



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. UL25-1-000]

### **FirstLight: Notice of Pending Jurisdictional Inquiry, and Soliciting Comments, Protests, and Motions to Intervene**

On April 4, 2025, the Federal Energy Regulatory Commission (Commission) received a request from the U.S. Department of the Interior (Interior) for an updated jurisdictional determination for the unlicensed Tunnel Hydroelectric Project. The project is located on the Quinebaug River in New London County, Connecticut.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA),<sup>1</sup> a non-federal hydroelectric project must be licensed if it: (a) is located on a navigable water of the United States; (b) occupies lands or reservations of the United States; (c) utilizes surplus water or waterpower from a government dam;<sup>2</sup> or (d) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

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<sup>1</sup> 16 U.S.C. 817(1).

<sup>2</sup> A project that meets condition (a), (b), or (c) is not required to be licensed if it holds a still valid pre-1920 federal permit.

A stream is navigable under section 3(8) of the FPA<sup>3</sup> if: (1) it is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements, to transport persons or property in interstate or foreign commerce.<sup>4</sup> Navigability under section 3(8) of the FPA is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

Commission staff previously investigated the Commission's jurisdiction over the Tunnel Hydroelectric Project. On December 6, 1979, Commission staff determined that the project was non-jurisdictional based on Commission staff's finding that there was insufficient evidence that the Quinebaug River was navigable at the site of the Tunnel Project and that there was no post-1935 construction at the project.<sup>5</sup> Interior requests that the Commission reexamine navigability of the Quinebaug River and look specifically at the river's use or suitability for commercial use. A stream's suitability for commercial use can be demonstrated based on its physical characteristics, as well as its actual use or suitability for use for recreational boating, if this information shows the river is suitable for the simpler types of commercial navigation.<sup>6</sup>

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<sup>3</sup> 16 U.S.C. 796(8).

<sup>4</sup> See *Rochester Gas and Elec. Corp.*, 344 F.2d 594, 596 (2d Cir. 1965).

<sup>5</sup> See *Conn. Light & Power Co.*, 9 FERC ¶ 62,146 (1979).

<sup>6</sup> See *FPL Energy Maine Hydro LLC v. FERC*, 287 F.3d 1151, 1158 (D.C. Cir. 2002) (affirming navigability finding based on stream characteristics and test trips by canoe).

In response to Interior's request, Commission staff is investigating the jurisdictional status of the Tunnel Hydroelectric Project (UL25-1-000). A copy of Interior's request may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number, UL25-1-000. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659.

The Commission is soliciting comments, motions to intervene, and protests in this proceeding. Comments, motions to intervene, and protests must be filed by **45 days from notice or November 10, 2025, by 5:00 pm Eastern Time**. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system

at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include Docket Number UL25-1-000.

For further information, please contact Maryam Akhavan at (202) 502-6110 or [maryam.akhavan@ferc.gov](mailto:maryam.akhavan@ferc.gov).

Dated: September 24, 2025.

**Carlos D. Clay,**

*Deputy Secretary.*

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