

Elnu Abenaki Tribe
Tribal Historic Preservation Office, Cultural Relations
117 Fuller Drive
Brattleboro, VT 05301



May 22, 2024

Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: Elnu Abenaki Tribe Comments on Great River Hydro, LLC Final License Application for Vernon Hydroelectric Project No. 1904-078, Bellows Falls Hydroelectric Project No. 1855-050, and Wilder Hydroelectric Project No. 1892-030 in Vermont and New Hampshire. Federal Energy Regulatory Commission.

Dear Secretary Reese:

Thank you for the opportunity to comment on the above referenced projects. The Elnu Abenaki (Vermont State-recognized Tribe citation¹ V.S.A. § 853a) through its Tribal Historic Preservation Office (Elnu THPO) is providing the Federal Energy Regulatory Commission (FERC) with the following comments pursuant to 36 CFR 800.4, regulations established by the Advisory Council on Historic Preservation to implement Section 106 of the National Historic Preservation Act (NHPA); we refer additionally to NHPA's National Register Bulletin 38 Guidelines (NRB38). Leading up to this point and at the prior invitation of Dr. Frank Winchell of FERC and Harold Peterson of the Bureau of Indian Affairs (BIA), the Elnu Abenaki have been participating in the Federal licensing consultation process as vested parties with recognized interests in Cultural Resources for the abovementioned proceedings. We have made multiple filings regarding the substantive lack of engagement, consultation, compliance, and negotiation by Great River Hydro, LLC (GRC) and their license predecessor TransCanada (TC).

With the implicit understanding that the Abenaki embody a river- and earth-centered culture, any activity on the Connecticut River and its tributaries will have an effect, to a greater or lesser extent, on the traditional and ongoing living relationship between the River, the Land, and the People. Areas may be flooded, eroded, modified, restricted, disrespected, damaged, destroyed, or otherwise compromised by industrial uses such as damming and hydrogeneration. As an indigenous People and culture, place-based and in relationship with many other communities – human, natural, ancestral, and both temporal and intangible –we are conscious of the connections and effects amongst all of these entities within the landscape.

The Elnu THPO has reviewed Great River Hydro, LLC's (GRH) amended Final License Application distributed on January 31, 2024. Elnu THPO offers the following comments regarding the proposed concerns and measures (or the substantiated lack thereof) related to Cultural Resources. Also, we hereby refer to and incorporate the comments relative to Cultural and Historic Resources filed in this process on May 22, 2024 by Connecticut River Conservancy as aligned with our own, specifically around the complete lack and incorporation of tribal consultation regarding the woefully incomplete Traditional Cultural Properties Study (TCP) No. 33 and the preparation of the Historic Properties Management Plan (HPMP).

While the TCP Study 33 and its derivative documents are of singular concern, it must be noted that, as Indigenous Peoples, the subjects of other resource studies may also have great significance to the signatories in general and may in fact be integral to certain aspects of the TCP. These include but are not limited to: water quality and flowage patterns; accessibility; natural communities including fish, wildlife, and plants; the harvesting of traditional food and medicine; hunting and fishing; and effects upon the landscape itself such as erosion, earthmoving, and management practices.

- Given that the Traditional Cultural Property (TCP) Study No. 33 was conducted absent required Tribal consultation, Elnu Abenaki continue to stand as invited by FERC and the BIA to address the shortfall. NHPA Section 106 and the NRB38 Guidelines clearly reserve this final authority to those whose cultural interests are at stake. TransCanada, to their credit, did acknowledge this lack in the TCP Study, a critical condition that persists and an opportunity that we must remedy. Due to its essential (and now lacking) documentation role, the revision and completion of the TCP must precede or at a minimum be conducted in coordination with any related Programmatic Agreements (PA), Memorandums of Agreement (MOA), and ultimately Historic Property Management Plans (HPMP).
- Relative to the project Area of Potential Effect (APE) as previously defined is "the area within the FERC Project Boundary owned in fee simple by TransCanada and 10 meters, or about 33 feet of land inland from the top of bank in areas along the Connecticut River and affected portions of tributaries where TransCanada holds flowage rights." With regard to the APE when dealing with TCPs and their associated landscapes, it is critical to note that (quoting from NRB38 Section V) "boundaries are often difficult to define... [and] in part because of the difficulty involved in defining boundaries, it is important to address the setting of the property... The nomination form or eligibility documentation [should] discuss those qualities of a property's visual, auditory, and atmospheric setting that contribute to its significance, including those qualities whose expression extends beyond the boundaries of the property as such into the surrounding environment." In other words, TCPs, in particular, may be better understood as functioning within a holistic setting, such as a viewshed, watershed, or naturally defined feature. Notwithstanding the Project's general APE description, this contextual characteristic must be taken into account when conducting any TCP study.

- We concur with the comments filed by the Vermont State Historic Preservation Office (VTSHPO) in that they “do not not agree with the conclusions in sections 3.11.4 *Cumulative Effects* and 3.11.4 *Unavoidable Adverse Effects* that no effects or adverse effects are associated with the GRH proposal. The archaeological investigations identified multiple areas of erosion adjacent to and directly impacting known archaeological sites and archaeologically sensitive areas. Due to the extended length of these proceedings and the absence of interim monitoring of archaeological sites, VT SHPO is concerned that adverse effects are actively occurring and may continue under the GRH proposal. The HPMP should include specific Protection, Mitigation, and Enhancement Measures for all known historic sites and effects as well as procedures to identify project effects that may occur over the term of the proposed license to historic sites, known and yet to be identified, in the APE.
- Elnu Abenaki tribe was and has not been included, to any substantive degree, with the series of (still incomplete) Phased Archaeological Surveys, and we were not included in the more crucial segment for Traditional Cultural Properties (TCPs). The documentation of TCPs by NHPA, Section 106 definition requires consultation and active engagement with the cultural groups who are directly associated with the Project area. They alone hold that body of knowledge, but despite this reality we were not included in the TC/GRH abstract and simplistic literature/desktop survey (Study 33) that was produced. Since it documents no culturally self-identified TCPs and did not include the necessary inclusive participation and consultation, albeit in the Connecticut River region which is well-known for its deep cultural presence and significance, the TCP Study as currently comprised is without value. It is obvious that, lacking a meaningful TCP process with its documentation, there can be no effective, responsive Historic Properties Management Plan (HPMP) and the requisite ongoing dialogue regarding the recognition of and responsibility for Cultural Resources, in a culturally appropriate manner.

This ongoing lack of consultation, and thus the necessary documentation that would follow, has been brought to the attention of Great River Hydro (and its predecessor TransCanada) and FERC, with a request to keep the TCP process goals and dialogue open, and to develop a PA or MOU for the same, that would, in turn, inform a comprehensive and responsive HPMP. We (Elnu Chief Roger Longtoe Sheehan, Councilman Jim Taylor, and I) met in person with Great River Hydro Licensing Manager John Ragonese and he agreed to continue dialogue. Since then, we have maintained this exact position, with both Great River Hydro (GRH) and FERC, and – despite promises - there has been no substantive follow-through to this effect. We have remained in this position – for nine years now - and request that FERC require the licensees (GRH) to codify and support a PA or MOU between themselves and Elnu Abenaki Tribe that will meaningfully constitute an ongoing TCP process, as a living document, which can then inform a comprehensive and responsive HPMP. This can be accomplished through constructive dialogue so that

vested community concerns are included and NHPA objectives are successfully met.

- This is all the more crucial since Native American Cultural Resources (which are highly significant in the ethnographic record) have *never* been adequately addressed in the Project Area - in the entire history of hydroelectric operations on the Connecticut River - and this current relicensing process the only opportunity to responsibly do so within a lifetime.

The operation and relicensure of the Projects under discussion has impacted and will continue to affect our interests in an ongoing, significant, and deleterious manner. We are alarmed and concerned at the lack of response, dialogue, and accountability by the licensees and the delegated agencies to our concerns, which are clearly stated and protected in the several Federal statutes and policies, administered through this process by FERC. We are not being heard. Our traditional homelands, centered on the Connecticut River including the Project areas, are being degraded and mismanaged; we refer to multiple previous docket filings, to this effect. The neglect and harm continues and the statutory authority to require these remedies rests with FERC and we respectfully request your concurrence toward these ends.

- A perfect example, but not the only one, is the area known as the Bellows Falls Petroglyphs, on the mainstem bypass reach between the Bellows Falls dam and generating station outfall. This is an ancient and sacred traditional fishing place and burial ground, almost completely disregarded and deeply compromised by the historic hydroelectric impoundment and other industrial uses and surrounded by very sensitive, well-documented archaeological sites and Traditional Cultural Properties including burials. On a related note, the Bellows Falls site is also implicated in its significance to the anadromous fish runs subject to their own relicensure Studies. That all of these and other factors converge on this particular site and its environs is exemplary of its Indigenous significance, which is driven by cultural relationships with both human and other-than-human entities, including the River itself. This is precisely why the Traditional Cultural Properties recognition process was created. Further, all these Project impacts inform each other, and we are rendered unable to meaningfully participate in other aspects, such as recreation, erosion, fisheries, etc. when our own intersectionalities are ignored and sidelined.

We request your attention to this situation and an affirmative response to our request for active, constructive dialogue and license requirements to ensure the same. Thank you for your witness and consideration.

Sincerely,

A handwritten signature in black ink that reads "Richard Holschuh". The signature is written in a cursive style with a large initial 'R'.

Richard Holschuh

May 22, 2024

Tribal Historic Preservation Officer

Elnu Abenaki Tribe

rich.holschuh@gmail.com

117 Fuller Drive

Brattleboro, VT 05301

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