

NEW YORK STATE COUNCIL OF TROUT UNLIMITED

21 April 2018
7 Helen Street
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Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

RE: Jarvis Project P-3211 Study Plan

Dear Secretary Bose:

The New York State Council of Trout Unlimited has reviewed the Revised Study Plan submitted on 11 April 2018 by the New York Power Authority for the Jarvis Project P-3211. The Council provides the following comments:

Comments on Specific Studies:

The Council supports the Fish and Wildlife Service's request for the placement of two data sondes, one above and one below Hinckley Dam, to obtain accurate and current water quality data. The Service's argument is compelling. If only one sonde is placed below the dam, one half of the data needed for a realistic comparison is unavailable. Without the "before" data, the other data obtained is meaningless.

Fish Survey: The most recent fish survey information was collected in 2014. Other fish survey data collected earlier is random and limited in scope. An up-to-date, current fish survey is needed to determine fish populations and to properly estimate the impact that Jarvis and Hinckley have on down stream fish populations. That impact is not limited to turbine entrainment passage and impingement issues. This information is needed to properly determine adequate fish protection and passage measures, and thus the survey must be conducted. Downstream impacts of Jarvis/Hinckley are further discussed below.

Fundamental Questions Requiring Resolution Re: Operation of Hinckley Dam

In examining the question of the continued unlicensed operation of Hinckley Dam and its role in the Jarvis Project and impacts on the ecosystem of West Canada Creek, several facts are paramount: These are:

16 USC 796 states as follows: "*project*" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and

appurtenant works and structures (including navigation structures) which are a part of a unit and all storage, diverting or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system, or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance or usage of said unit.

Hinckley Dam and the co-located Jarvis Project have significant and important impacts on a number of downstream users. These users include Brookfield Renewable Energy, Mohawk Valley Water Authority, recreational users and anglers (West Canada Creek is a noted cold-water fishery), and water supply to the New York State Canal Corporation.

The New York Power Authority is the master of the New York Canal Corporation, as the Canal Corporation has been a wholly owned subsidiary of the Power Authority since 2017 under an Act of the New York Legislature.

FERC, under its powers of the Federal Power Act and at its discretion, can, for proper cause, compel the licensing of headwaters dams that have significant downstream impacts on users, both power generators and non-generators. It has used that authority in recent cases in New York State, notably the licensing of the Conklingville Dam (FERC P-12252) operated by the Black River- Hudson River Regulatory District.

Discussion:

Does the Hinckley Dam meet the standards necessary for it to be licensed as part of the Jarvis Project? Indeed it does. Licensing of the Dam would yield benefits to all users of West Canada Creek resources. In its Conklingville decision the Commission used this rationale:

This order is in the public interest because it preserves the benefits of hydroelectric generation, will not result in any major, long-term adverse environmental impacts, includes enhancements to the to the existing aquatic and terrestrial environments, recreation, and cultural resources and bring under license for the first time all component of the unit of hydropower development that includes Conklingville Dam, Greater Sacandaga Lake, and the associated hydroelectric generating facilities, as required by the Federal Power Act (FPA.) We find therefore that issuance of a license for the Great Sacandaga Lake Project, with the conditions attached thereto, will serve the public interest because it is best adapted to the comprehensive development of the Sacandaga River and upper Hudson River Basins.

This same rationale can be applied in every instance to the current situation at Hinckley Dam and it associated Jarvis Project. It is impossible at this late date to determine why the Jarvis Project and Hinckley Dam were not integrated under one license or at least under two licenses under FERC jurisdiction, in an earlier

proceeding. Perhaps the fragmented ownership of the two facilities in the past was a contributing factor. This is, however, no longer the case, as for practical purposes the Canal Corporation, as a wholly-owned subsidiary of the Power Authority, is, indeed, the Power Authority's "baby." For whatever reason the Power Authority has not made its ownership of the Canal Corporation apparent in its filings in this matter. Regardless, the licensing of Hinckley Dam is clearly in the public interest.

The Power Authority's reliance on the cases it cites in opposition to licensing of Hinckley Dam is without merit. Neither the Upper Mechanicville nor the Fairfax cases are similar to the situation at Hinckley/Jarvis. As pointed out in the Fish and Wildlife response, neither of these projects involve up stream reservoirs that are managed to provide headwater benefits to downstream hydro operators, as is the case in point. No participants in this proceeding have demanded run-of river operation, and all are respectful of the needs of multiple downstream users of the waters regulated and used by Hinckley/Jarvis.

NYPA makes much of the inviolability of the 1920, amended in 2012, Hinckley Operating Diagram, which it implies absolves it of any responsibilities for downstream impacts of the Jarvis/Hinckley Project. It does so at its own peril, as the fact that the Operating Diagram, impacting Jarvis, Hinckley, NYPA, the Canal Corporation and downstream power producer Brookfield, as well as others, is a significant component of the operational scheme for the project, and obviously has an impact on "downstream" operations. As such, it cries out to be brought under the same regime of regulation as other components, and thus militates for the inclusion of Hinckley Dam as a licensee under FERC jurisdiction. Such inclusion is clearly "in the public interest" of the citizens of New York State.

It is incontestable that Hinckley provides major headwater service to downstream users, such as the Mohawk Valley Water Authority and the West Canada Project. It is equally apparent that without Hinckley, operation of the Jarvis project is moot. The Power Authority's use of straw men to imply that licensing of Hinckley would imperil current users of Jarvis/Hinckley is mere subterfuge, and does not merit serious consideration. Given that the West Canada Project is due for relicensing soon, it behooves the Commission to act quickly to compel the licensing of the Hinckley Dam as a part of the Jarvis Project.

For the New York State Council of Trout Unlimited
/s/

William H. Wellman, Hydro Chairman

CC: FWS Cortland
DEC Watertown and Utica
NYPA White Plains
NYSCTU
Brookfield
Citizens for Hinckley

Document Content(s)

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