

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 2705-037--Washington
Newhalem Creek Hydroelectric Project
Seattle City Light

February 10, 2023

VIA FERC Service

Mike Haynes
City Of Seattle, City Light Dept.
700 Fifth Avenue, Suite 3200, P.O. Box 3
Seattle, WA 98124-4023

Subject: Surrender Application-Proposal for Water Quality Certification and CZMA
Consistency Review

Dear Mr. Haynes:

This regards your surrender application for the Newhalem Creek Hydroelectric Project No. 2705, filed on January 28, 2022. The project is located on Newhalem Creek, in Whatcom County, Washington, just west of the town of Newhalem.

Under section 401(a)(1) of the Clean Water Act (CWA),¹ any applicant for a federal license or permit for an activity that may result in a discharge into United States waters must obtain either a water quality certification (401 certification) from the appropriate state pollution control agency verifying that any discharge from the project would comply with applicable provisions of the CWA or a waiver of such certification.

Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),² the Commission cannot issue a permit for activities within or affecting a state's coastal zone unless the state CZMA agency concurs with the applicant's certification of consistency with the state's CZMA Program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

¹ 33 U.S.C. § 1341(a)(1).

² 16 U.S.C. § 1456.

Review of Surrender Application

In section E.5.4.3 (Water Quality) of the application, you indicate that you would comply with any conditions included in any future 401 certification, as well as any section 404 permit³ for the in-water work associated with decommissioning the project and removing the project dam and headworks. You expect temporary effects on water quality from decommissioning, specifically short-term increases in turbidity during the filling, placing, and removal of the cofferdam (i.e., supersacks), as well as removal of the dam and headworks. You also anticipate that re-establishment of the stream gradient upstream of the diversion dam site would result in additional sediment input to Newhalem Creek as the channel adjusts post-dam removal.

In section 5 of your decommissioning plan, you state that you anticipate obtaining both a permit from the Washington Department of Ecology for 401 certification, as well as, completing a CZMA consistency review as part of the permitting process for decommissioning the project.

Discussion

To move forward with the review of your surrender application, Commission staff must confirm Washington Department of Ecology's determination regarding 401 certification. Secondly, we find that a CZMA consistency certification is warranted, prior to Commission action on the surrender application.

Regarding 401 certification, please file no later than 60 days following the date of issuance of this letter: (1) a copy of any water quality certification received from Washington Department of Ecology; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR § 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Also, the certification request must be sent to the certifying authority and to the Commission concurrently.

³ Section 404 of the CWA requires authorization from the Secretary of the Army, acting through the Corps of Engineers (Corps), for the discharge of dredged or fill material into all waters of the United States, including wetlands. See 33 U.S.C. § 1344 *et seq.*

Regarding compliance with the CZMA, we ask that you submit a request for CZMA consistency certification to the Washington Department of Ecology and file with the Commission copies of your request, as well as any response you receive.

We appreciate your assistance in this matter as we continue to review your surrender application. If you have any questions regarding this matter, please contact Diana Shannon at 202-502-6136 or diana.shannon@ferc.gov.

Sincerely,

Shana Wiseman, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance