

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

**FirstLight Hydro MA LLC)
Northfield Mountain LLC)**

**Project Nos. 1889-____
2485-____**

**RECREATION SETTLEMENT AGREEMENT
EXPLANATORY STATEMENT**

MAY ___, 2023

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Attachment A -- Proposed Exhibit G Map

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I. INTRODUCTION

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ FirstLight Hydro MA LLC, owner and operator of the Turners Falls Hydroelectric Project (“Turners Falls Project”) and Northfield Mountain LLC, owner and operator of the Northfield Mountain Pumped Storage Project (“Northfield Mountain Project”) (collectively, “FirstLight”), hereby submit this Explanatory Statement in support of the Recreation Settlement Agreement for the relicensing of the Turners Falls Project and Northfield Mountain Project (“Recreation Settlement Agreement”).

The Recreation Settlement Agreement was executed among FirstLight and the National Park Service (“NPS”), the Massachusetts Department of Conservation and Recreation (“MDCR”), Franklin Regional Council of Governments, the Towns of Erving, Gill, Montague and Northfield, Massachusetts, Access Fund, American Whitewater, Appalachian Mountain Club (“AMC”), Crab Apple Whitewater, Inc., New England FLOW, New England Mountain Bike Association, Western Massachusetts Climbing Coalition and Zoar Outdoor (“Recreation Settling Parties”).²

¹ 18 C.F.R. § 385.602 (2022).

² The other Recreation Settling Parties have had an opportunity to review this Explanatory Statement in advance but FirstLight takes sole responsibility for its content.

The Recreation Settlement Agreement is a package that, by its terms, addresses all of the issues among the Recreation Settling Parties pertaining to recreation for relicensing of the Turners Falls Project and Northfield Mountain Project (“Projects”), with the exception of recreational boating flows which are addressed in a separate Flows and Fish Passage Settlement Agreement.³ While recognizing that regulatory processes related to the relicensing of the Projects are not yet completed, the Settling Parties expressly intend that the Recreation Settlement Agreement establish FirstLight’s obligations with regard to non-flow recreation measures at the Projects. The Recreation Settlement Agreement reflects agreement among the Recreation Settlement Parties concerning recommendations, terms, and conditions to be submitted to the Commission pursuant to Section 10(a) of the Federal Power Act (“FPA”) regarding this topic.⁴

To this end, the Recreation Settlement Agreement includes proposed license articles for the Projects as set forth in Appendices A (Turners Falls Project) and B (Northfield Mountain Project). The proposed license articles would require FirstLight to implement a Recreation Management Plan (May 2023) (“RMP”),⁵ which is Appendix E to the Recreation Settlement Agreement. Consistent with the Recreation Settlement Agreement, FirstLight requests that the Commission adopt the proposed license articles in the new licenses for the Projects and approve the RMP. FirstLight further requests that the Commission not include in the new licenses for the Projects or the RMP any requirement that constitutes a material modification of, or addition to, the

³ FirstLight filed the Flows and Fish Passage Settlement Agreement (March 2023) with FERC on March 31, 2023.

⁴ See Recreation Settlement Agreement, Sections 2.1, 4.2.1.

⁵ The RMP, if approved by the Commission, would supersede the recreation management plans FirstLight filed with its Amended Final License Applications on December 4, 2020.

proposed license articles or that is otherwise inconsistent with the RMP or this Recreation Settlement Agreement.⁶

As explained in this document and as supported by substantial evidence in the record of this proceeding, the RMP measures adequately protect and enhance public recreation at the Projects and thus are in the public interest. Approving the RMP as proposed by the Recreation Settling Parties, which include federal and state resource agencies, local communities, and a broad range of other stakeholders with interests in recreation, also would be consistent with the Commission's long-standing policy favoring licensing settlement agreements.⁷

The Recreation Settlement Agreement also includes measures, set forth in Appendix C, which the Recreation Settling Parties do not intend to be incorporated into the new licenses for the Projects. Appendix C is included for the Commission's information only. The measures in Appendix C include FirstLight's commitments to Recreation Settling Parties that relate to recreation activities outside the Project boundaries, are intended to promote community development, exceed regulatory requirements, or are otherwise inappropriate as license conditions. As such, they are not required to address FirstLight's obligations under the FPA and are not subject to FERC's jurisdiction.⁸

II. BACKGROUND

The Turners Falls Project is located on the Connecticut River in Massachusetts at river mile 122. The Turners Falls Dam creates the Turners Falls Impoundment ("TFI"), extending upstream approximately 20 miles to the Vernon Hydroelectric Project (FERC No. 1904). The

⁶ Sections 1.3.6 and 1.3.7 of the Recreation Settlement Agreement define the term "Inconsistent with this Settlement Agreement."

⁷ *Settlements in Hydropower Licensing Proceedings under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 at P 2 (2006) ("Settlement Policy Statement").

⁸ *See id.* at P 7.

Turners Falls Project also includes a gatehouse, a power canal, two hydroelectric plants located on the power canal named Station No. 1 and Cabot Station, and fish passage facilities. Cabot Station is the largest conventional hydroelectric station in Massachusetts at over 62 megawatts (“MW”). Between the Turners Falls Dam and Cabot Station tailrace there is an approximately 2.5-mile-long bypass reach; Station No. 1 discharges into the bypass approximately 0.9 miles below the Turners Falls Dam.

The TFI also serves as the lower impoundment for the Northfield Mountain Project, an approximately 1,168 MW pumped storage project in Northfield, Massachusetts that includes an off stream upper reservoir. The Northfield Mountain Project is the largest pumped storage project in New England.

The current licenses for the Turners Falls Project and Northfield Mountain Project were issued on May 5, 1980, and May 14, 1968, respectively. Both licenses expired on April 30, 2018, and the Projects have been operating under annual licenses issued by the Commission.

FirstLight commenced the relicensing process by filing a Notice of Intent and Pre-Application Document (“PAD”) on October 31, 2012. In the PAD, FirstLight indicated that it would use the Integrated Licensing Process (“ILP”) to relicense the Projects. Pursuant to the ILP, FirstLight then engaged with relicensing participants, FERC and the public in scoping environmental issues related to the Projects and in developing and implementing a rigorous study plan to assess the Projects’ environmental impacts and recreation needs. As required by the FPA, FirstLight filed a Final Application for New License for the Projects with FERC two years prior to expiration of the existing licenses, on April 29, 2016.

Because certain environmental studies required by FERC had not yet been completed in 2016, FirstLight filed Amended Final License Applications (“AFLAs”) for each Project on

December 4, 2020. The AFLAs included FirstLight's proposed protection, mitigation, and enhancement measures to be included in the new licenses and the scientific and evidentiary basis for those measures. Included with the AFLAs was a proposed recreation management plan for each Project. FirstLight's recreation proposal was based on its relicensing studies which, in FirstLight's view, showed that its existing recreation facilities, combined with informal access and other public recreation sites, currently provide the public with a diversity of recreation opportunities and an abundance of options for accessing and utilizing Project lands and waters for recreation that is sufficient to meet forecasted demand. Nonetheless, FirstLight proposed several enhancements to existing Project recreation sites and new or modified recreation sites in the AFLAs.

In 2017, FirstLight began formal settlement discussions with relicensing participants. The initial focus of these discussions was with state and federal fish and wildlife agencies and certain conservation organizations on fish passage and stream flows for aquatic species protection. Following submittal of the AFLAs, FirstLight, the state and federal fish and wildlife agencies, and conservation organizations resumed discussions on fish passage and flows. The discussions ultimately expanded to include discussions with interested parties on flow releases for recreational boating. Those discussions resulted in the Flows and Fish Passage Settlement Agreement (March 2023), filed with the Commission on March 31, 2023.⁹

In parallel discussions, FirstLight engaged in extensive stakeholder outreach on non-flow recreation measures. These discussions led to an Agreement in Principle on recreation which FirstLight filed with the Commission on February 28, 2022. The Recreation Settling Parties

⁹ The Flows and Fish Passage Settlement Agreement superseded an Agreement in Principle on whitewater boating flow releases filed with FERC on February 28, 2022.

temporarily deferred a final settlement on recreation while relicensing stakeholders explored the possibility of a comprehensive settlement involving all relicensing issues. On January 12, 2023, FERC issued a letter instructing FirstLight to submit any settlement agreements for the Commission's consideration by March 31, 2023.¹⁰ The Recreation Settling Parties were not able to meet this deadline. However, the Recreation Settling Parties have now finalized the settlement and are submitting it for the Commission's consideration. The Recreation Settlement Agreement supersedes the Agreement in Principle on recreation previously filed with FERC.

In the Recreation Settlement Agreement, FirstLight has agreed to implement a number of recreation improvements in addition to those it proposed in the AFLAs. These better reflect the preferences and priorities of federal and state agencies, local communities, and recreation users as articulated during the extensive negotiations over the RMP. In addition, the Recreation Settling Parties anticipate a higher level of recreation use at the Project as a result of the increased flows in the bypass reach of the Connecticut River provided in the Flows and Fish Passage Settlement Agreement. The Recreation Settlement Agreement includes recreation facilities and amenities to account for such increased use as well as to attract additional recreation users to the Project area for the benefit of the local economy.

III. OVERVIEW OF THE RECREATION SETTLEMENT MEASURES

A. Proposed License Terms and Conditions

1. Proposed License Articles for the Turners Falls and Northfield Mountain Projects

Proposed License Article A100 for the Turners Falls Projects and B100 for the Northfield Mountain Project would require FirstLight to implement the RMP.

¹⁰ Letter from Vincent Yearick, FERC, to Alan Douglass, FirstLight, at 2, Project Nos. 1889-085 and 2485-071 (issued Jan. 12, 2023).

2. RMP

The RMP contains FirstLight's commitments to enhancing public recreation at the Projects for the next license term. For convenience and to avoid having to submit two separate and overlapping RMPs, recreational improvements for both Projects are contained in a single RMP. The RMP designates which recreational improvements pertain to which Project.

Section 5 of the RMP describes and lists the recreational facilities and amenities currently in place at the Projects. Section 6 describes the new recreation sites to be constructed as well as the proposed upgrades to existing sites. Table 6.3-1 of the RMP contains a comprehensive listing and summary of all existing and proposed recreational facilities and features under the RMP. Section 7 of the RMP provides an implementation schedule for the new facility construction and upgrades. FirstLight's commitments to manage and maintain the existing and new facilities are found in Section 8 of the RMP.

Section 4 of the RMP sets forth a number of programmatic or non-Project specific commitments of FirstLight. Highlights of these components are:

Ten-Year Comprehensive Review. The RMP Section 4.1.1 commits FirstLight to conduct a comprehensive review of recreation at the Projects every 10 years to evaluate recreation use and demand. FirstLight will review the information it collects from its recreation facilities, along with information which it will gather from the Recreation Settling Parties. Any updates to the RMP will be based on consensus among the Recreation Settling Parties and FirstLight. FirstLight will file any updated RMP for FERC's approval. If no updates are proposed, FirstLight will file an explanation of why no changes are needed along with any written comments from consulted entities.

Americans with Disabilities Act. Under RMP Section 4.1.2, for any new construction or rehabilitation of existing Project recreation buildings and facilities, FirstLight will comply with

applicable state and federal disability access standards. In addition, within two years of license issuance, FirstLight will conduct a comprehensive assessment of existing Project recreation facilities for consistency with Americans with Disabilities Act (“ADA”) requirements. FirstLight will implement applicable ADA improvements within a reasonable period.

Conservation Restrictions. RMP Sections 4.2.1 and 4.3.1 provide that FirstLight will place certain lands it owns within the Project boundaries that are not used for specific Project activities into conservation restriction. These include lands along the river right immediately downstream of the Turners Falls Dam, as well as lands along the TFI. Details will be worked out in consultation with the relevant towns and with MDCR.

FirstLight also will permanently conserve its lands within the Bennett Meadow Wildlife Management Area managed by the Massachusetts Division of Fisheries and Wildlife (“MDFW”) in consultation with MDFW. FirstLight will further consult with NPS, the Town of Erving, MDCR, and AMC to conserve, by way of a permanent trail easement, an approximately 1.3-mile long portion of the New England National Scenic Trail that lies inside the Northfield Mountain Project boundary on the eastern side of the Project’s upper reservoir.

FirstLight recognizes the Commission may need to approve any conveyances of Project property rights to third parties.¹¹

Flow and Water Level Notification Website. Under Section 4.2.2, FirstLight will provide certain real-time and forecasted data on a website accessible to the public to facilitate recreational use of the Project area. FirstLight will provide hourly TFI water level information measured at the

¹¹ See Form L-3, Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States, Article 5, 54 F.P.C. 1817, 1818-19 (1975).

Turners Falls Dam, Turners Falls Dam spill rates, and Station No. 1 discharges. The real-time data will be posted year-round, 24 hours a day.

FirstLight also will include on the website the Naturally Routed Flow (“NRF”),¹² the anticipated Turners Falls Dam spill rate, and the anticipated Station No. 1 discharge for a 12-hour window into the future at any given time. Should FirstLight deviate from passing the 12-hour previous NRF, it will post the revised flows (in the 12-hour look ahead window) to the website as soon as practicable after those flows are known.

Cabot Camp. Cabot Camp consists of multiple structures that are in varying states of disrepair due to insect and animal damage. It is not suitable for use in its current condition. Cabot Camp is not currently designated as a Project recreational facility. Section 4.2.3 of the RMP provides that FirstLight, in consultation with the Town of Montague, will attempt to find a qualified organization to take responsibility for preserving the Cabot Camp historic buildings. FirstLight will conduct a topographic and property survey and a condition assessment of the Cabot Camp parcel and will conduct a market/redevelopment study in collaboration with the Town. If no acceptable means to otherwise preserve the historic structures of Cabot Camp is identified, FirstLight will repurpose the property for other recreation or alternative use consistent with the FERC-approved Historic Properties Management Plan.

In addition to these programmatic components, FirstLight has agreed to a broad range of new recreational facility construction projects and upgrades to existing sites. These improvements are described in detail in Section 6 of the RMP. They include, for the Turners Falls Project:

- Construct a new pocket park (viewing location, picnic table) at the Pauchaug-Schell Bridge Greenway with signage for historical and cultural interpretation.

¹² For the definition of the NRF, see Appendix A to Flows and Fish Passage Settlement Agreement, Proposed License Article A110.

- Construct a new paddle access campsite at Mallory Brook or alternate location.
- Construct a new formal access trail and put-in at Cabot Camp with picnic area.
- Construct a new car-top access and put-in at the eastern end of Unity Park, with a means of storing and locking vessels, and reconfigure the Unity Park parking lot to improve vehicle and pedestrian safety.
- Construct a new river access and two put-ins below Turners Falls Dam, one for whitewater rafters closer to the dam and the other to accommodate pass-through boaters who want to avoid Peskeomskut Island.
- Construct a new viewing platform and picnic area below Turners Falls Dam.
- Construct a new river access trail for fishing and non-motorized boats to a put-in just upstream of the Station No. 1 tailrace.
- Install new stairs at the Cabot Woods fishing area just below Rock Dam.
- Construct a new portage trail around Rock Dam for boaters who may want to avoid the sizable vertical drop.
- Improve the existing Poplar Street river access by installing timber stairs with a boat slide railing leading to a concrete landing; anchor a gangway to the concrete abutment which will lead to a floating dock.
- Install interpretive cultural signage at key locations in consultation with area Tribes and the Town of Montague.

For the Northfield Mountain Project:

- Enhance existing trails at Bennett Meadow and add historical and cultural interpretive signage.
- Relocate the Boat Tour Dock further upstream to avoid the fish barrier net that will be installed under the Flows and Fish Passage Settlement Agreement.
- Construct a new, ADA-accessible dock layout in place of the current Boat Tour Dock that will support motorboats, canoes, kayaks, and the Tour Boat.
- Construct approximately five miles of new trails for mountain biking to be incorporated into the existing trail system.
- Provide paddle access camping at a new campsite in the Barton Cove area.
- Establish Rose Ledges as a Project recreation facility to ensure continued use of the area for rock climbing.

- Provide a means to lock canoes and kayaks during the day at the Barton Cove canoe and kayak rental facility in the picnic area.

In total, these improvements will significantly enhance the recreation experience for members of the local communities and others visiting the Projects. As detailed in the RMP, FirstLight will undertake these improvements working closely with the local towns, federal and state agencies, and interested organizations.

3. Fifty-Year License Terms

As stated in the Recreation Settlement Agreement, the Recreation Settling Parties agree that the investment of funds and other commitments associated with the terms of the Recreation Settlement Agreement and the Flows and Fish Passage Settlement Agreement support the issuance of 50-year licenses for the Projects.¹³ Where settling parties request a particular license term, it is the Commission’s policy to defer to the settling parties.¹⁴ Under the terms of the Recreation Settlement Agreement, a license term less than 50 years is defined as “Inconsistent with this Settlement Agreement,” permitting FirstLight to withdraw from the agreement.¹⁵

B. Off-License Provisions

These are the measures, to which the Recreation Settling Parties have agreed, that should not be included in the new Project licenses.

1. Additional Pocket Park

FirstLight has agreed to construct a second pocket park within three years of license issuance at a location yet to be determined in the Town of Northfield. Alternatively, FirstLight will make an equivalent investment for a single river access point which may be within or outside of

¹³ Recreation Settlement Agreement, Section 4.3.2.

¹⁴ See Settlement Policy Statement at P 15.

¹⁵ Recreation Settlement Agreement, Sections 1.3.6, 6.1.

the Town. The park may include signage for historical and cultural interpretation. Details will be developed in consultation with the Recreation Settling Parties. Because the exact nature and location of this recreation improvement are yet to be determined and may be outside the FERC Project boundaries, the Recreation Settling Parties have agreed to pursue this improvement as an off-license measure.

2. Farley Ledges Conservation Restriction

Farley Ledges is a rock climbing area on the eastern side of Northfield Mountain, some of which lies inside the FERC Northfield Mountain Project boundary and is owned by FirstLight. FirstLight has agreed to grant a conservation restriction to permanently conserve, for public recreational purposes, a portion of Farley Ledges as shown in Exhibit A to the Recreation Settlement Agreement.

FirstLight also has agreed to request the Commission to amend the Northfield Mountain Project boundary to exclude this area from the FERC-licensed Project. This will facilitate the potential conveyance of the property to a third party which would administer the conservation restriction. Attached to this Explanatory Statement as Attachment A is an Exhibit G map [to be provided] to show the proposed boundary change. FirstLight is hereby requesting the Commission to approve the boundary change as part of its order issuing the new Northfield Mountain Project license. The conservation restriction will ensure that the property continues to be used for rock climbing and other recreational purposes following the boundary change. Rose Ledges, another popular climbing area, would remain within the boundary because it is surrounded by the Project's recreational trail system. FirstLight has agreed to formally designate Rose Ledges as a Project recreational feature.¹⁶

¹⁶ See RMP Section 6.2.5

3. Recreation Advisory Group

FirstLight will form and chair a Recreation Advisory Group (“RAG”) consisting of any of the Recreation Settling Parties who wish to be members of the RAG. The RAG will meet at least annually to discuss recreation use at the Projects and any operation and maintenance needs. The purpose of the RAG is to address shorter term recreation needs at the Projects, as opposed to the longer term needs to be assessed in the ten-year periodic reviews under the RMP.

4. Advertising

FirstLight has agreed to promote use of its Project recreational facilities with local communities and organizations and improve its digital presence. FirstLight will work with the RAG to identify targeted audiences for this outreach including Environmental Justice communities, Indigenous communities, those with disabilities, visitors to the region, residents, and local communities and organizations. FirstLight will also work with the RAG to develop a schedule for pushing out promotional materials.

III. CONCLUSION

For all of the above reasons, the Commission should (1) adopt the proposed RMP in the new Project licenses without material modification, (2) revise the Northfield Mountain Project boundary to exclude the portion of Farley Ledges currently within the boundary as shown on Attachment A, and (3) issue FirstLight new Project licenses for terms of 50 years.

Respectfully submitted,

/s/ Michael A. Swiger

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DATED: May ___, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in these proceedings.

Dated at Washington, DC this ___ day of May, 2023.

/s/ Mealear Tauch
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