



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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September 22, 2022

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

Re: Turners Falls Hydroelectric Project (FERC No. 1889), FirstLight MA Hydro LLC  
Northfield Mountain Pumped Storage Project (FERC No. 2485), Northfield Mountain LLC  
Response to FirstLight Status Update and Connecticut River Conservancy Filings

Dear Secretary Bose:

FirstLight, as the licensee of Turners Falls Hydroelectric Project No. 1889 and Northfield Mountain Pumped Storage Project No. 2485 on the Connecticut River in Massachusetts, reports that it has been in discussions with stakeholders, as well as state and federal regulatory authorities, on a range of issues leading to Agreements in Principle (AIP) on recreation, whitewater boating and fish passage/flows. FirstLight has requested that the Federal Energy Regulatory Commission (FERC) defer issuance of its Ready for Environmental Analysis (REA) pending resolution of additional concerns and the filing of a Comprehensive Settlement Agreement (CSA).

The Massachusetts Department of Environmental Protection (MassDEP) is the certifying authority for the Commonwealth for purposes of Section 401 of the Clean Water Act (CWA). MassDEP is prepared to conduct a full assessment of the projects to ensure compliance with the Massachusetts Surface Water Quality Standards (MA SWQS) at 314 CMR 4.00 and other appropriate requirements of state law through internal review and opportunity for public comment. While MassDEP highly values the participation of its sister agencies and other stakeholders in the FirstLight-convened settlement discussions, MassDEP's posture reflects its commitment to an open public process to inform its decision making in the exercise of its 401 Water Quality Certification (WQC) authority.

MassDEP's 401 WQC review and public process benefits from information generated by the FirstLight-convened settlement process. While not a direct participant in the settlement discussions, MassDEP understands that more follow up is required on the recreational and fish passage/flows AIPs and that

This information is available in alternate format. Contact Glynis Bugg at 617-348-4040.  
TTY# MassRelay Service 1-800-439-2370  
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FirstLight is convening additional settlement discussions on the remaining erosion issue after releasing its updated erosion study. Accordingly, MassDEP believes issuance of the REA at this time would be premature and urges FERC to allow an extension through December 2022 for the pursuit of erosion settlement discussions and a possible CSA.

In its recent FERC filing, the Connecticut River Conservancy (CRC) raised objections to the fish passage/flows AIP, stating that it does not conform to the MA SWQS and has requested that FERC immediately issue its REA to initiate the state 401 WQC review. MassDEP would like to clarify its process for evaluating conformity with the MA SWQS. CRC has articulated its view that a Use Attainability Analysis (UAA) is required to determine whether the hydroelectric facilities can be operated to support designated aquatic life or recreational uses for the relevant Connecticut River segments. As each of these uses are existing uses under the CWA, a UAA is inappropriate because it would be conducted to evaluate the potential removal of a use. Existing uses cannot be removed through a UAA; both aquatic life and recreational uses in these segments must be protected under the MA SWQS. MassDEP also notes that the definition of aquatic life in the MA SWQS refers to a diverse community of aquatic flora and fauna, including threatened and endangered species. There may be differences of regulatory interpretation regarding CRC's concerns about the rare plant species present at the site.

Thank you for your consideration of this submittal. Questions or comments on this submittal should be addressed to Stephanie Moura, Director, Division of Wetlands & Waterways, at [stephanie.moura@mass.gov](mailto:stephanie.moura@mass.gov) or by phone at 857-338-5944.

Sincerely,

*Stephanie Cooper*

Stephanie Cooper

Deputy Commissioner