UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive Gloucester, MA 01930

May 22, 2023

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

Re: MOTION TO INTERVENE and RESERVATION OF AUTHORITY for the Green Lake Hydroelectric Project (P-7189-015)

Dear Secretary Bose:

On March 31, 2022, Green Lake Water Power Company submitted their Final License Application for a new license for the Green Lake Hydropower Project (FERC No. 7189) (Accession # 20220331-5449). On March 23, 2023, you issued your Notice of Application Ready for Environmental Analysis (Accession # 20230323-3044).

Reeds Brook and the Union River support several NOAA trust resources including Atlantic salmon, blueback herring, alewife, American shad, and American eel. Populations of these diadromous species are in decline throughout their range. In cooperation with federal and interstate management, we are actively working to maintain and enhance their populations. As such, we have a vested interest in any potential effects this project may have on our trust resources. Although passage of these species is greatly limited due to the downstream passage barriers associated with the Ellsworth Hydroelectric Project (P-2727) (i.e., the Ellsworth and Graham Lake Dams), river herring and salmon can currently access habitat downstream of Green Lake Dam as they are trucked from the trap at the Ellsworth dam upstream of the Graham Lake Dam. It is expected that sea run fish will be able to swim through the Union River once fishways have been constructed at the Ellsworth and Graham Lake dams, as required by our Section 18 fishway prescription at that project (Accession # 20190424-5024).

Atlantic salmon

The Gulf of Maine distinct population segment (GOM DPS) of Atlantic salmon is listed as endangered under the U.S. Endangered Species Act (ESA); the Union River watershed (including Reeds Brook) is within its designated critical habitat. The U.S. Fish and Wildlife Service's Green Lake National Fish Hatchery (GLNFH), which raises juvenile Atlantic salmon for stocking throughout the range of the GOM DPS, occurs in the project area and relies on water drawn both from Green Lake and the project penstock in order to operate. The operation of this hatchery is essential to the continued survival and eventual recovery of endangered Atlantic

salmon.

Information provided in Appendix D of the Final License Application indicates that flow available for fish passage is limited at the project due to the small size of the watershed. The Licensee reports that the median flow in the system is below 50 cubic feet per second (cfs) throughout the fish passage season, except for the month of May when it is 97 cfs. As a result, except for the month of May, the median flow available for fish passage at the Green Lake Project is considerably less than the minimum recommended in the USFWS Fish Passage Engineering Design Guidelines (2019) for effective passage.[1] The Licensee indicates that due to low flow conditions during the summer in recent years, they have been unable to generate power and that lake level has dropped below the authorized minimum elevation, while only passing the required minimum flow (1 cfs) into Reeds Brook. The lack of adequate flow throughout the fish passage season means that if a fishway was installed, only a portion of Atlantic salmon would be able to access habitat upstream of the dam and that those fish may have insufficient flow to migrate back downstream later in the season. This would lead to the delay or mortality of adult salmon. As providing passage under these flow conditions could prove detrimental, with any theoretical benefits being outweighed by likely negative consequences, NMFS has determined that it will not exercise its section 18 fishway prescription authority for salmon at this time.

The GLNFH is authorized to draw up to 30 cfs a month from Green Lake under the existing license. The USFWS indicated in their comments on the Draft License Application that the GLNFH "depends on the availability of water in sufficient quantities from Green Lake and the continuing operations and maintenance of the Green Lake Dam" (Accession # 20220125-5022). As indicated above, the continued operation of the hatchery is essential for the survival and recovery of endangered Atlantic salmon, and we would not be supportive of any measures that would significantly limit the amount of water available for it to operate.

River Herring

The state of Maine currently limits the number of alewife and blueback herring stocked into the watershed. Trap counts at the Ellsworth Dam demonstrate that the state's established stocking goals are consistently met. However, the state of Maine could establish new management targets during the term of a subsequent license. Should access to habitat in Green Lake be necessary to attain any new management targets for alewife and blueback herring, then we would support the installation of fish passage at the Green Lake Dam. As such, although we do not require a fishway at this time, we reserve our authority to prescribe an upstream fishway for herring consistent herewith in the future. Pursuant to Section 18 of the Federal Power Act, as amended, the Secretary of the Department of Commerce, acting through NMFS, hereby reserves the authority to prescribe the construction, operation, and maintenance of such a fishway as deemed necessary, including measures to determine, ensure, or improve the effectiveness of such fishways.

[1] USFWS Fish Passage Engineering Design Guidelines (2019) recommend that minimum attraction flow for upstream passage be "equal to 5% of the total station hydraulic capacity or a flow rate of 50 cfs, whichever is greater" and that downstream bypass flow should be "5% of station hydraulic capacity or 25 cfs, whichever is larger". Therefore, a minimum of 75 cfs would be recommended to implement both upstream and downstream fish passage.

If fish passage is required by FERC as a condition of a subsequent license, we request that FERC and the licensee consult with us to ensure that any new fishway be designed and operated in such a way that it does not adversely affect critically endangered Atlantic salmon or its designated critical habitat. Given the concerns expressed above, the design would likely need to include measures to prevent salmon passage.

Reservation of Authority for Prescribing Fishways under FPA Section 18

Given the term of the license, we anticipate that a prescription for fishways may be needed in the future to adapt to changing conditions or new information, including but not limited to:

- Management objectives for our trust species established in state and/or federal comprehensive management plans;
- Environmental conditions (including changes in habitat suitability for fish);
- Fish biology or population status (e.g., ongoing/future management objectives for relevant species in the project area);
- Project operations or effects (e.g., as a result of ongoing studies, designs, plans, and implementation schedules pertaining to fishway construction, operation, maintenance, and monitoring);
- Fish passage technology (e.g., as a result of ongoing studies, designs, plans, and implementation schedules pertaining to fishway construction, operation, maintenance, and monitoring); or
- New requirements or objectives arising out of other applicable legal authorities (e.g., the Endangered Species Act, the Magnuson-Stevens Fisheries Conservation and Management Act).

We request that FERC include in the license an appropriate reopener clause acknowledging FERC's authority to reopen the license upon a request by us to exercise this reservation pursuant to Section 18 of the Federal Power Act.

Motion to Intervene

NMFS hereby timely provides notice that we are intervening in this proceeding pursuant to 18 C.F.R. §385.214(a), as amended. We intervene for the purposes of becoming a party, and to ensure that its interests and those of the Department and the public are represented in this proceeding. Service of process and other communications concerning this proceeding should be made to:

Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

ESA Section 7 Consultation

ESA section 7(a)(2) states that each federal agency shall, in consultation with the Secretary of Commerce or Interior, as appropriate, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. As such, any discretionary federal action that may affect a listed species or its critical habitat, such as the issuance of a hydroelectric project license by the Commission, must undergo ESA section 7 consultation. We expect that you will request consultation with us to consider the effects of any proposed license on Atlantic salmon and their designated critical habitat. Additional protective measures may be necessary for Atlantic salmon pending analysis of the Commission's proposed action under section 7 of the ESA and conclusions of our anticipated Biological Opinion.

Thank you for your attention to this matter. If you have any questions, please contact Dan Tierney (Dan.Tierney@noaa.gov or 207-866-3755).

Sincerely,

for Sarah Bland

Michael Pentony
Regional Administrator