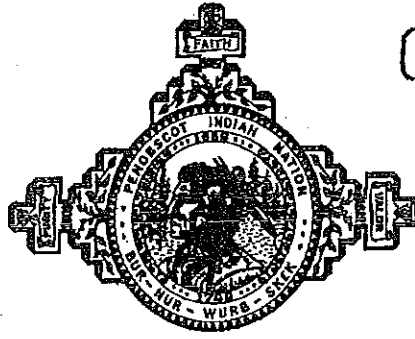


Office of the Chief and Council

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July 11, 2013

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

2013 JUL 17 A 9:34  
FEDERAL ENERGY  
REGULATORY COMMISSION  
SECRETARY OF THE  
COMMISSION

RE: Comments on the Pre-Application Document, Comments on Scoping Document 1, and Submission of Study Requests for the Mattaceunk Project, FERC No. 2520-072, Penobscot and Aroostook counties, Maine (ER 13/0284)

Dear Secretary Bose:

The Penobscot Nation (the Nation), a federally-recognized sovereign Indian Tribe whose reservation encompasses a large portion of the Penobscot River in what is now the State of Maine, offers the following comments on the Pre-Application Document (PAD), Comments on Scoping Document 1, and Submission of Study Requests for the Mattaceunk Project, FERC No. 2520-072, Penobscot and Aroostook counties, Maine (ER 13/0284).

Land of the United States

The May 1, 2013 cover letter for scoping document 1 states at the end of paragraph one that "No federal lands are located within the project boundary". Also, page 1, section 1.0, Introduction, states at the end of paragraph 2 that "No federal lands are occupied by the project" The Penobscot Nation disagrees with these statements. The Penobscot Nation believes that the Mattaceunk Dam occupies a portion of the Penobscot Indian Reservation and therefore includes federal lands within the project boundary. The Penobscot Nation has been in contact with the United States Bureau of Indian Affairs and has alerted them to this licensing proceeding, and the Nation understands that the Bureau of Indian Affairs will be reviewing the PAD and Scoping Document 1 to determine how the proposed relicensing would affect tribal lands and resources. The Bureau of Indian Affairs intends to submit comments in the near future.

Proposed Action and Alternatives

The Penobscot Nation requests that FERC consider decommissioning and removal of the Mattaceunk Dam as an alternative to project relicensing. The Mattaceunk Dam is inconsistent with the purposes for which the Penobscot Indian Reservation exists and removal of the project is therefore a reasonable alternative to the proposed action that should be evaluated in the EA.

Specific Comments regarding the PAD:

**Page 5-21, paragraph 2.** It should be noted, as the description seems unclear, that Smallmouth bass and Chain pickerel are not native to the Penobscot River.

**Page 5-26, paragraph 2, "*Atlantic Salmon Upstream Passage at the Project*".** "Annual upstream fishway monitoring" can not demonstrate "that the fishway is in an excellent location for attracting salmon". Annual upstream fishway monitoring can certainly verify the presence or absence of species caught in the fishway trap, but it can give no indication as to the efficiency of the fishway, the appropriateness of the entrance location, or any other condition within or around the fishway except that it does work sometimes for some species of fish.

**Page 5-28, paragraph 1, "*Atlantic Salmon Upstream Passage at the Project*".** "The results of radio telemetry studies revealed that smolts used other routes (opposed to the downstream bypass) relatively efficiently (GNP 1993). " Can you please clarify what this means? Efficiency with regards to downstream passage is related to the number of smolts using the bypass and the total number of smolts attempting to pass the project. The efficiency of the bypass is stated as between 17 and 59%. These numbers seem very low and quite variable, but certainly not conducive to the restoration of Atlantic salmon in the East Branch of the Penobscot River.

**Page 5-33, paragraph 1.** The statement "However, today only a few alewives pass the Veazie Dam, and even less Blueback herring." is not completely true. In 2013, nearly 13,000 river herring were passed at the Veazie dam. The number of spawning adult river herring returning to the Penobscot River is expected to increase exponentially in the next few years since the stocking of gravid adult river herring began in the drainage in 2010.

**Page 6-7, paragraph 1.** Please clarify and provide support for the GLHA consideration that the log sluice is a "safe migration route for downstream migrants". Have there been studies done to document the safety of this route?

**Page 6.6., section 6.2.3.3.** The upstream and downstream passage facilities need to be tested for their ability to efficiently pass American eel and resident sucker species. It is also important to note that within the proposed license of the project, it is very likely that

American shad, river herring and Sea lamprey will be in the project area and will require passage. GLHA needs to have a plan in place for evaluating the passage facilities for these species once they are present.

In addition to evaluating the efficiency of the fish passage facilities, it will be important to evaluate the survival and migration delay of these species as they attempt to migrate past the project facilities and migrate through the impoundment.

Comments on Scoping Document 1:

**Page 9, *Aquatic Resources, Proposed Measures.***

The downstream fishway needs to be operated year round in order to accommodate the downstream passage of adult American eels, which have been shown to migrate in times of increased discharge, regardless of water temperature and time of year. In addition, the operation of the downstream bypass from January 1 to December 31 would also help passage of resident fish moving downstream outside of the April 1 to June 15 window.

Also, the upstream fishway and downstream fishway need to be evaluated as to their efficiency for passing American eels and resident sucker species and the associated mortality and potential delay involved in using the bypass, spillway, turbines, or log sluice as downstream passage.

**Page 13, section 4.2.1**

As stated in the previous comment, the effects of the project on the upstream and downstream passage of eels and resident sucker species should also be analyzed.

Archeology Resources

Due to the Mattaceunk Project falling within the cultural landscape of the Penobscot Nation, the Penobscot Nation Tribal Historic Preservation Officer (THPO) requests that a Phase I archaeological survey for both historic and prehistoric components be completed within the Area of Potential Effect (APE) where archaeological surveys have not been previously conducted. According to the Maine Historic Preservation Commission (MHPC), the Mattaceunk Project area has the potential to contain one or more prehistoric and/or historic archaeological sites based upon predictive models of archaeological site locations.

Generally, the APE of projects include lands encompassed within the Project boundaries and/or lands located within 50 feet of the edge of the river bank, whichever is the greater of the two areas. Over the last 30 years of observing project effects by the MHPC this is a practical measurement limit in Maine.


The Penobscot Nation THPO is also requesting a copy of all archaeological reports of surveys and field work that will be conducted for review and consultation regarding the results of the survey.

Submission of Study Requests

In addition to study requests contained in this comment letter the Penobscot Nation supports the study requests proposed by the USFWS, NOAA, and the Maine DMR.

Thank you for the opportunity to submit these comments and please contact either Mr. Mark Chavaree, Staff Attorney for Penobscot Nation at 207-817-7324 or Mr. John Banks, DNR Director at 207-817-7330.

Sincerely,



Kirk E. Francis, Tribal Chief  
Penobscot Nation