

July 6, 2012

Via E-mail and Overnight Delivery

Secretary Richard K. Sullivan, Jr.
Executive Office of Energy & Environmental Affairs
ATTN: MEPA Office (josephine.wixon@state.ma.us)
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Request for Advisory Opinion
FirstLight Hydro Generating Company: Northfield Mountain Pumped
Storage Project and Turners Falls Hydroelectric Project

Dear Secretary Sullivan:

FirstLight Hydro Generating Company (FirstLight), an indirect subsidiary of IPR-GDF SUEZ North America, Inc., and licensee of the Northfield Mountain Pumped Storage Project ("Northfield Mountain Project", FERC No. 2485) and the Turners Falls Hydroelectric Project ("Turners Falls Project", FERC No. 1889), hereby submits a Request for an Advisory Opinion pursuant to 301 CMR 11.01(6)(a) and M.G.L. ch. 30, § 8. The Request pertains to whether the upcoming relicensing of the Northfield Mountain and Turners Falls Projects by the Federal Energy Regulatory Commission (FERC) subjects either Project to Massachusetts Environmental Policy Act (MEPA) jurisdiction. FirstLight requests your concurrence, based on the facts presented in this letter, that the forthcoming FERC relicensing process and the related State Actions do not require MEPA review.

Background

The Northfield Mountain Project and Turners Falls Project are located on the Connecticut River in Franklin County, in the towns of Erving, Gill, Greenfield, Montague and Northfield. Both Projects utilize water from the Connecticut River to generate hydroelectric power.

The Northfield Mountain Project consists of: (a) an upper reservoir and dam; (b) an underground powerhouse; (c) a tailrace; and (d) a lower reservoir known as the Turners Falls Impoundment (Connecticut River). The Turners Falls Project consists of: (a) two concrete

gravity dams separated by an island and appurtenant facilities located on the Connecticut River in the towns of Gill and Montague, MA; (b) a gatehouse controlling flow to the main power canal; (c) the main power canal and a short branch canal; (d) two hydroelectric powerhouses, located on the power canal, known as Station No. 1 and Cabot Station; and (e) a reservoir known as the Turners Falls Impoundment.

The Turners Falls Dam is located at approximately river mile 122 (above Long Island Sound) on the Connecticut River, in the towns of Gill and Montague, MA. The tailrace of the Northfield Mountain Project is located approximately 5.2 miles upstream of Turners Falls Dam, in the town of Northfield, MA. The upper reservoir of the Northfield Mountain Project is located atop Northfield Mountain in Erving, MA.

The Turners Falls Impoundment, created by the Turners Falls Dam (which also serves as the lower reservoir for the Northfield Mountain Project), is approximately 20 miles long, extending upstream through the Connecticut River valley to the base of Vernon Dam, located in Vernon, VT.

More information about the Northfield Mountain and Turners Falls Projects can be found at <http://www.NorthfieldRelicensing.com> and on Attachment A.

The current FERC license for the Northfield Mountain Project was issued on May 14, 1968 and expires on April 30, 2018. The current FERC license for the Turners Falls Project was issued on May 5, 1980 and also expires on April 30, 2018. No later than April 30, 2016, two years prior to license expiration, FirstLight is required to file its final license applications with FERC for both Projects.

FERC Relicensing Process

FirstLight will apply for FERC license renewal using the Integrated Licensing Process (ILP) as set forth in Part 5 of the FERC's regulations, 18 C.F.R. Part 5. The ILP was developed to integrate the pre-filing consultation with FERC's scoping pursuant to the National Environment Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.* The process is initiated with the filing of the Pre-Application Document (PAD) and Notice of Intent (NOI), which FirstLight plans to submit to FERC in the fall of 2012.

The major annual milestones in the ILP are as follows:

- 2012: Filing of the PAD and NOI with FERC in the fall.
- 2013: Formal study scoping and planning. In short, this entails developing study plans in consultation with the stakeholders.
- 2014: First field study season.
- 2015: Second field study season and, at the end of the year, file the Preliminary Licensing Proposal or Draft License Application with FERC.

- 2016: File the Final License Application with FERC and file an application for a Water Quality Certification pursuant to section 401 of the Federal Clean Water Act (“401 WQC”) with the Massachusetts Department of Environmental Protection (“MADEP”).

State Action

Prior to FERC issuing a new final license to FirstLight for the Projects, the MADEP must issue a 401 WQC. FirstLight believes that the issuance of a 401 WQC by MADEP could constitute an “Agency Action”, specifically issuance of a “Permit” as defined in 301 CMR 11.02.

Although FirstLight expects the MADEP will consult with many other Agencies prior to issuing a 401 WQC, FirstLight has not identified other Permits or Agency Actions that are required as prerequisites for FERC to issue new licenses for the Northfield Mountain or Turners Falls Projects.

Review Thresholds and Fail-Safe

For MEPA jurisdiction to be triggered, there must be both an “Agency Action”, and, except where the Secretary requires “fail-safe” review, the project must exceed the “Review Thresholds” identified in 301 CMR 11.03.

Because the proposed project is the relicensing of existing structures and operations, rather than authorization to construct new projects, FirstLight does not believe any of the Review Thresholds will be exceeded, and as a result, believes that MEPA jurisdiction would not be triggered.

Given the extensive public process associated with the FERC relicensing process itself, it does not appear that fail-safe review under 301 CMR 11.04(1) would be warranted.

Post-FERC Relicensing Construction

It is possible that the new FERC licenses issued in 2018 will require FirstLight to make physical or operational modifications to the Projects, and it is further possible that those required modifications might exceed Review Thresholds, e.g., modifications to wetlands or waterways to improve habitat functioning may exceed square footage thresholds set forth in 301 CMR 11.03(3)(a).

Because the requirements for Project modifications will not be specified until the FERC licenses have been reissued, they will need to be designed, permitted and constructed after the issuance of the FERC licenses. In FirstLight’s view, the possibility that such construction may be required, and the possibility that construction may require Agency Action and exceed Review Thresholds, should not trigger the requirement for MEPA review for the original relicensing. Rather, such subsequent projects should be reviewed for MEPA

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applicability prior to the taking of any Agency Actions that are necessitated by requirements in the 2018 licenses.

Request for Advisory Opinion

To avoid doubt about the meaning or applicability of 301 CMR 11.00, FirstLight hereby requests the Secretary's Advisory Opinion as to MEPA applicability, including whether the relicensing of the Northfield Mountain Project or the Turners Falls Project by FERC necessitates the prior filing of an Environmental Notification Form (ENF) or an Environmental Impact Statement (EIS) with MEPA prior to the taking of any Agency Actions.

Very truly yours,



Adana P. Kahn

Enclosure: Attachment A

cc: John S. Howard, FirstLight Relicensing Project Manager
Susan M. Babcock, Esq., FirstLight Power Resources
Mark J. Wamser, P.E., Gomez and Sullivan Engineers
Robert J. McCollum, MADEP
Robert Kubit, MADEP



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Richard K. Sullivan, Jr.
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

July 12, 2012

Adam Kahn
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600

Re: Request for Advisory Opinion
FirstLight Hydro Generating Company: Northfield Mountain Pumped Storage Project
and Turners Fall Hydroelectric Project – Erving, Gill, Greenfield, Montague and
Northfield

Dear Mr. Kahn:

I am writing in response to your letter of July 6, 2012, in which you requested an advisory opinion as to whether review under the Massachusetts Environmental Policy Act (MEPA) would be required for the relicensing by the Federal Energy Regulatory Commission (FERC) for the facilities referenced above.

The facilities utilize water from the Connecticut River to generate hydroelectric power and were first licensed by FERC in 1968. The current FERC license expires in 2018 and the Proponent is now embarking on relicensing both facilities. Prior to relicensing, the Massachusetts Department of Environmental Protection (MassDEP) must issue a 401 Water Quality Certification for both facilities. However, while the facilities require a State Agency Action, no new work or activity is proposed in conjunction with the relicensing. On this basis, you assert that the relicensing does not meet or exceed any MEPA review thresholds, and thus, the facilities would not be subject to any review under MEPA.

Based on the information contained in your letter, I concur that the relicensing of these facilities does not constitute a Project, as it is defined in the MEPA regulations. Because no new work or activity is proposed, no MEPA review thresholds would be met or exceeded. Therefore, the facilities are not subject to MEPA review and the submission of an Environmental Notification Form (ENF) is not required.

Please contact Rick Bourré, Assistant Director of the MEPA Office, at (617) 626-1130 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, reading "Maeve Vallely-Bartlett". The signature is fluid and cursive, with the first name "Maeve" being the most prominent part of the script.

Maeve Vallely-Bartlett
Assistant Secretary