



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL26-1-000]

Farmington River Power Company; Notice of Pending Jurisdictional Inquiry and Soliciting Comments, Protests, and Motions to Intervene

On November 3, 2025, the Federal Energy Regulatory Commission (Commission) received a request from Save the Sound for an updated jurisdictional determination for the unlicensed Rainbow Dam Hydroelectric Project. The project is located on the Farmington River, a tributary of the Connecticut River, in Hartford County, Connecticut.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA),¹ 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;² 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.

¹ 16 U.S.C. § 817(1).

² 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 FPA³ 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.⁴ 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.

Regarding condition (d) above, for purposes of FPA section 23(b)(1), headwaters and tributaries of navigable waters are Commerce Clause streams;⁵ “post-1935” construction or modification at an existing project includes enlarging a project, such as increasing size of the reservoir, height of the dam, or generating capacity;⁶ and projects that generate energy for transmission on the interstate grid affect interstate commerce.⁷

³ 16 U.S.C. § 796(8).

⁴ See *Rochester Gas & Elec. Corp.*, 344 F.2d 594, 596 (2d Cir. 1965).

⁵ *FPC v. Union Electric Co.*, 381 U.S. 90, 94-96 (1965).

⁶ See, e.g., *L.S. Starrett Co. v. FERC*, 650 F.3d 19, 26-27 (1st Cir. 2011); *Cent. Vt. Pub. Serv. Corp.*, 54 FERC ¶ 61,132, at 61,434 (1991) (citing *Puget Sound Power & Light Co. v. FPC*, 557 F.2d 1311 (9th Cir. 1977); *Aquenergy Systems, Inc.*, 29 FERC ¶ 61,026 (1984)).

⁷ See *FPC v. Union Elec. Co.*, 381 U.S. at 94-95. Moreover, it is well settled that small hydroelectric projects that are connected to the interstate grid, even if they have no interstate sales, affect interstate commerce by displacing power from the grid, and the cumulative effect of the national class of these small projects is significant for purposes of FPA section 23(b)(1). See *Habersham Mills v. FERC*, 976 F.2d 1381, 1384-85 (11th Cir. 1992).

Commission staff previously investigated the Commission’s jurisdiction over the Rainbow Dam Project in the 1970s and determined that licensing was not required, noting that there was insufficient evidence that the Farmington River was navigable at the project.⁸ Save the Sound requests that the Commission reexamine the navigability of the Farmington River at the site of the Rainbow Dam Project, specifically considering the river’s historic and current use or suitability for commercial use.⁹ 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.¹⁰ Additionally, Save the Sound requests that the Commission reexamine its jurisdiction on the grounds that the Rainbow Dam Project is located on a stream over which Congress has Commerce Clause jurisdiction, was modified to increase its water storage capacity on or after August 26, 1935, and affects the interests of interstate or foreign commerce.¹¹

⁸ See *Farmington River Power Co.*, 49 F.P.C. 389 (1973); but see *Farmington River Power Co.*, 44 F.P.C. 1393 (1970) (finding licensing required based on the retroactive application of the 1935 amendments to section 23(b) of the FPA requiring licensing for projects located on non-navigable streams that affect interstate commerce), vacated by *Farmington River Power Co. v. FPC*, 455 F.2d 86 (2d. Cir. 1972) (holding that the 1935 amendment to section 23(b) had no retroactive effect and vacating Commission’s 1970 order finding licensing required).

⁹ In 1996, Commission staff determined that the Farmington River is a navigable waterway of the United States “from north of the Colebrook Reservoir...into the Connecticut River.” *The Collinsville Co.*, 76 FERC ¶ 62,117 (1996). The Colebrook Reservoir is located on the West Branch of the Farmington River, approximately 73 river miles above the Rainbow Dam Project.

¹⁰ See *FPL Energy Me. 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).

¹¹ Save the Sound November 3, 2025 Request for Updated Determination of

In response to Save the Sound's request, Commission staff is investigating the jurisdictional status of the Rainbow Dam Hydroelectric Project (UL26-1-000). A copy of Save the Sound's request may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number, UL26-1-000. 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, 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 February 20, 2026, 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 Rules may become a party to the proceedings. 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, (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 UL26-1-000.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

For further information, please contact Kelly Fitzpatrick at (202) 502-8435 or kelly.fitzpatrick@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 6, 2026.

Carlos D. Clay,

Deputy Secretary.

