

**Great River Hydro**

**John L. Ragonese**  
FERC License Manager  
Great River Hydro, LLC  
40 Pleasant Street, Suite 202  
Portsmouth, NH 03801  
**tel** 603.498.2851  
**em** jragonese@greatriverhydro.com

September 19, 2022

**VIA ELECTRONIC FILING**

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: Great River Hydro, LLC**  
**Wilder Hydroelectric Project, FERC Project No. 1892-030**  
**Bellows Falls Hydroelectric Project, FERC Project No. 1855-050**  
**Vernon Hydroelectric Project, FERC Project No. 1904-078**

**Great River Hydro's Response to Comments on Offer of Settlement**

Dear Secretary Bose:

On August 2, 2022, Great River Hydro, LLC ("GRH"), licensee of the Wilder (FERC No. 1892), Bellows Falls (FERC No. 1855), and Vernon (FERC No. 1904) hydroelectric projects ("Projects"), filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") an Offer of Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedures. The Offer of Settlement consisted of a Settlement Agreement for Fish Passage ("Agreement"), executed by and among GRH, the U.S. Department of Interior ("Interior") Fish and Wildlife Service ("USFWS"), New Hampshire Fish and Game Department ("NHFG"), and Vermont Fish and Wildlife Department ("VFWD"), and an accompanying Explanatory Statement.

The Commission issued a Notice of Settlement Agreement and Soliciting Comments on August 4, 2022, setting a deadline of September 2, 2022 for comments on the Offer of Settlement and a deadline of September 17, 2022 for reply comments. The Upper Valley River Subcommittee of the Connecticut River Joint Commissions filed comments on August 31, 2022. The Connecticut River Conservancy, American Whitewater, and Appalachian Mountain Club filed joint comments on September 1, 2022. The Connecticut River Trout Unlimited Chapter (#450) and the Wantastiquet Local River Subcommittee of the Connecticut River Joint Commissions each filed comments on September 2, 2022. Commenters were generally supportive of the Agreement, but provided feedback on specific aspects of the Agreement,

Kimberly D. Bose, Secretary

September 19, 2022

Page | 2

including the timeline for additional studies and implementation, fish passage performance standards for migratory species at all Projects, removal of the barrier dam at the Bellows Falls Project, withdrawal rights under the Agreement, details on enhancements to the public viewing window and counting room at the Vernon Project, and submission of the annual fishway Operation and Maintenance (“O&M”) reports to FERC. GRH hereby submits this reply to the comments filed on the Offer of Settlement.

## **Introduction**

The Agreement was a result of over a year of extensive negotiations among the federal and state fishery agencies and GRH and includes mutually agreeable conditions for fish passage at the Projects under the new licenses. These fish passage conditions will be submitted as USFWS’s preliminary prescriptions for fish passage pursuant to Section 18 of the FPA and the Parties’ recommended terms and conditions related to fish passage pursuant to Sections 10(a) and 10(j) of the FPA. The Agreement is not a comprehensive settlement, but rather a very specific agreement between GRH and the federal and state fishery agencies responsible for Section 18 prescriptions and terms and conditions for fish and wildlife protection under Section 10 of the FPA. By virtue of their mandates and responsibilities, these agencies represent the public interest with respect to fishery management, passage, and restoration goals. In light of the federal and state agencies’ expertise in these areas and support for the Agreement, the Commission should not include any other conditions with respect to fish passage in the new licenses. Accordingly, once the conditions of the Agreement have been submitted to FERC in the form of fishway prescriptions and recommended terms and condition, GRH requests that FERC incorporate them into the new licenses without material modification.

## **Withdrawal Rights from Agreement**

The Agreement includes a provision permitting a Party to unilaterally withdraw from the Agreement if the New Hampshire Department of Environmental Services (“NHDES”) or Vermont Department of Environmental Conservation (“VDEC”) (together, “State 401 Agencies”) issues a water quality certification pursuant to Section 401 of the Clean Water Act that contains fish passage conditions “that are materially additive to, or materially inconsistent with, the terms of [the] Agreement.”<sup>1</sup> Certain commenters expressed concern that this language would bind the State 401 Agencies when they are not signatories to the Agreement and are required to conduct a public process and consider public input in the Section 401 process.

Neither NHDES nor VDEC are parties to the Agreement and the Agreement does not bind or obligate these agencies. Rather, the Agreement requires the New Hampshire Fish and Game Department and the Vermont Fish and Wildlife Department (“State Fishery Agencies”), each a Party to the Agreement, to support issuance by the State 401 Agencies of water quality certifications that are consistent with the Agreement and prohibits the State Fishery Agencies from proposing or recommending conditions to the State 401 Agencies that are materially inconsistent with or materially additive to the provisions in the Agreement. The State 401 Agencies will conduct a public process and consider public input in the Section 401 process, as

---

<sup>1</sup> See Agreement § 1.14.

Kimberly D. Bose, Secretary

September 19, 2022

Page | 3

required by state law. If the State 401 Agencies, as a result of this public process, decide to adopt provisions in the final water quality certifications that are inconsistent with the Agreement, any Party may choose to withdraw from the Agreement. This provision protects the Parties to the Agreement but does not bind the State 401 Agencies in any way.

### **Removal of Bellows Falls Fish Barrier Dam**

Commenters assert that removal of the Bellows Falls Fish Barrier dam is a necessary mitigation measure for protected fish species that have been impacted by the presence of the dam and that GRH should be financially responsible for the removal.

The fish barrier dam was installed at the recommendation of USFWS when the Bellows Falls Fish ladder was constructed in order to prevent upstream migrating Atlantic salmon from accessing the bypass and instead use the fish ladder. While salmon restoration is no longer active, there is a recognition and desire to continue operation of the fish ladder as the primary means of upstream passage for sea lamprey and American eel. GRH believes there is a benefit to support fish ladder passage by retaining the barrier dam. The Agreement does not require removal of the barrier dam for fish passage purposes; rather it outlines the agreed-upon pathway for addressing potential future removal of the barrier dam at some point during the term of the new licenses for purposes other than fish passage. Federal and state fishery agencies agreed that GRH should not be held responsible for its removal and only requested GRH support efforts to remove it, such as granting access or coordinating its operations as needed. GRH also agreed to assess upstream eel passage need and install a passage measure upstream, at the base of the Bellows Falls Dam where needed if the barrier dam were to be removed at a future date after the license is issued. Therefore, removal of the barrier dam at this time is neither a proposed nor recommended mitigation measure and, as such, the Agreement does not include it.

### **Timing of Evaluations to Support Fish Passage Alternatives and Design**

Commenters suggest that the evaluations included in the Agreement to support fish passage alternatives and designs should have been performed during the study phase of the relicensing and should now be initiated immediately. The evaluations identified in the Agreement are necessary components of fish passage mitigation measures and supported by the federal and state fishery agencies. They are necessary to design and implement appropriate and effective fish passage measures at the Projects. Fish passage agreements often include phased approaches to fish passage design that include an initial evaluation component, as is included in the Agreement.<sup>2</sup> The evaluations are not intended to assess project impacts, as are the pre-filing studies conducted during the study phase of the Integrated Licensing Process. Rather, these are post-license evaluations to design fish passage mitigation measures to be required under the operating regimes to be set forth in new licenses.

---

<sup>2</sup> See, e.g., Offer of Settlement for Pejepscot Hydroelectric Project, Project No. 4784-106 (filed Feb. 18, 2022) (providing for both interim and permanent downstream fish passage measures based on the outcome of studies to be conducted by the licensee).

Kimberly D. Bose, Secretary

September 19, 2022

Page | 4

The Agreement does not obligate GRH to commence evaluations or investigations prior to issuance of the new licenses. Under the terms of the Agreement, USFWS will issue preliminary prescriptions for the Projects that are fully consistent with the terms of the Agreement within 60 days after the deadline established by FERC in its “Ready for Environmental Analysis” Notice (“REA Notice”). The Section 18 prescriptions will become effective once FERC incorporates them into the new licenses. Thus, GRH does not intend to nor should it be required to commence any pre-design work, evaluations or investigations required under the Agreement and the Section 18 prescriptions until FERC issues the new licenses for the Projects.

### **Timetables and Sequence for Fish Passage Facilities**

Commenters generally assert that the timeline for implementation of the fish passage measures under the Agreement is too long. The timetable for implementation was discussed and adjusted over the extended course of settlement discussions and reflects the management priorities of the fishery agencies, the need to evaluate and design mitigation in consultation with the agencies, and the realities of budget and procurement processes, including seasonal construction windows. The timetable allows adequate time for GRH to evaluate fish passage options at each Project, design fishway structures, consult with agencies in the development of the designs, and receive approval of the designs by both the federal and state fishery agencies and FERC. The timetable also reflects expected implementation of measures downstream before proceeding at the next upstream dam.<sup>3</sup> The timing of installation of fish passage facilities at the Projects was carefully negotiated to account for all of these factors and the Agreement reflects a timetable that is acceptable to both GRH and the federal and state fishery agencies.

### **Performance Standards**

While certain commenters supported inclusion in the Agreement of performance standards for American shad at Vernon, they noted that the Agreement should include performance standards for all three migratory species for upstream and downstream passage at all three Projects. Performance standards cited in the Agreement are those published in existing species-specific Management Plans for restoration and recovery as developed by the participants and cooperating agencies to the Connecticut River Atlantic Salmon Commission and accepted by FERC as comprehensive plans pursuant to Section 10(a)(2)(A) of the FPA. No formal management plans that incorporate performance standards currently exist for sea lamprey and American eel. To the extent Management Plans that include performance standards are developed, adopted, and recognized as a comprehensive plan by the FERC, GRH would anticipate the federal and state fish agencies to use such standards to guide and assess fish passage mitigation performance for the species referenced in the plans.

---

<sup>3</sup> GRH also notes that the timetable under the Agreement is independent of potential mitigation timetables at the downstream Turners Falls project.

Kimberly D. Bose, Secretary

September 19, 2022

Page | 5

### **Improvements to Public Viewing Window and Counting Room**

Commenters generally expressed support for commitments in the Agreement to improve the public viewing window and counting room at the Vernon Project but noted that the Agreement lacked detail as to what improvements will be made. As stated in the Agreement, details on improvements to the public viewing window and counting room will be developed in consultation with federal and state fishery agencies during license year 4. The primary design elements targeted, based on settlement discussions, include replacement or updating viewing windows and fish counting features and technology, reducing humidity and moisture concerns in the counting room, accessibility improvements to the public viewing window, and educational information.

### **Submission of Fish Passage Operations and Maintenance Plan to FERC**

Commenters requested that the annual fishway O&M reports required under the Fish Passage Facilities Operations and Maintenance Plan (“FOMP”) be filed with FERC. GRH commits to and anticipates that the new licenses will require GRH to submit the annual O&M reports to FERC concurrently with submission of the reports to the federal and state fishery agencies each year.

### **Conclusion**

The Agreement commitments were carefully developed by the Parties to ensure that GRH will meet its regulatory obligations under the FPA while providing safe, timely, and effective fish passage at the Projects. GRH believes that the provisions of the Agreement are supported by the record and in the public interest. Accordingly, GRH renews its request for the Commission to review the terms of the Agreement in its environmental analysis for the relicensing of the Projects, acknowledge the Offer of Settlement, and issue new licenses for the Projects consistent with the provisions of the Agreement, which will be reflected in the preliminary prescriptions and recommended terms and conditions to be filed by the federal and state agencies following issuance of the REA Notice.

If you have any questions regarding this filing or require additional information, please contact me at 603-498-2851.

Sincerely,



John L. Ragonese  
FERC License Manager

Document Content(s)

20220919GRHReplyCommentsOnFPSA.pdf.....1