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Testimony of Scott Johnstone  
House Committee on Environment & Energy  
Regarding S213  
April 10, 2024

Madam Chair and members of the Committee, thank you for this opportunity to address you this morning regarding our request to potentially add language to S213 to address the need for timely completion and disclosure of a report, underway at the Agency of Natural Resources.

My name is Scott Johnstone, I am the General Manager of Morrisville Water & Light and also the Manager of the Village of Morrisville, a duly chartered municipality in Vermont chartered in the late 1800's for the purpose of creating and providing a renewable energy hydro electric resource in Morrisville. That dam and hydro station came online in 1895 and for the past 130 years MWL has proudly provided affordable, renewable energy to our now 4,000 customers spread across six communities while also continuing our history of environmental stewardship.

Personally, I am a civil engineer by training and a professional engineer by vocation, though I have, admittedly become more of a policy wonk over the arc of my career. Importantly, I had the great honor of serving both as Deputy Secretary and then Secretary of the Agency of Natural Resources during the Dean Administration and greatly enjoyed working closely with your predecessors during that time as we all sought to protect and enhance the wonder that is Vermont.

Prior to digging into our request of the Committee let me share some background and issues relating to the facilities at the Green River Reservoir and what has led us to come before you today. If you happened to see our press release of two weeks ago you will recall that we've begun what the Federal Regulatory Commission calls a process to "surrender" our license to generate power at these facilities. This FERC choice of words, in retrospect feels incredibly apt as you will see. It is worth a quick note to say out loud that, while the testimony that follows may sound like whining and a call for help to fix a broken process, it actually is not. Rather, we've moved past that point and simply want help to get to the end of the process.

The Green River Reservoir today hosts a flood control facility, a hydro electric plant, a State Park, an incredible wildlife experience and some private residences and camps. Of these uses, only the electric generation facility is of material interest to Morrisville Water & Light. We believe it is vital that the dam remain to support the other uses listed, but, seek fairness to the 4,200 electric customers and later the very small number of tax payers in the Village of Morrisville to pay to support the state park once the hydro station is shut down.

Today, our electric customers can and do pay for the operations and improvements to the facility, including over \$1,000,000 to attempt to get a license to continue to operate the facilities. Once we cease operations the Public Utility Commission will not allow MWL to charge our

electric customers for the upkeep to the dam as there is no benefit to the customer. This means that, once we cease operations the very small number of taxpayers in Morrisville would be required to maintain this facility in Hyde Park and of not benefit to our taxpayers. This seems quite unfair.

Lets begin by sharing a timeline of the facilities and process at Green River:

- 1940's: Dam is constructed for flood control purposes to protect all communities from Hyde Park to Lake Champlain along the Green and Lamoille Rivers
- Early 1980's: the hydro electric facilities were installed into the dam
- 2009: Permitting to gain new FERC and ANR water quality permits begins
- 2016: ANR issues a water quality permit with appeals ongoing ever since
- 2021: MWL announces its desire that the ANR should become owner of the dam as a way to preserve its interests in the state park
- 2022: The Legislature, in the budget adjustment act passed in March of that year, provided ANR \$350,000 to study potential ownership of the dam
- 2024: Another \$150,000 is provided by the Legislature for the study which has only just begun
- 2 Weeks Ago: MWL announces it has filed a letter of intent with FERC to surrender its permit to generate electricity
- Today: There is still no timeline or commitment for when the study will be completed by ANR nor who will get to see its results

With the timeline in place, it is useful to share a bit of detail of why MWL plans to surrender its FERC permit at Green River and actions taken to attempt to find a solution. To begin, lets understand what the generation station at Green River are and are not. Many hydro plants run all the time. While the reservoir is huge, the inflows are not sufficient to operate the plant all the time. When water is plentiful, like currently, it does run 24/7. Most times, it is run as a "peaker" plant. This means it runs when power is in short supply in New England and when the power you can buy "on the market" is derived from coal and oil generation.

To operate under these conditions requires the ability to draw down water from the reservoir. Historically, for flood and generation purposes our FERC permit provided for more than ten feet of drawdown - more than is required for sure. This permit has been in place for the past 40 years now and while we never draw down more than three feet currently, we still are allowed the full ten feet.

The 2016 water quality permit allows minimal drawdown in the winter, one and one half feet and none the rest of the year. No provision in the permit exists to operate the facility for flood control. The winter limit we believe, could result in the overtopping of both the concrete dam and associated earthen dike. While the former would not be problematic beyond some reinforcing at the toe of the slope, the latter, if allowed to overtop, would fail catastrophically within minutes of overtopping. We anticipate needing to raise the level of the dike to assure this could never occur.

The rest of the year, having no access to any drawdown essentially eliminates its ability to be used as a peaker plant. This would result in much higher costs of energy for our customers and, for some period of time (say 5 - 10 years) dramatically higher emissions of greenhouse gases by MWL to replace this power.

Overall, we anticipate needing to spend in the range of \$15,000,000 in upgrades to generate about half of the overall power and no power to contribute during peaks. There is simply no scenario where MWL could choose to move forward with such a poor economic and environmental choice.

As a side note on flooding, in July of 2023, MWL removed about three feet of water in anticipation of the great flood. This helped keep all that water away from down river communities precisely at their peak flood stages, something the new permit would not allow. Overall, even with a three foot drawdown we had about three feet of water flowing over our spillway (out of five available feet) at the peak. As such, one would expect that at least the concrete dam would have overtopped had we not drawn it down in anticipation of the flood. Without other contributors (massive snow melt at the same time, or ice blockages of the spillway for examples), I do not believe the earthen dike would have been at risk. However, if the same event occurred in a heavy ice year and or with large snow pack one might presume it could have without a drawdown.

I took the general manager position at MWL in June of 2022 and on my arrival this history and the economic and environmental outcomes were plain to see. With my background at ANR among other stops, it seemed to me that there was surely a way to do the Vermont thing and find a common path forward. Leaning on my ANR background this began with a recognition that the Clean Water Act, contrary to many written and spoken statements, did not require the conditions in the water quality permit. I also began with a pledge that, if we were going to find a solution it would meet all federal and state laws, rules, and regulation.

ANR leadership thankfully fully engaged in this conversation with MWL. MWL developed a few iterations of a settlement framework which ultimately led to ANR agreeing such a framework was workable for them. Since the driving issue in 2016 was invertebrates, our proposal limited draw downs to that which mimics both our energy system needs and to a certain extent nature. We proposed to have minimal draw downs for peaking purposes a few times a month when the energy markets signaled peaks. As committee members likely know, these "peaks" drive most of your energy costs and are when the next energy generated is from oil or coal. In short, it is the most valuable energy both economically and environmentally. We also suggested the ability to manage for flood control.

It was at that point that ANR informed us that, while they agreed, MWL had to go and convince the parties to the permits to sign on. Having run non profits in my career I knew at that point that the journey was over as non-profits should always strive to attain as much mission as possible - even beyond current laws and rules. When they gain these victories they are then used as evidence that the laws and rules should be changed. ANR's greatest power, in my experience as Secretary, was its power to convene. Since no "side" wants to be on the losing end of things, when ANR says come to a negotiation all attend and find common ground. It's fine that the current agency chooses not to use that power, but to defer their authority to non-profits guarantees the outcome we got. In fact, the parties would not even agree to meet and hear MWL out. This is not to complain about the non-profits - they did exactly what one would expect.

Ultimately, after much contemplation about how little hope or prospect there was remaining to find a path forward, we've chosen the path we announced two weeks ago - surrender of our FERC license. This will take some time to work through with FERC but the clock is now ticking. We are also mindful, as a small utility without much staff that we need to stop looking back over the past fifteen years and use our effort to move forward. In our recent submittal of our

Integrated Resource Plan to the PUC, MWL has committed to beat the timeline on the renewable energy standard the House just approved and also to meet the infrastructure needs of strategic electrification.

Once we surrender our license this means all remaining uses of the Green River facility are really of a state nature. Flood Control and the state park. It's why we took the position that the state should own the facility in 2021 and why we are reiterating it now. What needs to happen for this to occur is ANR needs to, finally, get their study completed and submitted by the end of the year.

Ultimately, this story should have a very different ending. The classic win-win-win was there for the making. But that time has now passed. Instead we are requesting the committee to add language to S213 to require the ANR to submit the study the Legislature has funded by the end of the year. This is common practice for study committees and other studies but was not done with either funding approval in this case. I recognize no one ever wants to have their feet held to the fire. FERC is requiring that MWL complete our most recent Part 12D dam safety study on this same facility by December 24th of this year. We'd surely like an open timeline, but FERC won't allow it. We hope you won't either.

The language to accomplish this is quite simple and MWL has provided draft language to the Committee below my signature for your consideration.

In closing, it may seem odd to make a request to set a deadline. For MWL we are grappling with this idea of surrendering a part of who we are. Over 130 years we've been about environmental stewardship through the provision of clean renewable hydroelectric energy and now we need to give up one of our three dams. It means more expensive power and a big battery project to focus on. And it should not mean our village taxpayers need to subsidize a state park of New England wide and beyond interest. Honestly, we are asking to simply help us move on. We've surrendered. Let's take the pain quickly rather than continuing to drag it out.

Thank you for our attention and the opportunity to share our thoughts and request.

Sincerely,



Scott Johnstone, P.E.

Proposed Language - DRAFT

Add to Section 24. Transition Dams:

New section:

(f) The Agency of Natural Resources shall complete its Green River Dam Study, as first authorized by the Legislature in Act 83 in the FY 2022 budget adjustment act, no later than January 15, 2025 and shall provide the study to the standing committees of the House and Senate at that time.