

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Village of Morrisville, Vermont

Project No. P-2629-029

Morrisville Hydroelectric Project

**ENVIRONMENTAL ORGANIZATIONS’
MOTION TO INTERVENE AND COMMENTS IN OPPOSITION TO
APPLICATION FOR ADMINISTRATIVE AMENDMENT**

American Whitewater, Vermont Council of Trout Unlimited, and Vermont Natural Resources Council (Environmental Organizations) submit the following motion to intervene and comments in opposition to the Village of Morrisville, Vermont’s (Morrisville) Application for Administrative Amendment, as noticed by the Federal Energy Regulatory Commission (FERC or Commission) on May 23, 2024.

The Environmental Organizations seek to protect and preserve the aquatic and recreational resources of the Lamoille River Basin. As discussed below, Morrisville’s administrative amendment would harm those interests by circumventing state authority under Section 401 of the Clean Water Act to address the adverse environmental impacts of Morrisville’s hydroelectric power developments (Developments).

I. Environmental Organizations’ Motion to Intervene

Per Section 214 of the FERC Rules of Practice and Procedure, 18 C.F.R. § 385.214, American Whitewater, Vermont Council of Trout Unlimited, and Vermont Natural Resources Council respectfully move to intervene in this proceeding.

The Environmental Organizations are dedicated to the protection and preservation of Vermont’s water resources, including ensuring the health and accessibility of Vermont rivers and watersheds. American Whitewater is a national conservation nonprofit focused on protecting America’s whitewater resources and enhancing their ability to be enjoyed safely. Vermont Council of Trout Unlimited’s mission is to protect and preserve cold-water fisheries and watersheds throughout Vermont. Vermont Natural Resources Council seeks to protect and enhance the State’s natural environments, communities, character, and unique sense of place.

The Environmental Organizations have a direct and substantial interest in the outcome of these proceedings. *See* 18 C.F.R. § 385.214(b)(2)(ii). Their members regularly use and enjoy the water resources affected by the Morrisville Developments, and the ongoing operation of the Developments has long been a concern to the Environmental Organizations due to their impact on the health of

the Lamoille and Green Rivers. The Environmental Organizations' intervention is also in the public interest. *See id.* § 385.214(b)(2)(iii). The Environmental Organizations have a unique and necessary perspective that cannot be adequately represented by the existing parties. Denying this motion to intervene would impair the Environmental Organizations' ability to advocate effectively for the protection and restoration of Vermont's water resources, which is integral to their organizational missions and the well-being of the ecosystems and communities they support.

The administrative amendment at issue puts at risk the overdue implementation of water quality protections at the Developments, including those included in the water quality certification issued by the State of Vermont in 2016 under Section 401 of the Clean Water Act (2016 Certificate).¹ After Morrisville's unsuccessful judicial challenges to its provisions in the Vermont courts, including the Vermont Supreme Court, and certain changes to the 2016 Certificate as a result of that litigation, the Environmental Organizations have strongly supported the 2016 Certificate.²

Indeed, for over a decade, the Environmental Organizations have actively participated in both administrative and judicial proceedings related to the relicensing of and the 2016 Certificate for the Morrisville Developments, advocating for stricter and more comprehensive implementation of water quality conditions to protect their members' interests and the environment. In this regard, American Whitewater is an intervenor in the relicensing proceeding for the Developments,³ and Vermont Council of Trout Unlimited and Vermont Natural Resources Council have been active stakeholders in the proceedings alongside American Whitewater.

The Environmental Organizations therefore respectfully move that FERC grant them leave to intervene in these proceedings to ensure that their substantial interests are adequately represented and protected and to further the public interest.

¹ Available at FERC Accession No. 20160809-5216 (Aug. 9, 2016). *See also In re Morrisville Hydroelectric Project Water Quality*, No. 103-9-16 VTEC, 2020 WL 5753099 (Vt. Super. Aug. 26, 2020) (setting final conditions following state court appeal).

² *See In re Morrisville Hydroelectric Project Water Quality*, 224 A.3d 473 (Vt. 2019) (describing Environmental Organizations' involvement).

³ *See Motion to Intervene and Study Request of American Whitewater and Vermont Paddlers Club under Morrisville Hydroelectric Project FERC Project No. 2629*, FERC Accession No. 20100824-5016 (Aug. 24, 2010).

Contact Information:

Christophe Courchesne, Director, Environmental Advocacy Clinic
Vermont Law and Graduate School
PO Box 96, 164 Chelsea Street
South Royalton, VT 05068
(802) 831-1627
ccouchesne@vermontlaw.edu
Counsel for Environmental Organizations

American Whitewater:
Bob Nasdor
Northeast Stewardship & Legal Director
American Whitewater
65 Blueberry Hill Lane
Sudbury, MA 01776
bob@americanwhitewater.org
(617) 584-4566

Vermont Council of Trout Unlimited:
Jared Carpenter
P.O. Box 892
Montpelier, VT 05601
rjaredcarpenter@gmail.com
(802) 356-3666

Vermont Natural Resources Council:
Jon Groveman
Policy & Water Program Director
Vermont Natural Resources Council
11 Baldwin Street
Montpelier, VT 05602
jgroveman@vnrc.org
(802) 223-2328

II. Administrative Background

The Morrisville Developments consist of four dams: Green River Dam, Lake Elmore Dam, Morrisville Dam, and Cadys Falls Dam. All four dams are currently regulated through a single license under Project No. 2629.

In its application, Morrisville is proposing to remove the Morrisville Dam and Cadys Falls Dam from the current license and have them operate under a separate, new license. The proposed license amendment would leave Green River Dam and Lake Elmore Dam to operate under the current license. Morrisville contends that

this amendment would facilitate the surrender of the Green River Dam and its removal from the license. *See* FERC, Notice of Application for Amendment Of License Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests, Accession No. 20240523-3066, at 2, 3 (May 23, 2024).

On May 23, 2024, FERC issued a Notice of Application for Amendment of License, soliciting comments, motions to intervene, and protests. *Id.*

III. Comments in Opposition

The Environmental Organizations Strongly Oppose the Proposed License Separation Given the Substantial Risks to Water Resources.

Since Morrisville filed this amendment application in 2022, the Environmental Organizations have consistently opposed Morrisville’s proposal to separate the license because it would put at risk Morrisville’s implementation of long overdue water quality protections at the Developments.⁴

The waterways and land around the Developments are home to “substantial fish and wildlife resources.”⁵ However, the Developments alter the Lamoille and Green Rivers’ stability and flow. In violation of Vermont state water quality standards, the Developments’ current operations cumulatively and significantly degrade the environmental and recreational values of these aquatic resources, destabilizing fish nurseries, harming ecological health, and limiting recreational opportunities.

In 2016, in connection with the Commission’s relicensing process for the Developments, the Vermont Agency of Natural Resources (Agency) issued a Water Quality Certificate (2016 Certificate) under Section 401 of the Clean Water Act, which applies to the four dams in question. As compared to the Developments’ current operations, the 2016 Certificate requires far more extensive protections for water quality that are necessary to meet the Vermont state water quality standards. These protections include mandatory water flow rates seeking to mimic the natural river while stabilizing temperatures to support and restore the ecology. The Developments are and must be subject to the conditions imposed by the 2016

⁴ *See* Environmental Stakeholders’ Enforcement Request to the Agency, Accession No. 20220401-5138 (Apr. 1, 2022) (grounds for opposition to license separation); *see also* Environmental Stakeholders, Answer to Applicant’s Motion for Expedited Action on Separation of License, Accession No. 20240314-5163 (Mar. 14, 2024) (reiterating grounds for opposition to license separation in response to Motion for Expedited Action).

⁵ *See, e.g.*, U.S. Dep’t of Interior, Comments, Recommendations, Prescriptions, at 4 Accession No. 20131231-519 (Dec. 31, 2013) (describing fish species including wild brook, brown, and rainbow trout; yellow perch; pumpkinseed; smallmouth and largemouth bass; brown bullhead; chain pickerel; and northern pike).

Certificate, as required under the Clean Water Act and the Vermont state water quality standards.⁶ The Environmental Organizations are deeply concerned that granting this proposed amendment will delay or even foreclose the implementation of the 2016 Certificate.

As detailed below, the Environmental Organizations are concerned about the separation of licenses for several reasons. First, Morrisville's proposal is far from administrative because it threatens to undermine the integrity and requirements of the 2016 Certificate. Second, Morrisville's recent statements troublingly suggest that it will, in fact, refuse either to comply with the 2016 Certificate or to diligently seek relicensing of the Developments. Third, the amendment application is premature, considering that the full array of Morrisville's plans, including decommissioning the Green River Dam, require full vetting by the Commission through duly-noticed and appropriate proceedings.

A. Separation of the Licenses Would Affect the Terms and Implementation of the 2016 Certificate.

As conceived, litigated, and finalized, the 2016 Certificate applies to all the dams in question. Yet Morrisville asserts that separating the operating licenses would be administrative in nature and not require further environmental review or an amendment to the 2016 Certificate. This does not make sense.

When the Agency developed the 2016 Certificate, it considered the unique attributes at the four dams individually *and collectively*, formulating conditions that work together to assure compliance with state water quality standards. As affirmed by the Vermont Supreme Court, this holistic set of requirements is applicable to the licensed operations as a whole, and separating the license through an amendment raises substantial uncertainty about how Morrisville would implement the 2016 Certificate across two separately-licensed projects. Contrary to Morrisville's unsupported assertions, the proposed changes in the license reasonably would interfere with timely and orderly implementation of the 2016 Certificate.⁷

⁶ See also Environmental Stakeholders, Request for FERC to Incorporate State Water Quality Standards, FERC Accession No. 20231220-5062 (Dec. 20, 2023) (reinforcing that current operation of the Developments is creating negative ecological effects, including impaired aquatic habitat under Vermont state water quality standards); Vt. Agency of Nat. Res., Lamoille: 2016 Tactical Basin Plan 29 (2016).

⁷ Belying Morrisville's characterization, the Agency's communications have expressed concerns with separation, not support. See Morrisville's Response to the Commission's March 3, 2023, Additional Information Request, FERC Accession No.

In this context, Morrisville cannot claim that its proposal would not affect the terms and implementation of the 2016 Certificate. The proposal appears calculated, instead, to be a stalking horse for evisceration of the 2016 Certificate’s requirements at the Green River Dam, and with it, the 2016 Certificate as a whole.

B. Morrisville’s Application, Along with Its Recent Actions and Statements, Perpetuates Its Ongoing Failure to Seek a Clean Water Act-Compliant License.

Morrisville’s own actions and statements indicate that the proposal is not administrative in nature at all but merely its latest effort to avoid compliance with the 2016 Certificate. Despite Morrisville’s obligation to diligently pursue a valid operational license for the Developments, separating the license sets the table for additional delays, non-compliance with Vermont water quality standards, and further frustration of the relicensing process.

As the Environmental Organizations have repeatedly pointed out, Morrisville has not implemented, and the Developments are not currently in compliance with, the 2016 Certificate. And in Morrisville’s filing of March 12, 2024, it stated that it has no intention of ever complying with the 2016 Certificate at the Green River Dam.⁸

As proposed by Morrisville, separating the licenses seems to be another delay tactic that will harm water quality and delay compliance with Vermont state water quality standards. The separation will also complicate the completion of the Commission’s safety study requests and calls into question the overdue completion of the relicensing process. Thus, Morrisville’s own conduct confirms its intent that this separation would further the unacceptable status quo.

C. The Proposal to Separate the Licenses Is Premature.

Finally, the Environmental Organizations oppose Morrisville’s proposal because it so clearly puts the cart before the horse. Morrisville bases this proposal on the “uncertainty and pall” surrounding the relicensing process—uncertainty that Morrisville itself manufactured through delays in the relicensing process and its refusal to provide the Commission with data supporting its alleged dam safety concerns.

20230711-5055 (July 10, 2023) (attaching Agency letter rejecting argument that separation is needed to decommission Green River Dam and recommending the Commission proceed with issuing new license and implementation of 2016 Certificate).

⁸ Response to Additional Information Requests Letter, FERC Accession No. 20240312-5072 (Mar. 12, 2024) (“Anticipated Surrender of Green River Development”).

Before any separation of the license takes place, the Commission should proceed with the pending relicensing of the Developments based on the record before the Commission, including any needed resolution of the pending safety issues. Should Morrisville wish to pursue its plans, there should be appropriate Commission proceedings that would consider decommissioning the Green River Dam, an amendment to the license that would eliminate its coverage of the Green River Dam in the context of Morrisville's obligations under the remainder of the license, and the urgent need for the projects to comply with Vermont water quality standards as reflected in the 2016 Certificate, in any scenario.

In any such proceeding, it would be incumbent on Morrisville, the party seeking these outcomes, to support its requests with a full presentation of all aspects of its plans, so that the Commission, the Agency, the Environmental Organizations, and the public can provide meaningful feedback. In a vacuum of information about these issues, the Commission should not move forward with Morrisville's proposed separation of the license.

IV. Conclusion

The Federal Energy Regulatory Committee should deny the Application for Administrative Amendment.

Respectfully submitted,

AMERICAN WHITEWATER,
VERMONT COUNCIL OF TROUT UNLIMITED,
VERMONT NATURAL RESOURCES COUNCIL

By their attorneys:

Willow Hogan
Student Attorney
Ashton Danneels
Student Attorney

Christophe Courchesne
Director
Environmental Advocacy Clinic
Vermont Law and Graduate School

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in the proceeding for Project No. 2629-029.

Respectfully submitted, on this day June 24, 2024.

/s/ Christophe Courchesne

Christophe Courchesne, Director
Environmental Advocacy Clinic
Vermont Law and Graduate School
*Counsel for American Whitewater, Vermont Council of Trout Unlimited, and
Vermont Natural Resources Council*

Cc: Penny Jones; Scott Johnstone; Kevin Newton – Morrisville Water & Light (by email)
Paul V. Nolan (by email)
Julie Moore; Jeff Crocker – Vermont Agency of Natural Resources (by email)
William Hildreth – Vermont Paddler’s Club (by email)
Kirk Francis – Penobscot Indian Nation (by mail)