



October 12, 2021

Via FERC Electronic Filing

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

Re: Kinneytown Hydroelectric Project, No. P-6985-005 and -006

Dear Secretary Bose:

The Naugatuck Valley Council of Governments, Save the Sound, and Naugatuck River Revival Group (collectively, "Commenters") file the following comments in response to exemptee Hydroland's October 5, 2021 letter and self-determined schedule that it proposes despite the Commission's compliance directives.

Hydroland's letter and proposed schedule are unworkable and represent a hollow, caveat-filled promise. Further, they demonstrate that Hydroland lacks the resources and wherewithal to rehabilitate and operate the Kinneytown Project. For numerous reasons, Hydroland's letter fails to offer a solution to the Kinneytown Project's innumerable, severe, and long-standing problems. These reasons include:

1. Hydroland's schedule is anything but firm. It is contingent on funding that Hydroland is "in the process of securing," but does not yet have. Its schedule is also contingent, according to Hydroland's October 5<sup>th</sup> letter, on (a) the COVID pandemic, (b) further analysis, (c) availability of labor, (d) unknown problems, (e) availability of parts and supplies, (f) increases in the costs of construction projects, (g) weather, (h) further investigation of the problems with the Kinneytown Project, and (i) "timely" approval of its plans. This litany of contingencies renders Hydroland's schedule and supposed commitment meaningless, especially in light of the complete failure to comply with any deadlines for filings or on-the-ground activities to date.

2. Further, Hydroland attempts to retain unilateral authority to alter its proposed schedule stating unabashedly that it "agrees to notify FERC" if any

circumstances arise that will prevent Hydroland from meeting its schedule, despite failing to do so for all of the deadlines missed thus far. Likewise, Hydroland appears to believe that it can unilaterally alter the schedule set forth in the Commission's August 26, 2021 Delegated Order, both in granting itself extensions and skipping over key process steps.

3. While Hydroland takes responsibility for not promptly responding to letters from the Commission, it fails to take any responsibility for another year's worth of inaction, missed deadlines, Project degradation, and gross environmental harm. Hydroland knew or should have known of the problems at the Project when it purchased Kinneytown, given the public filings in Fall 2020, prior to the purchase, from NVCOG, Save the Sound, NRRG, the U.S. Fish and Wildlife Service (FWS), and the Connecticut Department of Energy and Environmental Protection (CT DEEP). Indeed, Hydroland states that it "purchased [this] project with the intention of correcting these problems." Yet, it blames a lower-level local employee, former owners, the weather, and the pandemic. The corporate responsibility requisite to a credible schedule is wholly lacking. Further, Hydroland filed its proposed schedule in apparent response to the Commenters' Complaint. It is unfortunate that Hydroland's response is limited to a hollow and patently unworkable schedule.

4. Adding to the absence of funding and credibility, Hydroland fails to indicate that it has the staff and consultants in place with the skills needed to execute its proposed schedule. To the contrary, it is our understanding that Hydroland has lost two key engineering staff, Don Emel and Clayton Orwig. It dismissed the project operator, but makes no mention of having hired a replacement. And, Hydroland has yet to respond to the Regional Engineer's August 31, 2021 request that Hydroland provide safety and business contacts. Again, its schedule is contingent on the availability of personnel (among many other contingencies).

5. Hydroland's schedule also ignores the fact that, as claimed in the Complaint filed by the Commenters on September 30, 2021, there have been numerous material design and operational changes made to the Kinneytown Project. Hydroland's schedule acknowledges some these material changes including: alterations of generation capacity, defective and inoperable fish passage, and altered pond elevation. These numerous, longstanding material changes trigger a new license or exemption. Hydroland's schedule does not address the exemption or licensing process. Simply put, this is not a matter of a few repairs. This Project requires a comprehensive review from square one.

6. Similarly, Hydroland's schedule is simply unworkable and shows remarkable ignorance of resource needs, the role of resource agencies, and process.

Critically, Hydroland's schedule puts the fate of Unit 2 at the tail end of its schedule despite the fact that whether Unit 2 is restarted, and at what capacity, is critically important to any redesign and operation of interim and permanent fish passage facilities.

7. Hydroland's proposed schedule also fails to allow for review, comment, and modification of its plans. Any schedule should be driven by the FWS engineering recommendations. Yet Hydroland's proposed schedule allows Hydroland to independently begin investigating these issues, and then develop a plan without apparent standards. In so doing, it ignores the role of the FWS and CT DEEP, as set forth in Commission correspondence and delegated orders. FWS has already filed an update detailing preliminary fishway conclusions related to significant issues of construction, maintenance, and operation that will need to be remedied to provide fish passage. FWS has told the Commission that it will provide further recommendations by October 31, 2021. However, Hydroland has repeatedly failed to accommodate FWS efforts to conduct its engineering survey of the Kinneytown Project. Hydroland's proposed schedule continues this pattern.

8. Hydroland's proposed schedule is unworkable for numerous other reasons including the failure to set any deadline(s) for implementing interim fish passage measures despite being ordered to start such implementation in April of 2021 (per FERC's April 15, 2021 Letter). For long-term fish passage improvements, Hydroland provides only an October 1, 2022 start date, but no end date, despite deadlines of either December 31, 2022 or February 28, 2022 set by FWS and DEEP, respectively.

9. The immediate deadlines set by Hydroland require minimal investment and any compliance with such deadlines should not distract from the significant investment and technical expertise required for remedying the fish passage issues.

In conclusion, Hydroland's October 5 filing effectively concedes the existence of numerous, long-standing material alterations to the project design and operation requirements ordered in the Commission's exemption decision and subsequent orders. For decades, the Kinneytown Project has hardly resembled the project as described and subject to exemption, and Hydroland has admitted as much. As such, the Commission should revoke the exemption that was granted in 1983 because the basis on which it was issued proved not to be followed. Hydroland's October 5th schedule should be treated by the Commission as one set of timetable ideas that could govern a new licensing proceeding.

The Kinneytown Project's innumerable problems require comprehensive review. The exemption should be revoked and a new license or exemption required.

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Sincerely,



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