

187 FERC ¶ 62,039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Green Mountain Power Corporation

Project No. 3025-032

ORDER APPROVING SURRENDER OF LICENSE

(Issued April 15, 2024)

1. On March 22, 2023, Green Mountain Power Corporation, licensee, filed an application to surrender its license for the Kelley's Falls Hydroelectric Project No. 3025,<sup>1</sup> pursuant to 18 C.F.R. §6.1 and 6.2 of the Commission's regulations. The project is located on the Piscataquog River in Hillsborough County, New Hampshire. The project does not occupy any federal lands.

**Project Description**

2. On April 24, 1984, the Commission issued a minor license for the project, which expired March 31, 2024.<sup>2</sup> Project works consist of: (1) a concrete and stone masonry dam approximately 31-feet-high by 504-feet-long that includes a concrete river right abutment, a 42-inch-diameter low level outlet pipe in the river right abutment with an invert elevation of 154 feet mean sea level (msl), a 192-foot-long concrete ogee spillway inclusive of a 6-foot-wide slide gate and topped with 33-inch-high timber flashboards, a blocked 36-inch diameter pipe that is non-operational through the spillway, intake structure, and river left stone masonry non-overflow wall with concrete cap; (2) an impoundment (Namaske Lake) with a surface area of 129-acres at a normal water surface elevation of 158.0 feet msl and surface area of 154-acres at elevation 160.75 feet msl (when flashboards are up); (3) an intake structure; (4) a 65-foot-long underground steel and concrete penstock; (5) a powerhouse containing a single turbine-generator unit rated at 0.450 MW; (6) an 80-foot long ledge terrace and backwater pool "bypass reach"; (7) a tailrace; (8) a 2,400 Volt (V), approximately 275-foot-long underground transmission line

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<sup>1</sup> *Hydro Resources Corporation*, 27 FERC ¶ 62,082 (1984). See most recently, *Order Approving Transfer of Licenses*, 157 FERC ¶ 62,133 (2016).

<sup>2</sup> See Notice of Authorization for Continued Project Operation, issued April 10, 2024.

that connects to a 12-kilovolt (kV) transformer situated in a Green Mountain Power-owned substation located outside of the project boundary; and (9) appurtenant facilities.<sup>3</sup>

3. The licensee owns the hydroelectric generating equipment and leases the dam from the New Hampshire Department of Environmental Resources (New Hampshire DES). Although Article 25 of the license requires the release of a specific minimum flow from the project,<sup>4</sup> the licensee reports that the project has historically been operated in a run-of-river mode.<sup>5</sup>

### **Background**

4. On March 30, 2022, the licensee filed an application for subsequent license and on October 3, 2022, Commission staff issued its Ready for Environmental Analysis notice in the proceeding. Concurrently, the licensee continued to consult with the resource agencies regarding potential measures being considered as part of relicensing. Ultimately, the licensee determined that the expected capital-intensive measures would not be financially viable due to the expected capital-intensive measures. On November 18, 2022, the licensee informed the Commission that it intended to surrender its license for these reasons and on December 29, 2022, filed a notice of withdrawal of its license application.<sup>6</sup> Subsequently on March 22, 2023, the licensee filed a surrender application.

### **Proposed Surrender**

5. The licensee proposes no modifications to the existing dam or powerhouse. No ground disturbing activities are proposed. To decommission the project, the licensee proposes to close the intake gate that allows water to flow to the penstock. The powerhouse would be locked and secured with existing security fencing and gates. The generating unit would be disconnected from the grid. All mechanical and electrical equipment would be left in place and ownership of the equipment would be transferred to the New Hampshire DES.

6. Upon surrender, the New Hampshire DES would operate its dam in accordance with applicable New Hampshire dam safety laws and regulations. All inflow would be

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<sup>3</sup> As described in the surrender application.

<sup>4</sup> *Hydro Resources Corporation*, 30 FERC 62,338 (1985). Article 25 requires the release of a minimum flow of 45 cubic feet per second, or inflow to the impoundment, whichever is less, as measured immediately downstream of the project.

<sup>5</sup> See the final license application, p. A-9, filed on March 30, 2022.

<sup>6</sup> Noticed on January 17, 2023.

passed primarily over the spillway and through the 42-inch diameter low level outlet, and/or through the 6-foot-wide slide gate, as needed. The licensee does not anticipate any adverse environmental effects from surrender of the project.

### **Pre-filing Consultation and Public Notice**

7. On February 13, 2023, the licensee provided a draft surrender application to Federal and state resource agencies including the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (Corps), National Marine Fisheries Service (NMFS), New Hampshire DES, New Hampshire Fish and Game Department (New Hampshire FGD), and New Hampshire Division of Historical Resources (New Hampshire State Historic Preservation Officer, or SHPO). Additional parties consulted include Hillsborough County (New Hampshire), Hillsborough County Conservation District, City of Manchester (New Hampshire), Wildlife Heritage Foundation of New Hampshire, American Rivers, and a number of Tribes including, but not limited to, the Abenaki Nation of New Hampshire, the Cowasuck Band-Pennacook/Abenaki People, Koasek (Cowasuck) Traditional Band of the Sovereign Abenaki Nation.

8. The Commission issued public notice of the surrender application on June 29, 2023, with protests, comments, and motions to intervene due to be filed by July 31, 2023. NMFS, FWS, and New Hampshire FGD filed comments in response to the Commission's notice, with NMFS also filing a motion to intervene.

9. The NMFS, FWS, and New Hampshire FGD support the proposed surrender and state their primary interest is in pursuing options for providing fish passage at the dam after surrender. These agencies explain that surrender of the license will render the project eligible for federal funding opportunities through the Infrastructure Investment and Jobs Act.

### **Statutory Compliance**

#### **Threatened and Endangered Species**

10. Section 7(a)(2) of the Endangered Species Act (ESA)<sup>7</sup> requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally-listed threatened or endangered species or result in the destruction or adverse modification of the critical habitat of such species.

11. Based on the U.S. Fish and Wildlife's (FWS) Information for Planning and Consultation (IPaC) website,<sup>8</sup> Commission staff identified one federally listed species in

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<sup>7</sup> 16 U.S.C. § 1536(a).

<sup>8</sup> IPaC, FWS, <https://ipac.ecosphere.fws.gov/> (accessed March 11, 2024).

the project area, the Northern long-eared bat (*Myotis septentrionalis*), which is listed as endangered. The monarch butterfly (*Danaus plexippus*), a candidate species, may also be found in the project area. No other listed species have been identified in the project area.

12. No construction, tree removal, or ground disturbing activities are proposed as part of surrender. Therefore, Commission staff conclude that surrender of the project would have no effect on any listed or candidate species.

### **National Historic Preservation Act**

13. Section 106 of the National Historic Preservation Act (NHPA)<sup>9</sup> and its implementing regulations<sup>10</sup> require federal agencies to take into account the effect of any proposed undertaking<sup>11</sup> on properties listed or eligible for listing in the National Register of Historic Places (National Register) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Historic properties are those that are listed or eligible for listing on the National Register. This generally requires the Commission to consult with the state SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

14. The existing project works, the dam and powerhouse, were previously determined eligible for listing on the National Register.<sup>12</sup> By letter dated January 8, 2024, Commission staff informed the New Hampshire SHPO that approval of the surrender would remove the project from federal jurisdiction, which consistent with the implementing regulations of the NHPA, would result in an adverse effect on the potentially eligible historic resources. Given that no modifications to the dam or powerhouse are proposed and no ground-disturbing activities would occur, Commission staff proposed no mitigation for this adverse effect. By letter filed on February 21, 2024, the New Hampshire SHPO determined there was no potential to cause effects resulting

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<sup>9</sup> 54 U.S.C. § 306108.

<sup>10</sup> 36 C.F.R. § 800.

<sup>11</sup> An undertaking means “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.” 36 C.F.R. § 800.16(y). Here, the undertaking is the proposed surrender of the project.

<sup>12</sup> See the licensee’s final license application, page E4-143, filed on March 30, 2022.

from the proposed surrender of the project. We consider our consultation under section 106 of the NPHA complete.

### **Environmental Review**

15. The National Environmental Policy Act (NEPA) requires federal agencies to consider the environmental effects of their actions in the decision-making process and provide a detailed statement on proposals for major federal actions significantly affecting the quality of the human environment. The purpose and function of NEPA is satisfied if federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process.<sup>13</sup> In assessing whether NEPA applies or is otherwise fulfilled, federal agencies should determine whether the proposed activity or decision is a major federal action.<sup>14</sup>

16. Commission staff invited agency and public participation in our decision-making process, and examined environmental issues related to the proposed action. The actions considered in this proposed surrender do not rise to the level of a major federal action.

17. Because the proposed surrender would not involve modifications to the existing dam or powerhouse and no ground disturbing activities would occur, Commission staff finds there would be no effects to geology and soils, water quality, water quantity, aquatic resources, or terrestrial resources from surrender of the project license. No effects would occur on species listed for protection under the ESA. No formal recreation facilities were required as part of the project license and with no change in project operations, adverse effects on any non-project recreation facilities in the project vicinity also would not occur.

18. Commission staff concludes that approving surrender of the project license would not result in adverse effects to environmental resources, except for the adverse effect of the loss of federal jurisdiction on historic resources, and no additional mitigation measures are recommended. Because surrender of the license would not result in any changes to the existing environment (baseline conditions), we conclude that surrender, as proposed, is not a major Federal action “significantly affecting the quality of the human environment.”<sup>15</sup>

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<sup>13</sup> 40 C.F.R. §1500.1.

<sup>14</sup> 40 C.F.R. §1501.1(a)(4).

<sup>15</sup> The National Environmental Policy Act (NEPA) requires Federal agencies to prepare a detailed environmental impact statement for all “major Federal actions significantly affecting the quality of the human environment” 42 U.S.C. § 4332(C).

## **Dam Safety**

19. The project dam is classified as having a high hazard potential. Dams are assigned a high hazard classification when potential failure of the dam would result in a probable loss of human life. The project was last inspected by the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer (D2SI – New York Regional Engineer) on September 8, 2023. There were no dam safety items identified that required remedial action.

20. The most recent Part 12D Independent Consultant (IC) safety inspection was conducted on July 11, 2022. The Independent Consultant's Safety Inspection Report (CSIR) was filed on January 23, 2023. In the CSIR, the IC concluded that the project is in good condition and adequately maintained. The IC did note that the dam does not have sufficient spillway capacity to pass the current Inflow Design Flood (IDF) without overtopping the right abutment and left non-overflow wall and questioned whether there could be additional downstream impacts if the spillway were to incur a sliding failure followed by breaches of the right abutment and left non-overflow wall. Since this scenario has not been evaluated, the IC made several recommendations for its assessment. In addition, the IC noted that these recommendations could be avoided if additional spillway capacity is provided at the dam. On January 23, 2023, the licensee submitted a plan and schedule to address the IC's recommendations by the end of 2025. Commission staff notes this effort would continue after surrender.

21. In summary, neither D2SI–New York Regional Engineer nor the CSIR noted any immediate dam safety concerns and found the project safe for continued operation. The dam is owned by New Hampshire DES and will be under the state's jurisdiction if the project is surrendered. It would be the responsibility of New Hampshire DES to pursue additional dam safety investigations or modifications. We find this acceptable since it is in the interest of the New Hampshire DES, as both dam owner and regulator, to ensure the dam is in accordance with the state's dam safety regulations after the dam is no longer under the Commission's jurisdiction.

22. When a project is surrendered, the Commission's jurisdiction over the project ends and future dam safety oversight of any remaining works becomes the responsibility of the state entity with regulatory authority. On October 31, 2023, the D2SI – New York Regional Engineer contacted the Chief Dam Safety Engineer of the New Hampshire DES to discuss the proposed surrender of the project. In response, the Chief Dam Safety

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NEPA is not implicated where, as here, no environmental effects are anticipated. *See, e.g., Watervliet Paper Co.*, 35 FERC ¶ 61,030 (1986) (license surrender leaving all project features in place not major federal action significantly affecting environmental quality).

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Engineer acknowledged that the project would be under state jurisdiction when and if the project is surrendered.

23. Based on the recent inspections discussed above, the project features are in satisfactory condition. Staff concludes there is no reason to deny surrender of the license for project safety issues. Staff recommends the licensee decommission the project as proposed, coordinate with the New Hampshire DES and provide them copies of existing dam safety documents, and file with the D2SI – New York Regional Engineer a final decommissioning report once activities are complete. Staff recommends the final report include documentation that the licensee has provided the dam safety documents to the New Hampshire DES. Surrender of the project would not be effective until the D2SI – New York Regional Engineer issues a letter that states all decommissioning work has been completed.

### **Discussion**

24. The licensee found continued operation of the project infeasible due to expected costs associated with relicensing the project and the existing license expired on March 31, 2024.<sup>16</sup> Commission staff reviewed the surrender application and finds no adverse environmental effects would result from surrender, except for the adverse effect on historic properties due to a loss of federal jurisdiction, for which no mitigation is recommended.

25. Section 6 of the Commission's regulations allow licensees to surrender existing project licenses upon the fulfillment of obligations prescribed by the Commission. This order makes the project surrender contingent upon the licensee providing documentation to the Commission's D2SI – New York Regional Engineer that it has decommissioned the project's facilities as required by this order. This surrender will not be effective until the Commission's D2SI – New York Regional Engineer issues a letter finding that the conditions of this order have been satisfied. With these conditions, the proposed surrender of license should be approved.

### **The Director orders:**

(A) Green Mountain Power's application to surrender the license for the Kelley's Falls Hydroelectric Project No. 3025, filed on March 22, 2023, as modified in paragraphs (B) through (E), is approved.

(B) Within 90 days of the date of this order, the licensee must complete the following decommissioning activities: (1) close the intake headgate and secure it against

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<sup>16</sup> See Notice of Authorization for Continued Project Operation, issued April 10, 2024.

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unauthorized access with the existing fence and gates; (2) disconnect the turbine-generator and lock and secure the powerhouse; and (3) secure the dam and powerhouse by utilizing the existing fencing and security system.

(C) Within 60 days of the date of this order, the licensee must provide the New Hampshire Department of Environmental Services with copies of all existing dam safety documents for the project.

(D) Within 30 days of completing decommissioning activities, the licensee must file with the Commission by eFiling to the Division of Dam Safety and Inspections-New York Regional Engineer, a final report, with photographs, that documents the project facilities have been decommissioned in accordance with this order. The final report must also provide documentation that the licensee has provided all dam safety documents to the New Hampshire Department of Environmental Services.

(E) The surrender of the license for the project shall not be effective until the Commission's Division of Dam Safety and Inspections - New York Regional Engineer has issued a letter stating that the project's facilities have been decommissioned in accordance with this surrender order.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l, and the Commission's regulations at 18 C.F.R. § 385.713 (2023). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

CarLisa Linton  
Director  
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and Compliance

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