



**Environmental Advocacy Clinic
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March 7, 2023

Kimberly D. Bose, Secretary
Debbie-Ann Reese, Deputy Secretary
Federal Energy Regulatory Commission
888 First St. N.E.
Washington, DC 20426

Re: LICENSE APPLICATION NO. 2629-014 MORRISVILLE HYDROELECTRIC PROJECT

Dear Secretary Bose:

The Environmental Advocacy Clinic at Vermont Law & Graduate School represents American Whitewater, Vermont Natural Resources Council, and Vermont Council of Trout Unlimited. These stakeholder organizations are committed to protecting the quality of Vermont’s waters.

These organizations are specifically concerned with the degrading health of the Lamoille and Green Rivers resulting from the continued operation of the Morrisville Dam, the Cadys Falls Dam, and the Green River Dam—all owned by Morrisville Water & Light (“MWL”). The Federal Energy Regulatory Commission (“FERC”) can address these concerns by changing the interim license conditions to match the Clean Water Act § 401 state water quality certifications issued by the Vermont Agency of Natural Resources (“ANR”) in 2016.

ANR developed these water quality certifications to limit adverse impacts to the environment. ANR did so by setting standards “that fully supports water character, flows, water level, bed and channel characteristics, and water of a quality that consistently exhibits good aesthetic value.” (Standards, Section 3-04(A)(2) and (B)(6)(d)). The certifications protect aquatic habitats, fish passage, enhance the water chemistry, prevent shoreline erosion, support recreational boating, and protect the aesthetics of these areas. Interim licenses for project No. 2629 have been issued annually from 2016 to the present day in anticipation of a new license. These certifications were timely filed in 2015 and have not been adhered to since.

Under 18 CFR § 16.18 (d), FERC “may incorporate additional or revised interim conditions if necessary and practical to limit adverse impacts on the environment.” Implementing the certifications would limit adverse impacts on the environment. This is supported by ANR’s findings and development of the water quality certifications. It is necessary for FERC to implement the certifications to prevent further degradation, including lack of adequate minimum flows, excessive impoundment fluctuation, and lack of support for recreational use and aesthetics. It is practical to implement the certifications because (1) FERC has determined that there is a valid 401, (2) MWL has demonstrated that it can operate at full pond during the winter months, (2) MWL has unreasonably delayed in providing FERC with information to address its alleged dam safety concerns, and (4) it is not expeditiously pursuing its waiver appeal.

MWL does not have a viable reason for failing to comply with the water quality certifications. They previously asserted that complying with the certifications “would compromise the dam’s ability to operate safely and Morrisville Water and Light’s ability to generate power and revenue.” These statements are contradicted by the reservoir levels maintained by MWL throughout the winter, which—according to Scott Johnstone—were kept at full capacity. This

shows MWL can comply with the water quality certifications and has no valid reason for declining to do so.

American Whitewater, Vermont Natural Resources Council, and Vermont Council of Trout Unlimited request a technical conference with FERC to discuss altering the interim license conditions to include the certifications. We look forward to your response.

Sincerely,

/s/ Nick Bondurant

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the relicensing proceeding for Project No. 2629-014.

Respectfully submitted this 7th day of March, 2023.

/s/ Maribel Moses

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