



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
5 Post Office Square, Suite 18011
Boston, Massachusetts 02109

April 9, 2020

9043.1
ER 21-0060
FERC No. 15056

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., NE
Washington, DC 20426

RE: COMMENTS

Application for Preliminary Permit

Ashokan Pumped Storage Hydroelectric Project, FERC No. P-15056-000

Esopus Creek, Bush Kill Creek, Ulster County, New York

Dear Ms. Bose:

The U.S. Department of the Interior (Department) has reviewed the February 11, 2021, NOTICE OF PRELIMINARY PERMIT APPLICATION ACCEPTED FOR FILING AND SOLICITING COMMENTS, MOTIONS TO INTERVENE, AND COMPETING APPLICATIONS regarding the Application for Preliminary Permit filed with the Federal Energy Regulatory Commission (Commission) by Premium Energy Holdings, LLC, for the proposed Ashokan Pumped Storage Hydroelectric Project located on Esopus Creek, Bush Kill Creek, and the Ashokan Reservoir in Ulster County, New York. The proposed Project would consist of the following: (1) a new impoundment at one of three locations (labeled as Stony Creek Reservoir, Woodland Reservoir, and Wittenberg Reservoir) with a surface area between 226 and 313 acres and a storage capacity between 22,496 and 26,231 acre-feet at a normal pool level between 1,180 and 1,500 feet above mean sea level; (2) a new compacted concrete dam with a length between 2,527 and 2,736 feet long and between 212 and 304 feet high; (3) a new 500 foot long by 125 foot wide, and 150 foot high new powerhouse located approximately 200 to 300 feet below ground level; (4) five turbine-generator units with a total rated capacity of 800 megawatts; (5) new tunnels, shafts, and penstocks located underground and measuring between 3.8 and 13.99 miles long; (6) a new 230-kilovolt transmission line measuring between 12.9 and 17.3 miles long and connecting the new generating units to an existing substation; (7) the existing Ashokan Reservoir as the lower reservoir with a surface area of 8,300 acres and storage capacity of 382,358 acre-feet at a surface elevation of 1,180 feet above mean sea level; and (8) appurtenant facilities. The Proposed project would have a maximum annual generation of 2,700 gigawatt-hours.

General Project Comments

The Department is aware that a preliminary permit is to preserve the right of the permit holder to have first priority in applying for a license for a proposed project while determining project feasibility. We understand that the applicant will be required to consult with the appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on any license application before it is filed (18 C.F.R. § 4.38). The following general comments are not intended to address the potential effects of constructing and operating the proposed project as a component of this preliminary permit; however, they are being provided for consideration by the applicant if, and when, a Notice of Intent and Preliminary Application Document are prepared for the proposed project (18 C.F.R. § 4.38(a)(3)).

Fish and Wildlife Resources

The following comments are submitted pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

Esopus Creek and its tributaries are found within the project area. This watershed is known for high water quality which supports a cold water fishery and unique aquatic organisms. The mostly forested, mountainous landscape and low human development of the upper watershed are emblematic of the Catskill Mountains and the streams support wild populations of brook (*Salvelinus fontinalis*), brown (*Salmo trutta*), and rainbow trout (*Oncorhynchus mykiss*). It is also stocked with brown trout. It is one of the most heavily fished streams in the Catskills.

Steep slopes result in highly flashy stream levels and large sediment transport to the Ashokan Reservoir. The reservoir divides Esopus Creek into upper and lower management units. The reservoir itself is a warmwater fishery with smallmouth bass (*Micropterus dolomieu*) and walleye (*Stizostedion vitreum*) being the primary gamefish. The lower Esopus Creek is a mixed fishery with many warm water species such as smallmouth bass, largemouth bass (*Micropterus salmoides*), and migratory species associated with the Hudson River.

The proposed project could affect water quality of Esopus Creek and its tributaries through construction activities. Construction could result in higher loads of sediment transport in these streams, something that the New York City Department of Environmental Protection has been studying and trying to prevent by investing in restoration projects in the watershed. During project operation, overland flow and groundwater will be intercepted at one of the proposed reservoirs which may reduce available hydrology and nutrients to downstream habitat. Also of concern is the pumping of Ashokan Reservoir water to fill the new upper reservoir which will result in fluctuating water levels. Preliminary estimates indicate the Ashokan Reservoir levels will fluctuate as much as two feet during a 12- hour cycle. This will affect shoreline habitat and potentially disrupt life cycles of fish and wildlife. Likewise, the ramping up and down of water levels in the Ashokan Reservoir are likely to disrupt flows to downstream habitat in Esopus Creek.

These issues need to be studied by the applicant and shared among the various stakeholder groups for review. These studies should address, but not be limited to, the effects of project construction and operations on the movements of fish and other aquatic organisms, the reproduction and survival of aquatic or semi-aquatic fish and wildlife resources, recreational fishing, wetland and riparian vegetation. The studies should also identify and evaluate general measures to avoid, offset, and/or reduce adverse project-caused impacts on fish and wildlife resources.

In addition, the proposed upper reservoir will most likely result in the loss of terrestrial habitat due to conversion to open water. Similarly, the applicant should identify any habitat loss and fragmentation by the proposed transmission line. The applicant should identify and document the potential effects to existing fish and wildlife as well as the loss of their habitat.

Threatened and Endangered Species

The following comments are provided as technical assistance pursuant to the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

Federal agencies, including the Commission, have responsibilities under Section 7(a)(2) of the ESA to consult with the U.S. Fish and Wildlife Service (Service) regarding projects that may adversely affect federally listed species or “critical habitat.” Pursuant to 50 CFR§402.08, federal agencies have the option to designate a non-federal representative for the purposes of conducting informal consultation or preparation of a Biological Assessment. Should the Commission choose to designate Premium Energy Holdings, LLC, as a non-federal representative, the Commission should send the Service that designation in writing.

Directions for completing consultation can be found on the Service’s website¹. The most recent compilation of federally listed and proposed endangered and threatened species in New York is available for your information on the New York Field Office website. Until the proposed project is complete, we recommend that you check this website regularly to ensure that listed species presence/absence information for the proposed project is current.

The project is within the range of the federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*Myotis septentrionalis*). Presence of these species may be assumed wherever suitable habitat occurs unless presence/absence surveys have been performed to document absence. The bats use a variety of upland, wetland, and riparian habitats during non-winter months and roost in living or dead trees with exfoliating bark, hollows, cracks, crevices, or cavities, including shagbark hickory, red and white oak, and sugar maple. Trees greater than 3 inches in diameter at breast height (dbh) may serve as roost habitat for these bats and should be saved wherever possible. Seasonal clearing of trees is recommended to minimize the likelihood of adverse effects on both bat species. Depending upon the location of the project facilities, presence/absence surveys for Indiana bats may be requested for impacted forest habitat.

¹ Additional information may be found on the Service’s website at: <http://www.fws.gov/northeast/nyfo/es/section7.htm>

While the incidental take of northern long-eared bats from most tree clearing is exempted by a 4(d) rule², take occurring from the removal of a tree serving as a known maternity roost or removal of a tree within a 150-foot radius of a maternity roost tree during the pup season (June 1 through July 31) is not exempted. If construction of the proposed facilities and transmission line includes tree removal of trees ≥ 3 inches dbh, we recommend that removal of trees ≥ 3 inches dbh only occur between October 1 and March 31.

The project is also within the range of the federally threatened Northern wild monkshood (*Aconitum noveboracense*). This rare plant is found along streams shaded by the forest canopy. It has specific soil and microclimate requirements to grow. It can be found flowering in the summer and bearing fruit in the fall. Surveys should be considered in portions of suitable habitat in the project area which overlap the species range and should be coordinated with the Service.

The bald eagle (*Haliaeetus leucocephalus*) was removed from the Federal Endangered Species List on August 8, 2007, and is no longer protected under Section 7 of the ESA; however, bald eagles remain on the New York State list as a state-listed threatened species. Bald eagles are also protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). Bald eagles are known to occur in the vicinity of the proposed project. The Department recommends the applicant review the Bald Eagle Management Guidelines found on the Service's website to evaluate potential project impacts to this species.

For additional information on fish and wildlife resources or state-listed species, we suggest you contact the appropriate New York State Department of Environmental Conservation regional office and the New York Natural Heritage Program Information Services.³

Thank you for the opportunity to review and comment on this preliminary permit application. If you have questions regarding these comments, please contact Tim Sullivan at tim_r_sullivan@fws.gov or (607) 753-9334. Please contact me at (617) 223-8565 if I can be of further assistance.

Sincerely,

Andrew L. Raddant
Regional Environmental Officer

² Additional information regarding the 4(d) rule may be found at: <https://www.govinfo.gov/content/pkg/FR-2016-01-14/pdf/2016-00617.pdf#page=1> and <https://www.fws.gov/midwest/endangered/mammals/nleb/4drule.html>

³ Additional information referred to above may be found on the Service's website in footnote #1.