



December 8, 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, Nos. P-6985-005 and -006;  
Failure to meet deadlines for Project compliance.

Dear Secretary Bose:

The Naugatuck Valley Council of Governments, Save the Sound, and Naugatuck River Revival Group (collectively, "Commenters") hereby provide the Commission with very recent documentation demonstrating, yet again, the failure by the owner of the Kinneytown Hydroelectric Project ("Project"), Hydroland Omega LLC ("Hydroland"), to comply with deadlines set by the Commission or natural resource agencies or even deadlines self-imposed by Hydroland in response to Commission directives and the Commenters' Complaint and other filings. These comments supplement the information on non-compliance provided to the Commission by the Connecticut Department of Energy and Environmental Protection ("CT DEEP") on December 3, 2021.<sup>1</sup>

The Commission is aware that Hydroland entirely ignored the Project compliance directives issued by the Commission on April 15, 2021.<sup>2</sup> Following receipt of a stern warning from the Commission on August 26, 2021 and the Commenters' September 30, 2021 Complaint calling on the Commission to revoke the Project exemption, Hydroland promised to act immediately; it set forth a series of very specific actions it would take and dates these actions would be completed.

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<sup>1</sup> Letter to Secretary Bose, FERC, from Commissioner Katie Dykes, CT DEEP (Dec. 3, 2021), Project Nos. P-6985-005, -006, accession no. 20211203-5093.

<sup>2</sup> Letter to Tim Carlsen, Hydroland, from Holly Frank, FERC (Apr. 15, 2021), Project No. P-6985-005, accession no. 20210415-3050, at 6 (adopting FWS's proposed implementation schedule, Letter to Don Emel, Hydroland, from David Simmons, FWS (Apr. 2, 2021), Project No. P-6985-005, accession no. 20210405-5427, at 2) (hereinafter FERC Order, Apr. 15, 2021).

These representations were made in filings to the Commission<sup>3</sup> and in letter correspondence with the Connecticut Congressional Delegation, a copy of which was then filed at the Commission.<sup>4</sup>

On October 22, 2021, the U.S. Fish and Wildlife Service (“FWS”) expressed strong concern with what Hydroland had promised – both with the delays being proposed by Hydroland and the open-ended nature of the commitments it was making – and urged the Commission to adopt a schedule that would promptly bring the Project into compliance.<sup>5</sup> This FWS schedule was endorsed by CT DEEP on November 5, 2021,<sup>6</sup> and Commenters then informed the Commission that, as an alternative to revocation, implementation of this FWS schedule would be acceptable to Commenters.<sup>7</sup> To date, the Commission has not taken action on the filings by Commenters, FWS, and CT DEEP.

\* \* \*

As of December 1, 2021, the following actions by Hydroland are past-due, based on investigations conducted by Commenters on December 1, 2021. Commenters’ investigation both confirmed findings made by CT DEEP in its November 5, 2021 filing to the Commission, as well as documenting additional matters in which Hydroland either has not come into compliance or appears to be in non-compliance.<sup>8</sup> Hydroland’s ongoing non-compliance includes matters of public safety that pose a significant ongoing risk to neighboring communities and users of the Naugatuck River, as well as environmental issues well known to the Commission.

1. Public safety:

a. Broken signs, lights, and fences have not been repaired or replaced.

Deadline: Safety issues were noted by the Commission as early as July 5, 2019 in an inspection follow-up report, wherein the Commission

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<sup>3</sup> Letter to Holly Frank, FERC, from Cory Lagerstrom, Hydroland (Oct. 5, 2021), Project Nos. P-6985-005, -006, accession no. 20211005-5189, attach. A (hereinafter Hydroland Letter, Oct. 5, 2021).

<sup>4</sup> Letter to Senator Blumenthal, from Cory Lagerstrom, Hydroland (Oct. 25, 2021), Project No. P-6985, accession no. 20211025-5146 (hereinafter Hydroland Letter to Delegation, Oct. 25, 2021).

<sup>5</sup> Letter to Secretary Bose, FERC, from Audrey Mayer, FWS (Oct. 22, 2021), Project No. P-6985-005, accession no. 20211022-5034 (hereinafter FWS Letter, Oct. 22, 2021).

<sup>6</sup> Letter to Secretary Bose, FERC, from Commissioner Katie Dykes (Nov. 5, 2021), Project No. P-6985-005, accession no. 20211109-5064.

<sup>7</sup> NVCOG, Save the Sound, & NRRG, Answer in Opposition to Motion (Nov. 4, 2021), Project Nos. P-6985-005, -006, accession no. 20211104-5179.

<sup>8</sup> See Appendix II, Affidavits of Aaron Budris, NVCOG, and Kevin Zak of Naugatuck River Revival Group.

required that signs be replaced or made visible.<sup>9</sup> Hydroland stated that it would repair or replace broken signs, lights, and fences by October 31, 2021.<sup>10</sup>

Current status: See Appendix I, Photos 1-2, 7. While some general clean-up of the site has been completed (such as vegetation management), no tasks relevant to protecting the public from the hazards of the hydroelectric facilities and the dam itself have apparently been conducted: there are no signs alerting approaching river users of the dam and there are no functioning lights surrounding the facilities.

- b. Repair of fences, gates, and other measures to restrict access for public safety have not been completed.

Deadline: Hydroland stated that it would complete repair of fences, gates, and other measures to restrict access by November 30, 2021.<sup>11</sup>

Current status: See Appendix I, Photos 3-5. Hydroland has not restricted access by the public to the hydropower facilities. The conditions existing when Hydroland made this promise of repair to the Commission appear to remain unchanged, namely: the gatehouse remains unlocked; Unit 2 remains unlocked and open, including an open skylight; and there are significant gaps in the fencing surrounding the Unit 2 property. Unit 2 is of particular concern, given that the property abuts a residential neighborhood.

- c. The boat boom has not been repaired or replaced.

Deadline: In its July 2019 inspection report, the Commission determined that the boat boom was not in place and required that it be replaced.<sup>12</sup> Hydroland stated that the boat barrier would be replaced by April 2022.<sup>13</sup> Commenters contend that waiting until April 2022 is a dangerously delayed response, as this task is not resource intensive, and urgent to protect public safety.

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<sup>9</sup> Letter to Salim Ayas, Enel, from John Spain, FERC (July 5, 2019), Project No. P-6985-000, accession no. 20190705-3026, at 1 (hereinafter FERC Inspection Follow-Up Letter, July 5, 2019).

<sup>10</sup> Hydroland Letter, Oct. 5, 2021, attach. A.

<sup>11</sup> *Id.*

<sup>12</sup> FERC Inspection Follow-Up Letter, July 5, 2019, at 2.

<sup>13</sup> Hydroland Letter, Oct. 5, 2021, attach. A.

Current status: The boat barrier remains draped over the face of the dam, continuing to leave boaters at risk. See Appendix I, Photos 6-7.

2. Operation of hydroelectric and fish passage facilities:

a. Flashboards/crestboards have not been installed or repaired.

Deadline: This task was to be completed by November 30, 2021, according to Hydroland and FWS deadlines.<sup>14</sup> FERC previously ordered the installation or repair of these flashboards/crestboards by April 15, 2021.<sup>15</sup>

Current status: See Appendix I, Photo 8. There are still no flashboards on the east side of the dam. This task would bring the dam height to a uniform elevation, which is one of the many tasks necessary to provide the proper flow regimes for fish passage, as it would limit the spill that results in false attraction.

b. Unit 1 is required to be back in operation – status is unknown.

Deadline: Hydroland has provided various deadlines for returning Unit 1 to service, most recently stating that it would be back in operation “ASAP,”<sup>16</sup> in the “near future,”<sup>17</sup> or “with[in] a few days.”<sup>18</sup> FERC previously ordered that Unit 1 return to operation by April 15, 2021.<sup>19</sup>

Current status: Hydroland has not notified the Commission that Unit 1 is now operating, nor has it provided any subsequent updates regarding any reason for a delay if indeed it is still offline. It is our understanding from site observations and river flow conditions that Unit 1 is still not in operation: no flow was observed exiting Unit 1, and all flow appeared to be spilling over the face of the dam. See Appendix I, Photo 9. A status update regarding Unit 1 should be immediately provided to the Commission and natural resource agencies. Operation of Unit 1 is required under the conditions of the

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<sup>14</sup> FWS Letter, Oct. 22, 2021, app. A; Hydroland, Response to Complaint (Answer) (Oct. 20, 2021), Project Nos. P-6985-005, -006, accession no. 20211020-5175, at 17 (hereinafter Hydroland Answer, Oct. 20, 2021) (extending its own proposed deadline of October 31, 2021 from its October 5, 2021 correspondence).

<sup>15</sup> FERC Order, Apr. 15, 2021, at 6.

<sup>16</sup> Hydroland Letter, Oct. 5, 2021, attach. A.

<sup>17</sup> Hydroland Answer, Oct. 20, 2021, at 14.

<sup>18</sup> Hydroland Letter to Delegation, Oct. 25, 2021, at 2.

<sup>19</sup> FERC Order, Apr. 15, 2021, at 6.

facility's exemption, and is also one of many critical conditions necessary for the proper flow regimes for fish passage.

c. Repairs of head gates – status is unknown.

Deadline: Hydroland first stated that the head gates would be repaired in Summer 2021.<sup>20</sup> Later, Hydroland reported that these gates were installed and tested the week of October 18, 2021<sup>21</sup> and would be “operational in the near future.”<sup>22</sup>

Current status: Hydroland has not notified the Commission if the head gate hydraulic equipment has been installed and if the head gates are now operational. A status update should be immediately provided to the Commission and the natural resource agencies. This task is one of many critical steps necessary for proper flow regimes for fish passage, as it would allow flows to be diverted into the canal.

d. Comprehensive engineering assessment not filed.

Deadline: FWS set a deadline of November 30, 2021 for the completion of a comprehensive engineering assessment.<sup>23</sup> As a part of this assessment, Hydroland would determine whether the facilities were constructed as designed, whether the as-built facilities deviate from the 2019 FWS fish passage engineering design criteria, and would present the status of the ladder, bypass, and ancillary features.

Current status: This assessment does not appear to have been completed. Hydroland has not reported whether it has conducted such an assessment. Delay of the assessment causes further delays in the remainder of the necessarily aggressive schedule for interim and long-term measures to restore fish passage.

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<sup>20</sup> Letter to Secretary Bose, FERC, from Don Emel, Hydroland (Mar. 1, 2021), Project No. P-6985-005, accession no. 20210304-5056, at 3.

<sup>21</sup> Hydroland, Declaration of Cory Lagerstrom, Response to Complaint (Answer) (Oct. 20, 2021), Project Nos. P-6985-005, -006, accession no. 20211020-5175, at 5.

<sup>22</sup> Hydroland Answer, Oct. 20, 2021, at 17.

<sup>23</sup> FWS Letter, Oct. 22, 2021, app. A.

- e. Repair to damaged structures or concrete spalling in fish ladder – status is unknown.

Deadline: FWS set a deadline of November 30, 2021 for these repairs to be completed.<sup>24</sup> These repairs were to be completed while the fish ladder was dewatered for the engineering assessment.

Current status: It is unknown whether Hydroland has dewatered the fish ladder to conduct the proper engineering assessment, or the required rehabilitation of the damaged fish ladder structures. A status update should be immediately provided to the Commission and the natural resource agencies.

Hydroland has, yet again, failed to meet compliance deadlines set by the Commission, or natural resource agencies, or even self-imposed deadlines. Commenters respectfully suggest that the time for Commission action on the several requests from FWS, CT DEEP, and Commenters is now, for the reasons stated above and in support of these requests.

Sincerely,



Rick Dunne  
Executive Director  
Naugatuck Valley Council of Governments



Katherine M. Fiedler  
Staff Attorney  
Save the Sound



Kevin Zak  
President  
Naugatuck River Revival Group

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<sup>24</sup> *Id.*

Project Nos. P-6985-005, -006

December 8, 2021

Page 7

CC: Via Electronic Mail

Cory Lagerstrom, Hydroland, Inc.

Tim Carlsen, Hydroland, Inc.

Holly Frank, FERC

Melissa Grader, U.S. Fish and Wildlife Service

Jessica Pica, U.S. Fish and Wildlife Service

Andrew Tittler, Department of Interior

Rick Jacobson, CT DEEP

Tim Wildman, CT DEEP

Alison Rau, CT DEEP

Bill Lucey, Save the Sound

Ron Shems, NVC OG Attorney

Eric Christensen, Hydroland Attorney



## APPENDIX I

Photo 1: No warning signage approaching dam (A. Budris, 12/1/21)





Photo 2: no safety lights at dam (K. Zak, 12/1/21)



Photo 3: Unit 2 unsecured, skylight and door open (A. Budris, 12/1/21)





Photo 4: Unit 2 unsecured, skylight and door open (A. Budris, 12/1/21)





Photo 5: Unit 2 unsecured, easy access from adjacent neighborhood (A. Budris,  
12/1/21)





Photo 6: boat barrier draped over face of dam (A. Budris, 12/1/21)





Photo 7: no warning signs, no boat barrier (A. Budris, 12/1/21)



Photo 8: no crestboards on east side of dam (A. Budris, 12/1/21)





Photo 9: no flow from Unit 1 outfall (A. Budris, 12/1/21)



## **APPENDIX II**

Affidavit of Aaron Budris

Affidavit of Kevin Zak

## AFFIDAVIT OF AARON BUDRIS

1. I am a Senior Regional Planner for the Naugatuck Valley Council of Governments. As part of my duties, I have been monitoring compliance and assisting in the efforts to seek compliance at the Kinneytown Dam for approximately the last 18 months.
2. I have regularly visited the Kinneytown dam site on a monthly basis for the last three months and visited the site several times before then.
3. On Wednesday, December 1, 2021 from 10:30 a.m. to 12:30 p.m., I visited the Kinneytown Dam site to determine whether November 30, 2021 deadlines were met and whether there were any apparent efforts underway towards compliance.
4. I took the day-time pictures attached as exhibits to NVCOG, Save the Sound and Naugatuck River Revival Group's December 8, 2021 comments.
5. I went to a public parking area off of Derby Avenue in Seymour, Connecticut. I could observe the Kinneytown Dam and Seymour powerhouses from that location.
6. I launched a drone with photo and video capabilities from this parking area to better observe the Dam. I am a FAA licensed unmanned aerial vehicle (UAV) operator. Kevin Zak acted as a visual observer, assisting with maintaining operational visual line of sight.
7. I flew the drone over the dam at heights between 50 and 300 feet and took photos and video of the dam, canal gate house, fish ladder, and Seymour powerhouse.
8. I also took pictures with my cell phone.

9. The pictures accurately reflect my direct visual observation of the dam from this parking area.
10. I did not alter the pictures in any way.
11. After taking pictures with my drone and cell phone, Kevin Zak and I went to the Ansonia Unit on North Fourth St. in Ansonia, CT.
12. We stayed on North Fourth Street from where we could observe the Ansonia powerhouse.
13. We saw that the door to the Ansonia powerhouse was open, the gate on North Fourth Street securing the powerhouse was severely bent and could easily be bypassed, and that the canal was strewn with trash.
14. I took pictures of the broken gate and open door with my cell phone.
15. I launched the drone from the public roadway with Kevin Zak acting as visual observer. I flew the drone over the Ansonia Unit and the Naugatuck River and was able to see that the skylight was open, and several windows in the Ansonia powerhouse were broken, exposing the powerhouse to the elements and trespassers. I took pictures of the broken skylight and windows and the open door with the drone.
16. The pictures accurately reflect the conditions of the Kinneytown Dam and related structures on December 1, 2021. They also reflect my actual observations made on that day.

  
Signature of Affiant

12/8/21  
Date

Subscribed and sworn to me this 8 day of December, 20 21

Signature of Notary Public: Carolyn Quintana

Date Commission Expires: 11-30-25

CAROLYN QUINTANA  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 11-30-25

### **AFFIDAVIT OF KEVIN ZAK**

1. I am over the age of 18 and I am competent to testify to all facts contained in this declaration.
2. The facts contained in this affidavit are within my own knowledge and are true and correct.
3. I am the President of Naugatuck River Revival Group, Inc. (NRRG). The NRRG is a 501(c)(3) organization. The business address of NRRG is 132 Radnor Ave, Naugatuck, CT.
4. As part of my advocacy for the Naugatuck River and in my role as President of NRRG, I regularly monitor the status of fish passage at the Kinneytown Dam and progress towards restoring the Naugatuck River historic fish runs. I have also been monitoring compliance on-site through direct observations and photo and video documentation.
5. I regularly visit the Kinneytown Dam site and the publicly accessible reaches of the Naugatuck River. I am familiar with the features and operations of the hydroelectric facilities and fish passage structures.
6. On Wednesday, December 1, 2021, from 10:30 a.m. to 12:30 p.m., I visited the Kinneytown Dam site to determine whether November 30, 2021 deadlines were met and whether there were any apparent efforts underway towards compliance.
7. I worked with Aaron Budris as a visual observer, assisting in maintaining operational visual line of sight, as he operated the drone. The pictures taken by Aaron Budris are attached as exhibits to the comments filed by NRRG, Save the Sound, and Naugatuck Valley Council of Governments on December 8, 2021.
8. I returned to the site around 10:00 p.m. on December 1, 2021 to inspect the lights surrounding Unit 1. I took several pictures with an iPhone of Unit 1 from a public parking area

off of Derby Avenue in Seymour, Connecticut. These photos, taken with and without vehicle headlights illuminating the facility, show that there are no functioning safety lights around Unit

1. Several of these photos are attached as exhibits to the December 8, 2021 comments.

9. I did not alter the pictures attached to the December 8, 2021 comments in any way.

10. The pictures accurately reflect the conditions of the Kinneytown Dam and related structures on December 1, 2021. They also reflect my actual observations made on that day.

Kevin R. Zate  
Signature of Affiant

Dec. 7, 2021  
Date

Subscribed and sworn to me this 7th day of December, 2021

Signature of Notary Public: R. Maria

Date Commission Expires: 06/30/24