Hudson Hydroelectric Project. On March 20, 2009, the FERC issued a preliminary permit to the NYCDEP. The preliminary permit provides the City three years in which to study the West of Hudson Hydroelectric Project.

The West of Hudson Hydroelectric Project consists of four developments at existing dams and reservoirs that comprise integral components of the City of New York's water supply system. The dams and reservoirs are owned by the City of New York and operated by the NYCDEP. The four developments are listed in Table 1.

Table 1: Proposed Hydropower Developments, West of Hudson Hydroelectric Project

Development Name	Dam Name	River	Drainage Area at Dam (sq mi)	Station Hydraulic Capacity (cfs)	Proposed Installation Capacity (kW)
Cannonsville	Cannonsville	West Branch Delaware River	454 mi ²	1,130	12,100
Neversink	Neversink	Neversink River (tributary to Delaware)	92.6 mi ²	160	1,650
Pepacton	Downsville	East Branch Delaware River	372 mi ²	270	3,100
Schoharie	Gilboa	Schoharie Creek	316 mi ²	1,050	12,900

The location of each development is shown on the map attached to this letter.

As part of the licensing process, the NYCDEP is developing a Pre-Application Document (PAD), which summarizes the available background information on the project. The information in the PAD is presented under the following topic areas:

1. Description of the Project Location, Facilities, and Operations
2. Description of Existing Environment and Resource Impacts
 - Geology & Soils
 - Water Quantity & Quality Resources



www.nyc.gov/dep

- Wetlands, Riparian, Littoral Habitat
 - Rare, Threatened, & Endangered Species
 - Recreation & Land Use
 - Cultural Resources
 - Aesthetic Resources
 - Socio-Economic Resources
 - Tribal Resources
 - General Description of Basin
3. Preliminary List of Issues and Studies
 4. Summary of Contacts

Because the four developments have been managed and operated by the NYCDEP for water supply needs for decades, the NYCDEP already has a significant amount of background information on the facilities. However, **we need your help**. We would appreciate receiving any information your organization may have collected on the environmental, recreational, and/or historical/archeological resources at these four developments. Listed below are specific areas addressed in the PAD. If you have data that is relevant to these focus points we would appreciate you forwarding that information to us:

- Fisheries - any stocking records, regulation and management plans, population surveys, creel surveys, target fish community, diadromous fish information (if applicable), etc.
- Water Quality - any water quality data collected within the project area including temperature and dissolved oxygen studies in the reservoirs and below the dams.
- Wetlands - any known wetlands that occur within the project area (e.g., impoundment down to the project tailrace);
- Any historical, archeological or cultural resources in the project area;
- Any rare, threatened or endangered species in the project area;
- Any recreational information in the project area; and
- Any other relevant information.

We would be most appreciative if you could provide us with any pertinent additional information by June 12, 2009. If needed, we can visit your office to retrieve and copy any pertinent information. Please let us know if a visit to your office works best for you so we can coordinate accordingly.

We appreciate your assistance in providing background information so we can prepare our Pre-Application Document.

Sincerely,



Anthony J. Fiore
Director of Planning & Sustainability

cc: Mark Wamser, Gomez and Sullivan
Kevin Lang, Couch-White

Attachments: Figure 1, Contact List



New York City's Water Supply System

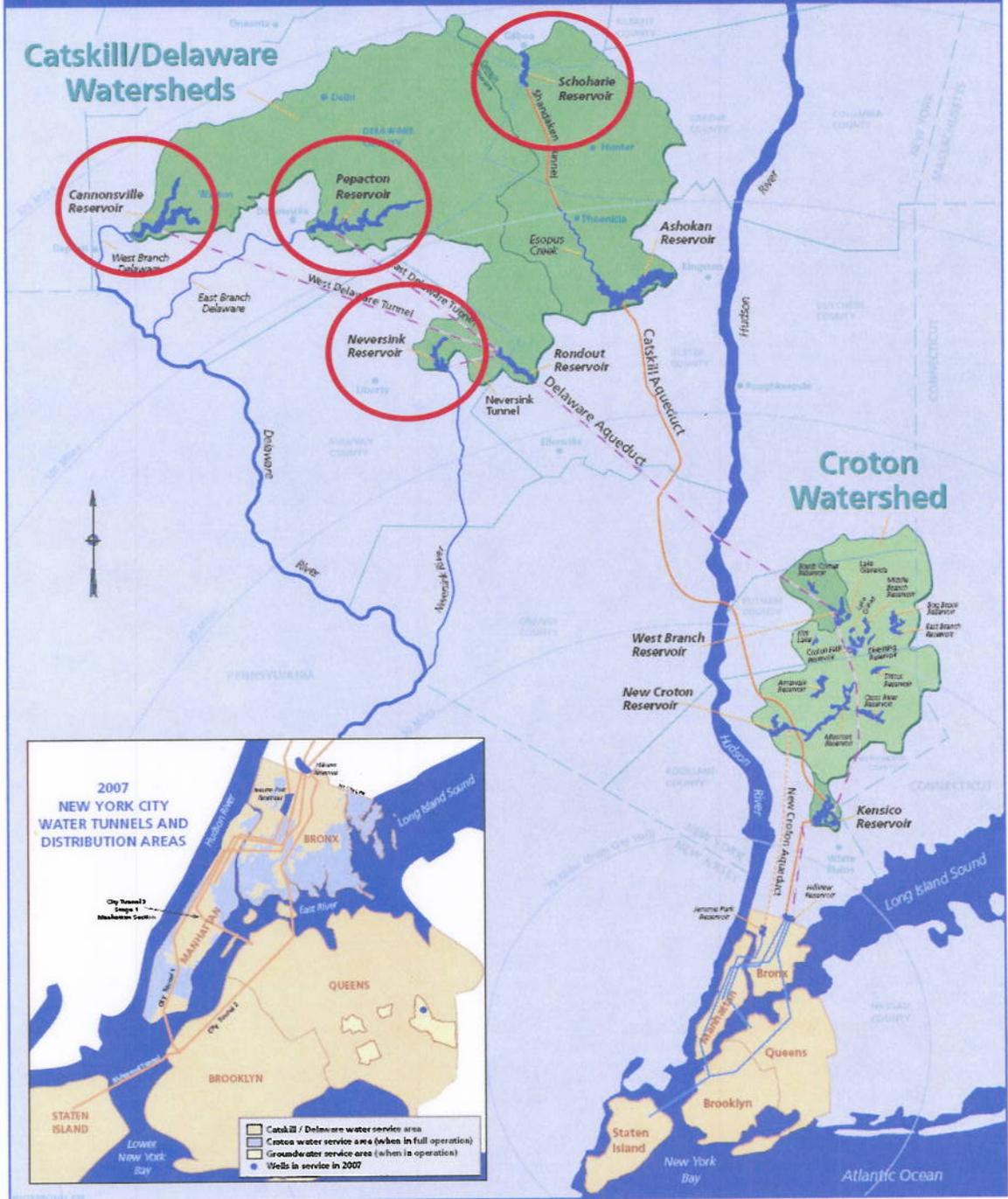


Figure 1: Location of West of Hudson Proposed Hydroelectric Projects

Federal Agencies

Atlantic States Marine Fisheries Comm.
1444 Eye Street, NW - 6th Floor
Washington, DC 20005

Julie Crocker
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930-2298

NOAA Fisheries Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930-2298

NOAA's National Marine Fisheries Service
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

Kevin Mendik
National Park Service
15 State Street
Boston, MA 02109

Cynthia Wilkerson
National Park Service
Northeast Region-US Custom House
US Custom House
200 Chestnut Street, 5th Floor
Philadelphia, PA 19106-2816

Dennis Reidenbach
Regional Director
National Park Service, Northeast Region
U.S. Custom House
200 Chestnut St., Fifth Floor
Philadelphia, PA 19106

Steve Patch
US Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

David Stillwell
US Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

Grace Musumeci
Environmental Protection Agency
290 Broadway, Fl 25
New York, NY 10007-1823

Myron Elkins
Bureau of Land Management
7450 Boston Boulevard
Springfield, VA 22153-3121

U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090

Environmental Protection Agency
Regional Office
290 Broadway
New York, NY 10007-1866
Federal Emergency Management Agency
Regional Office
26 Federal Plaza
Suite 1337
New York, NY 10278

Native American

Mohawk National Council of Chiefs
398 State Route 37
Hogansburg, NY 13655

A. Francis Boots
St. Regis Mohawk Tribe
82 Indian Village Road
Akwesasne, NY 13655

Mr. Loran Thompson
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655

Arnold L. Printup, THPO
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655

Sherry White
Cultural Resources Coordinator
Stockbridge-Munsee Community
PO Box 70
N8510 Moh-He-Con-Nuck Rd.
Bowler, WI 54416

Mr. Robert Chicks
President
Stockbridge-Munsee Community
PO Box 70
N8510 Moh-He-Con-Nuck Rd.
Bowler, WI 54416

Mr. Raymond Halbritter

Oneida Indian Nation of New York
5218 Patrick Road
Verona, NY 13478

Ray Halbritter
Nation Representative
Oneida Indian Nation
5218 Patrick Road
Verona, NY 13498

Irving Powless
Chief
Onondaga Indian Nation
RR#1, Box 319 B
Nedrow, New York 13120

Mr. Brian Patterson
Oneida Indian Nation
PO Box 1
Route 5
Vernon, NY 13476

Jesse Bergevin
Historic Resources Specialist
Oneida Indian Nation
Member Legal Services
PO Box 1, Route 5
Vernon, NY 13476

Ms. Kathleen Mitchell, THPO
Seneca Nation Tribal Historic Preservation
467 Center Street
Salamanca, NY 14779

Seneca Nation of New York
Cattaraugus Reservation
William Seneca Building
12837 Route 438
Irving, NY 14081

Mr. Barry E. Snyder
Seneca Nation of Indians
1490 Route 438
Irving, NY 14081

Mr. Clint HalfTown
Cayuga Nation of New York
PO Box 11
Versailles, NY 14168-0011

Emerson Webster
Tonawanda Band of Senecas
7027 Meadville Road
Basom, NY 14013

Mr. Kevin Jonathan

Tonawanda Band of Senecas
7027 Meadville Road
Basom, NY 14013

Mr. Kenneth Poodry
Tonawanda Band of Senecas
7027 Meadville Road
Basom, NY 14013

Leo R. Henry
Tuscarora Nation
2006 Mt. Hope Road
Lewiston, NY 14092

Tuscarora Nation
5616 Walmore Road
Lewiston, New York 14092

Mr. Irving Powless, Jr.
Onondaga Indian Nation
RR1, Box 319-B
Nedrow, NY 13120

Anthony Gonyea
Onondaga Nation Historic Preservation Office
716 East Washington Street, Suite 104
Syracuse, NY 13210-1502

Bureau of Indian Affairs
1849 C Street, NW
Washington, DC 20240

James Kardatzke
Bureau of Indian Affairs
Eastern Regional Office
711 Stewarts Ferry Pike
Nashville, TN 37214

State Agencies

NYSDEC-DFWMR
NY Natural Heritage Program
625 Broadway, 5th Floor
Albany, NY 12233-4757

Mark S. Woythal
NYS DEC
625 Broadway
Albany, NY 12233

William C. Janeway, Regional Director
NYS Department of Environmental
Conservation Region 3
21 South Putt Corners Road
New Paltz, NY 12561

Eugene Kelly, Regional Director
NYS Department of Environmental
Conservation
Region 4
1130 North Westcott Road
Schenectady, NY 12306-2014

Ms. Kathleen LaFrank
New York State Historic Preservation Office
Peebles Island
PO Box 189
Waterford, New York 12188-0189

Mr. Travis Bowman
New York State Historic Preservation Office
Peebles Island
PO Box 189
Waterford, New York 12188-0189

New York State Office of Parks, Recreation, and
Historic Preservation
Agency Building 1, Empire State Plaza
Albany, New York 12238

William Nechamen
NYS Department of Environmental
Conservation
Chief, Flood Plain Management
625 Broadway
Albany, NY 12233-3507
Phone: (518) 402-8146

Mark Klotz, P.E.
NYS Department of Environmental
Conservation
Chief, Water Quantity Section
625 Broadway
Albany, NY 12233-3504
Phone: (518) 402-8098

Philip Bein, Watershed Inspector General
NYS Office of the Attorney General
The Capitol
Albany, NY 12233

Other:

Delaware River Basin Commission
25 State Police Drive
P.O. Box 7360
West Trenton, NJ 08628-0360

Stephen F. Blanchard
Delaware River Master
US Geological Survey
National Center, MA-415
Reston, VA 20192

Gary N. Paulachok, P.G.
Deputy Delaware River Master
US Geological Survey
Milford Professional Park
10 Buist Road, Suite 304
Milford, PA 18337

Roger Sokol, Ph.D.
Bureau of Water Supply Protection
NYS Department of Health
Flanigan Square, 547 River Street
Troy, NY 12180-2216

**National Marine Fisheries Service
Habitat Conservation Division
Milford Field Office, 212 Rogers Avenue
Milford, Connecticut 06460**

DATE: 2 November 2009

TO: Mr. Anthony J. Fiore, Director of Planning & Sustainability
The City of New York
Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

SUBJECT: **Proposed Hydropower Developments, West of Hudson Hydroelectric Project;
Cannonsville Dam/Development [West Branch of Delaware River] & Downsview Dam/Pepacton Development
[East Branch of Delaware River], Delaware County, Neversink Dam/Development [Neversink River], Sullivan
County, and Gilboa Dam/Schoharie Development [Schoharie Creek], Schoharie County, New York**



Diane Rusanowsky
(Reviewing Biologist)

We have reviewed the information provided to us regarding the above subject project. We offer the following preliminary comments pursuant to the Endangered Species Act, the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act:

Endangered and Threatened Species

XX There are no endangered or threatened species under the jurisdiction of this agency in the **immediate** project area.

Fish and Wildlife Coordination Act Species

XX The following may be present in the project vicinity: Resident and diadromous fishes, forage and benthic species

Please contact the appropriate Regional Office of the New York State Department of Environmental Conservation to confirm the presence of diadromous or resident aquatic populations. Habitat use by some species or life stages may be seasonal (e.g. over-wintering or spawning)

Essential Fish Habitat

XX No Essential Fish Habitat (EFH) has been designated in the **immediate** project vicinity. However, we note that potential adverse project impacts to diadromous fishes or other species that are prey of federally managed fishery resources would constitute at least an indirect effect on EFH quality and quantity downstream. There is not sufficient information in your submittal to determine if the nature and extent of such impacts would require an essential fish habitat assessment should these activities require federal authorizations or receive federal funding. We will make a determination regarding the nature and scope of any EFH coordination that may be necessary when sufficient information becomes available for us to base a definitive conclusion regarding this issue.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Boulevard Flushing, New York 11373

Steven W. Lawitts Acting Commissioner

SS/

SPL

13222 ✓

May 19, 2009

Re: West of Hudson Hydroelectric Project, FERC No. 13287

Dear Sir/Madam:

The New York City Department of Environmental Protection (NYCDEP) filed a preliminary permit application with the Federal Energy Regulatory Commission (FERC) on September 15, 2008 to develop the West of Hudson Hydroelectric Project. On March 20, 2009, the FERC issued a preliminary permit to the NYCDEP. The preliminary permit provides the City three years in which to study the West of Hudson Hydroelectric Project.

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Development Name	Dam Name	River	Drainage Area at Dam (sq mi)	Station Hydraulic Capacity (cfs)	Proposed Installation Capacity (kW)
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The location of each development is shown on the map attached to this letter.

As part of the licensing process, the NYCDEP is developing a Pre-Application Document (PAD), which summarizes the available background information on the project. The information in the PAD is presented under the following topic areas:

1. Description of the Project Location, Facilities, and Operations
2. Description of Existing Environment and Resource Impacts
 - Geology & Soils Resources
 - Water Quantity & Quality

rec'd 6/2/09

MAY 26 2009





New York City's Water Supply System

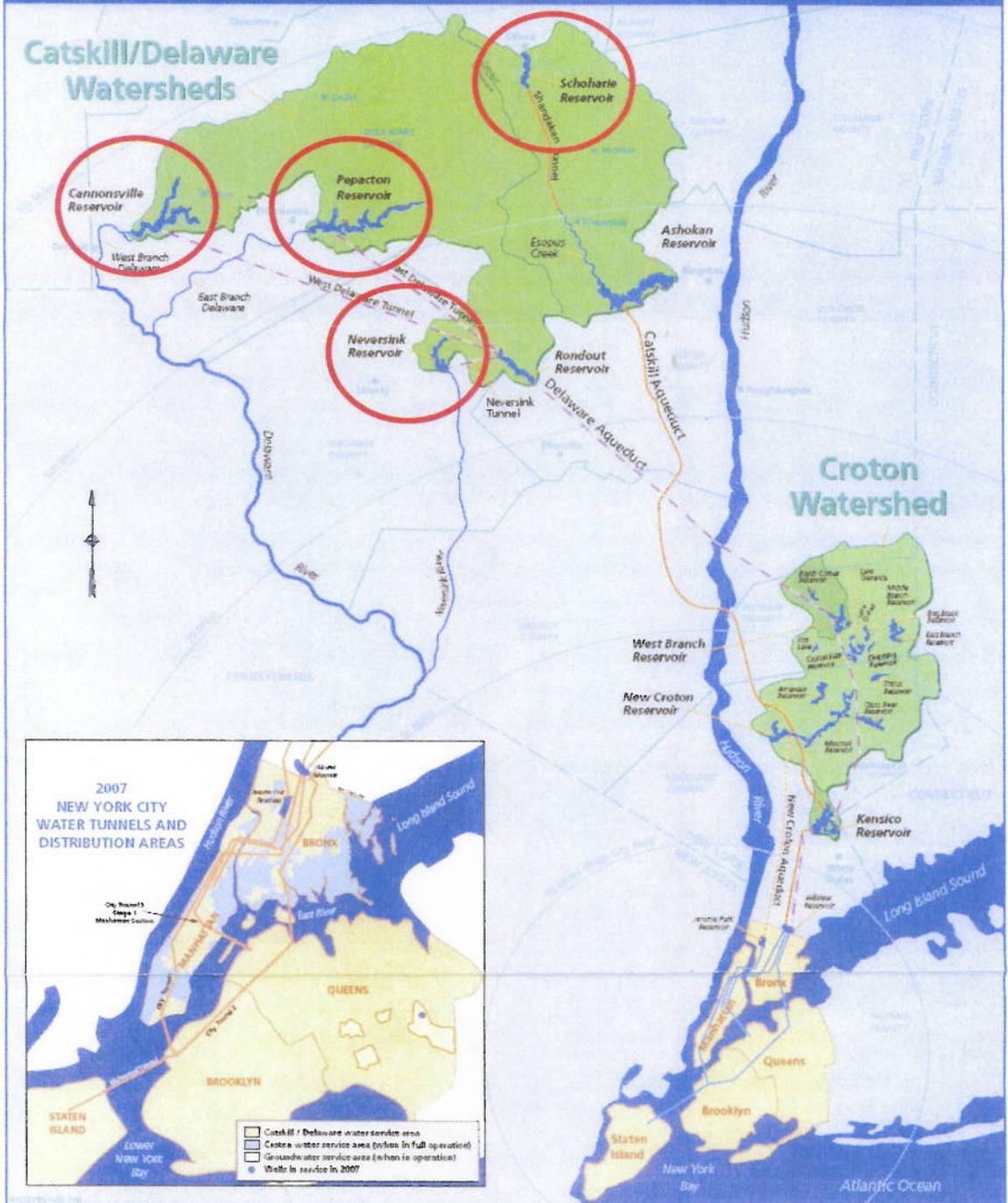


Figure 1: Location of West of Hudson Proposed Hydroelectric Projects

August 13, 2009

VIA ELECTRONIC FILING

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project –
Notification of Intent to File an Original License Application, Pre-Application
Document, and Application to Use the Traditional Licensing Process

Dear Secretary Bose:

On September 15, 2008, the City of New York (“City”), acting through the New York City Department of Environmental Protection (“NYCDEP”), filed an application for a preliminary permit for its proposed West of Hudson Hydroelectric Project (“Project”). The Project involves the development of hydroelectric facilities on four of the dams and reservoirs that comprise a portion of its water supply system. By Order issued March 20, 2009, the Federal Energy Regulatory Commission (“Commission”) issued a Preliminary Permit to the City, thereby facilitating its ability to proceed with its data collection, studies, and evaluation of the Project.¹

In accordance with that Order and the Commission’s regulations, the City hereby commences the pre-filing process by filing its Notification of Intent (“NOI”) and Pre-Application Document (“PAD”) for the Project. As directed by the Order,² and pursuant to Section 5.3 of the Commission’s regulations, 18 CFR § 5.3, the City is concurrently, but under separate cover, seeking approval to use the Traditional Licensing Process (“TLP”) for this Project.

In accordance with Section 5.5 of the Commission’s regulations, 18 CFR § 5.5, the NYCDEP is simultaneously distributing copies of the NOI, PAD, and request to use the TLP

¹ *City of New York and Delaware County Electric Cooperative*, 126 FERC ¶ 62,215 (2009).

² *Id.* at P 16.

Hon. Kimberly D. Bose

August 13, 2009

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to relevant federal and state resource agencies, Indian tribes, non-governmental organizations, and other potentially interested parties. The NYCDEP has also published notice of these filings in the following newspapers that are in general circulation in the Project region:

- The Times-Herald Record, Middletown, NY
- Daily Freeman, Kingston, NY
- Press & Sun Bulletin, Binghamton, NY
- Oneonta Daily Star, Oneonta, NY
- Mountain Eagle, Stamford, NY

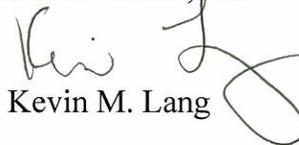
If there are any questions or comments regarding the NOI, PAD, or any information provided by the City, please contact either of the following:

Anthony J. Fiore
Director of Planning & Sustainability
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373-5108
Tel: 718-595-6576
Email: AFiore@dep.nyc.gov

Kevin M Lang, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201
Tel: 518-320-3421
Email: klang@couchwhite.com

Respectfully submitted,

COUCH WHITE, LLP


Kevin M. Lang

KML/glm

Enclosures

cc: Distribution List
Kathryn Garcia
Anthony Fiore, P.E.
Paul V. Rush, P.E.
John Vickers, P.E.
Robert Craig, Esq.
Linda Geary, Esq.
Thomas Sullivan, P.E. (Gomez and Sullivan)
Mark Wamser, P.E. (Gomez and Sullivan)

August 13, 2009

VIA ELECTRONIC FILING

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project; Request for Approval to Use the Traditional Licensing Process

Dear Secretary Bose:

Pursuant to Section 5.3 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 CFR § 5.3, and for the reasons sets forth herein, the City of New York ("City") hereby requests use of the Traditional Licensing Process ("TLP") for the licensing of Project No. 13287-000, the West of Hudson Hydroelectric Project ("Project"). Concurrent with this filing, but under separate cover, the City is filing its Notification of Intent and Pre-Application Document for the Project.

Background

The Project consists of four hydroelectric developments located on the City of New York's water supply system. The four developments and their associated rivers are:

Development	Dam Name	River
Cannonsville	Cannonsville	West Branch Delaware River
Neversink	Neversink	Neversink River
Pepacton	Downsville	East Branch Delaware River
Schoharie	Gilboa	Schoharie Creek

The dams and reservoirs are owned by the City of New York and operated by the New York City Department of Environmental Protection ("NYCDEP"). They are an integral part of the City's water supply system, which provides high quality unfiltered water for New York City and four nearby counties. In total, the water supply system provides

approximately 1.1 billion gallons of high quality drinking water daily to approximately nine million New York State residents (about 50% of the State's total population), as well as the millions of tourists and commuters who visit New York City each year. The four developments are located within the Catskill and Delaware Watershed areas, which provide over 90% of the City's water supply.

Through this Project, the City seeks to develop hydroelectric power on its water supply system while simultaneously maintaining the critical water supply operations in accordance with drinking water needs, conservation releases, directed releases, and water quality standards. Because the water supply functions are paramount, the City intends to integrate the hydroelectric operations into its current practices and to generate electricity only from water that is released for non-water supply purposes.¹

Likelihood of Timely License Issuance [18 CFR § 5.3(c)(1)(ii)(A)]

The City was issued a Preliminary Permit ("Permit") for the Project on March 20, 2009.² The Permit has a three-year term, which expires on March 1, 2012. In order for the City to take advantage of the priority position afforded by the Permit, it must file an Application for License relating to the Project with the Commission and an accompanying Application for 401 Water Quality Certification with the New York State Department of Environmental Conservation prior to March 1, 2012.³ By its concurrent filing of a Notification of Intent ("NOI") and Pre-Application Document ("PAD"), the City is initiating the pre-filing consultation process contemplated by the Commission's regulations.

¹ During the pre-application process, the NYCDEP intends to assess the extent to which electricity can be economically generated at each development site.

² City of New York and Delaware County Electric Cooperative, 126 FERC ¶ 62,215 (2009).

³ While the City presently intends to seek a single license for the Project, it may seek individual licenses, or exemptions from licensing, for each development. That decision will be made based on the studies, assessments, and evaluations conducted over the next two years, as well as discussions with Commission Staff and interested parties, and the City's analysis of whether and how the hydroelectric facilities can be incorporated into its operations at each development site without jeopardizing its paramount water supply functions.

To meet the March 1, 2012 date, the City, acting through the NYCDEP, will need to circulate a Draft License Application on or before October 1, 2011 (*i.e.*, 150 days prior to filing a Final License Application). To do so, the NYCDEP will need to complete the majority of its licensing studies during the 2010 field season. In order to utilize the full 2010 field season, the NYCDEP will need to have completed issue identification and study scoping by February 2010.

Under the Integrated Licensing Process (“ILP”), issue identification and study scoping will take a minimum of 10 months, as the NYCDEP and the Commission must work through that Process’ sequential steps and proscribed timeframes. Thus, under the ILP Process, the NYCDEP will not have a final study plan determination letter until sometime in May 2010, thereby preventing it from undertaking and completing all of the requisite studies during the 2010 field season.

In contrast, the first stage of consultation (including consultation on study plans) under the TLP can be completed in six to seven months. Therefore, the NYCDEP would be able to complete study plan development by February 2010 and commence its licensing studies at the start of the 2010 field season, thereby ensuring that the City can remain on schedule to file a Final License Application on or before the expiration of its Permit on March 1, 2012.

Complexity of the Resource Issues [18 CFR § 5.3(c)(1)(ii)(B)]

The significant issues anticipated by the City in the licensing process for the Project relate to water management, including flow management, operation of, and releases from, the reservoirs, maintenance and enhancement of the fisheries in the Delaware River Basin, and preservation and enhancement of aquatic biota and threatened and endangered species in each of the river systems. While the City recognizes that water management issues of this type are complex, the setting for this Project is different than for most hydroelectric projects because of pre-existing nature of the dams and reservoirs. That is, because of nature of the water supply and the area in which it is located, the City and these development sites are subject to a panoply of regulations and regulatory oversight.⁴ Accordingly, much of the information relating to the Project that would be typically requested in a Commission licensing proceeding has already been developed because of this extensive regulatory oversight (*e.g.*, instream flow studies, fisheries studies, operations models), as further described in the section below regarding the availability of information. Moreover, the

⁴ The City’s operation of the Delaware water supply system is governed by a Decree issued by the United States Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954) (“1954 Decree”) and subject to the regulatory oversight of the Delaware River Basin Commission (“DRBC”), United States Environmental Protection Agency, Delaware River Master (an employee of the United States Geological Survey), New York State Department of Environmental Conservation, and New York State Department of Health.

licensing of hydroelectric projects in New York is a mature endeavor with the resource agencies, the NYCDEP, and many of the interested parties all having a long and successful history of identifying issues, scoping studies, and achieving resolutions that satisfactorily address their various respective interests.

Additionally, most, if not all, of the issues that could be raised in this proceeding have existed and been the subject to extensive litigation, discussion, collaboration, and regulatory intervention for decades. As a result, the interested parties have a significant history of working together to address these matters. The flexibility provided by the TLP, as opposed to the strict timeframes dictated by the ILP, better facilitate the necessary collaborative process that will need to occur between and among the resource agencies, interested parties, and the NYCDEP to address these issues during the licensing process. In fact, the prescriptive timeframes of the ILP are likely to unnecessarily hamper such collaborative efforts, leading to discord, divisiveness, and unnecessary litigation (with its concomitant costs and resource burdens) before the Commission.

Level of Anticipated Controversy [18 CFR § 5.3(c)(1)(ii)(C)]

The water management issues highlighted above have been contentious for many years, but many of them have been addressed in the Flexible Flow Management Program (“FFMP”), a plan developed under the auspices of the 1954 Decree and the DRBC. Although the DRBC has yet to incorporate the FFMP into the Water Code for the Delaware River Basin, the NYCDEP has committed to implementing and following its procedures and requirements while the DRBC goes through its regulatory process for codification of the FFMP. As a result, while the NYCDEP expects some interested parties to raise these water management issues before the Commission, the level of controversy should be less than that which existed prior to the development of the FFMP.

The NYCDEP also expects some interested parties to raise other water use issues, such as increasing the amount of water released from the reservoirs and increasing the amount and type of public access to the reservoirs. However, while potentially controversial, such issues have already been addressed by the 1954 Decree and/or the statutory and regulatory requirements that comprehensively govern the water supply system. For example, because the primary function of the reservoirs is to provide drinking water to over nine million people, and because the water supply system is unfiltered,⁵ the permissible uses of the reservoirs must be limited.

The resolution of virtually all issues is best addressed through a collaborative process involving the resource agencies, the NYCDEP, and all interested parties, similar to the process that resulted in the FFMP, rather than costly and extensive litigation. For such a

⁵ See United States Environmental Protection Agency, *New York City Filtration Avoidance Determination*, July 2007.

collaborative process to succeed, it must be provided flexibility in terms of timing because of the complex nature of these issues and the varying interests of the parties. The strict timeframes of the ILP do not provide the necessary flexibility to foster such a collaborative effort. In contrast, the flexibility provided by the TLP will provide all of the parties more time to address these issues in a mutually agreeable fashion, rather than requiring the Commission to resolve these issues via protracted and undoubtedly contentious litigation.

Relative Cost of the Traditional Licensing Process Compared to the Integrated Licensing Process [18 CFR § 5.3(c)(1)(ii)(D)]

Due to the resource agencies' familiarity with the TLP, the water supply system, and the Delaware River Basin, as well as the time constraints associated with the Permit, and the NYCDEP's commitment to enhanced consultation, the NYCDEP is confident that under the TLP, it will be able to provide the Commission with a Final License Application for the Project at less cost and in less time than that required by the ILP. Factors contributing to this conclusion include: (i) the flexible nature and timelines of the TLP would allow the NYCDEP to work cooperatively with the resource agencies and interested parties to develop information needed to resolve issues; (ii) this same flexibility is most likely to foster consensus-building and settlement or other mutually acceptable resolutions of disputed issues; (iii) a reduced, or potential lack of, need for Commission Staff involvement in the pre-filing stage; (iv) the NYCDEP, resource agencies, and interested parties could focus their efforts on seeking substantive agreements and resolution of the issues and avoid the costs and other resource commitments needed to file comments and undertake other actions needed to comply with the regimented nature of the ILP; (v) by working collaboratively instead of adhering to rigid deadlines, the NYCDEP, resource agencies, and interested parties should be able to focus the issues and the scope of additional studies the NYCDEP must perform; and (vi) because of their familiarity with the issues and the TLP, as well as the flexibility provided by the TLP, the resource agencies and interested parties would be able to reduce their overall costs of participating in the licensing process.

The Amount of Available Information [18 CFR § 5.3(c)(1)(ii)(E)]

As discussed above, the four reservoirs and dams associated with the Project have been operated by the NYCDEP for decades and are already subject to extensive requirements and regulatory oversight. As a result, issues relating to the Project and information that would otherwise be requested in the course of the licensing process have, largely, already been studied and/or developed. A voluminous amount of data and information is already available regarding the dams and reservoirs, rivers, river basins, watersheds, fisheries, upland habitats, operational impacts on the surrounding environment, and other related topics. Moreover, numerous studies have been conducted by the NYCDEP, state agencies, federal agencies, the DRBC, and others.

The TLP will allow interested parties to understand the breadth, nature, and content of this pre-existing information, which should lead to agreements to narrow the issues and the scope of additional studies to be undertaken. The prescriptive timeframes of the ILP will unnecessarily restrict the ability of interested parties to properly comprehend the large body of information and data that is already available, and to appropriately tailor their study and other information requests

Other Pertinent Factors [18 CFR § 5.3(c)(1)(ii)(F)]

For budgetary and planning purposes, as well as to adequately communicate the process to interested parties, the NYCDEP respectfully requests that the Commission provide a decision on this request to use the TLP for the Project within 60 days of the filing of this request. Granting the City's request will not infringe on the ability for resource agencies, interested parties, or the public to provide comments on the Project, or on their ability to have their comments addressed during the licensing process.

For all of the foregoing reasons, the City respectfully requests that the Commission grant this request and authorize the City to use the TLP for the licensing of the Project

As required by 18 CFR § 5.3(d)(1), the NYCDEP is concurrently providing copies of this request to all affected resource agencies, Indian tribes, and potentially interested parties. As required by 18 CFR § 5.3(d)(2), the NYCDEP is publishing notice of this request simultaneously with the publication of notice of availability of the NOI and PAD in five local newspapers of general circulation in the counties where the Project is located.

By this letter, the City is notifying the resource agencies, Indian tribes, and potentially interested parties that comments on this application must be provided to the Commission and the City no later than 30 days following the filing date of this document. All comments should reference Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project, and they should address, as appropriate to the circumstances of the request, the following topics:

- Likelihood of timely license issuance;
- Complexity of the resource issues;
- Level of anticipated controversy;
- Relative cost of the TLP compared to the ILP;
- The amount of available information and potential for significant disputes over studies; and
- Other factors believed by the commenter to be pertinent.

Hon. Kimberly D. Bose
August 13, 2009
Page 7

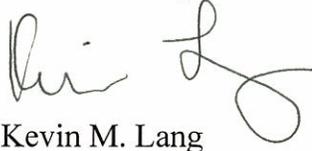
Comments should be submitted to the Commission electronically pursuant to 18 CFR § 385.2003(c), or by sending an original and eight copies to:

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Copies of the comments should be sent to the undersigned at klang@couchwhite.com or the address set forth above, and to NYCDEP at zinniar@dep.nyc.gov or to Zinnia Rodriquez, NYCDEP, 19th Floor, 59-17 Junction Boulevard, Flushing, NY 11373-5108.

Respectfully submitted,

COUCH WHITE, LLP

A handwritten signature in black ink, appearing to read "Kevin M. Lang", with a stylized flourish at the end.

Kevin M. Lang

KML/glm

cc: Distribution List
Kathryn Garcia
Anthony Fiore, P.E.
Paul V. Rush, P.E.
John Vickers, P.E.
Robert Craig, Esq.
Linda Geary, Esq.
Thomas Sullivan, P.E. (Gomez and Sullivan)
Mark Wamser, P.E. (Gomez and Sullivan)

New York State Department of Environmental Conservation



Office of General Counsel, 14th Floor
625 Broadway, Albany, New York 12233-1500
FAX: (518) 402-9018 or (518) 402-9019
Website: www.dec.ny.gov

August 14, 2009

VIA ELECTRONIC FILING

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Project No. 13287-000 City of New York West of Hudson
Hydroelectric Project; Request for Approval to Use the Traditional
Licensing Process

Dear Secretary Bose:

The Department of Environmental Conservation (“DEC”) has no objections to the use of the Traditional Licensing Process pursuant to the above-captioned project. DEC has reviewed the application and found it to be consistent with 18 CFR §5.3.

Because of the delicate geography and unique nature of the water resources of this area, we are also committed to helping to give this project the highest level of environmental review.

Sincerely,
David S. Sampson

David S. Sampson
Associate Counsel
Office of General Counsel
14th Floor
Department of Environmental
Conservation
625 Broadway
Albany, NY 12233-1500

cc: Distribution List

Faxed 8/20/09

ORIGINAL



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

August 18, 2009

Kevin M. Lang, Esq.
Couch White, LLP
540 Broadway
PO Box 22222
Albany, NY 12201

**RE: City of New York West of Hudson Hydroelectric Project (FERC #13287)
Request to Use the Traditional Licensing Process**

Dear Mr. Lang:

The U.S. Fish and Wildlife Service (Service) has received the August 13, 2009, Notification of Intent to File an Original License Application and Pre-Application Document for the subject project. The Service does not object to the use of the Traditional Licensing Process (TLP) for this project. As requested by your consultants, Gomez and Sullivan, we are hereby providing you with this letter of concurrence regarding the use of the TLP. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,

David A. Stilwell
Field Supervisor

cc: NYSDEC, Albany, NY (M. Woythal, C. Hogan)
FERC, Washington, DC (K. Bose)

Morgan Lyle
621 6th Street
East Northport NY 11731

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington DC 20426

Aug. 24, 2009

I write to express my opposition to New York City's request for the Traditional approach to licensing for West of Hudson Hydroelectric Project, Project No. 13287. The rivers downstream of the proposed project (east and west branches of the Delaware River, Neversink River, Schoharie Creek) are extremely valuable, highly sensitive and extremely complex natural resources and any project with potential impact on these rivers should be subjected to the highest possible level of scrutiny. The hydroelectric proposal will generate a great deal of controversy and a transparent integrated licensing process is essential.

Sincerely,

Morgan Lyle

Dear Sir,

It has come to my attention that New York City for its West of Hudson Hydroelectric Project, Project No. 13287, wants to file for the ability to produce hydro power from the upper Delaware River water shed. Specifically utilizing the water the Cannonsville, the Peapacton and the Neversink dams. Further I understand they want to file with the traditional approach rather than the integrated approach to avoid studies on the environmental impact of their plans.

Please make sure that the City must pursue the integrated approach which mandates environmental impact studies. The upper Delaware watershed is an ecological gem with its world famous wild trout fishery. It also supports the habitat of the dwarf wedge mussel, which is currently on the endangered species list.

It is critically important that environmental studies are conducted to insure that New York City's plans for hydro generation does not impact the wild trout or the Zebra Mussel. Without these studies New York City could endanger the wild trout species which exist in these waters.

Regards,

Fred Nelson
13 Robert Dr.
Chatham, NJ 07928

ORIGINAL

TOWN OF DEPOSIT

3 Elm Street
 Deposit, New York 13754
 PHONE: 607-467-2433
 FAX: 607-467-1414

August 28, 2009

FILED
 SECRETARY OF THE
 COMMISSION
 2009 SEP -4 A 10:19
 FEDERAL ENERGY
 REGULATORY COMMISSION

Hon. Kimberly D. Bose
 Secretary
 Federal Energy Regulatory Commission
 888 First Street, NE
 Washington, DC 20426

Re: Project No. 13287-~~000~~⁰⁰² — City of New York West of Hudson Hydroelectric Project

Dear Secretary Bose,

I am writing to provide comment to the New York City ("City") request for a waiver, permitting it to use the Traditional Process in favor of the Integrated Licensing Process ("ILP"), dated August 13, 2009, in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of resource issues as well as the very real likelihood that the City will not pursue the project, we respectfully request the Commission deny the City's request. We believe the City's request would preclude meaningful opportunity for comment provided by the FERC Integrated Licensing Process.

Denial of the City's request will ensure that participants in the licensing proceeding will have a full and meaningful opportunity to contribute. The City's proposed studies will assist it in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintains the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP process provides the necessary framework through which the permittee and the participants can engage in an open dialogue regarding the necessary studies to be performed.

STANDARD FOR GRANTING WAIVER

The onus is on the applicant to demonstrate to the Commission that the Commission should waive its regulations and discard the ILP in favor of the Traditional Process. The standard for such a demonstration is "good cause shown." In determining whether an applicant has met this standard in requesting that the Commission deviate from the default ILP and pursue licensing through the Traditional Process, the Commission has determined that it will analyze the five following factors:

- (1) the likelihood of timely license issuance;
- (2) the complexity of the resource issues;

- (3) the level of anticipated controversy;
- (4) the amount of available information and potential for significant disputes over studies; and
- (5) the relative cost of the traditional process compared to the integrated process.

As the Commission has stated, it will consider how easy it anticipates the licensing process to be:

The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request.

Unfortunately, this proceeding does not present tidy issues that the Commission may easily mediate but instead has stirred considerable controversy that will cast doubt on the City's ability to successfully complete the licensing process on time.

DISCUSSION

This proceeding presents a number of unique challenges and the likely inclusion of a number of different parties, all with varied interests. The project will likely be controversial in light of the City's actions to date in the proceedings which deprive much of the economic benefit to the area based on the City's competing against the Delaware County Electric Cooperative in securing the preliminary permit. In addition, the City is likely to cause further economic hardship in the upstate region through its Land Acquisition Program in the region. Finally, the City's project would produce significantly less hydroelectric power than the alternative that was proposed by the Delaware County Electric Cooperative, thus reducing the renewable energy benefits to the region and the State and thus increasing greenhouse gas emissions. The discussion below addresses each of the five factors the Commission will use to evaluate requests for a waiver of the requirements to use the ILP.

The Likelihood of Timely License Issuance

In its request for the use of the traditional licensing process, the City details an aggressive licensing timeline. The City, however, fails to acknowledge the need for ample opportunity for public comment and consideration as part of the licensing process.

Complexity of the Resource Issues

The water resources at issue would present any potential licensee with a number of difficulties because of the complexity of the water flow and management issues. As the City notes, the usual issues connected to projects of this size and nature — maintenance of fisheries and recreation areas, protection of ecosystems, and coordination with existing structures on and uses of the water resource — are complicated by a myriad of actors at various levels of three state governments. Controversies surrounding water flow from the Delaware River Basin have reached the Supreme Court on two occasions, and the water flow is still subject to oversight per a decree of the Supreme Court.

The City, however, suggests an unrealistic ability to coordinate during the proceedings. The City has a history of failing to consult with the region. Although many issues concerning flow management and other operational concerns of any potential hydroelectric project have already been resolved, new disputes will inevitably arise that will need thoughtful consideration

Level of Anticipated Controversy

The City underestimates the level of anticipated controversy that the pursuit of this project has and will create. The Commission granted the City its instant permit in a contested proceeding in which the Commission denied the first-filed Delaware County Electric Cooperative (“DCEC”) request for a preliminary permit. Prior to the City’s submission of a competing preliminary application, the DCEC consulted with and built local support for its filing before this Commission. As an upstate neighbor to the communities in which the reservoirs are located, DCEC assured both local elected officials in the area and recreational groups that enjoy use of these waters that it could develop the project in a manner consistent with its current use. Relying on its municipal preference, however, the City filed a competing application drawn closely from the DCEC filing and ultimately defeated the DCEC’s application.

As noted, the DCEC enlisted the support of numerous local public officials in its efforts to develop the site. In recognition of its efforts to secure a permit to study the feasibility of its proposed project, the DCEC secured the support of U. S. Senator Charles Shumer, who issued a press release on July 14, 2009 praising DCEC for proposing the project and criticizing the City for its lack of action and cooperation causing delay to this significant new renewable resource.

Based on the foregoing concerns, we are concerned that the Traditional Licensing Process will not allow all voices to be heard, particularly local voices that have a strong interest in seeing that this project is developed in a way that assures continued use and enjoyment of the surrounding recreational area.

The Amount of Available Information and Potential for Significant Disputes over Studies

As the City indicates, the long and contentious history of the reservoirs and dams at issue in this proceeding has resulted in a large amount of data and studies. As noted above, however, concerns over such items as flow management and other operational issues have been studied and subjected to the oversight of three regulatory schemes.

More basic questions, however, surrounding the newly proposed uses of the river, reservoirs, and dams have not been broached. New studies will need to be performed to determine the effect of adding a hydroelectric generating facility on the environmental habitat, the use of the water resources and surrounding land for recreational purposes, and the overall character of the site.

Because the City is geographically remote from the actual sites of the proposed developments, questions will inevitably arise as to whether the City will work to ensure that the basic character of the site—environmentally—will be retained. The river provides bountiful fishing as well as a certain degree of tourism, all of which needs to be protected during the study, planning, and design phases of any project.

The Relative Cost of the Traditional Process Compared to the ILP

The water resources and the surrounding land serve as pristine areas and are the source of recreation and regional opportunities. For many communities, the water resources serve as a lifeblood. Studies will be needed to determine the true impact of these projects on the region, recreational uses, and the environment. Furthermore, commenters will need adequate time to review study proposals to ensure that they will be designed and conducted in a way that ensures the City has all necessary data in the pursuit of a license and the design of any hydroelectric facility thereafter.

As the Commission has noted, early resolution of disputes concerning studies is one of the most central means of ensuring timeliness of the licensing process. In addition, the pre-filing study dispute resolution procedures included within the Traditional Process are rarely invoked. From the perspective of commenters, one of the most important features in the ILP is the procedural timeliness involved in the study process.

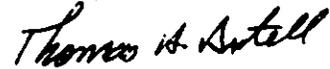
In its request, however, the City cites the flexibility inherent in the Traditional Process as a reason to waive the requirement that it use ILP. From the perspective of local residents and those that will participate in an effort to ensure that the overall character of the water resources and surrounding lands will be retained, this so-called “flexibility” for the City actually results in fewer and less meaningful opportunities for comment. The ILP provides the permittee and commenters a better chance at collaboration because they can collaborate on the study plan prior to implementation. It ensures that the commenters have an

opportunity to voice concerns at each step of the licensing process, especially at the critical study phase.

Conclusion

For the reasons described herein, we request the Commission reject the City's request to use the Traditional Process.

Sincerely,

Handwritten signature of Thomas A. Axtell in black ink.

Thomas A. Axtell, Supervisor

Dear Sir,

It has come to my attention that New York City wants to file for the ability to produce hydro power from the upper Delaware River water shed. Specifically the Cannonsville, the Peapacton and the Neversink dams. Further I understand they want to file with the traditional approach rather than the integrated approach to avoid studies on the environmental impact of their plans.

Please ensure that the City pursues the integrated approach which mandates environmental impact studies.

The upper Delaware watershed is an ecological gem with it's world famous wild trout fishery. It also supports the habitat of the dwarf wedge mussel, which is on the endangered species list. Additionally the trout fishery and general environs are major contributors to the economies of the small communities which already struggle to survive. It is critically important that environmental studies are conducted to insure that New York City's plans for hydro generation does not impact the wild trout or the Zebra Mussel

SECRET

2009 SEP 21

August 31, 2009

Hon. Kimberly D. Bose
 Secretary
 Federal Energy Regulatory Commission
 888 First Street, NE
 Washington, DC 20426

Re: **Project No. 13287-000** — **City of New York West of Hudson Hydroelectric Project**

Dear Secretary Bose,

I am writing to provide comment to the New York City ("City") request for a waiver, permitting it to use the Traditional Process in favor of the Integrated Licensing Process ("ILP"), dated August 13, 2009, in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of the resource issues as well as the very real likelihood that the City will not pursue the project, we respectively request the Commission deny the City's request. We believe the City's request would preclude meaningful opportunity for comment as provided by the FERC Integrated Licensing Process.

Denial of the City's request will ensure that participants in the licensing proceeding will have a full and meaningful opportunity to contribute. The City's proposed studies will assist it in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintains the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP process provides the necessary framework through which the permittee and the participants can engage in an open dialogue regarding the necessary studies to be performed.

STANDARD FOR GRANTING WAIVER

The onus is on the applicant to demonstrate to the Commission that the Commission should waive its regulations and discard the ILP in favor of the Traditional Process. The standard for such a demonstration is "good cause shown." In determining whether an applicant has met this standard in requesting that the Commission deviate from the default ILP and pursue licensing through the Traditional Process, the Commission has determined that it will analyze the five following factors:

- (1) the likelihood of timely license issuance;
- (2) the complexity of the resource issues;
- (3) the level of anticipated controversy;
- (4) the amount of available information and potential for significant disputes over studies; and

(5) the relative cost of the traditional process compared to the integrated process.

As the Commission has stated, it will consider how easy it anticipates the licensing process to be:

The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request.

Unfortunately, this proceeding does not present tidy issues that the Commission may easily mediate but instead has stirred considerable controversy that will cast doubt on the City's ability to successfully complete the licensing process on time.

DISCUSSION

This proceeding presents a number of unique challenges and the likely inclusion of a number of different parties, all with varied interests. The project will likely be controversial in light of the City's actions to date in the proceedings which deprive much of the economic benefit of the project to the area based on the City competing against the Delaware County Electric Cooperative in securing the preliminary permit. In addition, the City is likely to cause further economic hardship in the upstate region through its Land Acquisition Program in the region. Finally, the City's project would produce significantly less hydroelectric power than the alternative that was proposed by the Delaware County Electric Cooperative, thus reducing the renewable energy benefits to the region and the State and thus increasing greenhouse gas emissions. In the discussion below addresses each of the five factors the Commission will use to evaluate requests for a waiver of the requirement to use the ILP.

The Likelihood of Timely License Issuance

In its request for use of the traditional licensing process, the City details an aggressive licensing timeline. The City, however, fails to acknowledge the need for ample opportunity for public comment and consideration as part of the licensing process.

Complexity of the Resource Issues

The water resources at issue would present any potential licensee with a number of difficulties because of the complexity of the water flow and management issues. As the City notes, the usual issues connected to projects of this size and nature—maintenance of fisheries and recreation areas, protection of eco-systems, and coordination with existing structures on and uses of the water resource—are complicated by a myriad of actors at various levels of three state governments. Controversies surrounding water flow from the Delaware River Basin have reached the Supreme Court on two occasions, and the water flow is still subject to oversight per a decree of the Supreme Court.

The City, however, suggests an unrealistic ability to coordinate during the proceedings. The City has a history of failing to consult with the region. Although many issues concerning flow management and other operational concerns of any potential hydroelectric project have already been resolved, new disputes will inevitably arise that will need thoughtful consideration and resolution.

Level of Anticipated Controversy

The City underestimates the level of anticipated controversy that the pursuit of this project has and will create. The Commission granted the City its instant permit in a contested proceeding in which the Commission denied the first-filed Delaware County Electric Cooperative (“DCEC”) request for a preliminary permit. Prior to the City’s submission of a competing preliminary permit application, the DCEC consulted with and built local support for its filing before this Commission. As an upstate neighbor to the communities in which the reservoirs are located, DCEC assured both local elected officials in the area and recreational groups that enjoy use of these waters that it could develop the project in a manner consistent with its current use. Relying on its municipal preference, however, the City filed a competing application drawn closely from the DCEC filing and ultimately defeated the DCEC’s application.

As noted, the DCEC enlisted the support of numerous local public officials in its efforts to develop the site. In recognition of its efforts to secure a permit to study the feasibility of its proposed project, the DCEC secured the support of U.S. Senator Chuck Schumer, who issued a press release on July 14, 2009 praising DCEC for proposing the project and criticizing the City for its lack of action and cooperation causing delay to this significant new renewable resource.

Based on the foregoing concerns, we are concerned that Traditional Licensing Process will not allow all voices to be heard, particularly local voices that have a strong interest in seeing that this project is developed in a way that assures continued use and enjoyment of the surrounding recreational area.

The Amount of Available Information and Potential for Significant Disputes over Studies

As the City indicates, the long and contentious history of the reservoirs and dams at issue in this proceeding has resulted in a large amount of data and studies. As noted above, however, concerns over such items as flow management and other operational issues have been studied and subjected to the oversight of three state regulatory schemes.

More basic questions, however, surrounding the *newly proposed* uses of the river, reservoirs, and dams have not been broached. New studies will need to be performed to determine the effect of adding a hydroelectric generating facility on the environmental habitat, the use of the water resources and surrounding land for recreational purposes, and the overall character of the site.

Because the City is geographically remote from the actual sites of the proposed developments, questions will inevitably arise as to whether the City will work to ensure that the basic character of the site—environmentally and recreationally—will be retained. The river provides bountiful fishing as well as a certain degree of tourism, all of which needs to be protected during the study, planning, and design phases of any project. Accordingly, significant disputes will arise over the course of the licensing project.

The Relative Cost of the Traditional Process Compared to the ILP

The water resources and the surrounding land serve as pristine areas and are the source of recreation and regional opportunities. For many communities, the water resources serve as a lifeblood. Studies will be needed to determine the true impact of these projects on the region, recreational uses, and the environment. Furthermore, commenters will need adequate time to review study proposals to ensure that they will be designed and conducted in a way that ensures the City has all necessary data in the pursuit of a license and the design of any hydroelectric facility thereafter.

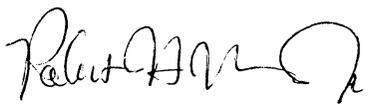
As the Commission has noted, early resolution of disputes concerning studies is one of the most central means of ensuring timeliness of the licensing process. In addition, the pre-filing study dispute resolution procedures included within the Traditional Process are rarely invoked. From the perspective of commenters, one of the most important features in the ILP is the procedural timelines involved in the study process.

In its request, however, the City cites the flexibility inherent in the Traditional Process as a reason to waive the requirement that it use the ILP. From the perspective of local residents and those that will participate in an effort to ensure that the overall character of the water resources and surrounding lands will be retained, this so-called “flexibility” for the City actually results in fewer and less meaningful opportunities for comment. The ILP provides the permittee and commenters a better chance at collaboration because they can collaborate on the study plan prior to implementation. It ensures that commenters have an opportunity to voice concerns at each step of the licensing process, especially at the critical study phase.

CONCLUSION

For the reasons described herein, we request the Commission reject the City’s request to use the Traditional Process.

Sincerely,



Town Supervisor

Town of Blenheim

P.O. Box 928

N. Blenheim, NY 12131

TOWN OF COLCHESTER

72 Tannery Road * PO Box 321 * Downsville, NY 13755 * Phone (607) 363-7169

Supervisor- Robert A. Homovich

Town Clerk- Julie B. Townsend

Town Council- Cindy L. Donofrio - Mark W. Mattson - Wayne R. Knorr - Gilbert D. Clöse

September 02, 2009

Hon. Kimberly D. Bose

Secretary

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

Re: Project No. 13287-000 — City of New York West of Hudson Hydroelectric Project

Dear Secretary Bose,

I am writing to provide comment to the New York City ("City") request for a waiver, permitting it to use the Traditional Process in favor of the Integrated Licensing Process ("ILP"), dated August 13, 2009, in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of the resource issues as well as the very real likelihood that the City will not pursue the project, we respectfully request the Commission deny the City's request. We believe the City's request would preclude meaningful opportunity for comment as provided by the FERC Integrated Licensing Process.

Denial of the City's request will ensure that participants in the licensing proceeding will have a full and meaningful opportunity to contribute. The City's proposed studies will assist it in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintains the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP process provides the necessary framework through which the permittee and the participants can engage in an open dialogue regarding the necessary studies to be performed.

STANDARD FOR GRANTING WAIVER

The onus is on the applicant to demonstrate to the Commission that the Commission should waive its regulations and discard the ILP in favor of the Traditional Process. The standard for such a demonstration is "good cause shown." In determining whether an applicant has met this standard in requesting that the Commission deviate from the default ILP and pursue licensing through the Traditional Process, the Commission has determined that it will analyze the five following factors:

- (1) the likelihood of timely license issuance;
- (2) the complexity of the resource issues;
- (3) the level of anticipated controversy;
- (4) the amount of available information and potential for significant disputes over studies; and

(5) the relative cost of the traditional process compared to the integrated process.

As the Commission has stated, it will consider how easy it anticipates the licensing process to be:

The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request.

Unfortunately, this proceeding does not present tidy issues that the Commission may easily mediate but instead has stirred considerable controversy that will cast doubt on the City's ability to successfully complete the licensing process on time.

DISCUSSION

This proceeding presents a number of unique challenges and the likely inclusion of a number of different parties, all with varied interests. The project will likely be controversial in light of the City's actions to date in the proceedings which deprive much of the economic benefit of the project to the area based on the City competing against the Delaware County Electric Cooperative in securing the preliminary permit. In addition, the City is likely to cause further economic hardship in the upstate region through its Land Acquisition Program in the region. Finally, the City's project would produce significantly less hydroelectric power than the alternative that was proposed by the Delaware County Electric Cooperative, thus reducing the renewable energy benefits to the region and the State and thus increasing greenhouse gas emissions. In the discussion below addresses each of the five factors the Commission will use to evaluate requests for a waiver of the requirement to use the ILP.

The Likelihood of Timely License Issuance

In its request for use of the traditional licensing process, the City details an aggressive licensing timeline. The City, however, fails to acknowledge the need for ample opportunity for public comment and consideration as part of the licensing process.

Complexity of the Resource Issues

The water resources at issue would present any potential licensee with a number of difficulties because of the complexity of the water flow and management issues. As the City notes, the usual issues connected to projects of this size and nature—maintenance of fisheries and recreation areas, protection of eco-systems, and coordination with existing structures on and uses of the water resource—are complicated by a myriad of actors at various levels of three state governments. Controversies surrounding water flow from the Delaware River Basin have reached the Supreme Court on two occasions, and the water flow is still subject to oversight per a decree of the Supreme Court.

The City, however, suggests an unrealistic ability to coordinate during the proceedings. The City has a history of failing to consult with the region. Although many issues concerning flow management and other operational concerns of any potential hydroelectric project have already been resolved, new disputes will inevitably arise that will need thoughtful consideration and resolution.

Level of Anticipated Controversy

The City underestimates the level of anticipated controversy that the pursuit of this project has and will create. The Commission granted the City its instant permit in a contested proceeding in which the Commission denied the first-filed Delaware County Electric Cooperative ("DCEC") request for a preliminary permit. Prior to the City's submission of a competing preliminary permit application, the DCEC consulted with and built local support for its filing before this Commission. As an upstate neighbor to the communities in which the reservoirs are located, DCEC assured both local elected officials in the area and recreational groups that enjoy use of these waters that it could develop the project in a manner consistent with its current use. Relying on its municipal preference, however, the City filed a competing application drawn closely from the DCEC filing and ultimately defeated the DCEC's application.

As noted, the DCEC enlisted the support of numerous local public officials in its efforts to develop the site. In recognition of its efforts to secure a permit to study the feasibility of its proposed project, the DCEC secured the support of U.S. Senator Chuck Schumer, who issued a press release on July 14, 2009 praising DCEC for proposing the project and criticizing the City for its lack of action and cooperation causing delay to this significant new renewable resource.

Based on the foregoing concerns, we are concerned that Traditional Licensing Process will not allow all voices to be heard, particularly local voices that have a strong interest in seeing that this project is developed in a way that assures continued use and enjoyment of the surrounding recreational area.

The Amount of Available Information and Potential for Significant Disputes over Studies

As the City indicates, the long and contentious history of the reservoirs and dams at issue in this proceeding has resulted in a large amount of data and studies. As noted above, however, concerns over such items as flow management and other operational issues have been studied and subjected to the oversight of three state regulatory schemes.

More basic questions, however, surrounding the *newly proposed* uses of the river, reservoirs, and dams have not been broached. New studies will need to be performed to determine the effect of adding a hydroelectric generating facility on the environmental habitat, the use of the water resources and surrounding land for recreational purposes, and the overall character of the site.

Because the City is geographically remote from the actual sites of the proposed developments, questions will inevitably arise as to whether the City will work to ensure that the basic character of the site—environmentally and recreationally—will be retained. The river provides bountiful fishing as well as a certain degree of tourism, all of which needs to be protected during the study, planning, and design phases of any project. Accordingly, significant disputes will arise over the course of the licensing project.

The Relative Cost of the Traditional Process Compared to the ILP

The water resources and the surrounding land serve as pristine areas and are the source of recreation and regional opportunities. For many communities, the water resources serve as a lifblood. Studies will be needed to determine the true impact of these projects on the region, recreational uses, and the environment. Furthermore, commenters will need adequate time to review study proposals to ensure that they will be designed and conducted in a way that ensures the City has all necessary data in the pursuit of a license and the design of any hydroelectric facility thereafter.

As the Commission has noted, early resolution of disputes concerning studies is one of the most central means of ensuring timeliness of the licensing process. In addition, the pre-filing study dispute resolution procedures included within the Traditional Process are rarely invoked. From the perspective of commenters, one of the most important features in the ILP is the procedural timelines involved in the study process.

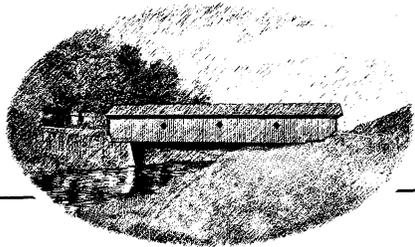
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CONCLUSION

For the reasons described herein, we request the Commission reject the City’s request to use the Traditional Process.

Sincerely,





TOWN OF DELHI

5 Elm Street, Delhi, New York 13753

ORIGINAL

607-746-TOWN (8696)

Fax: 607-746-7847

September 3, 2009

P-13287-002

FILED
SECRETARY OF THE
COMMISSION
2009 SEP - 9 A 9:44
FEDERAL ENERGY
REGULATORY COMMISSION

Hon. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Secretary Bose;

We are formally requesting that The FERC deny New York City's request to allow them to use "Traditional Licensing Process" (TLP) for proposed projects to develop hydroelectric generation facilities on any of the City owned Reservoirs.

Granting the TLP to the City is a deviation from the established licensing process and would not hold the City to a structured timeline for completion nor provide opportunity of neither public visibility nor comment.

Based on the City's comments we question the City's intention to fully develop this renewable resource. Instead, we believe local interest would be better served through the Delaware County Electric Cooperative (DCEC), which submitted an application to FERC to develop this resource in May of 2007.

Please do not hesitate to call me at any time.

Sincerely,

Peter J. Bracci
Supervisor Town of Delhi

PJB/djc
cc: Town Board



Schoharie County
OFFICE OF CLERK, AUDITOR & PURCHASING AGENT

P.O. Box 429, County Office Building
Schoharie, NY 12157

Phone: (518) 295-8347 Fax: (518) 295-8482



Board of Supervisors, Chairman
Earl VanWormer, III

Karen Miller, Clerk
Sheryl Largeteau, Deputy Clerk
Karen Hathaway, Deputy Clerk

ORIGINAL

September 4, 2009

Hon. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

FEDERAL ENERGY REGULATORY COMMISSION
 2009 SEP 15 PM 14:18
 RECEIVED

RE: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project.

Dear Secretary Bose,

I am writing to provide comment to the New York City (“City”) request for a waiver, permitting it to use the Traditional Process in favor of the Integrated Licensing Process (“ILP”), dated August 13, 2009, in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of the resource issues as well as the very real likelihood that the City will not pursue the project, we respectfully request the Commission deny the City’s request. We believe the City’s request would preclude meaningful opportunity for comment as provided by the FERC Integrated Licensing Process.

Denial of the city’s request will ensure that participants in the licensing proceeding will have a full and meaningful opportunity to contribute. The city’s proposed studies will assist it in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintains the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP process provides the necessary framework through which the permittee and the participants can engage in an open dialogue regarding the necessary studies to be performed.

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4. The amount of available information and potential for significant disputes over studies;
and

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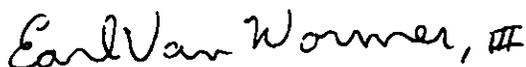
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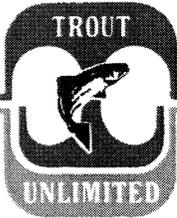
CONCLUSION

For the reasons described herein, we request the Commission reject the City's request to use the Traditional Process.

Sincerely,



Earl VanWormer III, Chairman
Schoharie County Board of Supervisors



NEW YORK STATE COUNCIL OF TROUT UNLIMITED

7 Helen Street

Plattsburgh NY 12901

wellman1985@charter.net

8 September 2009

Subject: Petition to Intervene: Project -13287 NYC West of Hudson

Ms Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

FILED
SECRETARY OF THE
2009 SEP-16
11:51:16 P 2:07
FEDERAL ENERGY REGULATORY COMMISSION
RECEIVED

Dear Secretary Bose:

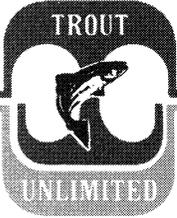
Enclosed are an original and eight copies of a Petition to Intervene in the above captioned matter.

Service has been made on those on the current service list electronically and by US mail, as appropriate.

Sincerely,

William H. Wellman, Region 5 Vice President, New York State Council of Trout Unlimited

ORIGINAL



NEW YORK STATE COUNCIL OF TROUT UNLIMITED

7 Helen Street
Plattsburgh NY 12901
wellman1985@charter.net
8 September 2009

PETITION TO INTERVENE-PROJECT P-13287 NYC WEST OF HUDSON

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

SECRET
PROJECT P-13287
SEP 16 P 2 07
FEDERAL ENERGY REGULATORY COMMISSION

Dear Secretary Bose:

Pursuant to Rule 214 of the Rules, Practices and Procedures (18 CFR Section 385.314) the New York State Council of Trout Unlimited hereby petitions the Federal Energy Regulatory Commission to grant it full party status in the above-captioned proceeding. The persons to whom communications should be addressed and to whom service of proceedings should be made are as follows:

William H. Wellman
7 Helen Street
Plattsburgh NY 12901
wellman1985@charter.net

Ron Urban
PO Box 815
Port Ewan, NY 12466
ronsgonefishing@aol.com

Roy Lamberton

Manny Zanger

PO Box 90

62 Beaverkill Mountain Road

East Berne NY 12059

Roscoe NY 12776

Roymcl@aol.com

beamoc@hvc.rr.com>

As grounds for its Petition, the New York State Council of Trout Unlimited states as follows:

The New York State Council of Trout Unlimited (NYSCTU) consists of 36 chapters and over 8,000 members across the State of New York. As America's foremost cold water fisheries and habitat conservation organization, Trout Unlimited has a vital interest in the preservation of America's fishing heritage. The New York State Council and its constituent chapters are frequent interveners in proceedings such as this and in other legal and administrative matters concerned with fisheries conservation, water quality, and similar issues. The area proposed for development under this project contains some of America's prime cold-water trout fisheries. Protection of these irreplaceable resources is of utmost importance.

Members of the New York State Council are residents of and anglers in the area impacted by the proposed development, and fish and enjoy the recreational benefits inherent in the area. Thus, no other party can represent Trout Unlimited's interest in this matter.

No disruption to the proceedings or any prejudice or additional burden to any party will result from the granting of this petition.

In light of the foregoing, the New York State Council of Trout Unlimited respectfully petitions for intervention.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Wellman". The signature is written in a cursive, flowing style.

William H. Wellman, Region 5 Vice President, New York State Council of Trout Unlimited

CC: NYSCTU; Service List; TU National

DAVID P. FANSLAU, M.G.A., ICMA-CM
COUNTY MANAGER

TEL. 845-807-0450
FAX 845-794-0230



**COUNTY OF SULLIVAN
COUNTY MANAGER'S OFFICE
SULLIVAN COUNTY GOVERNMENT CENTER
100 NORTH STREET
PO BOX 5012
MONTICELLO, NY 12701**

September 10, 2009

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project

Dear Secretary Bose:

This letter is submitted by the County of Sullivan (the "County") in response to the City of New York (the "City") requesting that the Commission use the Traditional Licensing Process ("TLP") for review of the City's application for licensing of the West of Hudson Hydroelectric Project. The County hereby recommends that the Commission deny this request.

The County hereby urges the Commission to deny the City's request for use of the TLP and direct the City to follow the Integrated Licensing Process ("ILP"), which, as the default position under the law, provides for more stringent timetables for all parties and for more frequent and earlier opportunities for public involvement in the process. The Sullivan County Legislature has determined that the level of controversy that surrounds the project, as evidenced in the long history of complex negotiations between the City and its Watershed Communities, and the complexity of the resource issues involved both warrant denial of this request (see Resolution attached) and that the project be reviewed under the ILP.

The County and associated municipalities were notified of the City's "Request for Approval to Use the Traditional Licensing Process," filed August 13, 2009, concurrently with the City's filing of a "Notification of Intent to File an Original License Application" (NOI) and its Pre-Application Document (PAD). By way of background, this project represents an effort to develop hydroelectric power on the four existing

dams of the Cannonsville, Neversink, Pepacton and Schohairie Reservoirs, which comprise part of the City's water supply system. The County received notification as an interested party, due to the fact that the Neversink Reservoir is located in the Town of Neversink, which lies within the County of Sullivan. The Sullivan County municipalities of Neversink, Fallsburg, Liberty, Thompson, Bethel and Rockland were all notified as well, due to their proximity to the project.

For reference, portions of the towns of Liberty, Neversink and Fallsburg are located within the New York City Watershed. The County and these municipalities all participate as members of the Coalition of Watershed Towns. Moreover, the County's land area falls almost entirely within the Upper Delaware River watershed, as overseen under federal compact by the multi-state Delaware River Basin Commission. For these reasons, the County closely monitors activities within the basin, including those upstream of the County's land area, for their potential impacts on the County and on the system as a whole.

It is the County's understanding that the ILP is the default procedure for licensing as established by Congress in the federal government's Energy Policy Act of 2005, and that, among the options for FERC's review of such projects, the ILP provides for maximum disclosure, transparency and timely opportunities for public input. Therefore, it is the County's view that the magnitude of the project, the number of communities affected, and the extent of the resource issues that must be considered all warrant use of the Integrated Licensing Process for this project.

The County finds the City's justification for using the TLP to be insufficient. Any hardship regarding the timetables presented by the ILP are self-imposed and do not justify use of any process that provides for less than the maximum opportunity for public involvement that the law allows. Therefore, it is the County's view that the Commission should direct the City to use the ILP and that the City be required to demonstrate a good-faith effort to develop the project within the timetables allowed.

For the reasons contained herein, the County vehemently opposes the request by the City to use the TLP and urges the Commission to deny this request.

Sincerely,

A handwritten signature in black ink that reads "David P. Fanslau". To the right of the signature is a circular stamp containing the initials "D.P.F.".

David P. Fanslau
County Manager

Cc: Hon. Charles E. Schumer, United States Senate
Hon. Kirsten Gillibrand, United States Senate
Hon. Maurice D. Hinchey, United States House of Representatives
Hon. John J. Bonacic, New York State Senate
Hon. Aileen M. Gunther, New York State Assembly

Encl.



THE SENATE
STATE OF NEW YORK

RANKING MINORITY MEMBER
COMMITTEES ON
HOUSING, CONSTRUCTION
& COMMUNITY DEVELOPMENT
RACING, GAMING & WAGERING

JOHN J. BONACIC
SENATOR, 42ND DISTRICT

September 11, 2009

COMMITTEES
BANKS
CODES
JUDICIARY
LOCAL GOVERNMENT

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

007

2009 SEP 21

Re: Project No. 13287-~~000~~ – City of New York West of Hudson Hydroelectric Project

Dear Secretary Bose:

I am writing in opposition to the City of New York's desire to use the Traditional Licensing Process (TLP) as it relates to the City's application for licensing of the West of Hudson Hydroelectric Project. This project represents an effort to develop hydroelectric power on four New York City owned reservoirs - the Cannonsville, Neversink, Pepacton and Schoharie Reservoirs. Three of these reservoirs – Cannonsville, Neversink, and Pepacton are in my Senate District.

The City of New York has consistently shown an inability to work with localities in my Senate District when it comes to managing its water supply. The City's attempt to use the TLP would limit, if not exclude, public input from watershed municipalities, as they seek to develop a hydro project.

With respect to hydro power in particular, the City has shown an open hostility to working with local community organizations, such as the Delaware County Electric Cooperative (DCEC) in the Catskills. The City has repeatedly given assurances to DCEC that the City will work with them. Unfortunately, the City has repeatedly failed to live up to their promises.

The inability to work with or trust the City with respect to their hydro related actions should mandate the use of the Integrated Licensing Process ("ILP"). The ILP provides for more stringent timetables for all parties and for more frequent and earlier opportunities for public involvement in the process. The historic difficulties between watershed communities and the City – in everything from what type of sports activities are permitted on City owned lands in the watershed, to costs of community septic systems, to reservoir storage and release levels, to the



maintenance of aqueducts are well known. The controversies are near constant. An open process, as only the ILP provides, is the best way to diminish that controversy and ensure a workable hydro project actually comes to fruition.

Communities in my Senate District were notified of the City's "Request for Approval to Use the Traditional Licensing Process," on August 13, 2009, concurrently with the City's filing of a "Notification of Intent to File an Original License Application" (NOI) and its Pre-Application Document.

Any hardship claimed by the City in their effort to use the TLP are also without merit and are self-imposed. The Commission should direct the City to use the ILP and also require the City to develop the project within the timetables allowed.

Sincerely,


JOHN J. BONACIC
State Senator

JJB:lcc

cc: Senator Schumer
Senator Gillibrand
Delaware County Board of Supervisors
Sullivan County Legislature



Pennsylvania Fish & Boat Commission

Division of Environmental Services

450 Robinson Lane
Bellefonte, PA 16823
Phone: 814-359-5133
Fax: 814-359-5175

Electronically filed with FERC at <https://ferconline.ferc.gov/eFiling.aspx>

September 11, 2009

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Docket No. P-13287-002 City of New York West of Hudson Hydroelectric Project
Request for approval to use Traditional Licensing Process

Dear Secretary Bose:

The Pennsylvania Fish and Boat Commission (PFBC) is an independent administrative commission of the Commonwealth of Pennsylvania with authority to manage and promulgate rules and regulations concerning protection, preservation and management of fish, aquatic life, reptiles and amphibians and recreational boating. We request that the PFBC be added to the contact list for this docket since our agency has a vested interest in waters affected by hydroelectric facilities proposed under this docket. The West Branch of the Delaware River and Delaware main stem are boundary waters between our state and New York in the vicinity of the proposed docket projects. PFBC has the regulatory responsibility to manage the recreational fishery of these waters as well as to protect the dwarf wedge-mussel, a state listed endangered species, located in these downstream waters. The 1954 Supreme Court Decree referenced by the project sponsor's August 13, 2009 letter includes flow targets at Montague, New Jersey and Trenton, New Jersey. Our agency has been very active in providing input on the Flexible Flow Management Plan also referenced in New York City Department of Environmental Protection's filed material. Potential impacts of the hydroelectric operation and the reservoir releases they depend on have potential impacts to the Delaware Bay and we observed no communication with New Jersey, Pennsylvania and Delaware.

It is our agency's recommendation that an Integrated Licensing Process (ILP) be followed instead of the Traditional Licensing Process (TLP) for a number of reasons.

- In general, the City's request for permission to use the TLP greatly understates or underestimates the complexity of the resources issues involved, the level of controversy involved, and the potential for study disputes, which are all relevant factors in determining whether good cause can be shown for abandoned the ILP in favor of the TLP.
- Although the TLP is described as a "mature endeavor" in New York, the fact that important agencies and representatives from New Jersey and Pennsylvania have not been invited into the process through direct contact supports use of the ILP.
- The FERC licensing process for hydroelectric facilities is separate from reservoir operations as defined and constrained in the 1954 Supreme Court Decree.

Our Mission:

www.fish.state.pa.us

To protect, conserve and enhance the Commonwealth's aquatic resources and provide fishing and boating opportunities.

The Hon. Kimberly Bose

September 10, 2009

Page 2

- Management decisions in recent history have not been implemented in a transparent publicly participated process such as those provided by the ILP; they have been adopted following closed door Decree Party negotiations with limited outside input.
- The Decree Party negotiations have not included a federal agency representative, which would be more readily utilized in the ILP.
- The claim that issue identification has been subject to litigation or regulatory intervention is not shared by the PFBC. The legal requirements to change a Supreme Court Decree require a different avenue of activity than evaluating hydroelectric generation feasibility and environmental impacts associated with a FERC license.
- The time requirements for this project constitute a rather circular argument. The fact that a preliminary permit expires on March 1, 2012 should not cause only activities that support this deadline to be considered. Currently available information has supported reservoir management for water supply and best use of undiverted water. It has not been applied to hydroelectric generation, for which the capability has not yet been determined. It is understood that only water in excess of that required for water supply use will be used for generation, but we are not confident issues important to Pennsylvania will be identified and studied.
- The Flexible Flow Management Program currently used to manage water released from reservoirs based on available storage is by nature flexible. Many if not most public comments received have been unfavorable regarding this program. By definition, it is flexible, and subject to change. The ILP will allow a broad range of operational alternatives to be considered in terms of power generation and potential environmental impacts.

Thank you for providing the opportunity to comment. Please contact me at (814) 359-5133 or e-mail mhartle@state.pa.us if you have any questions or require additional information.

Sincerely,

Mark A. Hartle, Chief
Aquatic Resources Section
Division of Environmental Services

c: PFBC – L. Young, J. Arway, D. Arnold, D. Pierce
PA DEP – Abdulhossain Liaghat – Central Office, JR Holtmaster – NE Region
Kevin M. Lang, Couch White, LLP
NY DEC – Mark Woythal, Douglas Sheppard
DRBC – Carol Collier

Zimmerman & Associates

Environmental Litigation, Mediation, Enforcement & Compliance, Counseling

September 18, 2009

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project

Dear Secretary Bose:

Friends of the Upper Delaware River, Inc., North Delaware River Watershed Conservancy Ltd. and Aquatic Conservation Unlimited, LLC, request that the Commission deny the City of New York's request to use the Traditional Licensing Process ("TLP") rather than the Integrated Licensing Process ("ILP") for review of the City's application for licensing of the West of Hudson Hydroelectric Project. The ILP is the default procedure under the Commission's licensing process and should be used in this case because it provides earlier and more frequent public participation opportunities.

The City also represents in its request to use the TLP that "the level of controversy should be less than that which existed prior to the development of the FFMP." Either New York City has not been paying attention or it seriously underestimates the level of controversy related to the Flexible Flow Management Program (FFMP). It does note that the Delaware River Basin Commission (DRBC) has not incorporated the FFMP into the DRBC's water code, but fails to explain that there was an extremely high level of controversy about the FFMP and the proposed water code amendments. This controversy in large measure was the reason that the DRBC withdrew its water code proposal in December 2008 and has yet to prepare a new proposal. Meanwhile, the City has been using the FFMP to control diversions and releases from its Delaware River Basin reservoirs (Cannonville, Pepacton and Neversink) with no acknowledgment of, let alone responsiveness to, the controversial issues that were presented to DRBC through the public input and comment process if follows.

In deciding whether to allow the City to use the TLP rather than the ILP, it is particularly important for the Commission to understand that a great portion of the controversy regarding the FFMP is that it was developed behind closed doors with no direct public involvement or opportunity to comment. The only entities that were included in the process that developed the FFMP were the five parties to the 1954 U.S. Supreme Court decree in *State of New Jersey v. State of New York and City of New York*. The first view the public had of the FFMP was when it was released at a DRBC meeting on September 26, 2007, a few hours after the decree parties had completed their secret negotiations and less than five days before it went into effect. Since

Zimmerman & Associates

Environmental Litigation, Mediation, Enforcement & Compliance, Counseling

Hon. Kimberly D. Bose

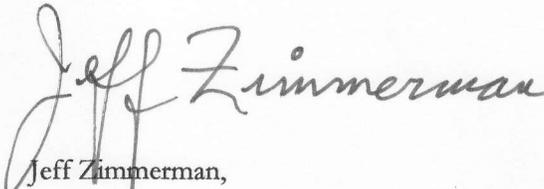
September 18, 2009

Page 2

then, the decree parties have modified the FFMP five times and each time have done so in secret, only announcing after the fact the changes that they made.

In summary, if the Commission approves New York City's request to use the TLP rather than the ILP, it will be rewarding the City for its total lack of transparency in its reservoir operations, an action that flies in the face of the public process at the core of the ILP.

Respectfully submitted,



Jeff Zimmerman,

cc: Distribution list

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

October 21, 2009

OFFICE OF ENERGY PROJECTS

Project No. 13287-001-- New York
West of Hudson Project
City of New York

Kevin M Lang, Esq.
Couch White, LLP
540 Broadway
P. O. Box 22222
Albany, NY 12201

RE: Authorization to Use the Traditional Licensing Process

Dear Mr. Lang:

In a letter filed August 13, 2009, submitting a notice of intent (NOI) and pre-application document (PAD), you requested use of the traditional licensing process (TLP) in preparing a license application for the proposed 29.75-MW West of Hudson Project. The project would be located on Schoharie Creek, the West Branch Delaware River, the East Branch Delaware River, and the Neversink River, in Schoharie, Delaware and Sullivan Counties, New York.

In the August 13, 2009, edition of The Times Herald-Record, The Daily Freeman, and The Daily Star Newspapers you published notice of your request to use the TLP. Your notice contained the information required in sections 5.3(d)(1) and (2) of the Commission's regulations, including a statement requesting that comments on the request to use the TLP be filed with the Commission no later than 30 days following the filing date of the request. Comments were filed by the U.S. Department of the Interior (Interior); the New York State Department of Environmental Conservation (New York DEC); State Senator John Bonacic; the Towns of Deposit, Delhi, Blenheim, and Colchester New York; Sullivan and Schoharie Counties, New York; the Pennsylvania Fish and Boat Commission; Edward Smith; Fred Nelson; Morgan Lyle; and the Friends of the Upper Delaware River, Inc., et al.

Interior and New York DEC commented that they have no objection to use of the TLP. The remaining commenters requested the TLP be denied for a variety of reasons including: (1) a perception that environmental studies would not be conducted under the TLP; (2) a perception of less than adequate public participation with the TLP; (3) an expected high level of controversy due at least in part to the commentors past experience with the applicant; (4) the potential for study disputes; and (5) a perception that the

Project No. 13287-001

2

applicant will ultimately not pursue the project.

I have reviewed your TLP request and the comments that have been filed. Despite some of the perceptions of the commentors, the TLP does require consultation with federal, state, and local agencies; Indian tribes; and members of the public. It also requires a public meeting and preparation of a draft license application for comment. Studies are required to be conducted under the TLP, and when there are disputes over studies, a dispute resolution mechanism is in place that provides for Commission resolution. From an applicant's perspective, however, you should be aware that under the TLP, additional studies may be requested after the application is filed to ensure that staff have sufficient information to address all issues raised during the Commission's environmental review. To that end, I strongly recommend that you address the issues raised by the commentors during pre-filing consultation. Based on the information provided, I am granting your request to use the Commission's Traditional Licensing Procedures.

If you have any questions, please contact Michael Spencer at (202) 502-6093.

Sincerely,

Jeff Wright
Director
Office of Energy Projects

cc: Public Files
Mailing List

P-13287-002

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

**ASSOCIATED
PUBLIC FILE**

OFFICE OF THE CHAIRMAN

October 23, 2009

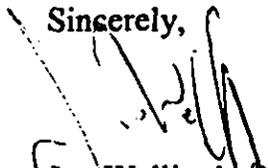
The Honorable John J. Bonacic
Room 815 – Legislative Office Bldg.
New York State Senate
Albany, NY 12247

Dear Senator Bonacic:

I am writing in response to your September 11, 2009, letter regarding the potential West of Hudson Hydroelectric Project (Federal Energy Regulatory Commission Project No. 13287-002). Specifically, you object to the City of New York's request to use the traditional licensing process (TLP) in its preparation of a license application for the project. You state that the City's attempt to use the TLP in this case would limit input from watershed municipalities during the licensing process.

Please note that both the integrated licensing process (ILP) and the TLP require *consultation with federal, state and local agencies; Indian tribes; and members of the public during application preparation.* The primary difference between the two processes involves when studies are conducted. With the ILP, the majority of the information needed to support the application is gathered during the pre-filing stages whereas with the TLP, additional data, and sometimes studies, are needed after the application is filed. Regardless of the licensing process that is used in this case, please be assured that all concerns raised during the Commission's environmental review will be addressed.

I appreciate your comments regarding this project. If I can be of further assistance in this or any other Commission matter, please let me know.

Sincerely,

Jon Wellinghoff
Chairman

2009-00188

COUCH WHITE

counselors and attorneys at law

Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

Kevin M. Lang
Partner
Direct Dial: (518) 320-3421
Telecopier: (518) 426-0376
email: klang@couchwhite.com

November 24, 2009

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project – **Notice of Joint Meeting and Site Visits**

Dear Secretary Bose:

Pursuant to 18 C.F.R. § 4.38(b)(3)(i)(A)(3), the City of New York (“City”) hereby provides written notice of its upcoming joint meeting and site visits to be conducted in accordance with the requirements of 18 C.F.R. § 4.38(b)(3)(ii) for the City’s proposed West of Hudson Hydroelectric Project (“Project”). As further described herein, a joint meeting regarding the Project will be held on December 16, 2009. The City has also scheduled two separate site visits for the Project on December 15 and 16, 2009. In addition, the City has scheduled two informal public meetings regarding the Project to occur on the same dates as the site visits.

On September 15, 2008, the City, acting through the New York City Department of Environmental Protection (“NYCDEP”), filed an application for a preliminary permit for the Project. The Project involves the development of hydroelectric facilities on four of the dams and reservoirs that comprise a portion of the City’s water supply system. By order issued March 20, 2009, the Federal Energy Regulatory Commission (“Commission”) issued a preliminary permit to the City, thereby facilitating its ability to proceed with its data collection, studies, and evaluation of the Project. On August 13, 2009, the City commenced the pre-filing process for the Project with the filing of its Notification of Intent and Pre-Application Document. Coincident with this filing, the City also filed a Request for Approval to Use the Traditional Licensing Process (“TLP”). The Commission, by letter order dated October 21, 2009, granted the City’s request to use the TLP for the Project. Therefore, in accordance with the first stage consultation requirements of the TLP, the City hereby provides written notice of the scheduling of a joint meeting and site visits.

November 24, 2009

Page 2

A. JOINT MEETING

The City has scheduled a joint meeting regarding the Project that is open to all interested resource agencies, Indian tribes, members of the public and other interested parties on December 16, 2009, commencing at 9:00 a.m. and ending at 11:30 a.m. The joint meeting will be held at the NYCDEP's Kingston Office, 71 Smith Avenue, Kingston, New York 12401. An agenda regarding the joint meeting is attached hereto as Attachment A.

The purpose of the joint meeting is to: provide an overview of the Project and the information provided in the City's Pre-Application Document filed with the Commission on August 13, 2009; discuss the licensing process and timeline; present the City's proposed studies to support its license application; receive comments from participants regarding these proposed studies and suggestions for additional studies; and identify and clarify the scope of issues for this phase of the Project's licensing process.

B. SITE VISITS

Given the geographic location of the reservoirs associated with the Project, the City will conduct site visits on two separate days. On December 15, 2009, there will be a site visit for Cannonsville, Neversink and Pepacton reservoirs (the Delaware River Basin Developments), commencing promptly at 10:30 a.m. The City will provide bus transportation on a first-come, first-served basis. The bus will pick up interested persons at the Sullivan County Community College, 112 College Road, Loch Sheldrake, New York 12759. The City anticipates that this site visit will be completed by 4:00 p.m. An agenda regarding the site visit for the Delaware River Basin Developments is attached hereto as Attachment B.

On December 16, 2009, the City will conduct a site visit for the Schoharie Development, commencing promptly at 2:30 p.m. The City will provide bus transportation on a first-come, first-served basis. The bus will pick up interested persons at the Gilboa Town Hall, 373 State Route 990V, Suite 1, Gilboa, New York 12076. The City anticipates that this site visit will be completed by 4:00 p.m. An agenda regarding the site visit for the Schoharie Development is attached hereto as Attachment C.

C. NOTICE OF THE JOINT MEETING AND SITE VISITS

In accordance with the requirements of 18 C.F.R. § 4.38(g), the City will publish notice of the joint meeting and site visits in the following newspapers of general circulation in the Project region: (a) The Times-Herald Record – Middletown, NY; (b) The Daily Freeman – Kingston, NY; (c) The Press & Sun-Bulletin – Binghamton, NY; (d) The Daily Star – Oneonta, NY; and (e) The Mountain Eagle – Stamford, NY.

November 24, 2009

Page 3

D. INFORMAL PUBLIC MEETINGS

In addition to the joint meeting and site visits described above, the City will also hold two separate informal public meetings regarding the Project that are open to all interested parties. The purpose of these public meetings is to provide an overview of the Project, discuss the licensing process and timeline, and receive public comments regarding the Project.

The Delaware River Basin Developments informal public meeting will be held on December 15, 2009, commencing at 7:00 p.m. This public meeting will be held at the Sullivan County Community College, Seelig Theatre, 112 College Road, Loch Sheldrake, New York 12759. An agenda regarding this informal public meeting is attached hereto as Attachment D.

On December 16, 2009, the Schoharie Development informal public meeting will commence at 7:00 p.m. This public meeting will be held at the Schoharie County Office Building, Board of Supervisors Chambers, 3rd Floor, 284 Main Street, Schoharie, New York 12157. An agenda for this informal public meeting is attached hereto as Attachment E.

If you have any questions regarding this filing, please feel free to contact me directly.

Respectfully submitted,

COUCH WHITE, LLP

Kevin M. Lang

Kevin M. Lang

KML/glm

Enclosures

cc: Service List
Mr. Michael Spencer (via email)
Ms. Kathryn Garcia (via email)
Mr. Anthony Fiore (via email)
Paul V. Rush, P.E. (via email)
John Vickers, P.E. (via email)
Robert Craig, Esq. (via email)
Linda Geary, Esq. (via email)
Thomas Sullivan, P.E. (via email)
Mark Wamser, P.E. (via email)

ATTACHMENT A

Agenda for Joint Meeting

FERC Project No. 13287-000

Date: December 16, 2009

Time: 9:00 a.m. – 11:30 a.m.

Location: NYCDEP's Kingston Office, 71 Smith Avenue, Kingston, New York 12401

Agenda:

- I. Welcome and Introductions
- II. Overview of Project
- III. Review of FERC Licensing Process and Timeline
- IV. Overview of Information Provided in PAD
- V. Discussion of Study Plans
- VI. Solicitation of Comments
- VII. Next Steps
- VIII. Adjournment

ATTACHMENT B

**Agenda for Site Visit of the
Cannonsville, Neversink and Pepacton Developments
Associated with the City of New York's West of Hudson Hydroelectric Project**

FERC Project No. 13287-000

Date: December 15 2009

Time: 10:30 a.m. – 4:00 p.m.

Starting/Ending Location: Sullivan County Community College, 112 College Road, Loch Sheldrake, New York 12759 (“SCCC”)

Agenda:

The City of New York (“City”) will make transportation via bus available on a first-come, first-served basis. The bus will pick up individuals interested in attending the site visit for the Delaware River Basin Developments (i.e., Cannonsville, Neversink and Pepacton) associated with the City’s West of Hudson Hydroelectric Project (“Project”) promptly at 10:30 a.m. The site visit and bus pick up will start from SCCC. From SCCC, the site visit will depart for Neversink Reservoir. After stopping at Neversink Reservoir, the site visit will continue to Cannonsville Reservoir, followed by Pepacton Reservoir. Once the site visit at Pepacton Reservoir is completed, the bus will return to SCCC.

ATTACHMENT C

**Agenda for Site Visit of the Schoharie Development
Associated with the City of New York's West of Hudson Hydroelectric Project**

FERC Project No. 13287-000

Date: December 16, 2009

Time: 2:30 p.m. – 4:00 p.m.

Starting/Ending Location: Gilboa Town Hall, 373 State Route 990V, Suite 1, Gilboa, New York 12076 (“Gilboa Town Hall”)

Agenda:

The City of New York (“City”) will make transportation via bus available on a first-come, first-served basis. The bus will pick up individuals interested in attending the site visit for the Schoharie Development associated with the City’s West of Hudson Hydroelectric Project (“Project”) promptly at 2:30 p.m. The site visit and bus pick up will start from the Gilboa Town Hall. From the Gilboa Town Hall, the site visit will depart for Schoharie Reservoir. Once the site visit at Schoharie Reservoir is completed, the bus will return to the Gilboa Town Hall.

ATTACHMENT D

**Agenda for Informal Public Meeting Regarding the
Cannonsville, Neversink and Pepacton Developments
Associated with the City of New York's West of Hudson Hydroelectric Project**

FERC Project No. 13287-000

Date: December 15, 2009

Time: 7:00 p.m. – 10:00 p.m.

Location: Sullivan County Community College, Seelig Theatre, 112 College Road, Loch Sheldrake, New York 12759

Agenda:

- I. Welcome and Introductions
- II. Overview of Project and Information Available
- III. Overview of FERC Licensing Process and Timeline
- IV. Solicitation of Comments
- V. Adjournment

ATTACHMENT E

**Agenda for Informal Public Meeting Regarding the Schoharie Development
Associated with the City of New York's West of Hudson Hydroelectric Project**

FERC Project No. 13287-000

Date: December 16, 2009

Time: 7:00 p.m. – 10:00 p.m.

Location: Schoharie County Office Building, Board of Supervisors Chambers, 3rd Floor, 284
Main Street, Schoharie, New York 12157

Agenda:

- I. Welcome and Introductions
- II. Overview of Project and Information Available
- III. Overview of FERC Licensing Process and Timeline
- IV. Solicitation of Comments
- V. Adjournment



ORIGINAL Upper Delaware Council

PO Box 192, 211 Bridge Street, Narrowsburg, New York 12764-0192 • (Tel.) 845-252-3022 • (Fax) 845-252-3359

William E. Douglass, Executive Director • David B. Soete, Senior Resource Specialist
Laurie Ramie, Public Relations/Fund Raising Specialist • Carol Coney, Office Manager

January 7, 2010

KIMBERLY D. BOSE, SECRETARY
FEDERAL ENERGY REGULATORY COMMISSION
888 FIRST STREET, N.E. ROOM 1A
WASHINGTON DC 20426

RE: Project No. 13287-~~000~~ 002
City of New York West of Hudson Hydroelectric Project

FILED
SECRETARY OF THE
COMMISSION
2010 JAN 19 A 10:26
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Secretary Bose:

The Upper Delaware Council (UDC) is aware that, on August 13, 2009, the City of New York made a request to the Federal Energy Regulatory Commission (FERC) for a waiver permitting it to use the Traditional Process in favor of the Integrated Licensing Process (ILP) in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of the resource issues, we respectfully request that the Commission deny the City's request. Instead, we recommend that FERC require that the ILP be followed to ensure that participants in the licensing proceeding will have a full and meaningful opportunity to provide comments.

The City's proposed studies will assist it in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintains the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP provides the necessary framework through which the permittee and the participants can engage in an open dialog regarding the necessary studies to be performed.

The UDC is the non-profit organization responsible for the coordinated implementation of the 1986 River Management Plan for the Upper Delaware Scenic and Recreational River, a component of the National Wild and Scenic Rivers System. Our voting members are the two states (NY and PA) and 13 local governments (NY Towns and PA Townships) which border on the Upper Delaware River. The Delaware River Basin Commission (DRBC) is a non-voting member of the Council. We operate under a direct contractual relationship with the National Park Service (NPS) for the oversight, coordination, and implementation of many elements of the River Management Plan.

Working together to conserve the Upper Delaware Scenic and Recreational River

Town of Hancock • Town of Fremont • Town of Delaware • Town of Cohecton • Town of Tusten • Town of Highland • Town of Lumberland
Town of Deepark • Lackawaxen Township • Shohola Township • Westfall Township • State of New York • Commonwealth of Pennsylvania
Delaware River Basin Commission • In partnership with the National Park Service

The Upper Delaware Scenic and Recreational River corridor was designated by Congress in 1978 for its outstanding natural resources. It is home to numerous threatened and endangered plant and animal species. It is a popular recreational-boating destination, a world-class trout fishery, and is recognized by the Audubon Society as an Important Bird Area. It is a Pennsylvania water trail. Part of the river is included in the Pennsylvania Rivers Conservation Registry and the Pennsylvania Route 6 Heritage Corridor. It also includes a significant section of the Upper Delaware Scenic Byway and contributes three sites to the New York State Revolutionary War Heritage Trail. An estimated 250,000 people visit the River corridor each year.

Section 1271 of the Wild and Scenic Rivers Act, under which the Upper Delaware Scenic and Recreational River was designated in 1978, states:

"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

Since its inception, the UDC has been advocating for improved flows and management of the water resources. We have participated in the DRBC's Flexible Flow Management Program (FFMP) currently used to manage water released from the New York City reservoirs based on available storage. By definition, it is flexible, and subject to change. We are also very concerned about flooding issues. The ILP will allow a broad range of operational alternatives to be considered in terms of power generation and potential environmental impacts.

Thank you for providing the opportunity to comment.

Sincerely,



Harold G. Roeder, Jr.,
Chairperson

cc: Hon. David A. Paterson, NY Governor
Hon. Charles Schumer, US Senator, NY
Hon. Kirsten Gillibrand, US Senator NY
Hon. Maurice D. Hinchey, Jr., US Congressman, 22nd District NY
Hon. John Hall, US Congressman, 19th District NY
Hon. John Bonacic, NY State Senator, 42nd District
Hon. Aileen M. Gunther, NY State Assemblywoman, 98th District
Hon. Clifford W. Crouch, NY State Assemblyman, 107th District
Hon. Edward G. Rendell, PA Governor
Hon. Arlen Specter, US Senator, PA
Hon. Robert P. Casey, US Senator, PA
Hon. Christopher Carney, US Congressman, 10th District PA
Hon. Lisa Baker, PA State Senator, 20th District
Hon. Michael T. Peifer, PA House of Representatives, 139th District
Hon. Sandra J. Major, PA State Representative, 111th District
Carol Collier, Executive Director, Delaware River Basin Commission
Pete Grannis, Commissioner, NYS DEC
William Janeway, Regional Director, NYS DEC - Region 3
Steve Schassler, Regional Director, NYS DEC - Region 4
William Rudge, NYS DEC and UDC Rep.
Michael Flaherty, NYS DEC and UDC Alternate
Dennis DeMara, PA DCNR and UDC Rep.
Gary N. Paulachok, Deputy Delaware River Master, USGS
Douglas J. Austen, Ph.D, Executive Director, PA Fish and Boat Commission
Mayor Michael R. Bloomberg, New York City
Caswell F. Holloway, Commissioner, NYC DEP
Dan Wenk, Acting Director, National Park Service
Dennis Reidenbach, Northeast Regional Director, National Park Service
Sandra Schultz, Acting Superintendent, National Park Service - UDSRR
File

ORIGINAL

TOWN OF HIGHLAND
Town Supervisor
ANDREW BOYAR

lawboy@hvc.rr.com
(845) 557-8901
Fax: (845) 557-0257

PO Box 177
4 Proctor Road
Eldred, NY 12732

January 11, 2010

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E. Room 1A
Washington DC 20426

Re: Project No. 13287-000
City of New York West of Hudson Hydroelectric Project

FILED
SECRETARY OF THE
COMMISSION
2010 JAN 22 A 10:46
FEDERAL ENERGY
REGULATORY COMMISSION

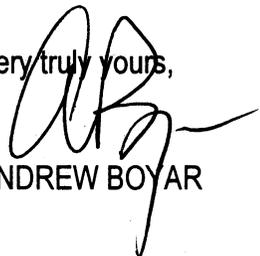
Dear Secretary Bose:

The Town of Highland is aware that, on August 13, 2009, the City of New York made a request to the Federal Energy Regulatory Commission (FERC) for a waiver permitting it to use the Traditional Process in favor of the Integrated Licensing Process (ILP) in its pursuit of a license for the above-cited project. Because of the level of controversy surrounding the project and the complexity of the resource issues, we respectfully request that the Commission deny the City's request. Instead, we recommend the FERC require that the ILP be followed to ensure that participants in the licensing proceeding will have a full and meaningful opportunity to provide comment.

The City's proposed studies will assist in determining whether this project can be pursued in a way that both ensures the financial viability of the project and maintain the essential character of the land surrounding the water resources at issue in this licensing proceeding. The ILP provides the necessary framework through which permittee and the participants can engage in an open dialog regarding the necessary studies to be performed.

Thank you for considering our comments.

Very truly yours,


ANDREW BOYAR

AB:dk

Cc: Upper Delaware Council

Mark Wamser

Subject: Hydro - Study Plans
Location: Kingston (DEP Offices)
Start: Mon 2/8/2010 10:00 AM
End: Mon 2/8/2010 12:00 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Fiore, Anthony

Meeting documents attached.



Meeting Agenda 2-8-10.pdf Study Plans for
2-8-10 Meeting...

Hydro - Study Plans - Meeting

Meeting Insert Format Text Developer

Save & Close
 Calendar
 Delete
 Appointment
 Scheduling
 Accept
 Tentative
 Decline
 Propose New Time
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 Reply to All
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 High Importance
 Low Importance
 Spelling
 Proofing

100% 010 Monday, February 08, 2010 Tuesday, February 09, 2010

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All Attendees	[Hatched pattern]																	
<input checked="" type="checkbox"/> Fiore, Anthony <FioreA@dep.gov>																		
<input checked="" type="checkbox"/> Stephen Patch <spatch@fws.gov>																		
<input checked="" type="checkbox"/> Kent Sanders <kpsander@dep.gov>																		
<input checked="" type="checkbox"/> David Sampson <dssampso@dep.gov>																		
<input checked="" type="checkbox"/> Larry Wilson <lrwilson@dep.gov>																		
<input checked="" type="checkbox"/> Michael Flaherty <mflaher@dep.gov>																		
<input checked="" type="checkbox"/> Mark Woythal <mwoyth@dep.gov>																		
<input checked="" type="checkbox"/> Norman McBride <ndmcbri@dep.gov>																		
<input checked="" type="checkbox"/> Robert Anaya <rkangval@dep.gov>																		
<input checked="" type="checkbox"/> Vickers, John <JVickers@dep.gov>																		
<input checked="" type="checkbox"/> Helmut, Jeffrey <JHelmut@dep.gov>																		
<input checked="" type="checkbox"/> Principe, Robert <RPrincipe@dep.gov>																		
<input checked="" type="checkbox"/> Craig, Robert <RobertCr@dep.gov>																		
<input checked="" type="checkbox"/> Geary, Linda <GearyL@dep.gov>																		
<input checked="" type="checkbox"/> Mark Wamser <mwamser@dep.gov>																		
<input checked="" type="checkbox"/> Tom Sullivan <tsullivan@dep.gov>																		
<input checked="" type="checkbox"/> Usai, Michael <MUsai@dep.gov>																		
<input checked="" type="checkbox"/> Page, Mark <MarkPa@dep.gov>																		
<input checked="" type="checkbox"/> Iyer, Sangamithra <Sangamithra@dep.gov>																		
<input checked="" type="checkbox"/> Lenz, Paul <PLenz@dep.gov>																		
<input checked="" type="checkbox"/> Garcia, Kathryn <KathrynG@dep.gov>																		

Add Others Options
 Start time: Mon 2/8/2010 10:00 AM
 End time: Mon 2/8/2010 12:00 PM



**CITY OF NEW YORK
WEST OF HUDSON HYDROELECTRIC PROJECT**

FERC Project No. 13287-000

AGENDA AND MEETING NOTES

NYCDEP, Kingston, NY
February 8, 2010
10:00 am

I. Introductions

Notes: Mr. Fiore welcomed everyone to the meeting and thanked them for participating. The attendees went around the room and introduced themselves. The attendees included:

For the Applicant:

Anthony Fiore, NYCDEP
John Vickers, NYCDEP
Robie Craig, Esq., NYCDEP
Jeff Helmuth, NYCDEP
Tom Baudanza, NYCDEP
Michael Usai, NYCDEP
Robert Principe, NYCDEP

Linda Geary, Esq., NYC DOL
Tom Sullivan, Gomez & Sullivan
Mark Wamser, Gomez & Sullivan
Kevin Lang, Esq., Couch White

For USFWS:

Steve Patch

For NYSDEC:

Kent Sanders
Larry Wilson
Norm McBride

Robert Angyal
Michael Flaherty
David Sampson, Esq.

II. Status of Schoharie Development

Notes: Mr. Fiore explained that at the present time, none of the options that had been studied appear to be economically and technically feasible. The NYCDEP is continuing to evaluate development options for that site, but no project is being proposed at that location right now. In response to a question from NYSDEC, Mr. Fiore explained that flow considerations are the primary driver of the feasibility conclusions.

Mr. Sullivan added that the City has evaluated a longer time frame than what would be acceptable to most developers and incorporated the City's more advantageous financial capability. He observed that if the economics do not work for the City, they would not work for any other developer, either.

III. Proposed Operations and Turbine Sizing

- a. Cannonsville Development
- b. Pepacton Development
- c. Neversink Development

Notes: Mr. Wamser explained that none of the Delaware River projects (Cannonsville, Pepacton, and Neversink) will be operated as peaking units or otherwise in a manner that will maximize their generation output. Rather, they will be operated based on the flows and releases contemplated by the FFMP. As of now, all three projects will use Francis-type turbines. Cannonsville will require the construction of a new power house, while Pepacton and Neversink will involve replacing an existing valve with a turbine and very little work outside the existing gate house structures. Mr. Wamser noted that the space in each valve chamber is very limited, and the installation of the turbines will be difficult.

IV. Fish Entrainment and Intake Protection

- a. Existing Drawings – Intake Gross Area and Bar Rack Clear Spacing
- b. Level of Effort
- c. Methodology

Notes: Mr. Wamser first provided some background on the fish species located in the reservoirs and known hydrologic conditions. He then explained the layout, location, bar sizing, clear spacing, and total area of the intake structures for each site using drawings, topographical maps, and pictures. He noted that the intake structures at each site are very different, with the gross area and velocities in front of the intakes similarly being very different. Mr. Sullivan added that while the intake for Neversink is located at the edge of the building, the intakes for Cannonsville and Pepacton are located in the reservoir with no support or other structures overhead, making access to those structures, such as for cleaning and debris removal, difficult.

A question was posed regarding the condition of the Cannonsville intake structure, and Mr. Vickers responded that it was last inspected by divers two years ago, no problems were identified, and no debris was found.

A discussion of the velocities ensued. Mr. Wamsler explained that the numbers presented to the agencies at the meeting were conservatively high. As the analysis is refined, and other factors that impact the flow of water into and around the intake structures are included, the gross areas of the intake structures are likely to be considered larger than first stated, and the velocities will be correspondingly reduced. It was observed by a few participants that the velocities at Pepacton and Neversink are already within acceptable parameters and do not present cause for concern.

Mr. Sullivan then discussed the FERC's expanding reliance on literature reviews over field studies. He added that many field studies have been performed, with millions of dollars spent, but the results were not conclusive and fish entrainment and impingement issues remains as contested after the studies were performed as they had been without the studies. He therefore asked the agencies if they would accept a literature review in this matter as sufficient.

Mr. McBride stated that he was primarily concerned with Cannonsville because the water level in that reservoir can and often does drop to 20 % - 30 % of its capacity, and a few years ago, it dropped to 4 % of its capacity. At such low levels and with the high velocities around the intake structure, he continued, fish are more likely to become entrained. Indeed, the NYSDEC was aware of at least two instances of fish kills related to fish becoming entrained and impinged in the Cannonsville valve works. In contrast, he observed that the water levels at Pepacton and Neversink tended to remain relatively constant, and the velocities at the intakes make entrainment less likely (he said he was not aware of any reports of entrainment at Pepacton). Mr. Flaherty added that seasonal variations are also important, and the fish in the reservoirs move from shallow to deep water based on relative water temperatures, with the highest accumulations near the thermocline (during the winter, the deeper water tends to be warmer than the water near the surface). In response to this statement, Mr. Sullivan acknowledged that a seasonal analysis would be needed (and accomplished via the literature review).

Mr. Patch stated that behavioral barriers have not been successful with trout and some other species. At other projects, sound barriers worked for only some types of trout, while others swam right by the barriers. Therefore, he does not believe such barriers would be effective for this project.

A number of participants from NYSDEC commented that a literature review would be an acceptable first step, but a literature review will not identify the types and numbers of fish located near the intake structures in the three reservoirs. Therefore, they believe that some field studies, which could include gill netting, hydroacoustics, or a combination of both, will

be needed. Further, because of the seasonal variations in water temperature, there is a potential that the number and types of fish located near the intake structures will be seasonally different; therefore, they believe seasonal field studies will be needed. Given the differences between Cannonsville and the other reservoirs (noted above), though, they agreed that it may make sense to focus on Cannonsville and treat the results of its field studies as equally applicable to the other reservoirs.

A question was then posed regarding the need for, and frequency of, cleaning the bar racks and valves. Mr. Vickers explained that the polyjet valves rarely get clogged,. The water pressure and velocity is such that obstructions are either immediately forced through the holes or over time are broken down until they pass through the holes. The racks at Neversink accumulate sticks and branches and are cleaned once or twice a year.

NYSDEC then requested that the NYCDEP provide details on the studies that have been performed at the three sites so that they can understand what information already exists and what additional information must be gathered to properly evaluate the Project.

Mr. Vickers proposed bypassing the studies and moving directly to a discussion of acceptable mitigation measures, such as adding mesh screens. However, Mr. Sullivan suggested that discussing mitigation is premature because at two of the sites velocities are very low and entrainment should not be an issue at all.

NYSDEC then requested that the NYCDEP share data from its other reservoirs and the hydroelectric units operated by NYPA on those reservoirs and tunnels (specifically, Ashokan and Kensico). Messrs. McBride and Sanders observed that the NYSDEC never weighed in on protections at those sites when licensing exemptions were granted for them in 1980. Because there have been reports of fish kills at those sites, the NYSDEC may be receptive to considering intake protections for those units outright or as off-site mitigation of the potential entrainment impacts at Cannonsville. Mr. Fiore then explained that the Kensico hydroelectric unit would be decommissioned in the near future, so no protections would be needed at that site.

Returning to the issue of field studies, the attendees agreed that the critical period to be studied is likely late summer and early fall. Therefore, if field studies are to be performed, they could occur during the 2010 field season and into the winter of 2010-2011. If necessary, additional studies could be performed in the spring of 2011 without delaying completing all work in time to file an application in March 2012. Mr. Flaherty added that for Ashokan and Neversink, the critical periods for studying alewives is December through February when the warmer water is at the lower depths.

- V. Construction-Related Activities on Wildlife and Botanical Resources, Wetlands, Riparian and Littoral Habitat, and Rare, Threatened and Endangered Species
- a. Timing of Study
 - b. Level of Effort
 - c. Methodology

Notes: Mr. Wamser explained the NYCDEP's plans for conducting field studies in these areas and the level of effort the NYCDEP proposes to employ. At Pepacton and Neversink, the areas impacted will be very small. At Cannonsville, temporary siphons will be needed at a latter stage of the construction project while the new facilities are connected to the existing discharge/release works. The siphons are needed to satisfy the FFMP flow requirements. Some concerns were expressed that the siphons will draw warm water from the top of the reservoir, while the releases draw cold water from the bottom of the reservoir. Discussion ensued on the need to properly plan for the releases such that the down stream fisheries are not negatively impacted. In particular, the siphons should not be used from June through early September.

- VI. Construction-Related Activities on Erosion
- a. Timing of Study
 - b. Level of Effort
 - c. Methodology

Notes: Mr. Sullivan stated that the NYCDEP would prepare an erosion control plan, and that over time, the plan would be refined and revised as appropriate. He added that the plan would need to be approved by the agencies. There were no comments.

- VII. Impacts on Land Use and Recreation
- a. Need for Study

Notes: Mr. Wamser noted that a study of the potential impacts of construction and operation on land use and recreation was mentioned in the PAD. However, based on the proposed design, configuration, and location of the hydroelectric units and related facilities, it now does not appear that there would be any impacts on either land use or recreation. Therefore, he indicated that the NYCDEP is considering not conducting such a study and asked if either agency had any objections. There was a brief discussion among the group that the areas to be disturbed appeared to be minimal and unlikely to impact recreations activities at the sites. Further, because most of the work, and new facilities, would either be inside existing buildings or in areas that are not generally visible to the public, no land use impacts are apparent or worthy of study.

Meeting with Resource Agencies

February 8, 2010

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The meeting concluded with Mr. Fiore and Mr. Sullivan noting that they would consider the agencies' comments and looked forward to receiving the agencies' proposals for studies. Mr. Fiore thanked everyone for attending and stated that the discussions would continue. The meeting was then adjourned.



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Partner
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Telecopier: (518) 426-0376
email: klang@couchwhite.com

February 10, 2010

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project – **Filing of Transcripts from Public Meetings and Joint Meeting**

Dear Secretary Bose:

Pursuant to 18 C.F.R. § 4.38(b)(4), the City of New York (“City”) hereby files copies of the transcripts of the public meetings conducted on December 15, 2009 and December 16, 2009, and the joint meeting conducted on December 16, 2009 regarding the City’s proposed West of Hudson Hydroelectric Project (“Project”).

The attachments to this letter are as follows:

1. Attachment A – Transcript from the Public Meeting conducted December 15, 2009 at the Sullivan County Community College in Loch Sheldrake, New York;
2. Attachment B – Transcript from the Joint Meeting conducted December 16, 2009 at the New York City Department of Environmental Protection’s (“NYCDEP”) Office in Kingston, New York; and
3. Attachment C – Transcript from the Public Meeting conducted December 16, 2009 at the Schoharie County Office Building in Schoharie, New York.
4. Attachment D – Proof of Publication for the Public Notices regarding the Public Meetings, Joint Meetings and Site Visits

Upon reviewing the transcripts provided by the reporting service retained by the NYCDEP, we discovered a number of transcription errors, typographical errors, and party identification errors. We corrected the transcripts using our best efforts and asked the reporting service to correct and re-issue the documents. Some of those changes were not made by the service, however, so we further corrected the transcripts manually.

February 10, 2010

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Notwithstanding our efforts, there are portions of the transcript in which the comments provided were transcribed incorrectly or incompletely. Because the reporting service did not make a backup audio recording, these problems could not be rectified.

Regardless of any quality issues with respect to the transcript from the joint meeting, it is important to note that City and NYCDEP officials involved with the Project were present at the meeting and took notes regarding the comments provided and intend to address, to the extent necessary, the concerns and issues that were raised. Moreover, in an effort to avoid the recurrence of the transcription problems, the City and NYCDEP will implement improvements for future meetings regarding the Project that require the creation of a record pursuant to the rules and regulations of the Federal Energy Regulatory Commission. Such improvements will include utilizing a different reporting service and a requirement that the reporting service use an audio recording device in addition to the stenographic transcription.

If you have any questions regarding this filing, please feel free to contact me directly.

Respectfully submitted,

COUCH WHITE, LLP

Kevin M. Lang

Kevin M. Lang

KML/glm

Enclosures

cc: Service List
Mr. Michael Spencer (via email)
Mr. Anthony Fiore (via email)
Robert Craig, Esq. (via email)
Linda Geary, Esq. (via email)

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



February 12, 2010

Mr. Anthony J. Fiore
Director of Planning and Sustainability
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373-5108

**RE: West of Hudson Hydroelectric Project (FERC #13287)
Review of Notice of Intent to File an Original License Application and Pre-Application Document and Initial Study Requests**

Dear Mr. Fiore:

The U.S. Fish and Wildlife Service (Service) has reviewed the August 13, 2009, *Notice of Intent to File an Original License Application and Pre-Application Document* (PAD) for the West-of-Hudson Hydroelectric Project (Project), located on Schoharie Creek, the Neversink River, and the East and West Branches of the Delaware River in Schoharie, Delaware, Sullivan, and Greene Counties, New York. The Project consists of four hydroelectric developments totaling 29.75 MW. However, it is our understanding that the Schoharie development has not been determined to be economically feasible. As such, at this point in time, the New York City Department of Environmental Protection (NYCDEP) is proceeding with a review of three developments totaling 16.85 MW. The Service has the following comments and study requests.

Review of Pre-Application Document

The Service has reviewed the PAD and found that it adequately describes the proposed Project and the resources in the vicinity of the Project. We have no specific comments on the PAD.

Study Requests

The Federal Energy Regulatory Commission (FERC) has granted the NYCDEP's request to use the Traditional Licensing Process (TLP) for this Project. Under the TLP, the FERC does not have to approve the Study Plan, as they do with the Integrated Licensing Process. This allows flexibility to conduct studies in stages, with the parties agreeing on next steps following each stage. In addition, the Service and other stakeholders have the opportunity to request additional studies, if required, after the submittal of the Draft Application.

On February 8, 2010, a meeting was held in Kingston, New York, which included the NYCDEP, the New York State Department of Environmental Conservation (NYSDEC), and the Service. The NYCDEP's Proposed Draft Study Plan (DSP) was provided to the Service at the meeting,

and appropriate studies were discussed. Based on that meeting and our review of the DSP, the Service recommends that the following studies be undertaken during the upcoming field season.

Fish Entrainment, Protection, and Downstream Passage

Each of the Project's reservoirs is part of the City of New York's water supply. The hydroelectric turbines will be installed to utilize water that is currently being released into downstream riverine reaches according to the Flexible Flow Management Plan (FFMP) that governs water releases from the Cannonsville, Pepacton, and Neversink Reservoirs. These releases consist of conservation releases, directed releases, and water that would otherwise spill. There is no intent on the part of the NYCDEP to alter the current FFMP as part of this licensing. As such, flows into the downstream reaches of the Neversink River and East and West Branches of the Delaware River should not change as a result of Project operation.

However, flow releases will now pass through turbines rather than through release valves or other mechanisms, subjecting any entrained fish to potential injury and mortality from the turbines. Therefore, it is important that the NYCDEP identify the potential for fish entrainment, as well as impingement on any Project intake screens. Since these studies may demonstrate that entrainment mortality is a potential project impact, the NYCDEP should also explore alternatives to minimize and mitigate for this mortality.

Each reservoir supports warmwater/coldwater fisheries, with brown trout (*Salmo trutta*) and brook trout (*Salvelinus fontinalis*) being the primary game fish species, along with smallmouth bass (*Micropterus dolomieu*) and chain pickerel (*Esox niger*) in Cannonsville Reservoir, rainbow trout (*Oncorhynchus mykiss*), smallmouth bass, and chain pickerel in Pepacton Reservoir, and smallmouth bass and landlocked Atlantic salmon (*Salmo salar*) in Neversink Reservoir. The NYSDEC currently stocks the reservoirs, as well as upstream and downstream reaches, with brown trout.

The Service recommends the following sequence of studies to address the fish protection and passage issues.

I. Fish Entrainment Literature Surveys

The NYCDEP has proposed a literature review of existing entrainment studies conducted on similar reservoirs with similar fish communities to determine the likelihood that entrainment will occur. The Service is not aware of any entrainment studies that have been conducted at hydroelectric facilities on similar reservoirs in New York, in particular, those with a coldwater fishery and deep intakes. In addition, the studies that were conducted in the 1990's in New York were generally site-specific, with minimal transferability of data. In some instances, adjacent turbines at one hydroelectric facility yielded remarkably different entrainment and mortality data. There were also differences between hydroelectric facilities located on the same river, and among hydroelectric facilities located on similar, nearby rivers. These entrainment studies also experienced many logistical problems, resulting in relatively large confidence intervals around the data, in particular the mortality data.

However, the Service agrees that an entrainment literature survey is a good starting point to locate existing data and to identify the range of levels of entrainment and mortality for the

species of concern that have been found at other projects using turbines similar to those proposed for this Project.

The NYCDEP has proposed the following level of effort:

- Summarize the fish species and life stages present in each reservoir.
- Evaluate which fish species and life stages could be present at the low level intakes, based on habitat preferences.
- Evaluate water quality conditions (specifically dissolved oxygen and temperature) at the intake locations to determine the potential for fish entrainment.
- Evaluate the likelihood of fish entrainment given the fish species and life stages present in each reservoir, water quality conditions at each intake, and water depth at each intake.
- Characterize the proposed turbines (size, runner diameter, speed, etc.).
- Develop literature-based estimates of entrainment and mortality potential.

In addition to these proposed tasks, the NYCDEP should also evaluate:

- Likely differences in entrainment potential based on time of year, water temperatures, water levels in each reservoir, the location of the thermoclines, and stratification of the reservoirs.

It is likely that the fish communities move around as the reservoir levels vary and the water temperature changes. Many of the fish may be following the thermocline. Thus, it is likely that entrainment probability varies considerably throughout the year and will likely be different for each reservoir.

This study will produce rough estimates of the likelihood of various fish species and life stages being entrained at each reservoir and a range of potential mortalities likely to be found with the proposed turbine types.

1. *Goals and Objectives*

The goals and objectives of this study are to provide information on the potential for fish to be entrained into the Project intakes and on the potential levels of mortality that could be expected for those fish that are entrained.

2. *Resource Management Goals*

The Neversink River and the East and West Branches of the Delaware River, in the vicinity of the proposed Project, are managed by the NYSDEC as a mixed warmwater-coldwater fishery, with brook trout, brown trout, smallmouth bass, and chain pickerel as the primary game fish species. Landlocked salmon are also a species of concern for the Neversink Reservoir. Protection of fish from entrainment and impingement mortality is the goal of the Service.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD includes little information regarding the likelihood of impingement and entrainment. The purpose of this study is to identify existing information.

5. *Nexus to Project Operations and Effects*

The proposed Project may result in greater entrainment and impingement of fish than currently occurs with the existing release structures. In addition, the fish will pass through turbines, which is not currently the case, therefore increasing the likelihood of mortality from entrainment.

6. *Methodology Consistent with Accepted Practice*

The recommended study uses standard literature reviews used in most hydro licensing activities.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve a few months and be relatively inexpensive. This step is a necessary precursor to any additional data collection.

II. Fisheries Field Surveys

Upon completion of the literature review, the NYCDEP should prepare a report for distribution to the NYSDEC, the Service, and other appropriate stakeholders. A meeting should then be held to determine whether additional field data collection is needed to determine where different fish species and life stages are located at various times of the year and at various reservoir levels. Such a study, if needed, should encompass a variety of seasons and reservoir levels. This study may be needed at one, two, or all three reservoirs, depending on the results of the literature surveys.

Field collections should be done using gill nets with a variety of mesh sizes following protocols previously used by the NYSDEC in sampling conducted in these reservoirs. The exact details of sampling design and location should be developed in consultation with the Service and the NYSDEC. The data from these surveys will supplement and support the literature data to further refine the likelihood of entrainment and mortality.

1. *Goals and Objectives*

The goals and objectives of this study are to provide information on the potential for fish to be entrained into the Project intakes and on the potential levels of mortality that could be expected for those fish that are entrained.

2. *Resource Management Goals*

The Neversink River and the East and West Branches of the Delaware River, in the vicinity of the proposed Project, are managed by the NYSDEC as a mixed warmwater-coldwater fishery, with brook trout, brown trout, smallmouth bass, and chain pickerel as the primary game fish

species. Landlocked salmon are also a species of concern for the Neversink Reservoir. Protection of fish from entrainment and impingement mortality is the goal of the Service.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD includes little information regarding the likelihood of impingement and entrainment. The purpose of this study is to field verify the literature review from Study I.

5. *Nexus to Project Operations and Effects*

The proposed Project may result in greater entrainment and impingement of fish than currently occurs with the existing release structures. In addition, the fish will pass through turbines, which is not currently the case, therefore increasing the likelihood of mortality from entrainment.

6. *Methodology Consistent with Accepted Practice*

The recommended study uses standard fisheries field collection techniques used in most hydro licensing activities.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve sampling for 6 months to 1 year, depending on data needs. Additional field seasons may be needed if an appropriate variety of water levels and temperatures is not available during the first field season. This study will be necessary if the results of the literature review are inadequate to address the entrainment issue.

III. Evaluation of Fish Protection Alternatives

This study will be conducted concurrently with Study I and consist of a literature review of potential fish protection and exclusion alternatives. The NYCDEP has proposed to investigate physical barriers such as bar racks, angled bar racks, barrier nets, and Eicher screens, as well as behavioral barriers such as light, sound, electric fields, and air bubble curtains. Based on our knowledge of current literature, it is unlikely that the NYCDEP will discover a behavioral barrier, or combination of barriers, that will effectively exclude the variety of fish species found in these reservoirs. However, exploring the existing literature is a necessary first step to narrow the field of potential alternatives.

The proposed hydroelectric installations have very low approach velocities projected at Pepacton and Neversink Reservoirs at full pond. However, the approach velocities at Cannonsville Reservoir are well above the Service's guidelines of less than 2 feet per second (fps). As part of the evaluation of physical barriers, the NYCDEP should determine the approach velocities (as measured 1 foot in front of the racks or other intake structures) at a variety of reservoir elevations likely to be encountered over the life of the license. The NYCDEP should also investigate alternative locations and configurations for each type of physical barrier that would enable them

to minimize the approach velocities. Approach velocities above 2 fps could result in unacceptable levels of fish impingement and mortality and may rule out certain alternative physical barriers at some locations.

Hydroelectric developers throughout New York have frequently installed trash racks with clear spacing of 1" for warmwater species and ¾" for salmonids. These spacings physically prevent most adult game species from entering the turbines, and may have some level of behavioral deterrent for smaller fish. The NYCDEP should investigate the feasibility of installing narrow-spaced trash racks at each site and any problems that are likely to be encountered, such as fish impingement or clogging with trash and debris. These latter two problems may be ameliorated by the design and location of the trash racks, or by installing appropriate cleaning mechanisms.

Barrier nets are not common in New York. However, they may prove to be more feasible at these sites than narrow-spaced trash racks. Depending on the results from Studies I and II, barrier nets may only be needed during certain seasons or at certain water levels or temperatures. The most serious potential problems with the use of barrier nets would be debris loading, installation and removal, and storage when not in use. However, these nets appear to be a viable option and this alternative should be thoroughly investigated.

The NYCDEP has also explored the use of Eicher screens or similar modular inclined screens. Other alternatives, such as the FISHIS™ screen proposed by the developer who filed a competing preliminary permit for this project, should also be explored as potential fish protection options.

Following completion of this review, the NYCDEP should prepare a report and meet with the Service and the NYSDEC to discuss potential alternatives. Assuming that fish entrainment mortality remains as a concern, agreement on fish protection alternatives may preclude the need for further fisheries investigations (Study II).

1. *Goals and Objectives*

The goals and objectives of this study are to provide information on the potential alternatives available to minimize fish entrainment into the Project turbines under various water level and temperature conditions.

2. *Resource Management Goals*

The Neversink River and the East and West Branches of the Delaware River, in the vicinity of the proposed Project, are managed by the NYSDEC as a mixed warmwater-coldwater fishery, with brook trout, brown trout, smallmouth bass, and chain pickerel as the primary game fish species. Landlocked salmon are also a species of concern for the Neversink Reservoir. Protection of fish from entrainment and impingement mortality is the goal of the Service.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD includes little information regarding mechanisms to minimize fish entrainment and impingement. The purpose of this study is to identify potential alternatives and weigh the relative merits of each alternative.

5. *Nexus to Project Operations and Effects*

The proposed Project may result in greater entrainment and impingement of fish than currently occurs with the existing release structures. In addition, the fish will pass through turbines, which is not currently the case, therefore increasing the likelihood of mortality from entrainment. Fish protection measures may be necessary to minimize entrainment and impingement.

6. *Methodology Consistent with Accepted Practice*

The recommended study uses standard literature reviews used in most hydro licensing activities.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve a few months and be relatively inexpensive. This step is necessary to evaluate appropriate protection, mitigation, and enhancement measures.

IV. Downstream Fish Passage Studies

The Project dams serve as barriers to upstream and downstream fish migration. Fish moving downstream will be subjected to potential mortality from impingement and entrainment. The NYCDEP should investigate the need for downstream fish passage and any appropriate mechanisms to facilitate this movement. This study is tied into the previous studies, since an increase in fish entrainment and mortality with hydro operations as opposed to the current release structures could result in the need for effective downstream passage where it may not have been historically needed or desired.

The NYCDEP should consult with the NYSDEC regarding their management plans for the rivers and the desirability of allowing/encouraging downstream fish passage. The NYCDEP should explore alternative structures that could be utilized with any proposed entrainment reduction measures to facilitate safe downstream passage for fish moving downriver. Such structures would include sluices and pipes with appropriate plunge pools. Should some form of inclined screen be recommended for fish protection, a passage sluice often accompanies such a structure. The NYCDEP should prepare a report on the need for such a structure and the designs that could be utilized. The NYCDEP should then meet with the Service and the NYSDEC, in conjunction with fish protection discussions, to determine the need for such facilities.

1. *Goals and Objectives*

The goals and objectives of this study are to determine the need for fish passage structures and to provide information regarding potential fish passage structures that could be utilized at these sites. The information obtained will allow the Service's biologists and fishway engineers to evaluate the potential effectiveness of various options.

2. *Resource Management Goals*

The Neversink River and the East and West Branches of the Delaware River, in the vicinity of the proposed Project, are managed by the NYSDEC as a mixed warmwater-coldwater fishery, with brook trout, brown trout, smallmouth bass, and chain pickerel as the primary game fish species. Landlocked salmon are also a species of concern for the Neversink Reservoir. Fish attracted to the intakes and prevented from entering the intakes by screening measures may need an alternative downstream passage facility to avoid being impinged or entrained.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD includes little information regarding the need for, and mechanisms to allow, downstream fish movement. This study will develop existing information and allow for a discussion of need and alternatives.

5. *Nexus to Project Operations and Effects*

The proposed Project may result in greater entrainment and impingement of fish than currently occurs with the existing release structures. In addition, the fish will pass through turbines, which is not currently the case, therefore increasing the likelihood of mortality from entrainment. Fish passage measures may be necessary to allow the fish an alternative route to avoid impingement and entrainment.

6. *Methodology Consistent with Accepted Practice*

The recommended study uses standard literature reviews used in most hydro licensing activities.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve a few months and be relatively inexpensive. This step is necessary to evaluate the need for downstream passage measures as well as the measures most likely to be feasible.

Rare, Threatened, and Endangered Species

There are four Federally-listed species residing within the counties where the Project is located. These include the dwarf wedge mussel (*Alasmidonta heterodon*), Indiana bat (*Myotis sodalis*), bog turtle (*Clemmys muhlenbergii*), and northern wild monkshood (*Aconitum noveboracense*). Two of these species, the Indiana bat, and bog turtle, in New York State, have not been found in otherwise suitable habitat at elevations above 900 feet and 1,000 feet, respectively. Neither are likely to be impacted by habitat modifications, if any, resulting from the project development and operation, as the Neversink, Pepacton and Cannonsville Reservoir elevations are all greater than 1,200 feet above sea level. Although the bald eagle (*Haliaeetus leucocephalus*) was removed from the Federal Endangered Species List on August 8, 2007, it is still protected under the Bald

and Golden Eagle Protection Act (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755). In addition, the bald eagle is still listed as threatened by the State of New York. Since bald eagles are present in the Project area, the Service recommends that you follow the Bald Eagle Management Guidelines found on our website (<http://fws.gov/northeast/nyfo/es/section7.htm>) prior to commencement of any construction activities. The NYCDEP proposes to develop mitigation plans, in consultation with the NYSDEC, to prevent disturbance to existing nests. The Service should be included in this consultation.

Development of hydroelectric facilities on these reservoirs may impact the remaining above-listed species. Potential impacts and measures to avoid or minimize these impacts must be addressed in the Draft License Application.

V. Dwarf Wedge Mussel

The Federally-listed (endangered) dwarf wedge mussel is found in the Neversink River. The Service's main concerns relate to any changes in flows or water levels that may occur as a result of the development of this Project, and any direct or indirect impacts from changes in flow or entrainment of fish species that serve as hosts for the parasitic larval life history stage in the mussels. Although the NYCDEP has not proposed any changes to existing flows, some stakeholders have advocated a reassessment of flow releases as part of this licensing. Since the issue of changes in flows has been broached, the potential exists for this licensing activity to alter flows in the Neversink River. As such, any impacts from flow changes on the dwarf wedge mussel must be identified.

The NYCDEP should identify any studies necessary to characterize the Project's potential impacts on dwarf wedge mussels, including their host fish species. Methodologies for such studies, and completion of the studies themselves should be undertaken in close coordination and consultation with the Service's endangered species biologists, the U.S. Geological Survey, and the NYSDEC's Endangered Species Program (for NYSDEC, contact Mr. Peter Nye at 518-402-8859).

1. *Goals and Objectives*

The goals and objectives of this study are to determine the potential Project impacts on the dwarf wedge mussel, a Federally-listed endangered species.

2. *Resource Management Goals*

The Neversink River harbors a population of the endangered dwarf wedge mussel. The Service's goal is to protect this species from further losses and to allow the population to recover to levels that will allow it to be delisted.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD provides limited information on the dwarf wedge mussel in the Neversink River.

5. *Nexus to Project Operations and Effects*

The proposed Project may impact host fish species and may alter flows in the Neversink River, thus affecting dwarf wedge mussels.

6. *Methodology Consistent with Accepted Practice*

The recommended study will use standard scientific study practices and literature reviews.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve a few months and be relatively inexpensive. This study is necessary to evaluate potential project impacts on an endangered species.

Impacts of Construction-Related Activities

The NYCDEP has proposed a series of studies to address the impacts of construction-related activities on wildlife and botanical resources, wetlands, riparian and littoral habitat, and rare, threatened, and endangered species. The NYCDEP proposed the following study items in the footprint of the specific areas where construction will actually occur:

- Consult with the NYSDEC, the Service, and the New York Natural Heritage Program on known rare, threatened, and endangered species locations and wetlands mapped to confirm work accomplished for the PAD.
- Update the list of mammals, reptiles, amphibians, and birds from the PAD.
- Develop site maps showing the construction areas.
- Complete field studies to document existing habitat conditions in the designated areas.
- Evaluate how construction-related activities could impact wetlands, wildlife, botanical species, and rare, threatened, and endangered species.
- Determine if modifications to construction sequencing could reduce impacts.
- Develop a mitigation plan in consultation with the agencies.

Except as related to other studies listed above, the Service concurs with this approach.

VI. **Impacts of Construction-Related Activities**

1. *Goals and Objectives*

The goals and objectives of this study are to determine the impacts of construction-related activities on wetlands, botanical resources, rare, threatened, and endangered species, and wildlife and their habitats.

2. *Resource Management Goals*

The Neversink River and the East and West Branches of the Delaware River, in the vicinity of the proposed Project, are managed by the NYSDEC as a mixed warmwater-coldwater fishery, with brook trout, brown trout, smallmouth bass, and chain pickerel as the primary game fish species. Landlocked salmon are also a species of concern for the Neversink Reservoir. Construction activities may impact resources of concern to the Service.

3. *Public Interest*

The requestor is a resource agency.

4. *Existing Information*

The PAD includes limited information on construction designs and location and potential habitat impacts.

5. *Nexus to Project Operations and Effects*

The construction activities related to development of the Project may have adverse impacts on wildlife, wetlands, botanical resources, or rare, threatened, and endangered species.

6. *Methodology Consistent with Accepted Practice*

The recommended study uses standard literature and field reviews used in most hydro licensing activities.

7. *Level of Effort, Cost, and Why Alternative Studies Will Not Suffice*

The level of effort would involve a few months and be relatively inexpensive. This step is necessary to evaluate potential impacts from construction-related activities.

Recreation and Land Use

The Service concurs with the NYCDEP's assessment that there does not appear to be any impact on recreation or land use from construction-related activities. Unless Project plans change, there is no need to undertake additional studies related to these topics at this time.

* * * * *

We appreciate the opportunity to review the PAD and make study recommendations. We look forward to working closely with the NYCDEP to develop the study plans and assess potential

project impacts. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334. For consultation on endangered species issues, please contact Robyn Niver at the same number.

Sincerely,



for David A. Stilwell
Field Supervisor

cc: Service List
Gomez and Sullivan, Henniker, NH (T. Sullivan)
NYSDEC, Albany, NY (M. Woythal, D. Sampson)
NYSDEC, Stamford, NY (K. Sanders)
NYSDEC, New Paltz, NY (L. Wilson)
FERC, Washington, DC (K. Bose)
DOI, Newton, MA (A. Tittler)
FWS, Hadley, MA (C. Orvis)

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 4

65561 State Highway 10, Stamford, New York 12167-9503

Phone: (607) 652-7741 • FAX: (607) 652-3672

Website: www.dec.state.ny.us



Alexander B. Grannis
Commissioner

February 12, 2010

Mr. Anthony Fiore
New York City Department of Environmental Protection
59-17 Junction Blvd
Flushing, NY 11373

RE: DEC ID#4-1246-00063/00003
West of Hudson Hydro Project
Request for Studies Proposal

Dear Mr. Fiore:

The Department has reviewed the Preliminary Application Document for the above referenced FERC License proposal. In order for the Department to make its required findings under Section 401 of the Clean Water Act the following studies on the projects impacts on fish and wildlife resources need to be undertaken.

Oxygen Depletion

Two issues concerning oxygen levels are germane to this project. The first is that the intakes at these reservoirs are at significant depth. Oxygen levels at these depths are unknown and have a direct bearing on the use of this area of the water column by fish which directly relates to their susceptibility of entrainment and impingement.

Secondly if the oxygen levels are depleted in the intake water what impact to the receiving water will occur? Waters discharged to the receiving waters needs to meet State Water Quality Standards for oxygen levels.

Entrainment

Studies detailing the fish entrainment and mortality of the current operations and proposed changes are needed. The number size, species and seasonal fluctuations need to be assessed so that the appropriate mitigative measures can be implemented.

Occasional entrainment through the release structure at Cannonsville has occurred in the past. This seems to be associated with drawing the reservoir down to low levels and or when the hypolimnion nears the elevation of the intakes. Winter water temperature conditions can also concentrate fish in the lower levels of the reservoir.

Level of Effort: NYCDEP has proposed to do only literature research entrainment studies. This level of effort may not be sufficient to support issuance of the Water Quality Certificate. Following initial review of the literature NYCDEP should be prepared to conduct field studies to answer any remaining issues for the late summer-fall and winter seasons.

Impingement

The installation of water turbines into the bypass flows may increase the overall mortality associated with the reservoirs. Studies adequate to quantitatively and qualitatively assess this increase are needed to determine what mitigation strategies are appropriate and their effectiveness.

Potential for Improvements to the FERC In-Conduit Exemptions

Our records do not indicate that the Department was afforded the opportunity to review and comment on the FERC exemptions issued for the In Conduit Hydropower facilities in the West of Hudson System. Given the large volumes of water that are delivered in the system and the lack of screening the potential for entrainment, impingement and mortality exists. If the West of Hudson system is looked as a whole, the potential to benefit fisheries resources may be accomplished more efficiently by addressing fish mortality associated with the Exempted turbines than by just addressing the newly proposed turbines.

Technology Review

The NYCDEP has constructed, operated and maintained a large number of reservoirs, aquaducts and tunnels for many years. There are undoubtedly many unpublished reports and studies concerning fish entrainment, impingement, mortality as well as oxygen levels, A review of these documents should be made and pertinent information be supplied to the resource agencies so that these issues can be clarified and narrowed. The proposed studies can then be focused on specific questions and time and efforts not wasted on gathering redundant information.

We look forward to developing the above studies with you in the near future.

Sincerely,



Kent P. Sanders
Deputy Regional Permit Administrator
Region 4 Stamford

Cc: WOH Review Team



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 19, 2010

Office of Water Management

717-783-4693

Mr. Anthony J. Fiore
Director of Planning and Sustainability
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373-5108

RE: West of Hudson Hydroelectric Project (FERC#13287)
Review of Notice of Intent to File an Original License Application and Pre-Application Document and Initial Study Requests

Dear Mr. Fiore:

The Pennsylvania Department of Environmental Protection (PA DEP) has reviewed the August 13, 2009, Notice of Intent to File an Original License Application and Pre-Application Document for the West-of-Hudson Hydroelectric Project that was filed by the New York City Department of Environmental Protection (NYC DEP). The PA DEP has the following study request for NYC DEP's three Delaware River Basin Reservoirs (the reservoirs) Hydroelectric Project (Project).

Review of Pre-Application Document (PAD)

The Flexible Flow Management Program (FFMP) is currently used to manage the reservoirs. The FFMP by nature is an adaptive and flexible means of managing multiple and competing water uses in the reservoirs and is subject to change. The PAD filed with the Federal Energy Regulatory Commission (FERC) for this Project clearly relies on the current FFMP. Because the existing version of FFMP is subject to change by negotiation and is the subject of proposed Delaware River Basin Commission (DRBC) Water Code amendments, an assessment of the potential changes to the FFMP, therefore, must be addressed.

In Chapter 3, Project Location, Facilities and Operation, there is discussion of proposed operations. It is not clear from the PAD how adaptability and flexibility measures of the FFMP are included in the design assumptions for the Project. The following study is requested if the specific considerations that were utilized to develop the PAD did not account for FFMP flexibility.



Study Request

Water supply and water resources in the reservoirs are insufficient to meet the optimum needs of all basin-wide uses and users (including but not limited to water supply to New York City and downbasin users, flood mitigation, salinity repulsion, recreational activities, and aquatic habitat) at all times. The FERC license for New York City's Hydroelectric facilities is separate from reservoir operations subject to the 1954 Supreme Court Decree. The impact and relative priority of water and power demand of the Project with respect to other uses in the DRB as defined in the evolving FFMP is of great significance to the downbasin water users, including the Commonwealth of Pennsylvania.

The PA DEP is requesting a Downbasin Impact Assessment Study to be performed to address the potential limitations the Project could impose to future evolution of the FFMP.

Downbasin Impact Assessment Study

The current FFMP considers the following factors/parameters in management of the DRB water resources: diversions; releases (flow objectives—Montague and Trenton and conservation release rate); excess release quantity; release variation as a function of time of day, season, duration, lead time for changes, flexibility, operating rules, etc.; different drought conditions; and salinity repulsion. While this is not an exhaustive list of variables, the variables are subject to change based on the DRB needs and consensus of the Decree parties. FFMP changes in the management variables will affect the amount, timing period, and season of power generation water availability and relates directly to the hydro power operation needs.

The existing FFMP does not address hydroelectric operations from the reservoirs. We believe power generation operating parameters may have a significant impact on future FFMP options for optimum management of downstream resources. The Downbasin Impact Assessment study is required to assess this Project under projected future scenarios.

Goals and Objectives

The goal of this study should be to identify critical parameters to ensure sufficient flexibility is employed to this Project that allows for optimum future management of DRB waters or a minimization of undesirable limitations for the future management of the downbasin DRB waters.

Short-term and long-term changes to the DRB needs may change and thereby direct future FFMP revisions. An assessment must be conducted on the potential limitations of the Project that may be imposed on the future evolution of the FFMP.

Resource Management Goals

The water resources of the DRB reservoirs are managed according to the 1954 Supreme Court Decree and its revisions. The goals of the resource management agencies, PA DEP in particular, are to optimize the use of the DRB water resources based on the 1954 Supreme Court Decree and its revisions including the current FFMP and future FFMP.

Public Interests

The requestor is a resource agency.

Existing Information

The FFMP and the PAD.

Nexus to Project Operations and Effects

The operation of the reservoirs is based on the current FFMP and the generation of power is a new activity not addressed in the existing FFMP. However, the FFMP is subject to change and for such a long-term project such as hydropower generation, different scenarios of reservoir operations under projected or potential changes to the operating rules needs to be evaluated and the flexibility, modification, and feasibility of the Project to be assessed.

Methodology

The recommended study will be based on procedures for general engineering feasibility studies and address applicable factors including economic, feasibility along with sensitivity analysis to determine the flexibility/feasibility of the Project as a function of expected variation in the FFMP operating rules and criteria resulting from hydroelectric generation.

Level of Effort, Cost and Why Alternative Studies Will Not Suffice

For a river basin with an extensive diversity of water uses and users, an additional impact on basin waters resulting from new hydroelectric operations can easily add another layer of complexity to the management of the water resources of the basin. For this reason, this Project requires a more comprehensive feasibility study.

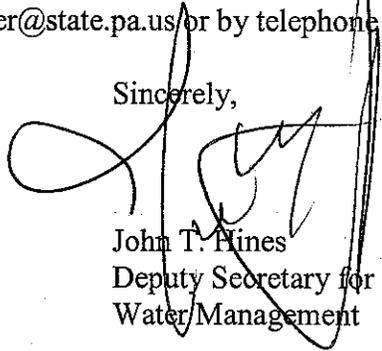
Mr. Anthony J. Fiore

4

February 19, 2010

We appreciate the opportunity to review the PAD and make study recommendations. We look forward to working closely with the NYC DEP to develop the study plans and assess potential project impacts. If you have any questions or desire additional information, please contact Susan Weaver by e-mail at suweaver@state.pa.us or by telephone at 717-783-8055.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Hines", is written over the typed name and title. The signature is stylized and somewhat illegible.

John T. Hines
Deputy Secretary for
Water Management

cc: Carol Collier, DRBC
Brian Barner, PFBC

Mark Wamser

From: Kent Sanders [kpsander@gw.dec.state.ny.us]
Sent: Tuesday, April 13, 2010 10:54 AM
To: Mark Wamser
Cc: David Sampson; Larry Wilson; Michael Flaherty; Mark Woythal; Norman McBride; Robert Angyal
Subject: NYC Studies

Mark,

Please see Norms response to your question on downstream fish passage. Our Division of Wildlife also indicates that Bog Turtle and Bat studies are not necessary for the projects in Delaware County and as I believe that the Neversink work is internal to the current intake building, there are no potential turtle or bat impacts.

Kent

Downstream fish passage is not an issue for the Region 4 NYC reservoirs. I assume the question refers to fish passage via spillage since passage thru the release structure would be considered entrainment which is a totally different issue.

There is no need to prevent fish from moving out of the reservoir downstream. In the East and West Branches, summer water temperatures are too cold for warmwater species to thrive. Following the 2006 flood event, we had record numbers of smallmouth bass, carp, and panfish in the West Branch. The numbers of these fish declined annually. By 2009, warmwater fish numbers were back to normal which is present but very sparse. Alewives from Cannonsville and Pepacton Reservoirs provide forage to downstream trout populations. However, summer water temperatures are again too cold for alewives to thrive or even survive. Reservoir brown trout also move over the these 2 dams in generally low numbers and these fish do contribute to the downstream trout fishery. Schoharie Creek below the Schoharie Dam currently supports a warmwater fishery as does Schoharie Reservoir. Smallmouth bass, walleye, and walleye that spill over the dam can survive in the river but many of the lake species do not do well in a riverine environment. Whatever is in Schoharie Reservoir is also present in the two Blenheim-Gilboa pumped storage reservoirs

There is no need to facilitate downstream fish passage since it will not enhance the downriver fish populations. Although mortality probably occurs, it can not be significant since we do not get reports of fish kills.

Entrainment, as stated at the beginning of this email is a totally different issue. Currently and in the future, any fish entrained thru the release structure or hydropower facility will die shortly after discharge to the river. Cause of death will be the pressure change from deep water (>50 ft) when entrained to 0 ft when discharged from the release works. Mortality is probably 100%. However, entrainment may not be an issue except occasionally. We certainly had no complaints of dead fish when Cannonsville Reservoir was reduced to 4% of capacity in 2001. Cannonsville is often reduced to 25-30% of capacity during hot, dry summers. Again, we do not get complaints of dead or dying fish. Regardless, NYC DEP should determine the approach velocities at various distances from the intake which would facilitate a better evaluation of entrainment impacts. As Mike Flaherty pointed out, the dead fish may be concentrated in the reach below the dam that is closed to public access. In that case, anglers and other water recreationists may not know that a fish kill event had occurred.

Norm

Mark Wamser

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Tuesday, June 15, 2010 9:13 AM
To: 'Kent Sanders'; 'Stephen_Patch@fws.gov'; 'ndmcbride@gw.dec.state.ny.us'
Cc: Lang, Kevin; 'Mark Wamser'; 'Tom Sullivan'; Vickers, John; Craig, Robert; Geary, Linda
Subject: WOH Hydroelectric Project - Study Plans
Attachments: Study Plans 6-14-10.pdf

Please find our Study Plans attached. We would like to get consensus with you on these so we can begin the field work in earnest. Please let me know if you agree with the approach. We would like to mobilize field forces by July 1st, so if you could let me know if you have any issues or comments on the study plans before then that would be greatly appreciated.

We would also like to schedule a meeting to go over our findings on the fish entrainment research. Realizing the summer vacationing season is fast approaching I would like to see if we could reserve time during the last week of July. Please let me know if you have any conflicts.

Thanks,
-Anthony-

Anthony J. Fiore | Chief of Staff & Senior Advisor on Sustainability - Operations | NYC Environmental Protection
(718) 595-6529 | (917) 682-4492 | afiore@dep.nyc.gov



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Sent via email on 7/1/2010 from Kent Sanders, NYSDEC to Anthony Fiore, DEP

NYSDEC Comments on NYC DEP Study Plans West of Hudson Hydroelectric Project

Task 60. Intake protection Evaluation

The emphasis on physical barriers as opposed to sound, light and other deterrents is to be encouraged.

Evaluating locations and configurations that would minimize approach velocities to 2 FPS or less “consistent with USFWS protocols.” I’m not familiar with this protocol but the velocity seems high in my experience. With other types of water intakes the benchmark has been set at 0.5 FPS or less. I suggest that should be the target.

Fisheries Field Surveys

Fisheries field studies should be considered necessary, at least at Cannonsville.

Task 210. Sampling

This section proposes experimental gillnets set in front of the intakes as the method for sampling. I suggest that some type of sampling that filters a portion of the water flowing through the conduit downstream of the intake should also be devised to collect a representative sample of any juvenile fish that are susceptible to entrainment and too small to be captured in gillnets.

FERC Exemptions

We raised the issue of the impingement and entrainment at the existing hydroelectric facilities in the NYC reservoir system at our last meeting. Quantifying the impingement and entrainment at the existing facilities was not done for the FERC exemptions issue for the existing hydros so this would be useful information for determining if measures to reduce I&E at these facilities are warranted.

Reductions in I&E at these facilities may be used as mitigation for potential impacts at the new proposed facilities. Installation of screens, diversions, etc. may be more feasible and cost effective at the existing intakes.

Mark Wamser

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Wednesday, August 04, 2010 5:30 PM
To: 'Kent Sanders'; 'Larry Wilson'; 'Michael Flaherty'; 'Norman McBride'; 'Robert Angyal'; 'David Sampson'; 'Stephen_Patch@fws.gov'; Vickers, John; Helmuth, Jeffrey; DeJohn, Thomas; Principe, Robert; Allen, Michael; Baudanza, Thomas; Page, Mark; Iyer, Sangamithra; Lang, Kevin; 'Jason George'; 'Mark'; 'Tom Sullivan'; Garcia, Kathryn; Rush, Paul; Craig, Robert; Geary, Linda; Mahnovski, Sergej
Cc: Danvetz, Mark; Cushman, Elissa Stein; Nicholas, Donna; West, Todd; Usai, Michael; Legg, Debra
Subject: Hydro - Fish Entrainment Report Review
Attachments: NYCDEP Entrainment Report Final.pdf

Attached please find the fish entrainment report for review at our meeting. If you have any questions please do not hesitate to contact me.



**City of New York
West of Hudson Hydroelectric Project**

FERC Project No. 13287-000

AGENDA AND MEETING NOTES

August 23, 2010
10:00 a.m.

DEP Office, 71 Smith Avenue, Kingston, NY

I. Welcome and Introductions

Notes: Mr. Anthony Fiore (New York City Department of Environmental Protection or “DEP”) welcomed everyone to the meeting and thanked them for participating. The attendees then introduced themselves. The attendees were as follows:

For the Applicant:

Anthony Fiore, DEP
Thomas DeJohn, DEP
Mark Danvetz, DEP
Robert Principe, DEP
Robie Craig, DEP Legal
Tom Baudanza, DEP
Sangu Iyer, DEP
Jeff Helmuth, DEP

Linda Geary, NYC Law Department
Jason George, Gomez and Sullivan
Mark Wamser, Gomez and Sullivan
Craig Arnold, Gomez and Sullivan
Tom Sullivan, Gomez and Sullivan
Kevin Lang, Couch White
Garrett Bissell, Couch White

For the New York State Department of Environmental Conservation (“NYSDEC”):

Kent Sanders
Mike Flaherty
Larry Wilson
Norm McBride
Mark Woythal (via Teleconference)

For the United States Fish and Wildlife Service (“USFWS”):

Steve Patch

II. Fish Entrainment Study

Notes: Mr. Sullivan provided a brief overview of the Fish Entrainment Study conducted for the Project and indicated that the objectives of the meeting were as follows:

1. Obtain feedback from NYSDEC and USFWS regarding whether the study conducted will meet each respective agencies' requirements for NEPA [National Environmental Policy Act] and 401 Water Quality certification [Section 401 of the Clean Water Act];
2. Obtain feedback from NYSDEC and USFWS regarding additional data needs to meet each respective agencies' needs with respect to fish entrainment considerations; and
3. Obtain feedback from NYSDEC and USFWS regarding the Revised Study Plans for the Project.

Mr. George identified that the objective of the Fish Entrainment Study conducted for the Project were as follows:

1. Evaluate the potential for fish entrainment and mortality associated with the Project;
2. Assess the need for, appropriateness and feasibility of additional intake protection measures; and
3. Analyze the feasibility and appropriateness of downstream fish passages.

Mr. George then proceeded with a presentation providing an overview of the Fish Entrainment Study conducted for the Project and the findings of such study (see presentation attached hereto).

Mr. Wilson asked whether the velocity calculations relating to Neversink were based on all of the intakes being open. If so, Mr. Wilson claimed that this would explain why the velocities at Neversink decrease as the water level drops because the number of openings being included in the calculation of the gross area decreases.

Mr. Wamser and Mr. Sullivan responded that the velocity calculations at all of the reservoirs were based on the gross area in front of the existing screens and not at the racks.

Mr. Sullivan further explained that the design flow of the turbines selected for each Project development could impact the velocities. The feasibility analysis for the Project is currently ongoing and in the event that the final design would increase velocities above those indicated in the study and addendum to the study would be prepared to identify any such modifications and the impacts relating thereto; however, currently, it is not anticipated any major modifications are likely to occur.

Mr. Wilson asked whether DEP is proposing to measure the actual velocities after implementation of the Project.

Mr. Wamser indicated that DEP was not proposing to do so. Instead, if determined to be necessary, DEP would look to design additional intake protection based on estimates of what velocities are likely to be.

Mr. George explained that this study was different from most other studies because of the significant pressure differentials that exist between the intakes and the downstream releases regardless of whether turbines are present; therefore, for this Project, there was less focus on turbine mortality.

Mr. Sullivan indicated that the velocities estimated for Neversink are so low as to obviate the need for additional intake protection and although 1 inch spaced racks are the most feasible additional intake protection identified for Cannonsville and Pepacton, if additional protection is deemed necessary, having such racks at depths of 130 feet and 170 feet presents significant challenges both for initial construction and ongoing maintenance.

Mr. Sanders questioned whether at Cannonsville the larger turbines anticipated by the current design could be throttled or whether they operate as an “on/off” only.

Mr. Sullivan responded that the turbines have the flexibility to control their flow.

Mr. Wamser further indicated that the flows to the turbine are rarely expected to push them to their maximum ratings.

Mr. Sanders asked how the lack of a littoral zone in the vicinity of the intakes affect the likelihood of entrainment.

Mr. George indicated that this is more of an issue for Neversink due to the existence of intakes at different depths.

Mr. Sanders responded that the lack of littoral habitat appears to make no difference with respect to this Project.

Mr. Sullivan responded that, with respect to Neversink, regardless of whether littoral habitat is present the estimated velocities are so low as to obviate the need for additional intake protection.

Mr. Sanders stated that the entrainment potential is highest during high drawdown periods when the pressure differentials will be the lowest. Mr. Sanders questioned whether during these periods the pressure differentials will still be too great to override the potential impacts of turbine mortality.

Mr. George indicated that they did investigate the pressure differentials that existed during the 2005 entrainment event at Cannonsville. This event, in which significant fish mortality was observed, occurred during a drawdown event in which the fish were exposed to pressure differential resulting from approximately 70 feet of head.

Mr. Sullivan indicated that they would look at pressure differentials over a range of water depths including times when the entrainment potential is expected to be highest and provide this additional information.

Mr. McBride indicated that the East Sidney Reservoir previously experienced a fish kill event with head levels as low as 30 feet.

Mr. Sullivan asked what the general sense was of NYSDEC and USFWS as to whether the information provided by the study meets the needs of the respective agencies for 401 water quality certification and NEPA.

Mr. Patch responded affirmatively with respect to NEPA.

Mr. Sanders indicated that NYSDEC needed additional information regarding pressure differentials under high drawdown conditions.

Mr. Wilson stated that with respect to water cooling intakes for certain fossil-fuel fired generation facilities the EPA requires the velocities at such intakes to be less than 0.5 ft/second. Mr. Wilson further indicated that the burst swim speed may not be the most relevant factor to examine because fish may not be inclined to react quickly. Mr. Wilson indicated that the Project does not appear to present any change in conditions at Cannonsville or Pepacton due to the pressure differentials at these locations, but Neversink may present a different situation. The lack of a littoral zone near the intake structure at Neversink may not mean that fish would not be present in this area as the rock face surface could provide feeding opportunities for fish. Mr. Wilson stated that at Neversink the DEP does not operate all the intake levels at once; therefore the projected velocities will be higher than estimated because of a smaller surface area associated with way in which DEP operates Neversink. Accordingly, Mr. Wilson indicated that the velocities estimated in the study may be understated and should be recalculated based on the way in which DEP operates Neversink.

Mr. Vickers clarified that the velocities estimated for Neversink are actually the velocities into the release chamber and not the velocities at the intake to the downstream release which would provide water supply for power generation at Neversink. The intake for the downstream release is located at the bottom of the release chamber and the stop shutters at various elevations are for the purposes of water supply only and would, therefore, have no affect on entrainment potential for the Project.

Mr. Wilson responded that Neversink may present the need for additional review.

Mr. Sanders indicated that NYSDEC required additional information focusing on when the potential for entrainment is highest.

Mr. Sullivan indicated that additional analysis could be provided assessing pressure differentials during high drawdown. In addition, more information will be provided regarding the details of the existing release works at Neversink.

Mr. Wilson asked whether DEP has experienced any maintenance issue with respect to the bar racks in place today at the reservoirs.

Mr. Danvetz responded that DEP has not experienced any major debris issues with respect to the intakes at Cannonsville and Pepacton.

Mr. Vickers added that debris tends to settle out in the reservoirs prior to the location of the intakes and confirmed that DEP has not experienced debris issues at Neversink.

Mr. McBride suggested that DEP may want to provide additional information regarding the amounts being taken for water supply versus downstream releases in assessing the entrainment issue because DEP is pulling a lot more water overall for water supply purposes out of these reservoirs than for downstream releases.

Mr. Sanders asked whether there were any known issues with zebra mussels in these reservoirs.

Mr. Vickers responded that no zebra mussels were known to be in these reservoirs.

Mr. Sullivan stated that there was a need to establish a deadline for comments from NYSDEC and USFWS in response to the report and proposed a three-week timeframe, establishing the deadline for written comments as September 15, 2010.

Mr. Fiore responded that DEP will need to provide follow-up in response to the issues raised today before the agencies would be able to respond.

Mr. Sullivan confirmed that the additional information to be provided was a further assessment of pressure differentials over a greater range of drawdown conditions, additional details regarding the physical setup of the release works at Neversink, and information regarding the relative amount of flows for water supply purposes at each reservoir.

III. Revised Study Plans

Notes: Mr. Wamser asked if NYSDEC or USFWS had any comments regarding the Revised Study Plans for the Project.

Mr. Sanders stated that because these Projects involve the addition of generation facilities at existing structures that he didn't see many potential issues.

Mr. McBride indicated that the proposed location for the Cannonsville powerhouse may be within a federal wetland but that DEP would need to further investigate this issue.

An additional question was raised as to whether specific measures needed to be developed with respect to the protection of Bald Eagles.

Mr. McBride asked for confirmation of whether his understanding that there are no Bald Eagle nests located near the existing downstream releases was accurate.

Mr. Danvetz indicated that he believed Mr. McBride's understanding was correct.

Mr. McBride indicated that NYSDEC would be able to identify and provide additional information regarding Bald Eagle nest locations.

Mr. Sullivan indicated that discussions are currently ongoing with DEP regarding the existing protection measures with respect to Bald Eagles.

Mr. Patch stated that he did not see any issues with the Revised Study Plans.

IV. Next Steps

Mr. Sullivan asked whether NYSDEC and USFWS would be able to provide written comments in response to the Entrainment Study and the Revised Study Plans by September 15, 2010.

Mr. Sanders indicated that NYSDEC should be able to do so.

Mr. Sullivan stated that September 15, 2010 would be set as the date for written comments from the agencies regarding the Entrainment Study and the Revised Study Plans.

S:\DATA\Client6 12456-13409\12804\Fish Entrainment Report\Resource Agency Meeting 8-23-10 - Official Meeting Notes.doc

Mark Wamser

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Wednesday, September 08, 2010 11:30 AM
To: 'Kent Sanders'; 'Larry Wilson'; 'Michael Flaherty'; 'Norman McBride'; 'Robert Angyal'; 'David Sampson'; 'Stephen_Patch@fws.gov'; Vickers, John; Helmuth, Jeffrey; DeJohn, Thomas; Principe, Robert; Allen, Michael; Baudanza, Thomas; Page, Mark; Iyer, Sangamithra; Lang, Kevin; 'Jason George'; 'Mark'; 'Tom Sullivan'; Garcia, Kathryn; Rush, Paul; Craig, Robert; Geary, Linda; Mahnovski, Sergej
Cc: Danvetz, Mark; Cushman, Elissa Stein; Nicholas, Donna; West, Todd; Usai, Michael; Legg, Debra
Subject: Hydro - Fish Entrainment Report Addendum
Attachments: NYCDEP Entrainment Report Addendum 9 2 2010.pdf

Please find attached the response to the additional request for information discussed at the August 23rd meeting. If you have any questions please give me a call.

Best Regards,
-Anthony-

Anthony J. Fiore | Chief of Staff - Operations | NYC Environmental Protection
(718) 595-6529 | (917) 682-4492 | afiore@dep.nyc.gov

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United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

September 15, 2010

Mr. Anthony J. Fiore
Director of Planning and Sustainability
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373-5108

**RE: West of Hudson Hydroelectric Project (FERC #13287)
Review of Study Plans**

Dear Mr. Fiore:

The U.S. Fish and Wildlife Service (Service) has reviewed a variety of documents related to the licensing of the West of Hudson Hydroelectric Project. These documents include the June 14, 2010, *Study Plans*, the August 2010 *Fish Entrainment Report – Literature Based Characterization of Resident Fish Entrainment and Mortality*, and the September 2010 *Addendum to the Fish Entrainment Report*. We also participated in the August 23, 2010, meeting to discuss the Study Plans and the Entrainment Report.

The Study Plans, as described in the report and presented at the meeting, are acceptable to the Service. The Entrainment Report and Addendum adequately characterize the likelihood of fish entrainment and mortality and the potential options available for fish passage. The Service does not foresee any further studies at this time.

We appreciate the opportunity to review the documents. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,

David A. Stilwell
Field Supervisor

cc: Gomez and Sullivan, Henniker, NH (M. Wamser)
NYSDEC, Albany, NY (M. Woythal)
NYSDEC, Stamford, NY (K. Sanders)

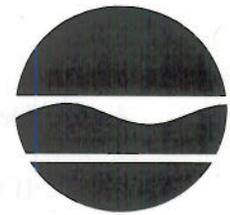
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 4

65561 State Highway 10, Stamford, New York 12167-9503

Phone: (607) 652-7741 • FAX: (607) 652-2342

Website: www.dec.state.ny.us



Alexander B. Grannis
Commissioner

September 24, 2010

Mr. Anthony Fiore
New York City Department of Environmental Protection
59-17 Junction Blvd
Flushing, NY 11373

RE: DECID# 0-9999-00143
West of Hudson Hydro Project
Fisheries Study Plans

Dear Mr. Fiore:

Thank you for the opportunity to review the Literature Review and Addendum. Based on that information and Department records the Department does not believe that entrainment at the Pepacton and Cannonsville Reservoirs is a significant issue under the current flow regime.

The Department remains concerned over the proposals fisheries impacts at the Neversink Reservoir. In order to bring this process forward the Department has the following proposal:

The level of mortality of entrained fish due rapid decompression at all three reservoirs is assumed to be high. However, no actual documentation is presented as to that the rate may actually be. Either additional documentation as to what depth/ pressure would cause mortality approaching 100% should be provided or the information should be developed during the field season.

As indicated in the reports submitted by NYC DEP, the intake configuration at the Neversink dam is somewhat unique. The intake is a vertical tower equipped with eight ports. The literature review dated September 2010, does not adequately address a facility with this intake design.

This Department requests that a site specific study be conducted for the proposed new Neversink hydroelectric facility. The study should be designed to provide the following information:

1. An estimate of the number of fish drawn into the conduit
2. The species of fish drawn into the conduit
3. An estimate of the mortality rate for fish drawn into the conduit

4. Determine if there are assemblages of fish in the zone of withdrawal
5. If there are assemblages provide information on their seasonal and diurnal movements.

The NYS DEC feels that hydro-acoustic equipment or the use of Didson cameras may be particularly useful in answering some of these questions

Please submit a proposed monitoring plan to this Department for review and approval by October 22, 2010. If you have any questions or need further information, please don't hesitate to contact me.

Sincerely,



Kent P. Sanders
Deputy Regional Permit Administrator
Region 4 – Stamford

CC: WOH Review Team
S. Patch, USF&WS



Caswell F. Holloway
Commissioner

Anthony Fiore
Chief of Staff for Operations
afiore@dep.nyc.gov

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October 19, 2010

Kent P. Sanders
Deputy Regional Permit Administrator
NYSDEC
Region 4 Sub-office
65561 State Highway 10, Suite 1
Stamford, NY 12167

Re: DEP West of Hudson Hydroelectric Project (FERC Project No. 13287)
Fisheries Study Plans

Dear Mr. Sanders:

The New York City Department of Environmental Protection (DEP) is in receipt of your letter dated September 24, 2010 providing comments on the West of Hudson Hydroelectric Project (Project) Fisheries Study Plan, and Entrainment Report and Addendum thereto. The Study Plans were submitted to the New York State Department of Environmental Conservation (NYSDEC) and the United State Fish and Wildlife Service (USFWS) on June 14, 2010, and the *Fish Entrainment Report - Literature Based Characterization of Resident Fish Entrainment and Mortality* (Entrainment Report) was submitted for review on August 17, 2010. A meeting was held with NYSDEC and USFWS on August 23, 2010 to discuss the Study Plans and the Entrainment Report. As a result of that meeting, DEP prepared an *Addendum to the Fish Entrainment Report* (Addendum), which was distributed for review on September 8, 2010.

In your letter, you indicated that the NYSDEC remains concerned with the potential impacts to fisheries from the proposed hydroelectric development at the Neversink Reservoir, and requested additional information on fish mortality due to pressure differentials of potentially entrained fish. The purpose of this letter is to respond to your concerns and address your requests for additional information.

Pressure Mortality

The NYSDEC requested that either additional documentation be provided as to what depth/pressure causes fish mortality approaching 100%, or the information should be developed during the field season. In the Entrainment Report and Addendum, focus was given to mortality related to the pressure gradient between the high pressure present at the low-level intake structures and the low pressure present at the downstream releases. To supplement the information provided in the Entrainment Report and Addendum, additional literature research was conducted to address NYSDEC's request, and is summarized below.

Most of the research conducted on this topic is related to turbine-passage mortality as there is a pressure gradient through a turbine, *i.e.*, a relatively high level of pressure prior to entering the turbine followed by a short low pressure region on the downstream side of the turbine runner blades. However, these studies can be applied to generally predict the effects of pressure differences on fish passing from deep water reservoirs to shallower stream environments.

Cada, *et al.* 1997 reviewed several experiments that examined the effects of pressure increases and decreases on fish and reports that there is considerable variation in the response of fish to pressure reductions¹. In their review, Cada, *et al.* 1997 summarized percent mortality among test fishes versus the ratio of exposure pressure² (P_e) to acclimation pressure³ (P_a), expressed as ratio = P_e / P_a .

Based on these studies of a variety of fish, Cada, *et al.* 1997 suggested that, as a general fish protection measure, exposure pressures should fall to no less than 60% of the value to which entrained fish are acclimated. This factor serves as a guideline for zero mortality for all fish species studied. Back calculating⁴ to determine acclimation depth using this ratio results in an acclimation depth of 23 feet. Accordingly, at acclimation depths less than 23 feet, all fish passed downstream to atmospheric pressure would be expected to show no direct mortality from pressure effects.

However, with respect to NYSDEC's inquiry regarding the depth/pressure that would cause mortality approaching 100%, one study (Hogan, 1941 cited in Cada, *et al.* 1997) reported that a P_e / P_a ratio of 40% resulted in 100% mortality in crappie (a sunfish). In the case of the Project, this ratio translates to an acclimation depth of 51 feet. This value is supported by a separate pressure study that reported swim bladders in four inch long perch burst, thus leading to mortality, when pressure was reduced to 40% of acclimation values (Jones 1951, cited in Cada, *et al.* 1997).

In addition to being species-specific, pressure mortality is dependent on other factors such as time of exposure, dissolved gas levels and other factors related to indirect mortality. Nevertheless, the 2005 observation of yellow perch mortality due to entrainment at Cannonsville Reservoir occurred at an acclimation depth of 71 feet, consistent with the findings above.

Information on mortality relative to pressure changes in salmonids indicates that a minimum P_e / P_a ratio of 30% or higher may be appropriate as protective criteria for physostomous fish⁵ (Abernathy, *et al.* 2001). Back calculating to determine acclimation depth using this ratio results

¹ Cada, *et al.* 1997 suggested that the variation in fish responses may have been due to differing test methods and small sample sizes.

² Exposure pressure is analogous to the water pressure experienced by fish after release into the downstream environment.

³ Acclimation pressure is the water pressure experienced by fish at the point of entrance to the intake structure.

⁴ Acclimation depth was determined first by solving the ratio equation for P_a ($P_a = P_e / \text{ratio}$) then converting P_a to water depth.

⁵ Physostomous species such as salmon, trout, minnows, and catfish have a pneumatic duct which connects the air bladder to the esophagus and allows for venting air from the swim bladder within seconds, resulting in the ability to rapidly adjust to changing water pressure. Physoclists such as bass, sunfish, and perch must adjust pressure within the swim bladder via diffusion into the blood, which takes hours.

in an acclimation depth of 80 feet. As presented in the Addendum, the acclimation depth for fish entering the intake to the proposed hydroelectric development at Neversink Reservoir is 151 feet at full pond. Acclimation depths of 80 feet or less in Neversink Reservoir occurs less than 3 percent of the time on an annual basis, thereby indicating that there is a very limited time during the year when acclimation depths would be expected to be equal to or less than the applicable criteria for protection.

Site Specific Information for Neversink Reservoir

The NYSDEC letter states, “As indicated in the reports submitted by DEP, the intake configuration at the Neversink dam is somewhat unique. The intake is a vertical tower equipped with eight ports. The literature review dated September 2010, does not adequately address a facility with this intake design.”

Although the common intake is a vertical tower with eight segments that span the length of the water column, the intake that conveys water from the forebay to the stream release is at a fixed location at the bottom of the water column (see Attachment 1). It is from this point that water will be conveyed to the proposed hydroelectric turbine. DEP believes that because: (a) the intake to the proposed hydroelectric development is in deep water with an acclimation depth under full pond equal to 151 feet; (b) the intake velocities are very low under all conditions; and (c) acclimation depths consistent with even the less limiting protective criteria associated with physostomous species occurs less than 3% of the time in the Neversink Reservoir fish entrained in the stream release would suffer high mortality rates due to pressure differentials. However, regardless of this expectation DEP believes based on the configuration outside and within the Neversink intake structure the likelihood of entrainment to the stream release is low.

The Addendum (see page 11) clarified a statement made in the Entrainment Report that misrepresented the entrainment potential of fish entering the common intake. DEP revised this statement to indicate that the design of the intake structure is such that all occurrences of potential fish entrainment to the proposed hydroelectric development at Neversink Reservoir would occur at the horizontal troughs on the floor of the intake structure and not from fish entering the common intake in the upper portions of the water column (see Attachment 1).

DEP has evaluated the life history and habitat preferences of the fish species living in the Neversink Reservoir to predict their likelihood of fish being in the vicinity of the intake and to determine the potential for entrainment of any such fish likely to be found in the vicinity of the intake. DEP concluded that fish entrainment at the proposed Neversink development is expected to be low for all species based on the following factors:

1. Lack of littoral zone habitat in the vicinity of the intake structure. The intake structure is located in an excavated channel—an approximately 600-foot-long and 22- to 32-foot-wide intake channel excavated in rock, with vertical bedrock walls. Because of this lack of littoral habitat, smaller fish are not expected to be in the vicinity of the common intake structure.

3. Low intake velocities. Approach velocities at the common intake are very low: 0.35 ft/s at maximum reservoir drawdown and 0.09 ft/s at full pond. At these velocities, most fish can swim away from the intake thus avoiding entrainment.
4. Intake protection. Neversink has close-spaced bar racks (2-inch clear spaced), affording protection to fish that may be in the vicinity of the Neversink intake structure.

NYSDEC also requested that the report include “An estimate of the mortality rate for fish drawn into the conduit.” Based on the additional information provided above, DEP contends that, while entrainment potential is low for all species, mortality of potentially entrained fish will be significant – with or without the proposed hydroelectric development – due to pressure effects. Based on the pressure differentials between the intake structure and the release works it is likely that any fish entrained through the release structure at the proposed Project development will not survive.

It is the opinion of DEP that the information provided to date to evaluate fish entrainment at the proposed Neversink development appropriately and adequately addresses the questions posed by NYSDEC in their study request. Accordingly, based on the totality of the information provided to date, including the information provided herein, DEP contends that a site specific fisheries study at Neversink Reservoir is not warranted and, therefore, respectfully requests NYSDEC’s concurrence with this approach.

If you have any questions regarding the information herein or would like to discuss it further, please do not hesitate to contact me at (718) 595-6529 or via email at afiore@dep.nyc.gov. Thank you in advance for your prompt attention to, and careful consideration of, this matter. DEP looks forward to continuing to work with NYSDEC regarding this Project.

Respectfully submitted,



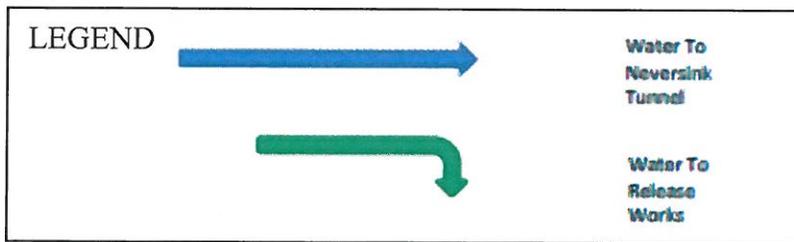
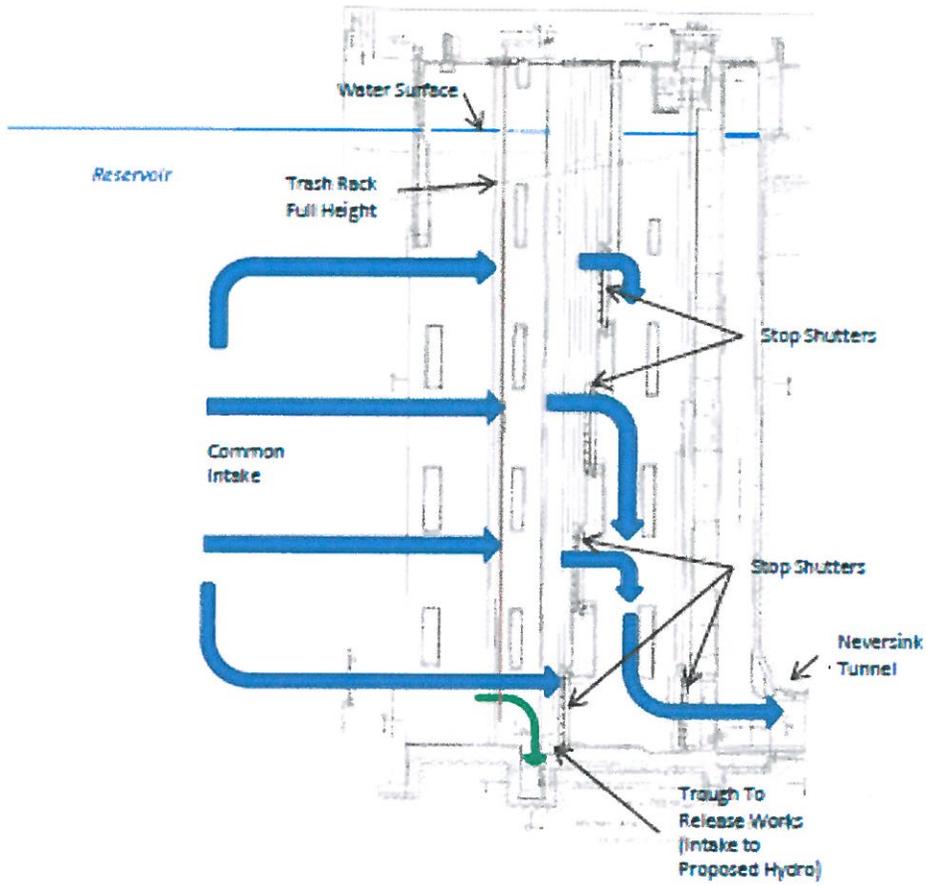
Anthony J. Fiore

c: Dave Sampson, Associate Counsel, NYSDEC
Mark Woythal, Director In-Stream Flow Unit, NYSDEC
Larry Wilson, Biologist, NYSDEC
Michael Flaherty, Biologist, NYSDEC
Norman McBride, Biologist, NYSDEC
David A. Stilwell, Field Supervisor, USFWS
Steven Patch, Fish and Wildlife Biologist, USFWS
Kevin Lang, Partner, Couch White
Mark Wamser, P.E., Water Resource Engineer, Gomez and Sullivan

References:

- Abernathy, C.S, B.G. Amidan, and G.F. Cada. 2001. Laboratory studies of the effects of pressure and dissolved gas supersaturation on turbine- passed fish. Pacific Northwest National Laboratory. PNNL-13470. Hydropower Program, U.S. Department of Energy, Idaho Falls, Idaho.
- Cada, G.F., C.C. Coutant, and R.R. Whitney. 1997. Development of biological criteria for the design of advanced hydropower turbines. DOE/ID-10578. Hydropower Program, U.S. Department of Energy, Idaho Falls, Idaho.

Attachment 1: Cross Section of Neversink Intake Structure



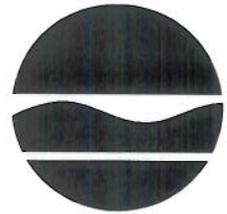
New York State Department of Environmental Conservation

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Peter M. Iwanowicz
Acting Commissioner

December 8, 2010

Mr. Anthony Fiore
New York City Department of Environmental Protection
59-17 Junction Blvd
Flushing, NY 11373

RE: DECID# 0-9999-00143
West of Hudson Hydro Project
Fisheries Study Plans

Dear Mr. Fiore:

Thank you for your October 19, 2010 response to our latest information request

After reviewing the additional information provided, the Department has determined that under the current Flexible Flow Management Plan (FFMP) flow regime, the addition of hydroelectric facilities as proposed will not have a significant impact on fisheries mortality at the Cannonsville, Pepacton and Neversink reservoirs and no further field studies are necessary.

However, this determination is based upon the NYCDEP's assertion that "...The NYCDEP is not proposing to modify the magnitude, frequency, duration, or timing of discharges due to the proposed hydropower facilities. Flows available for generation at these facilities will be based on the conservation or directed releases..." and the information provided that entrainment mortality under the current FFMP approaches 100%. If there is a change in proposed operations that would increase the flow through the turbines and release structures, then further studies or protective measures may be warranted.

The Department reserves the right to revisit this issue if the project changes in a way that would lead to additional fish mortality.

If you have any questions or need further information please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kent P. Sanders".

Kent P. Sanders
Deputy Regional Permit Administrator
Region 4 - Stamford

Cc: WOH Review Team
S. Patch, USF&WS

Mark Wamser

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Monday, July 11, 2011 6:24 PM
To: A. Scott Andres; Aaron Bennett; Abdolhossain Liaghat; Alan Rosa; Amy Shallcross; Bill Clarke; Bill Douglas; Dan Palm; Dan Plummer; David Plummer; Diane Galusha; Diane Tharp; Elaine Reichart; Goldstein, Eric; Gary N. Paulachok; Glenn Debrowsky; glenn Erikson; Jesse J. Bergevin; Joe Miri PhD (joe.miri@dep.state.nj.us); John A. Bonafide; John Osinski; John Suloway; John Talley; John Zimmerman; Joseph Libonati; Karen Greene; Knutson.Lingard@epamail.epa.gov; L. Helle Maide (helle.maide@nypa.gov); Larry Wilson; Louis Rea; Mark A. HHartle; Mark Woythal; Martha Bellinger (mabellin@gw.dec.state.ny.us); Matthew Stoddard; Maya K. vanRossum; Michael Fischer; Michael Flarehty; Michael Triolo; Norman McBride; Young, Pamela; Patch Steve (stephen_patch@fws.gov); peter.giasemis@nypa.gov; Richard Kenyon; Ron Leonard; Ron Urban; Sherrie & Howard Bartholomew; Stephanie Baxter; Stephen F. Blanchard; steve.walsh@drbc.state.nj.us; William Little; William S. Cummings, Jr.; William Wellman
Subject: WOH Hydro Project Update
Attachments: Meeting Agenda 7-21-11_Final.pdf

DEP will be holding meetings on July 21st to provide an update on our West of Hudson Hydroelectric Project, FERC Project No. 13287. The primary focus of this meeting will be to provide an overview of the studies conducted in support of the license application. These studies centered around: Entrainment and Intake Protection; Terrestrial Biology and Rare, Threatened, and Endangered Species; Erosion Control; Aesthetics; Socio-Economics; and Archaeological, Tribal, and Cultural Resources. The purpose of the public meetings is to: discuss the results of the studies; receive comments from participants regarding those results; and discuss the City's plans for seeking approval of the project from FERC. An agenda is attached.

The details regarding the public meetings are as follows:

Public Meetings

Daytime: Date: July 21, 2011
 Start Time: 10:00 a.m.
 End Time: 12:00 p.m.
 Location: NYCDEP's Kingston Office, 71 Smith Avenue, Kingston, New York 12401

Evening: Date: July 21, 2011
 Start Time: 7:00 p.m.
 End Time: 9:00 p.m.
 Location: Walton Town Hall, 129 North Street, Walton, New York 13856.

Regards,
Anthony

Anthony J. Fiore | Chief of Staff - Operations | NYC Environmental Protection
(718) 595-6529 | (917) 682-4492 | afiore@dep.nyc.gov

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T (603) 428-4960
F (603) 428-3973

July 19, 2011

Ms. Susan Greene
National Marine Fisheries Service
James J. Howard Marine Sciences Laboratory
74 Magruder Rd
Highlands, NJ 07732

Re: West of Hudson Hydroelectric Project
FERC No. P-13287

Dear Ms. Greene:

On May 19, 2009, the New York City Department of Environmental Protection (DEP) contacted the National Marine Fisheries Service (NMFS) regarding its proposed West of Hudson Hydroelectric Project. The Project consists of the additional of hydroelectric generating equipment and associated facilities at the following existing water supply dams and reservoirs in New York:

Dam Name	Reservoir Name	River
Cannonsville Dam	Cannonsville Reservoir	West Branch of the Delaware River
Downsville Dam	Pepacton Reservoir	East Branch of the Delaware River
Neversink Dam	Neversink Reservoir	Neversink River

The Project also includes a development at the Gilboa Dam and Schoharie Reservoir, located on the Schoharie Creek. However, at this time that development does not appear to be feasible. Therefore, while it investigates alternatives to its original design, DEP has suspended environmental studies and work towards a license application for that development.

By memorandum dated November 2, 2009, the NMFS responded to DEP, providing information on endangered and threatened species and Essential Fish Habitats (EFH). A copy of that memorandum is attached to this letter. Although no EFH have been designated in the vicinity of the Project, NMFS noted that it required additional information to determine whether an EFH assessment would be required.

One of the primary premises of the Project is that DEP will not change its operation of the water supply system to increase the output from the hydroelectric facilities. In other words, the conservation flows from the reservoirs (from which power will be generated) will not change as a result of the Project. Presently, those flows are memorialized in the "Flexible Flow Management Program" (FFMP). Commencing on June 1, 2011, conservation releases have been in accordance with a variant of the FFMP, known as the Operations Support Tool, or OST-FFMP. This tool estimates water availability using a forecast based mass balance and selects the release schedule that most closely matches the water availability.

Over the past approximate 1.5 years, DEP has met with the US Fish and Wildlife Service (USFWS) and New York State Department of Environmental Conservation (NYSDEC) to discuss the Project and the need for, and scope of, environmental studies to support the license application. The agencies requested that DEP examine the potential impact of the Project on fish entrainment and impingement and rare, threatened, and endangered species. DEP has performed these studies and, pertinent to this letter, determined that the Project will not directly cause or lead to fish entrainment or impingement. This conclusion was based on, among other things, the depth of the intake structures, the types and sizes of fish species that may be located near the intake structures, and the absence of any change in intake velocities due to the Project.

This information was discussed with the USFWS and DEC, as was DEP's intent to maintain conservation flows below all three dams for the protection of aquatic resources, in accordance with the FFMP and its successor flow regimes (such as the OST-FFMP). Given the conclusions of the environmental study, and because DEP does not intend to modify its releases for purposes of the Project, the USFWS and NYSDEC have not required any in-stream flow studies below the dams. For the same reasons presented to the USFWS and DEC, DEP does not believe that the Project will cause or lead to any potential indirect impacts on EFH quality and quantity downstream of the three developments.

DEP plans to file a Draft License Application with the FERC for the Cannonsville Development and Applications for Exemption from Licensing for the Neversink and Pepacton Developments (due to their small size). For the reasons set forth herein, DEP respectfully requests that NMFS provide a letter confirming that the Project would not create an indirect effect on EPH quality and quantity downstream of the three developments. Please send your response letter to the undersigned.

If you have any questions, please feel free to contact me at 603-428-4960. Thank you for your attention to this matter.

Sincerely,



Mark Wamser, PE
Water Resource Engineer

cc: Anthony Fiore, DEP via email AFiore@dep.nyc.gov
Kevin Lang, Couch White via email klang@COUCHWHITE.COM
Steve Patch, USFWS via email stephen_patch@fws.gov
Kent Sanders, NYSDEC via email kpsander@gw.dec.state.ny.us

Mark Wamser

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Wednesday, July 20, 2011 8:54 AM
To: 'mwamser@gomezandsullivan.com'; jgeorge@gomezandsullivan.com; Lang, Kevin; 'Garrett Bissell' (GBissell@CouchWhite.com)
Cc: Tom Sullivan; Craig, Robert; Geary, Linda
Subject: FW: WOH Hydro Project Update

FYI

From: Mackey, Douglas (PEB) [mailto:Douglas.Mackey@oprhp.state.ny.us]
Sent: Wednesday, July 20, 2011 7:52 AM
To: Fiore, Anthony
Cc: Bonafide, John (PEB); mkirk@hartgen.com
Subject: RE: WOH Hydro Project Update

Anthony,

I have looked over the Hartgen report which they got to me on Friday. I concur with their findings that the direct impact areas of your project have all be previously distrubed, and therefore there is no need for Phase IB testing at the project areas as defined in the report. There should still be HPMPs developed for each project as indicated in your 2009 submission however, and they should address the many sites that Hartgen identified which are now submerged as well as the potential for more sites and continued erosion of them along the edges of the reservoir. Typically we see language that identifies this potential, calls for regular monitoring, and if any extensive erosion is noted in areas of high potential, to have those areas examined. Regarding the Submerged sites, the document should acknowledge that they exist, identify that any substantial draw down of the reservoir could expose them, and address the potential for future archaeological research (identify how a researcher could gain access/permission to work on the sites) . I will be happy to work with you through all this in the coming weeks. As for tomorrow's meeting, I was already scheduled to be elsewhere by the time your initial invitation arrived. After looking over the Hartgen report, I believe my advice above should be sufficient so that there is no need for me to attend tomorrow. If you believe otherwise, or have specific questions you need to have addressed - please get back to me today. I will be out of touch during the remainder of the day, but will check my email this evening to see if you have responded.

Doug Mackey
OPRHP

From: Fiore, Anthony [FioreA@dep.nyc.gov]
Sent: Thursday, July 14, 2011 1:49 PM
To: Mackey, Douglas (PEB)
Cc: Bonafide, John (PEB); mkirk@hartgen.com
Subject: RE: WOH Hydro Project Update

Dear Mr. Mackey:

Please be assured that it has always been our intention to include the State Historic Preservation Office ("SHPO") as part of our consultation efforts on the Project. SHPO was invited to the Joint Meeting for the Project held on October 26, 2009, at which the City's plans for the Phase 1A study were discussed. As you are aware, SHPO has also been invited to attend our upcoming meeting on July 21, 2011. The City of New York ("City") retained Hartgen Archeological Associates, Inc. ("Hartgen") to conduct a Phase 1A Literature Review and Archeological Sensitivity Assessment ("Phase 1A Study") in order to help the City identify potential historic, architectural, archeological, or cultural impacts of the Project and determine whether detailed analysis and field studies are needed.

The Phase 1A Study has just recently been completed. The report concludes that the Project will be constructed almost entirely in areas that have previously been disturbed by the construction of the City's dams and reservoirs. Therefore, no field studies or other analyses have been recommended. In addition, to directly respond to your questions, explain the work performed to date, and address any concerns you may have, I have asked Matt Kirk, the lead consultant from Hartgen, to contact you directly and provide a copy of the Phase 1A Study.

If you have any additional questions or concerns, or if you would like to discuss further, please do not hesitate to contact me.

Regards,
Anthony

From: Mackey, Douglas (PEB) [mailto:Douglas.Mackey@oprhp.state.ny.us]
Sent: Tuesday, July 12, 2011 11:23 AM
To: Fiore, Anthony
Cc: Bonafide, John (PEB)
Subject: RE: WOH Hydro Project Update

Mr. Fiore,

Thank you for advising the New York State Historic Preservation Office (SHPO) of the upcoming meetings. As you may be aware, our agency is tasked with reviewing any historic/architectural/archaeological/cultural issues related to projects with Federal involvement (permits, license or funding) in accordance with Section 106 of the National Preservation Act. We first became aware of the project in 2009 and in June and August of that year we responded, to NYCDEP and to Couch White LLP, our interest in assisting you as needed. Our office has received no additional correspondence or information of any kind since August 2009.

Based on the agenda you provided and your email it appears that reports on related issue have been completed, yet nothing has ever been submitted to us for review, nor have we been consulted on the scope of those studies as called for in the Section 106 regs. Typically we are provided the opportunity to review such material well in advance of public meetings and have the opportunity to provide our comments to the applicant to be considered in advance. Have the studies actually been completed - or is this meeting just to help set a scope of studies? If studies have been completed, when should we expect to receive them for review?

I look forward to your response so that we can plan to participate as appropriate.

Thank you

Doug Mackey

Douglas Mackey
New York State Office of Parks, Recreation and Historic Preservation
Peebles Island
PO Box 189
Waterford, NY 12188
(518) 237-8643 x 3291



 Please consider the environment before printing this email.

From: Bonafide, John (PEB)
Sent: Tuesday, July 12, 2011 8:00 AM



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



August 3, 2011

Mr. Kevin M. Lang
Couch White, LLP
PO Box 22222
Albany, NY 12201-2222

**RE: West of Hudson Hydroelectric Project (FERC #13287)
Review of Study Reports**

Dear Mr. Lang:

The U.S. Fish and Wildlife Service (Service) has reviewed the five study reports for the West of Hudson Hydroelectric Project that were provided to us on July 11, 2011. These reports were discussed at a July 21, 2011, public meeting which the Service attended. The reports we reviewed are as follows:

- Phase IA Archeological Literature Review and Sensitivity Assessment
- Impact of Construction-Related Activities on Wildlife and Botanical Resources, including Wetlands, Riparian, and Littoral Habitat, and Rare, Threatened, and Endangered Species
- Aesthetics Report
- Impacts of Construction-Related Activities on Erosion
- Fish Entrainment Report

The Service has no comments on the first four studies. We have the following comments on the Fish Entrainment Report.

In Section 8.1 (2nd paragraph), the report indicates that intake protection could be achieved "...by enclosing the intake areas with close-spaced bar racks *larger* than the current openings [emphasis added]." This appears to imply that the new racks would have larger spacing than the existing racks, which is not what is intended. This statement should be clarified. In addition, the photos showing the front and side views of the Cannonsville intake structure are supposed to appear on page 114 but are missing.

We appreciate the opportunity to review the study reports and look forward to reviewing your draft license application. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,



for David A. Stilwell
Field Supervisor

cc: NYSDEC, New Paltz, NY (M. Flaherty)

From: susan kross [<mailto:sbkross@hotmail.com>]
Sent: Sunday, July 31, 2011 6:16 PM
To: Fiore, Anthony
Subject: Two "Q's" for you

Dear Mr. Fiore:

I was glad to read Adam Bosch's recent article on the upstate reservoir hydroelectrification project in the "Times Herald Record."

However, I'd appreciate your fielding a few questions that have thus come to mind, as follows:

- Why -- when energy is at such a premium, people are out of work by the thousands, and all predictions point to electricity usage continuing to increase -- was the project scaled down?
- Why was it decided that turbines not be located in the aqueducts supplying NYC water?

Looking forward to your reply,

All the best,

Susan Kross
Ellenville

8-8-2011

Dear Susan,

Thanks for your interest in the project. While there are many complicated factors that go into building these sorts of developments I will try to give short, clear answers to your questions:

- The initial sizing was based on the theoretical capacity just considering the volume of water available. This is without any engineering done. As the project gets further along and engineering studies are conducted other considerations such as the amount of time water is available, size/space requirements and turbine sizing come into play. Generally hydroelectric is better than other renewable projects like wind and solar because hydro has a higher capacity factor. The capacity factor is the product of the volume of renewable energy available and the time it is available for; in this case water. At Schoharie there is a fair volume of water available, but only for a very short period of time – during the Spring. The turbines need to be sized to capture the maximum volume of water available in the Spring. Since turbines have a limited operating range when the volume of water decreases there is no longer sufficient pressure to spin the turbines. Essentially the turbines would spin for 2-3 months of the year and lay idle the rest of the time, resulting in a very low capacity factor and very poor power economics. We do however, continue to look at this location to see if we can come up with a viable solution and are in fact designing in a connection point for hydroelectric on a new lower level release structure that is in the final stages of design with construction expected to be complete in 2015. While the capacity at Neversink and Pepacton decreased as a result of these factors (mostly space constraints) the capacity at Cannonsville actually increased.
- There are already 3 hydroelectric facilities on the aqueducts.

I hope the above answered your questions. If you have any others please let me know.

Best Regards,
Anthony

August 11, 2011

Mr. David A. Stilwell
Field Supervisor
United States Department of the Interior
Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

Re: FERC Project No. 13287 – West of Hudson Hydroelectric Project

Dear Mr. Stilwell:

We are in receipt of the U.S. Fish and Wildlife Service's ("Service") August 3, 2011 letter regarding the study plans prepared on behalf of the City of New York ("City") in connection with the above-entitled project. In that letter, the Service provided two comments on the Fish Entrainment Report. Please accept this letter as the City's response to those comments.

Comment 1:

In Section 8.1 (2nd paragraph), the report indicates that intake protection could be achieved "...by enclosing the intake areas with close-spaced bar racks *larger* than the current openings [emphasis added]." This appears to imply that the new racks would have larger spacing than the existing racks, which is not what is intended. This statement should be clarified.

Response:

The Service is correct that the sentence should be clarified to more accurately convey that the reference was to a larger bar rack structure, not a larger spacing between the bar racks. We have modified the Fish Entrainment Report as follows to address this comment:

Intake protection could be provided at Cannonsville by mounting a bar rack one foot in front of the entire intake structure (including the front and side of the intake structure), which would yield a greater intake surface area. The bar racks would be comprised of 5/8-inch vertical bars with 1-inch clear spacing between the bars and would be manufactured to fit into the existing stop log slots.

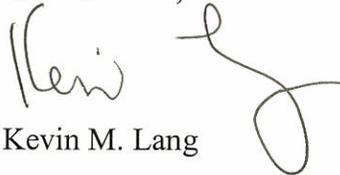
Please let me know if you have any concerns with this modified language.

Mr. David A. Stilwell
August 11, 2011
Page 3

A corrected version of the Fish Entrainment Report is included with this letter. If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

COUCH WHITE, LLP

A handwritten signature in black ink, appearing to read "Kevin M. Lang". The signature is written in a cursive style with a large, looping "K" and a long, sweeping tail.

Kevin M. Lang

KML/glm

cc: Mr. Anthony J. Fiore
Ms. Martha Bellinger (w/ enc.)
Mr. Michael Flaherty (w/ enc.)

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**New York State Department of Environmental Conservation
Office of General Counsel, 14th Floor**

625 Broadway, Albany, New York 12233-1500

Phone: (518) 402-9185 Fax: (518) 402-9018

Website: www.dec.ny.gov



Joe Martens
Commissioner

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
Room 1A East
888 First Street, N.E.
Washington, D.C. 20426

November 21, 2011

Re: Electronic Filing: FERC Project No. P-13287-000/City of New York West of Hudson Hydroelectric Project, New York State Department of Environmental Conservation Petition for Intervention

Dear Secretary Bose:

Enclosed is the New York State Department of Environmental Conservation's petition for intervention in the above-referenced proceeding, submitted by electronic filing and distributed via U.S. Mail to persons identified on the Commission's service list for this project. Please feel free to contact me regarding any questions that you may have.

Very truly yours,

Patricia J. Desnoyers
Patricia J. Desnoyers, Esq.

ENCL.

cc: FERC Contact
Martha Bellinger, NYSDEC
Christopher Hogan, NYSDEC
FERC Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

City of New York West of Hudson Hydroelectric Project
Draft License Application

FERC Project No. 13287-000

PETITION TO INTERVENE

Pursuant to Rule 214 of the Rules and Practice and Procedure (18 CFR Section 385.214), the New York State Department of Environmental Conservation ("NYSDEC" or "Petitioner") hereby petitions the Federal Energy Regulatory Commission for an order granting it party status in the above-captioned proceeding.

The names of the persons to whom communication regarding this Petition should be addressed and upon whom service of all pleadings or other documents in this proceeding should be made is as follows:

Patricia J. Desnoyers
Office of General Counsel
NYSDEC
625 Broadway
Albany, New York 12233-1500
Phone: (518)-402-9188
pjdesnoy@gw.dec.state.ny.us

Martha A. Bellinger
Deputy Regional Permit Administrator
NYSDEC
Region 4 Environmental Permits
65561 State Highway 10, Suite 1
Stamford, NY 12167
Phone: (607)-652-7741
mabellin@gw.dec.state.ny.us

As grounds for its Petition to Intervene, NYSDEC respectfully asserts:

1. Petitioner is a duly constituted Department of the Government of the State of New York, charged by law with administrative management of the State's fish, wildlife, water and other natural resources.

2. The project is located wholly within the State of New York and impacts the environment of the State.

3. As the agency of the State of New York responsible for administering the State's Environmental Conservation Law (McKinney's Consolidated Laws of New York Annotated, Volume 17), Petitioner is the State agency most intimately involved with and responsible for analyzing environmental impacts from hydropower projects. Petitioner's resources, expertise and familiarity with the locale of the proposed project and related resources will be of considerable assistance to the Commission during the course of the above captioned proceeding.

4. Petitioner is the State agency charged by law to consider and, upon proper showing, to issue water quality certifications for hydropower facilities pursuant to Section 401 of the Clean Water Act (33 U.S.C. Section 1341).

5. No disruption to this proceeding will result from granting NYSDEC party status.

6. NYSDEC's interest is not adequately represented by any other party hereto.

7. Existing parties will not be prejudiced by, nor will they sustain any additional burden by NYSDEC becoming a party to this proceeding.

WHEREFORE, Petitioner respectfully requests that the Commission grant NYSDEC intervention as a full party in this proceeding. NYSDEC does not request a hearing in this proceeding at this time; however, if a hearing is ordered, NYSDEC further requests that it be granted the right to have notice of and an opportunity to appear at all hearings in this proceeding, to produce evidence and witnesses, to cross-examine witnesses, and to be heard by counsel or other representatives for briefing and oral argument if oral argument is granted.

Respectfully submitted,
Patricia J. Desnoyers
Patricia J. Desnoyers, Esq.

New York State Department of
Environmental Conservation

Dated: November 21, 2011
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by the U.S. Postal Service upon each person designated on the official service list compiled in this proceeding by the Secretary to the Commission.

Respectfully submitted,

Patricia J. Desnoyers
Patricia J. Desnoyers, Esq.

New York State Department of
Environmental Conservation
625 Broadway
Albany, NY 12233-1500
Phone: (518) 402-9188

Dated November 21, 2011
Albany, New York



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



December 14, 2011

Zinnia Rodriguez, Principal Administrative Assistant
New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373

**RE: West of Hudson Hydroelectric Project (FERC #13287)
Review of Draft License Applications**

Dear Ms. Rodriguez:

The U.S. Fish and Wildlife Service (Service) has reviewed the following three Draft License Applications: 1) *Application for License for Major Project – Existing Dam Cannonsville Hydroelectric Development*; 2) *Application for Exemption of Small Hydroelectric Project from Licensing – Existing Dam Neversink Hydroelectric Development*; and, 3) *Application for Exemption of Small Hydroelectric Project from Licensing – Existing Dam Pepacton Hydroelectric Development* prepared by the New York City Department of Environmental Protection (NYCDEP). The applications were provided to the Service under FERC #13287 on September 20, 2011. It is our understanding that the Federal Energy Regulatory Commission (FERC) will be splitting this project into three separate projects, each with their own FERC number. In the interim, we will continue to provide comments on the three applications collectively under FERC #13287.

The three draft applications adequately describe the proposed projects. Each project will utilize only existing conservation release flows and other required flows. They will not affect the agreements in place through the Flexible Flow Management Plan for the Delaware River Basin nor will they impact flows utilized for New York City water supply. Reservoir elevations will not be impacted by the hydropower facilities.

The literature-based fish impingement and entrainment study indicated that impingement and entrainment are likely to be minimal at these sites. The Service will likely include language in our comments on the Cannonsville license application and our mandatory conditions for the two exemption applications reserving the opportunity to request fish protection at a future date if impingement or entrainment is deemed to be a problem.

Due to the high head at these sites and the pressure changes that will occur, it has been calculated that any fish currently being entrained suffer 100% mortality. The installation of hydro turbines will not alter this equation and thus will not increase mortality.

Downstream fish passage is not currently a viable alternative at these sites. Deep intakes would be unlikely to attract many downstream migrants and the fish would suffer mortality due to pressure changes. Surface releases could be designed, but these would lead to the release of warmer water than is currently released, thus likely increasing water temperatures to the

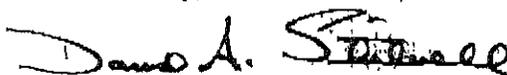
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ENVIRONMENTAL PROTECTION
GENERAL COUNSEL'S OFFICE
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detriment of the downstream coldwater fisheries. Therefore, the Service will not be requiring fish passage at this time. However, we will reserve the authority of the Secretary of the Interior to prescribe fish passage at Cannonsville and will include mandatory conditions for the exemptions reserving our right to require fish passage in the future if deemed necessary.

Construction impacts to fish and wildlife resources are expected to be negligible as most of the construction is occurring within existing buildings or on mowed lawns. As such, the NYCDEP has not proposed any mitigation measures. The Service will include mandatory conditions for the exemptions reserving the right to add conditions in the future if project plans change or unforeseen impacts to fish and wildlife resources occur.

We appreciate the opportunity to review the Draft Applications. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,



David A. Stilwell
Field Supervisor

cc: NYSDEC, Albany, NY (W. Little)
NYSDEC, Stamford, NY (K. Sanders)
NYSDEC, New Paltz, NY (R. Argyal, M. Flaherty)

New York State Department of Environmental Conservation

Office of General Counsel, 14th Floor

625 Broadway, Albany, New York 12233-1500

Phone: (518) 402-9185 Fax: (518) 402-9018

Website: www.dec.ny.gov



Joe Martens
Commissioner

Ms. Zinnia Rodriguez
Principal Administrative Assistant
New York City Department of
Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373

December 19, 2011

Re: FERC Project No. 13287/ City of New York West of Hudson Hydroelectric Project, NYSEC Comments to Draft License Applications

Dear Ms. Rodriguez:

The New York State Department of Environmental Conservation (NYSDEC) hereby submits the following preliminary comments to the draft license applications for the City of New York (NYC) West of Hudson Hydroelectric Project. The comments relate to the Pepacton, Cannonsville, and Neversink hydroelectric developments located in NYC's reservoirs west of the Hudson River.

Siphon Use During Construction:

The operation of siphons for a three month period during construction is a concern for the reservoirs at Pepacton, Cannonsville, and Neversink. The siphons will draw warm water from the surface; however, the normal release regime must sustain a coldwater ecosystem in the stream below the reservoir. The time of year in which the siphons may be used will be limited in the 401 Water Quality Certificate to October 1st through May 15th. This window of siphon use will not adversely impact the coldwater fisheries downstream of the reservoirs because the ambient surface water temperature during this period is typically 60F or cooler.

Siphon Operational Ability:

Current release protocols must be outlined in the 401 Water Quality Certificate and approved by NYSDEC. When releases of water are compromised by events including, but not limited to, the plugging of siphons with woody debris and lower reservoir levels below the operation of the siphons, the operation of the siphon is negatively impacted. The protocols shall include: 1) measures that the NYCDEP will employ to maintain protocol requirements; 2) alternative measures (i.e., pumps) and an evaluation of additional impacts such as noise and exhaust; and 3) quantification of the capacity of the siphons and their ability to maintain the release requirements.

Cannonsville Proposal to Increase Capacity:

Although the current maximum release capacity at Cannonsville is 1500 cfs, the draft application proposes to increase the physical capacity to 3000 cfs. The NYSDEC intends to maintain (through the 401 Water Quality Certificate) the current operation limits of 1500 cfs in order to protect the aquatic species at the project site and downstream. NYSDEC staff contends that aquatic species will be negatively impacted from entrainment and the drawdown of cold water which will provide inadequate amounts of coldwater releases to maintain downstream fishery flows. If the NYCDEP can demonstrate that the proposed capacity increase will not have an adverse impact on the aquatic species, the NYSDEC will consider this information.

Ashokan to Kensico Tunnel:

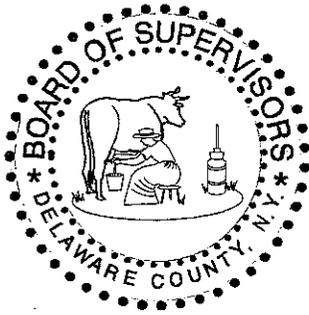
The entrainment and mortality of fish is undesirable and will attract birds in the project areas; certain mitigation measures may help alleviate this problem. Accordingly, the NYCDEP should explore and employ certain intake protections, such as barrier nets or other aquatic life exclusion devices. Simple studies can be used to determine which technology best avoids fish entrainment such as monitoring and recording the daily entrainment of fishes (size, number, specie), and correlating that to operations and reservoir conditions. Additionally, a hydroacoustic array may be used to record fish location in the water column during different times of the year. This technology will help determine which technology or operational modifications should be deployed. Once this information is recorded and collected, the NYSDEC will work with NYCDEP staff to assess the effectiveness of the various techniques.

Thank you for the opportunity to comment and please feel free to contact me with any questions that you may have.

Very truly yours,

Patricia J. Desnoyers, Esq.
Patricia J. Desnoyers, Esq.

Cc:
FERC Contact List
M. Bellinger



DELAWARE COUNTY BOARD OF SUPERVISORS

Senator Charles D. Cook County Office Building
111 Main Street
Delhi, New York 13753

Telephone: 607-746-2603
Fax: 607-746-7012

James E. Eisel, Sr., Chairman
Christa M. Schafer, Clerk

Date: December 19, 2011

To: Zinnia Rodriguez
NYC Department of Environmental Protection
19th Floor, 59-17 Junction Boulevard
Flushing, NY 11373-5106

From: James E. Eisel Sr., *JEE*
Chairman, Delaware County Board of Supervisors

Re: New York City's draft Federal Energy Regulatory Commission application for hydropower generation West of Hudson

I am writing on behalf of Delaware County to comment on the proposed project for hydropower generation in the West of Hudson on New York City owned dams.

We have been an advocate for hydropower generation on the New York City dams for years. We strongly supported the Delaware County Electric Cooperative's (DCEC) proposal. The DCEC maintains that to be cost effective and achieve the return on investment necessary to make the project financially feasible it would require 63 megawatts of generation. The City's proposal is far less than this at 16 megawatts of generation. Inquiries at public meetings in July 2011 revealed that City personnel could not answer the basic question of what the City expects for a return on investment for this project. It is hard to fathom that New York City has not evaluated this given the costs associated with constructing these projects. It is not reasonable to believe that the City would move forward on this project without thoughtful and careful projections for such an initiative. With that in mind, we question the resolve of the City to complete this project.

Having said that, if the City pursues this project to completion we have the following comments:

At public meetings there was no commitment by the City to have the electricity that would be generated to be beneficial locally. We strongly recommend that the City in consultation with watershed communities develop a method that enables communities in watershed counties to benefit from lower cost electric generation produced at these sites.

We recommend that the City make every effort to assure local residents and local contractors be hired by contractors for the construction of these projects and to buy supplies locally where practical and reasonable.

Thank you for the opportunity to comment.

From: John Mudre [<mailto:John.Mudre@ferc.gov>]
Sent: Tuesday, December 20, 2011 5:23 PM
To: Fiore, Anthony
Subject: Draft Applications for proposed West of Hudson Projects

Anthony,

Commission staff has reviewed the draft license application for the Cannonsville Project and the draft applications for exemption from licensing for the Neversink and Pepacton projects.

In general, the draft applications are thorough and of high quality. We have the following specific comments. Please consider these as you prepare your final applications and please contact me if you have any questions, or to discuss.

Cannonsville Project

- Exhibit A – please provide length of transmission line in the final license application (FLA)
- Exhibit F – please provide the Supporting Design Report in the FLA
- Exhibit G – the surveyor needs to sign the certification
- Exhibit C – please provide a metes and bounds description of the proposed project boundary, if available
- Exhibit H – please provide the information required in section 16.10(c)
- Cost Estimates for Environmental Measures - In Table D-1, you provide costs for two environmental measures (siphon for environmental flows, and wetland mitigation). You do not provide cost estimates for other apparent environmental measures that you describe generally within Exhibit E, including: 1) avoidance/protection of wetlands (i.e., signage for avoiding vernal pool habitat); 2) Bald Eagle monitoring and potential mitigation; and 3) invasive species management (i.e., spoil pile capping practices and other measures.) Further, it is not clear what the wetland mitigation line item (\$75,000) represents, as applicant states in Exhibit E (p. 115-116) that no wetland mitigation measures are proposed for the removal of 1.05 acres of emergent wetland within the tailrace, and that “there will be no net loss of wetlands due to proposed construction.”
- Buffer Zones - In your application, you illustrate buffer zones of up to 100 feet (i.e., Fig E-18) around proposed project features. The purpose of these buffer zones is unclear; in some cases, it appears there would be construction- and/or operation-related impacts due to the proposed project within the defined buffer zones, such as transmission line corridors. Please define and discuss the rationale for the term “buffer zone” as it applies to your proposed project, and discuss what construction-related or operation-related impacts would occur in these areas, and whether they represent a protective boundary to limit impacts to sensitive resources, such as wetlands (including vernal pools that may support Jefferson and longtail salamander breeding), forested habitat, and bald eagles.
- Transmission Lines - Exhibit E of your application does not provide a clear description of transmission line features, including tower height and length and location of line segments. However, the supporting Erosion Report (p. 2) provides the following description of the proposed transmission lines:

“The route for the generator lead is not yet finalized, but it is likely to run underground from the powerhouse indoor switchgear to a pole, then overhead approximately 1200 feet to the substation (approximately 43 feet wide by 115 feet long). There are existing poles in this area which will be replaced with 50-foot poles, of which approximately 10 feet will be below ground. The interconnection facilities between the new substation and the transmission line, approximately 460 feet, will consist of new overhead poles approximately 40 feet above ground.”

Additionally, the proposed right-of-way (ROW) width for overhead transmission lines is not provided in the application or supporting reports, and it is unclear whether the right-of-way would fall within the buffer zone illustrated in Figure E-18. Without this information, potential construction- and operation-related impacts to terrestrial resources, specifically to forested habitat, wetlands, and raptors, are not adequately described. Please confirm the transmission line design, ROW width, and discuss potential impacts due to design (such as collision and electrocution risk for raptors, including Bald Eagles), construction (temporary or permanent disturbance to forested or wetland habitat, including acreage of affected habitat), and operation (vegetation maintenance within ROWs, etc.) of the proposed project.

- Please address consistency of proposed project with the Coastal Zone Management Act

Neversink Project

- Exhibit A – please provide length of transmission line in the final exemption application
- Exhibit A, page 5 – you state that water is discharged through the Neversink Tunnel for water supply hydropower purposes. Is this hydropower existing, and if so, is it a currently licensed project?
- Exhibit A – please include in your final application any statement of fees required to develop any section 30(c) conditions from the federal and state fish and wildlife agencies.
- Exhibit A – please provide documentation (in the form of a deed, lease, easement, or right-of-way, or an option to obtain one of these rights) showing that you have the property rights necessary to construct, operate, and maintain the hydroelectric project.
- Exhibit G – transmission line needs to be included in project boundary up to point of interconnection with existing grid
- Exhibit G – the surveyor needs to sign the certification
- Buffer Zones - please see comment for Cannonsville Project regarding buffer zones
- Dwarf Wedgemussel – Potential impacts to dwarf wedgemussel within the Neversink River due to the temporary use of a siphon for environmental flows during construction, or flow changes during operation, are not explicitly discussed. FWS requested in their 2/12/2010, letter that NYCDEP identify studies necessary to characterize potential impacts on dwarf wedgemussels. In the draft license application, the applicant provides a review of past studies in the project vicinity (Exhibit E pgs. 34 & 39) , but does not explicitly discuss potential impacts to dwarf wedgemussel within the project boundary due to flow alteration

Pepacton Project

- Exhibit A – please provide length of transmission line in the final exemption application
- Exhibit A, page 5 – you state that water is discharged through the Neversink Tunnel for water supply hydropower purposes. Is this hydropower existing, and if so, is it a currently licensed project?
- Exhibit A – please include in your final application any statement of fees required to develop any section 30(c) conditions from the federal and state fish and wildlife agencies.
- Exhibit A – please provide documentation (in the form of a deed, lease, easement, or right-of-way, or an option to obtain one of these rights) showing that you have the property rights necessary to construct, operate, and maintain the hydroelectric project.
- Exhibit G – the surveyor needs to sign the certification
- Buffer Zones - please see comment for Cannonsville Project regarding buffer zones



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January 11, 2012

Mr. Matthew Maraglio
Division of Coastal Resources
New York State Department of State
99 Washington Avenue, Suite 1010
Albany, NY 12231-0001

Re: West of Hudson Hydroelectric Project
FERC No. P-13287
Via email (matthew.maraglio@dos.state.ny.us)

Dear Mr. Maraglio:

On September 20, 2011, the City of New York (City), acting through the New York City Department of Environmental Protection (DEP), submitted to the Federal Energy Regulatory Commission (FERC) draft license and exemption from licensing applications, as applicable, for its proposed West of Hudson Hydroelectric Project (FERC Project No. 13287).¹ The Project consists of the addition of hydroelectric generating equipment and associated facilities at the following existing City-owned water supply dams and reservoirs in New York:

Dam Name	Reservoir Name	River	Town	County
Cannonsville Dam	Cannonsville Reservoir	West Branch of the Delaware River	Deposit	Delaware
Downsville Dam	Pepacton Reservoir	East Branch of the Delaware River	Downsville	Delaware
Neversink Dam	Neversink Reservoir	Neversink River	Neversink	Sullivan

One of the primary premises of the Project is that DEP will not change its operation of the water supply system to increase the output from the proposed hydroelectric facilities. In other words, the conservation and directed flows from the affected reservoirs (from which power will be generated), as agreed to by the parties to the 1954 Supreme Court Decree,² will not change as a result of the Project. Accordingly, with the implementation of the proposed hydroelectric facilities at the locations identified above the City will generate electricity from the conservation releases, directed releases, and water that would otherwise spill to the extent that such releases are consistent with discharge mitigation releases required by the applicable operating protocol agreed to by the Decree Parties.

¹ The City's applications for the Project as well as additional information relating thereto are available at: http://www.nyc.gov/html/dep/html/dep_projects/woh_hydroelectric_project.shtml.

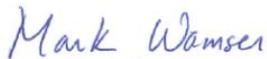
² *New Jersey v. New York*, 347 U.S. 995 (1954). The parties to the decree are the City of New York, the States of Delaware, New Jersey and New York, and the Commonwealth of Pennsylvania (hereinafter, the "Decree Parties").

DEP has met with the US Fish and Wildlife Service (USFWS) and New York State Department of Environmental Conservation (NYSDEC) to discuss the Project and the need for, and scope of, environmental studies to support the license and exemption applications relating thereto. Because the DEP proposes to maintain conservation and directed flows below all three dams for the protection of aquatic resources, in accordance with the applicable operating protocol agreed to by the Decree Parties, as may be modified from time to time, these agencies have not required any flow-related studies.

As noted above, the Project is not located within any New York State coastal zone. Moreover, because the City will not change operation of its water supply system as a result of the Project and will continue to maintain water releases in accordance with the requirements of the applicable operating protocol agreed to by the Decree Parties, the Project will not affect natural resources associated with any such coastal zones. Accordingly, the City contends that the Project is not subject to the requirement to obtain a consistency determination pursuant to the New York State Coastal Management Program (CMP) developed pursuant to the requirements of the Coastal Zone Management Act, and, as such, is otherwise consistent with the CMP. Therefore, the City respectfully requests a responsive letter from the New York State Department of State indicating concurrence with the City's position, as described above.

If you have any questions or require any additional information with respect to the Project, please feel free to contact me at 603-428-4960.

Sincerely,



Mark Wamser, PE
Water Resource Engineer

cc: Anthony Fiore, DEP *via email* (AFiore@dep.nyc.gov)
Kevin Lang, Couch White *via email* (klang@couchwhite.com)



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

January 23, 2012

Mark Wamser, PE for NYC DEP
C/O Gomez and Sullivan
41 Liberty Hill Rd.
Henniker, NH 03242

Re: O-2012-0001
FERC Project #: 13287
Addition of Hydroelectric generating equipment
and associated facilities at the Cannonsville,
Downsville and Neversink Dams
Towns of Deposit, Downsville, and Neversink,
Counties of Delaware and Sullivan
Not Coastal Area, No Review Necessary

Dear Mr. Warner:

The Department of State (DOS) received your correspondence on January 11, 2012 requesting a determination regarding the applicability of the State's coastal policies to the above referenced project.

From the information received, it does not appear that the proposed project's location is within New York State's coastal area.

When a particular action is proposed to occur outside of the coastal area, it is the applicant's responsibility as part of any federal permit or relicensing process to determine if the proposed action will have reasonably foreseeable adverse effects on the State's coastal resources and/or uses. If this is found to be the case, it is the applicant's responsibility to certify to the Department of State that the proposed project is consistent with the New York State Coastal Management Program or approved applicable Local Waterfront Revitalization Program. Absent your determination that coastal effects are reasonably foreseeable, you will be notified if DOS believes coastal effects are reasonably foreseeable and if a consistency certification is therefore required. Based on the information received, at this time DOS does not expect this to be the case. However, during the relicensing process, it may be beneficial to examine opportunities for: entering into beneficial pricing agreements with host communities, and developing education and outreach programs for residents, community groups and schools.

Please contact me at 518-474-5290 (email: matthew.maraglio@dos.state.ny.us) with any questions. When contacting us regarding this manner, please refer to file number O-2012-0001.

Sincerely,

Matthew P. Maraglio
Coastal Review Specialist
Division of Coastal Resources