



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

August 9, 2021

Stephen G. Tryon, Director
Office of Environmental Policy and Compliance
United States Department of the Interior
1849 C Street, NW
Mail Stop 2629
Washington, DC 20240

Re: MOTION TO INTERVENE; Re: Topsham Hydro Partners Limited Partnership's Request for Trial-Type Hearing on Disputed Issues of Material Fact and Alternative Prescription Pertaining Pejepscot Hydroelectric Project, FERC Project No. 4784-106

Dear Mr. Tyron:

On July 19, 2021, Topsham Hydro Partners Limited Partnership ("Topsham Hydro"), Licensee of the Pejepscot Hydroelectric Project No. 4784 ("Project"), filed a Request for Trial-Type Hearing on Disputed Issues of Material Fact pertaining to a Preliminary Section 18 fishway prescription filed by the U.S. Department of the Interior ("Interior") with the Federal Energy Regulatory Commission ("FERC") on June 17, 2021, for inclusion in the new license for the Project.

By this letter we provide notice pursuant to 43 C.F.R. §45.22, that our Agency is requesting intervenor status in this proceeding. Under Maine State Law (12 MRSA, §6021), the Maine Department of Marine Resources (MDMR) mandate is "*...to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes, as well as the exercise of all authority conferred by this Part.*" Intervenor status will provide opportunity for participation.

In their July 19, 2021 filing, Topsham Hydro listed the following Disputed Issues of Material Fact:

1. Whether the upstream migration period for American eel in the Androscoggin River and nearby watersheds is June 1 to September 15.
2. Whether currently available information provides that effective downstream passage for American eels can be achieved at the Project via an inclined screen for Unit 1 with 0.75 inch clear spacing or less with bypasses capable of passing a minimum of 5% of station capacity.
3. Whether trashracks with 0.75 inch clear spacing are commonly prescribed in New England to prevent entrainment of American eels.
4. Whether a nighttime turndown of Unit 1 would provide safe, timely, and effective downstream eel passage.

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MDMR disagrees with the opinions of Topsham Hydro on each of the four disputed issues of material fact. MDMR finds the Preliminary Section 18 fishway prescription filled by Interior (Accession No. 20210617-5089; 20210629-5059) to be founded on best available science in the best interest of protection of diadromous species present at the Pejepscot Hydroelectric Project including, but not limited to, American eel.

MDMR reserves the right to amend or supplement our exhibit and witness lists. MDMR consents to service by electronic means under 43 CFR § 45.13(c)(4).

MDMR is providing this submission via electronic mail and by U.S. mail. MDMR is also filing this submission to the FERC licensing proceeding for Project No. 4784. Please contact Casey Clark (207-624-6594 or casey.clark@maine.gov) if you have any questions regarding this motion.

Best regards,

A handwritten signature in black ink, appearing to read 'Mendelson', with a long horizontal flourish extending to the right.

Meredith Mendelson
Deputy Commissioner

Appendix A

List of Exhibits

Exhibit 1

Response of the Maine Department of Marine Resources to the Federal Energy Regulatory Commission's Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions, issued on April 19, 2021 for the Pejepscot Hydroelectric Project (FERC No. 4784-106).

This document includes MDMR's comments, recommendations, and preliminary terms and conditions for the Pejepscot Hydroelectric Project pursuant to section 10(j) of the Federal Power Act. This document can be retrieved from the FERC eLibrary system (Accession No. 20210618-5057).