Connecticut River Conservancy

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December 28, 2020

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

Re: CRC comments on the Fiske Mill hydroelectric project (P-8615) Request to use the Traditional Licensing Process

Dear Secretary Bose,

The Connecticut River Conservancy (CRC), is a nonprofit citizen group established in 1952 to advocate for the protection, restoration, and sustainable use of the Connecticut River and its four-state watershed. The interests and goals represented by CRC include, but are not limited to, improving water quality; enhancing habitat for fish and other aquatic biota; safeguarding and improving wildlife habitat; protecting threatened and endangered species; protecting wetlands; preserving undeveloped shore lands; enhancing public recreation and promoting recreational safety; protecting aesthetic values; protecting archeological, cultural, and historical resources; fostering sustainable economic development; and maintaining the potential energy benefits of ecologically sound hydroelectric projects in the Connecticut River watershed.

CRC has reviewed the Fiske Mill Notice of Intent to File Application for Exemption of Licensing and Request to Use the Traditional Licensing Process support letter, dated November 25, 2020. CRC does not support the use of the Traditional Licensing Process in this case as per our concerns outlined below.

Regarding the likelihood of timely license issuance
Fiske Mill has been operating significantly under its nameplate capacity for several years due to the collapse of one of the penstocks. CRC contends that due to the need to make these repairs, studies should be delayed until after the repairs are done in order to have reliable results when considering fish passage. Any studies done under the current circumstances are not properly reflective of how the facility will be operating when returned to its fully operating condition. It is not clear from the Notice of Intent or letter when Fiske Mill intends to fix the penstock and upgrade the turbines and how studies would be timed in relation to this. Properly scoping the studies around this facility rehabilitation will likely extend the overall time needed for the licensing process. It would be more appropriate to proceed with this relicensing using the Integrated Licensing Process (ILP) to scope the timeline of needed studies more comprehensively and transparently in relation to the needed construction.

Complexity of the resource issues
Five separate hydro-electric facilities on the Connecticut River are currently undergoing relicensing (P-1889 Turners Falls Dam, P-2485 Northfield Mountain Pump Storage Facility, P-1904 Vernon, P-1855 Bellows Falls, and P-1892 Wilder), two of which, P-1889 and P-2485, are downstream of the confluence of the Ashuelot River with the Connecticut. All these facilities will be changing operations and

enhancing up and downstream fish passage over the coming few years while Fiske Mill is beginning its relicensing process. It is important that studies done for the Fiske Mill project be comprehensive and properly scoped to anticipate potential changes to flows in the Connecticut River, expected upgrades to fish passage and subsequent changes to the number of migratory fish accessing the lower Ashuelot River for spawning habitat.

The Fiske Mill project is the first obstacle on the Ashuelot River for the upstream migration of important Connecticut River migratory fish. According to the NH Wildlife Action Plan[1], the Ashuelot River is important for the restoration of American Shad and American Eel. Additionally, the US Fish and Wildlife Service and CRC have both surveyed and found an abundant number of active sea lamprey nests in the Lower Ashuelot River. This relicensing process will require studies to evaluate effectiveness of upstream and downstream passage for American Shad and American Eel, spawning habitat assessments in the project area for sea lamprey, freshwater mussel surveys, and possibly studies to assess the presence of tesselated darter (Etheostoma olmstedi), Johnny darter (E. nigrum), mottled sculpin (Cottus bairdi), host fish for mussels.

While the licensee indicated in their letter requesting the use of the TLP that they "reviewed the information and agency comments provided in the proceedings for the P-3309 and P-14471"[2] projects, and that "the Commission authorized the use of TLP for both projects,"[3] neither of those projects are similar to the complexity faced by the Fiske Mill facility due to its proximity to the Connecticut River and its location between two large facilities that are currently undergoing relicensing, the importance of the Ashuelot River to the reproduction and population support of migratory species, the presence of a viable population of endangered species upstream, and the extensive cost and project management needed required to rehabilitate the damaged penstock and make the facility fully functional in the face of a relicensing effort. CRC contends that there is in fact little resemblance between the facilities cited in the letter and the studies and project management process that will be needed for Fiske Mill.

Additionally, the applicant states, "In light of the above information, the proceedings involving P-3309 and P-14471, and the ongoing American Shad restoration efforts of the resource agencies, the issues expected to be addressed in the exemption from licensing proceeding are well identified."[4] CRC contends that in fact this statement indicates that the issues are NOT clearly identified by the applicant. The licensee provides no discussion of anticipated recreational and cultural management considerations and simplifies the complexity of the fisheries considerations by asserting that an examination of what has happened at other facilities is enough to identify issues. The issues that need to be addressed under a relicensing are discovered through a comprehensive scoping process to identify needed studies.

Level of anticipated controversy

Fiske Mill is significantly located from a resource protection perspective, and it has been functioning at half capacity for several years, calling into question the justification for the impact to the environment for a very limited amount of electrical generation. CRC is concerned about the return on investment and limited electricity generated by this facility and whether the cost to the ecosystem and barriers to

[1] New Hampshire Fish and Game. NH Wildlife Action Plan. 2015 Revised Edition. Accessed at: https://www.wildlife.state.nh.us/wildlife/wap.html

[2] Fiske Mill Hydroelectric Project No. 8615. Information Supporting Default Traditional Licensing Process. November 30, 2020. Page 2.

[3] Ibid.

[4] Ibid. Page 3.

recreation are justified.

Additionally, due to limited electrical generation, this facility was previously considered for license surrender and removal. Given the current construction needed for this facility to function at full capacity and agency and stakeholder interest in possible dam removal and ecosystem restoration at this site, it is unlikely that the relicensing of this facility would be non-controversial.

Fiske Hydro's citing of a "need for TLP's flexibility to accommodate the planning needed soon for the 2021 study season"[5] is not warranted as justification to allow the TLP and it presumes a full understanding of the studies that would need to take place and the timing. In the same section Fiske Hydro indicates that the facility needs significant repairs. This presumption of knowledge and economic urgency is exactly why the ILP is justified. CRC is concerned that Fiske Hydro is preferring to expedite the process at the expense of resource considerations for economic reasons.

Deny Request to Use the Traditional Licensing Process

Fiske Mill mistakenly sites the ILP as "an alternative licensing process,"[6] undermining the long and comprehensive rulemaking process in 2003 where FERC ruled that it would henceforth function as the default process, expressly because it, "addresses … the problems that participants in licensing from every perspective have identified with the traditional process. It merges pre-filing consultation and the NEPA process, brings finality to prefiling study disputes, and maximizes the opportunity for the Federal and state agencies to coordinate their respective processes."[7]

In its final rule FERC concluded that, "five factors are most likely to bear on whether use of the traditional process is appropriate."[8]

CRC contends in the case of Fiske Mill that:

> (1) it is unlikely that a timely license would be issued for this project under the TLP as there may be disagreement on number and extent of studies that are needed;
> (2) the complexity of the resource issues as they relate to endangered and migratory species for this facility warrant the ILP;
> (3) there is some level of anticipated controversy based on the history of lack of effectiveness of this facility to generate electricity, relative unresponsiveness of the applicant to fish passage requirements, and its location upstream of the confluence of the Connecticut River and the dynamic changes occurring downstream;
> (4) there may be a general disagreement about the amount of available information *specific to this project* and there is a potential for significant disputes over studies, and
> (5) given the concerns above, that the assumption that the relative cost of the traditional process would be less than the integrated process may not be the case.

CRC requests that FERC deny the request to use the TLP process for Fiske Mill Hydro. We strongly feel that the default ILP process is more appropriate in this case. The formal timeframe of the ILP allows for more comprehensive public participation in the process and allows for all stakeholders to be informed

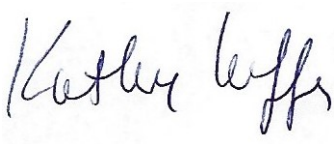
[5] Ibid Page 4-5.
[6] Ibid. Page 4.
[7] 104 FERC ¶ 61,109. United States of America Federal Energy Regulatory Commission. 18 CFR Parts 2, 4, 5, 9, 16, 375 and 385. Docket No. RM02-16-000; Order No. 2002. Hydroelectric Licensing under the Federal Power Act. Issued July 23, 2003. Page 13.
[8] Ibid. Page 16.

equally as the process unfolds. Additionally, early scoping of studies creates more comprehensive sources of information before the license application is submitted. The presence of dwarf wedgemussel in the river upstream of the project area and the significant consideration of resource needs for multiple migratory fish also supports the use of the ILP to ensure appropriate Federal coordination between FERC, NOAA, and the U.S. Fish and Wildlife Service. Given the Connecticut River watershed as an ecosystem and the fact that this dam is the first obstacle up-river of the Connecticut River, located between two Connecticut River project facilities that are currently undergoing relicensing under the ILP process, CRC requests the use of the ILP.

Additionally, as this Notice of intent is seeking a FERC exemption, this may be the last possible opportunity for a comprehensive analysis of how Fiske Mill project operations affect the Ashuelot River. CRC feels that it is imperative that a very structured and thorough relicensing process with appropriately scoped comprehensive studies and ample public participation, namely the ILP process, take place to ensure protections of the resource under the coming license, especially if it is the last opportunity to do so.

We appreciate the opportunity to provide comments. I can be reached at kurffer@ctriver.org or (802) 258-0413.

Sincerely,



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