

PETITION
FOR SURRENDER OF FERC EXEMPTION
(Project No. 8417)
Old Sparhawk Mill Hydro

Sparhawk, LLC
81 Bridge Street
Yarmouth, Maine 04096
October 31, 2018

INITIAL STATEMENT

Sparhawk, LLC (“Petitioner”) hereby petitions the Federal Energy Regulatory Commission (FERC) pursuant to 18 C.F.R. § 4.102 to surrender whatever rights it might possess in the exemption for FERC Project No. 8417 (the “FERC Exemption”). In 1985, FERC granted an exemption from licensing for a small hydropower facility located on the Royal River in Yarmouth, Maine (the “Project”). As discussed more fully below, in 2014, Petitioner acquired the Mill, which included the powerhouse. The dam, however, is owned by the Town of Yarmouth, and the fishway was installed and has been maintained by the State of Maine. There are no operable turbines remaining in the Mill, and the Project has not generated power in more than three years. The FERC Exemption for the Project does not appear to have been formally transferred to nor intentionally acquired by Petitioner when it acquired the Mill, and Mr. Jagger, the principal of Sparhawk, LLC, does not believe he or Petitioner possess the necessary rights from the Town to operate the Project. Petitioner does not intend to acquire such rights nor to recommence hydro operations at the Mill. Accordingly, to the extent that Petitioner might have rights in the Exemption, to avoid confusion and ensure clarity moving forward, it seeks to surrender whatever rights it might possess in the FERC Exemption.

THE PROJECT FACILITIES

The Project is located on the Royal River in Yarmouth, Maine. It includes the following: (1) an 8-foot-high, 140-foot-long dam; (2) a 9-acre reservoir; (3) an approximate 215-foot-long, 7-foot-diameter penstock; (4) the powerhouse with 3 generating units; (5) an 18-foot-wide, 80-foot-long tailrace channel; (6) a buried transmission line; and, (7) appurtenant facilities.¹ The dam is located approximately 130 feet upstream from the Bridge Street bridge and approximately

¹ FERC Exemption at Appendix A, j. The FERC Exemption is attached as Exhibit 1.

2,000 feet upstream from the head of tide line in the vicinity of the I-95 bridge.² The headgate is located on the east abutment of the dam and controls flow to the penstock. The penstock extends from the dam on the east side of the river to the powerhouse, which is located just below Bridge Street. A fishway is located on the west abutment of the dam. An aerial photograph of the Project obtained from the Town's website and a photograph of the Mill (but not showing the dam, which is located upstream from the Mill) are attached as Exhibit 3.

BACKGROUND

In 2014, Petitioner acquired the Sparhawk Mill in Yarmouth, Maine. The Mill is an approximately 20,000 square-foot four-story brick building located on the Royal River. The Mill was built in 1857 by the Royal River Manufacturing Company and for many years was under common ownership with the Bridge Street dam. In the 1970s, however, the Bridge Street dam was conveyed to the Town, and the Mill was conveyed to an unrelated entity. In the mid-1980s, the Mill property was revitalized for hydroelectric production and was permitted by the Federal Regulatory Energy Commission (FERC) pursuant to an exemption (P-8417) and the Maine Department of Environmental Protection (DEP). At the same time, the Town entered into a lease agreement with the then-Mill owner regarding flowage and other rights necessary to operate P-8417.

Mr. Jagger is not aware of and does not believe that there is any lease between Petitioner and the Town conveying the necessary interests for Petitioner to operate a hydroelectric facility on the Mill property. Petitioner is not currently generating hydropower at the Mill and has not done so since or shortly after it acquired the Mill. Currently, a number of small businesses occupy space in the Mill.

² See November, 1984 DEP Permit issued to the Old Sparhawk Mill Hydro Project (the "DEP Permit"), attached as Exhibit 2.

PETITION TO SURRENDER

Petitioner does not believe that it currently holds P-8417, nor did Petitioner intentionally acquire the exemption when it acquired the Mill in 2014. To the extent that Petitioner may be deemed to have an ownership interest in P-8417 by virtue of having acquired the Mill or otherwise, without waiver of any claim or argument that it does not hold the Exemption, Petitioner hereby petitions to surrender the Exemption in accordance with 18 C.F.R. § 4.102. Because the facility has not operated in more than three years, there are no operable turbines present on the site, Petitioner does not possess rights to all of the necessary Project components, and Petitioner does not intend to recommence hydro operation, FERC could terminate the exemption. See 18 C.F.R. § 6.4.

A. Ownership of The Bridge Street Dam and Sparhawk Mill Property

The Bridge Street dam was constructed in the 1700s to provide hydropower to an adjacent mill. In 1968, Philip and Paul Stultz acquired both the dam and the Sparhawk Mill property. In March, 1974, the Stultzs conveyed the Bridge Street dam and certain related facilities, water power, riparian, littoral and flowage rights associated with the dam to the Town of Yarmouth (the “Town”).³ In July, 1974, the Town entered into an agreement with the State of Maine Department of Marine Resources (DMR) granting DMR the exclusive right to build, operate and maintain a fish ladder at the dam. The agreement had an initial term of 25 years, and may have been renewed for a second 25-year term.⁴

In June, 1974, the Stultzs conveyed the Sparhawk Mill property to P. Andre LeMaistre and Thomas Yale. As discussed below, Messrs. LeMaistre and Yale redeveloped the site for

³ The deed conveying ownership of the dam and related facilities to the Town is attached as Exhibit 4.

⁴ A copy of the lease between the Town and DMR is attached as Exhibit 5. Petitioner does not know whether there is any current agreement between the Town and DMR regarding fish passage facilities at the dam.

hydropower use and obtained State and Federal permits to do so. Since then, the Sparhawk Mill site has been conveyed several times. In 2003, the property was conveyed to Sparhawk Mill, Inc., in 2006 it was conveyed to Sparhawk Mill Associates, LLC, in 2012 it was conveyed to Sparhawk Properties, LLC, and in 2014 it was conveyed to Sparhawk, LLC, the current owner.⁵ Allan Jagger is the principal of Sparhawk, LLC. Prior to acquisition of the Mill in 2014, Mr. Jagger had no involvement with the property and has had no ownership interest in any of the entities that previously owned the Mill.

In or around 1983, the Town leased the Bridge Street dam, related facilities, water power, riparian, littoral and flowage rights to P. Andre LeMaistre and Thomas L. Yale (doing business as Old Sparhawk Mill Co.) for hydropower development.⁶ Over time, the initial lease was renewed and/or modified and, in December, 2012, the Town entered into a new lease agreement with Sparhawk Properties, LLC (then the owner of the Sparhawk Mill) allowing Sparhawk Properties, LLC to operate the dam for hydropower use. The lease was a year-to-year lease. Petitioner does not believe there is any current lease between it and the Town regarding rights to operate hydropower. To the best of his knowledge, Mr. Jagger has never individually or through Petitioner assumed or otherwise acquired the rights of Sparhawk Properties, LLC under the 2012 lease, which is the last known lease agreement regarding flowage and other rights associated with the dam.⁷ Nor has Mr. Jagger or Petitioner entered into any other lease with the Town regarding flowage or other rights associated with the dam.

B. The Licensed Hydropower Facility

⁵ A copy of the deed by which Sparhawk, LLC acquired the Mill is attached as Exhibit 7.

⁶ A copy of the recorded Memorandum of Lease is attached as Exhibit 6.

⁷ To date, neither the Town nor Petitioner has located documentation regarding termination of the 2012 lease, although no rent has been paid to the Town since on or around July, 2014. Petitioner and other interested parties have always assumed that if hydro were to recommence, Petitioner (or a third party) would have to negotiate the necessary rights to do so from the Town, which owns the dam.

In November, 1984, the Maine DEP issued a Maine Waterway and Development and Conservation Act and Water Quality Certification to Old Sparhawk Mill Co. for redevelopment of the existing Bridge Street dam for the purpose of generating hydroelectric power (“DEP Permit”).⁸ As described in the DEP Permit, the project included rehabilitation of the existing headgate and penstock cradles, installation of a new steel penstock, excavation of existing intake and tailrace channels, and installation of three turbine-generator units within the mill building.⁹ On May 24, 1985, FERC issued an order granting exemption from licensing of a small hydroelectric project for what was referred to as the Old Sparhawk Mill located on the Royal River (the “Exemption”).¹⁰ The FERC project included the dam, the reservoir, the penstock, a proposed powerhouse with generating units, an existing tailrace channel, a proposed transmission line, and appurtenant facilities.¹¹

The Exemption was issued to Messrs. Yale and LeMaistre on May 24, 1985. In 2006, Mr. LeMaistre notified FERC that the facility had been sold to a new entity, Sparhawk Mill Associates, LLC. When Petitioner acquired the Sparhawk Mill in 2014, neither Mr. Jagger nor Petitioner were informed of the terms and conditions of the Exemption or provided a copy of the Exemption. See 18 C.F.R. § 4.106(i) (before transferring any property interests in the exempt project the exemption holder must inform the transferee of the terms and conditions of the exemption). Likewise, Petitioner is not aware of documentation that the prior exemptee ever notified FERC of the transfer. In any event, as demonstrated above, Petitioner does not believe it

⁸ The DEP Permit is attached as Exhibit 2.

⁹ DEP Permit at 1.

¹⁰ The Exemption is attached as Exhibit 1.

¹¹ Exemption at Appendix A, j.

has right, title or interest to critical Project elements and therefore could not acquire or maintain the Exemption unless and until it obtained such rights.¹² See 18 C.R.R. § 4.31(c)(2)(ii).

C. Disposition and Restoration of the Project Works and Lands

No action is proposed to dismantle or otherwise restore any aspect of the powerhouse, which Petitioner owns. All of the hydroelectric equipment has now been removed from the powerhouse. Additionally, steps have already been taken to reduce to the maximum extent practicable any flow of water through the penstock, which remains in place. The penstock does not present a hazard, and Petitioner does not believe it needs to be removed. There is some uncertainty as to who owns the penstock, but Mr. Jagger and Petitioner will cooperate fully if and to the extent it requires removal at a later date. If the penstock is removed care will have to be taken to minimize any adverse impact to the Mill. Likewise, although it is beyond the scope of this petition, if the Town decides to remove the dam, it will be critical to coordinate with the Mill and take steps to ensure that the Mill is not adversely impacted by such action, which could threaten the integrity of the structure.

D. Fish Passage

Although also beyond the scope of this petition, there has been substantial discussion by interested persons of fish passage at the dam and therefore it is addressed here for informational purposes only. As noted above, the Town owns the dam and DMR has the exclusive right to install, operate and maintain fish passage there. DMR installed a fishway in 1974 and for many years stocked and monitored fish returns at the Bridge Street dam.¹³ The fishway was already in

¹² Petitioner had been exploring the feasibility of redevelopment of the Project. In response to a request from FERC for information, Petitioner requested an extension of time to respond so that it could continue to explore the feasibility of redevelopment and also evaluate the scope of its legal rights to the FERC Project. Redevelopment does not appear feasible.

¹³ A copy of a summary prepared by DMR is attached as Exhibit 8.

existence and was being managed by DMR when the Exemption was issued. The Exemption (and DEP Permit and associated 401 Water Quality Certification) required minimum flows and appropriate screening at the intake to divert downstream migrating fish and at the tailrace channel to exclude upstream migrating fish.¹⁴ The screening was installed and the flows are not controlled by Petitioner. To the extent that there are minimum flow requirements that are not being met, the Mill has no ability to increase flows to facilitate fish passage. Water is no longer intentionally diverted through the penstock (although there may be residual de minimis flows through the penstock), and water levels at the fishway are unaffected by the Mill, and remain subject to the rights of others and natural conditions.

As discussed below, the Maine Department of Inland Fisheries and Wildlife and Department of Maine Resources have stated they have no objection to Applicant's proposed surrender of the FERC exemption.

For a number of years, the Town and various environmental organizations and other stakeholders have been evaluating potential alternatives to maintaining the dam and fish passage, including potential removal of the dam. Petitioner is willing to participate in those discussions, but any decision to remove the dam will require comprehensive analysis of the potential impact to the Mill and appropriate measures to mitigate any structural or other damage that might result.

E. Consultation Process

In accordance with the requirements of 18 C.F.R. § 4.102(b)(1), on July 10, 2018, Petitioner provided a draft of this petition to the Indian tribes, Federal and State agencies, and other stakeholders identified on Exhibit 9. The responses to that consultation are included as Exhibit 10. The Maine Department of Inland Fisheries and Wildlife and Maine Department of

¹⁴ Exemption Conditions (1984 Department of Interior, Fish and Wildlife Service Comments) March 18, 1985 letter from DEP to FERC.

Marine Resources stated they did not object to the proposed surrender of the FERC Exemption and did not request any conditions be included as part of the surrender. The Maine Historic Preservation Commission concluded there would be no historic properties (architectural or archeological) affected by the proposal. No other comments were received from State agencies. No substantive comments or requested conditions were provided by any Indian tribe or Federal agency.

The Sebago Chapter of Trout Unlimited, Conservation Law Foundation, Maine Rivers, and Royal River Restoration Trust submitted joint comments (collectively, “TU Comments”). The TU Comments requested that the Petitioner renounce all rights under the December 2012 lease agreement between the Town and the prior owner of the Sparhawk Mill. It is unclear how renunciation of rights under that lease, which involves a third party not subject to the FERC Exemption, would advance the public interest or is necessary to ensure safe and appropriate disposition of any of the FERC facilities. Moreover, as set forth above, Mr. Jagger does not believe that he or Petitioner have assumed any rights or obligations under that lease. Nonetheless, if FERC concludes that renunciation of rights, if any, under that lease are required as a condition of surrender, Petitioner does not object to doing so.

The TU Comments also suggest that removal of the penstock, to the extent Petitioner owns it, should be required as a condition of surrender. Importantly, the penstock does not present any environmental or other risks. Its removal would, however, result in at least temporary impacts including, potentially, to the river. Thus even if it could be determined that Petitioner owned the penstock and adjacent areas required for removal (and as TU concedes, ownership is unclear), removal is not necessary for public safety or to advance any environmental objective. The generating equipment referenced in the TU Comments has been

removed and there are no toxic chemicals associated with hydroelectric operation present at the site.

Finally, the TU Comments suggest that the issue of fish passage at the dam “be addressed” before the Petition is acted upon. It is undisputed that the dam is owned by the Town and pre-dated the FERC Exemption. To the extent that fish passage was or is an issue, it is not as a result of hydroelectric power that occurred previously or of the activities authorized by the FERC Exemption. Granting the Petition will not adversely impact the Town’s ability to control the dam and fish passage facilities, including to address the issues raised by TU if the Town wished to do so. Requiring Petitioner to solve a problem it did not cause and over which it has absolutely no control would most certainly violate the “realistic and pragmatic” guidance that governs FERC’s actions and that is referenced in the TU Comments.

CONCLUSION

For the reasons discussed above, Petitioner requests surrender of any rights it might possess in the FERC Exemption.

Dated: 10/31/18

Sparhawk, LLC
By: 
Manager