

November 9, 2021

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

RE: Kinneytown Hydroelectric Project, FERC No. 6985-005, 006- Department of Energy and Environmental Protection (DEEP) Comments in Support of Complaint and USFWS Recommendations

Dear Secretary Bose:

As the designated state fish and wildlife agency pursuant to the Kinneytown Project's exemption,¹ we write in support of both the motion/complaint² filed pursuant to 18 C.F.R. §§385.212, 385.207, and/or 385.206 by Save the Sound, the Naugatuck Valley Council of Governments, and Naugatuck River Revival Group, as well as the October 22, 2021 Response to Hydroland Submittal filed by the United States Fish and Wildlife Service (FWS).³ We feel that the material design and operational changes to the Project merit strict adherence to FWS and DEEP recommendations in order to achieve compliance with the terms of the Kinneytown exemption and effective fish passage for the Naugatuck River.

The history of the Project, the terms of its exemption, the resulting egregious violations of the terms of its exemption, and the deteriorating conditions at the project site have all been well documented in the various filings in the P-6985-005 and -006 subdockets. DEEP had previously concurred with the FWS April 5, 2021⁴ suggestions and the FERC April 15, 2021 delegated letter⁵ that set corrective actions and schedules. For approximately seven (7) months, Hydroland evidenced no response or action, and, to date, it appears that none of the actions as directed in the April 15th 2021 letter have been accomplished, recent filings notwithstanding. The vague assertions and conditional timeline set by Hydroland in their October 5, 2021 filing⁶ are

¹ Order Granting Exemption from Licensing, Project No. 6985-000 (May 20, 1983), accession no. 19830524-0183, appending and referencing Notice of Application filed with the Commission.

² Formal Complaint of Naugatuck Valley Council of Governments, Save the Sound and Naugatuck River Revival Group v. Kinneytown Hydro Company, Inc and Hydroland Omega, LLC under P-6985. September 30, 2021. Accession no. 20210930-5052.

³ Letter to Secretary Bose from Audrey Mayer, Supervisor, New England Field Office, USFWS (October 22, 2021), Response to Hydroland Submittal, Project No. 6985-005.

⁴ Letter to Secretary Bose from David Simmons, Acting Field Supervisor, New England Field Office, US FWS (Apr. 2, 2021), Project No. 6985-005, accession no. 20210405-5427.

⁵ Letter to Tim Carlsen from Andrea Claros, Acting Chief, Aquatic Resources Branch, Division of Hydropower Administration and Compliance, FERC (Apr. 15, 2021), Project No. 6985-005, accession no. 20210415-3050.

⁶ Hydroland Omega LLC, et. al. Timeline for Repairs and Improvements to Kinneytown Hydroelectric Project in Response to August 26, 2021 letter under P-6985. October 5, 2021. Project No. 6985-006, accession no. 20211005-5189.

inadequate and unacceptably open-ended, neglecting their duty to ensure safe, effective fish passage under the terms of their exemption.

It is DEEP's opinion that the FWS filing of October 22, 2021⁷ (Appendix A) should be the governing schedule under which Hydroland may again seek to fulfill the terms of its exemption. Both DEEP and FWS must be consulted on and must approve of the needed mechanisms by which the Project may be brought into compliance, including bringing both the Seymour and Ansonia Units back online. Failing meeting these requirements and the timeline, we support the process of revocation as outlined by the September 30, 2021 motion/complaint, with the goal of reaching a mutually agreeable, creative solution to ensure effective and unfettered fish passage through appropriate measures. The set deadlines in the FWS recommendations notwithstanding, we would still prefer that full and unfettered fish passage be restored at FWS efficiency standards no later than the next migration season beginning February 28, 2022, in accordance with our April 26, 2021 letter,⁸ and we reserve the right to file our own motion to revoke/complaint at that time should this deadline not be met.

DEEP does wish to clarify that the 2003 effectiveness study⁹ only determined that targeted fish species could (and did) use the ladder when spill conditions at the dam were compatible; however, the study did not assess, nor were any conclusions drawn, to indicate that the fish ladder passed fish at a pace that allowed for effective restoration of fish to the system. During periods of spill at the dam, fish usage of the fishway (counted at the viewing window) decreased as spillage increased.

DEEP also requests that Hydroland submit into the docket the most recent inspection report (and any and all documents requested by and still outstanding to Commission Regional Engineer John Spain, P.E.) documenting the condition of the dam and specific work that may be necessary to make the dam safe as soon as possible.

Additionally, DEEP requests that Hydroland submit prompt documentation of compliance to the outlined measures to DEEP and FWS prior to all outlined deadlines as required under the October 22, 2021 schedule. We note that the comprehensive engineering assessment is due for completion by November 30, 2021. If, on December 1, 2021, Hydroland fails to submit documentation attesting to the completion of the comprehensive engineering assessment of the Seymour fish ladder and downstream bypass facility, DEEP reserves the right to file a motion for revocation or complaint in response to such noncompliance. Moreover, DEEP reserves the right to file such motion or complaint in response to failure to document completion of measures at any point in the schedule.

We request that FERC direct Hydroland to comply with the letter and Appendix A of the most recent FWS filing, and hold Hydroland to the responsibilities and deadlines so outlined,

⁷ See FN 3.

⁸ Letter to Secretary Bose from DEEP Commissioner Katherine S. Dykes, (April 28, 2021), Project No. P-6985-005, accession no. 20210428-5137.

⁹ CT DEP, Kinneytown Dam Fish Passage Facility Evaluation Study (March 31, 2003); see Attachment 2 of Letter to Secretary Bose from Katherine Fiedler, Save the Sound (September 3, 2021), Project Nos. 6985-005, 6985-006, accession no. 202110903-5185.

including the restoration of flashboards/crestboards to a uniform elevation as defined by FWS. The Naugatuck River has become an important resource once again for migratory fish populations as water quality has increased. It is imperative that full and unfettered fish passage be restored by adhering to the most recent FWS recommendations with the counsel and approval of DEEP.

Sincerely,



Katherine S. Dykes
Commissioner, DEEP

Cc: Mason Trumble, Rick Jacobson, Melinda Decker, Alison Rau, USFWS, Save the Sound, NVCOG