

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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January 4, 2021

Via Electronic Filing

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Room 1A East
888 First Street, N.E.
Washington, D.C. 20426

Re: Sturgeon Pool and Dashville Hydroelectric Projects (Docket Nos. UL-19-1-000 and UL-19-2-000)
New York State Department of Environmental Conservation Comments

Dear Secretary Bose:

The New York State Department of Environmental Conservation (NYSDEC) submits the following comments in the above-referenced proceeding in response to comments filed by Central Hudson Gas & Electric Corporation (Central Hudson) on October 29, 2020 in order to clarify New York State's laws and approvals referenced by Central Hudson.

As Central Hudson has noted, NYSDEC is the New York State agency with dam safety jurisdiction of dams throughout New York State. NYSDEC's dam safety jurisdiction, however, is preempted for some hydroelectric facilities that fall under Federal Regulatory Energy Commission (FERC) licensing jurisdiction.

Central Hudson references a pre-June 1920 permit for the Dashville dam facility (Dashville Dam Facility) issued by NYSDEC's predecessor, the New York Conservation Commission, and claims such permit is currently valid, and therefore prohibits FERC jurisdiction over the Facility. The permit Central Hudson references, along with Application for Construction or Reconstruction, and accompanying approval, is attached hereto as Exhibit A. Further, the approval of Sturgeon Pool dam, dated July 19, 1922, is attached hereto as Exhibit B.

The provisions of Chapter LXV of the Consolidated Laws, and Chapter 647 of the Laws of 1911, Section 22, amended on April 25, 1916, referenced in Exhibit B, state that

No structure for impounding water...shall be erected or reconstructed by any public authority or by any private person or corporation without notice



Department of
Environmental
Conservation

to the commission, nor shall any such structure be erected, reconstructed or maintained without complying with such conditions as the commission may by order prescribe for safeguarding life or property again danger therefrom.

A copy of the law is attached hereto as Exhibit C. Similar to New York's dam safety laws and regulations in effect today, the law in effect at the time gave the Conservation Commission authority to regulate construction or reconstruction, and maintenance with respect to the safety of dams.

Based on a reading of the law and Exhibits A and B, it is clear the Conservation Commission issued the Dashville Dam Facility approval for construction only, much like the dam construction permits that are issued today. A construction approval or permit is generally distinct from an operational approval or permit. Construction approvals (or permits) are generally episodic in nature and do not approve or authorize subsequent operation of the constructed facility or dam. Currently, the controlling provisions are in Environmental Conservation Law Article 15, Sections 0503, 0507, 0511, and 0516, and Parts 608, 621, and 673 of Section 6 of the Codes, Rules and Regulations of the State of New York. As a result, neither the Dashville nor the Sturgeon Pool dam facilities has a permit to operate the dam, as Central Hudson claims. Therefore, New York State's dam safety authority does not appear to prohibit FERC licensing of the Dashville Dam Facility.

If you have any questions or require additional information, please do not hesitate to contact me at lisa.covert@dec.ny.gov or (518) 402-0894. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa A. Covert", with a stylized, flowing script.

Lisa A. Covert, Esq.

Office of General Counsel

ec: FERC Service List
Christopher Hogan, NYSDEC
Alon Dominitz, NYSDEC

EXHIBIT A

Farrell
Draft of order Nov. 8, 1919.

WHEREAS, the United Hudson Electric Corporation of 50 Market Street, Poughkeepsie, N. Y., has made application (Serial No. 368) for the approval of its plans (our Acc. 9776 & 9777) for the construction of a cyclopean masonry dam of the gravity type, which dam is to be located on the Wallkill River at a site immediately upstream from the right angle bend in such river just northwest of the Hamlet of Dashville in the townships of Rosendale and Esopus, Ulster County, N. Y., said dam being designated in our records as 759 Lower Hudson watershed, and

WHEREAS, such application together with the plans and engineer's report which accompanied same have been examined by the Engineers of the Division of Waters and received the approval of the Division Engineer, subject to the provision outlined below,

ORDERED, that the said application and plans be and they hereby are approved, provided, however, that this order shall not be deemed to authorize any invasion of property rights, either public or private, by any person in carrying out its requirements nor to create any claim or demand against the State of New York.

A true copy of an order entered in the minutes of the Conservation Commission on Nov. 10, 1919 and the whole thereof.

John J. Farrell
Asst. Secretary.

MEMORANDUM REGARDING DAM #759 LOWER HUDSON WATERSHED
WALLKILL RIVER AT DASHVILLE, ULSTER COUNTY, N.Y.
UNITED HUDSON ELECTRIC CORPORATION, APPLICANT

Serial No. 368.

(Ref. Comp. Acc. 3180 et seq.)

PAPERS

- (1) Completed application signed by J. R. Beal as President;
- (2) Typewritten report accompanying the application by R. H. Anderson, dated August 20, 1919, and designated as 26 D 10,040 - SC:3;
- (3) U. S. G. S. Sheet, Rosendale Quadrangle, showing exact location of the site;
- (4) Blue prints of the applicant's plans prepared by the J. G. White Eng. Corp. and designated by its authorization #5300 (H - 4491 & 4492 - 2) Our Acc. numbers 9777 & 9776;
- (5) October 30, 1919 report of an examination of the site by this Commission's Inspector of Docks and Dams, indicating that the foundation and shoulders are to be of solid rock of a satisfactory nature.

SITE AND GENERAL DESCRIPTION

The topographical map submitted by the applicant to accompany its plans, indicated that the dam is to be constructed across the Wallkill River at a point immediately up stream from the right angle bend in the channel just northwest of the Hamlet of Dashville, in the Townships of Rosendale and Esopus, Ulster County, N. Y. Such site is said to be about 2-1/2 miles above the junction of the Wallkill with the Rondout River, and about 7 miles below the Village of New Paltz.

The applicant proposes to construct a cyclopean masonry dam of the gravity type which would span the Wallkill River and have a maximum height of about 28 feet. The height of the dam for more than half its length is but a few feet, the portion of maximum height being adjacent to the proposed power house, which will stand at the foot of the rock ledge on the southeast bank of the river. The applicant's report and plans, and also the report by this Commission's Inspector of Docks and Dams, indicate that the entire foundation and the shoulders at both ends of the dam will consist of a hard and sound ledge rock.

The applicant's engineer, while in conversation with the writer at this Commission's Office on October 21st, stated that the channel of the Wallkill River below the site of the proposed

dam was walled in by high rock cliffs, and that the amount of water to be impounded was so insignificant that it would be impossible for a flood-wave resulting from the failure of the proposed structure, to over-flow the banks or reach any buildings below.

DRAINAGE AREA AND MAXIMUM FLOOD.

The drainage area of the Wallkill River above the site of the proposed dam is stated by the applicant's engineer to be 750 sq. miles, and such a value checks approximately with areas determined at this Commission's Office for points not far distant above and below.

From an examination of the U. S. G. S. Maps in the vicinity, it would appear that there are about 25 sq. miles of swamp or flat land in a single area, and that the watershed above its lower extremity is about 390 sq. miles, or somewhat more than one half the entire area above the proposed site. The catchment area east of the river below such flat area comprises the greater part of the remainder of the watershed, and is characterized by gentle, rolling land, which the applicant's engineer describes as grazing country. The ridge which is drained into this river from the west is somewhat steep and more of the nature of the country which characterizes the watershed of the Rondout River. It is therefore probable that for watersheds of equal area, the rate of flood run-off would be greater from the Rondout than from the Wallkill, and a ten-year record for the Rondout River indicates that the maximum flood value of 50,000 cubic feet per second assumed by the applicant's engineer for the site under consideration, is reasonably ample.

SPILLING CAPACITY

The report by the applicant's engineer indicates that 50,000 cubic feet per second assumed by him as the maximum flood rate, would pass the proposed dam without attaining a depth of more than 10 feet above its crest. A careful investigation of this point indicates that such statement is conservative.

OVERFALL SECTION.

As stated in the report accompanying the application, the dam has been designed exactly in accordance with the section developed by Mr. William P. Creager (who is also hydraulic engineer with J.G. White Eng. Corp.) in Chapter 7 of his book entitled "Masonry Dams". Figure 33 in such work shows the traces of the points of application of the resultants of all forces, together with a curve for the coefficient, insuring safety against sliding. Chapter XX (ibid.) also contains a detailed statement of all forces exerted upon and by such a structure.

While the section proposed was not designed to resist ice pressure, nevertheless it provided for an assumption that half the area of the base of every section would be exposed to full static pressure. As previously explained, the dam will rest upon solid

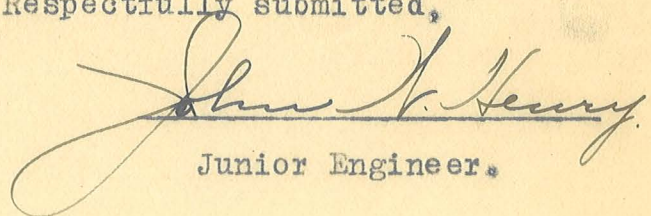
rock throughout its entire length, and it would therefore appear that the design provides ample stability, even though some ice pressure may at times be exerted at or near its crest. The portions of the proposed structure which would be only 3 or 4 feet in height are not to be shaped the same as the remaining and highest part of the dam. The upstream and downstream slopes of such low sections will, however, be 1 on 1-1/2 and 1 on 1, respectively, which indicate ample stability.

Flashboards 3 feet high are to be placed upon the crest of the proposed dam and although details of same were not indicated on the plans, nevertheless it is certain that such flashboards would fail when overtopped to a depth upwards to 7 feet as previously assumed, and even though water could attain a somewhat higher elevation, it is reasonably certain that no damage could result to any property other than that of the applicant.

CONCLUSIONS

From a careful examination of the plans submitted and an investigation of the statements included in the report accompanying the application, it is reasonably certain that the plans have been carefully prepared by the J. G. White Engineering Corporation, and that if properly built with suitable materials as proposed, the structure would satisfactorily resist all destructive forces. It therefore appears that the application and accompanying plans should be approved without other provisions than those regularly included in all such approving orders.

Respectfully submitted,


Junior Engineer.

To A. H. Perkins, Div. Engr.

November 3, 1919.

JWH-B.

STATE OF NEW YORK

GEORGE D. PRATT,
COMMISSIONER
ALEXANDER MACDONALD,
DEPUTY COMMISSIONER
A. S. HOUGHTON,
SECRETARY
MARSHALL McLEAN,
DEPUTY ATTORNEY-GENERAL



Filed: Oct 21, 1919, A.M.

Disposition: Approved Nov. 10, 1919.

Inspected site: Oct. 23, 1919

Foundation seen;
Construction O.K.

CONSERVATION COMMISSION
ALBANY

Serial No. 368

REC'D		No.
DIVISION OF FISH AND GAME		DATE
LLEWELLYN LEGGE, CHIEF		
DIVISION OF LANDS AND FORESTS		
C. R. BETTIS, SUPERINTENDENT		
DIVISION OF WATERS		
A. H. PERKINS, DIVISION ENGINEER		
DIVISION OF SARATOGA SPRINGS		
J. G. JONES, SUPERINTENDENT, SARATOGA SPRINGS, N. Y.		
PR. RPT.	He	3 No. 10
PR. R.M.Y.	He	11 No. 19
ACCN.		
FOL. UP	✓	11 No. 19
FILE		

APPLICATION FOR CONSTRUCTION OF A DAM

50 Market Street, Poughkeepsie, N.Y.
(Address of Applicant)

Application is hereby made to the Conservation Commission of the State of New York, in compliance with the provisions of Chap. LXV of the Consolidated Laws, the Conservation Law, for approval of the detailed specifications and plans, marked H-4491-2 H-4492-2

26-D-10040

herewith submitted for the { construction } of the dam located as stated below. All provisions of law will be complied with in the erection of the said dam, whether specified herein or not.

LOCATION AND GENERAL DATA

Site of dam is on Wallkill River
(Name of stream)
a branch of Rondout River
(Name of stream), within the
limits of the town of Esopus and Rosendale, County of Ulster

(Give approximate distance from well-known bridge, dam, village or mouth of stream, so that work can be located on map of state)

About 2.5 miles south of the junction of the Wallkill and Rondout
Rivers and 7 miles north of the Village of New Paltz.

Purpose of dam Hydro-electric development.

Reasons for making changes in existing structure.

October 20th, 1919.
(Date)

{ Signature of
applicant }

UNITED HUDSON ELECTRIC CORPORATION.

President.

(D. H. Bundy, Applicant's Engr.,
at above address.)

-2-

DESCRIPTION OF THE DASHVILLE DAM
TO BE CONSTRUCTED BY THE
UNITED HUDSON ELECTRIC CORPORATION

The resulting height over the spillway crest for a flood of 30,000 sec.ft., allowing for the

GENERAL: of approach, would be about 10 feet.

The dam will be located across the Wallkill River at Dashville Falls, about 2 1/2 miles above its junction with the Rondout River and about 7 miles below the village of New Paltz. Its purpose is the development of hydroelectric power at that point.

SPILLWAY: It will consist of a 1:3:6 cyclopean concrete spillway about 370' long and having a height of from 3 ft. to 28 ft. At the southerly end of the spillway a power house about 86' long by 33' wide will be constructed with a reinforced concrete substructure and bulkhead.

The general location is indicated by a red circle on the accompanying United States Geological Survey map and the plans and sections

INSPECTION: of the spillway and power house are shown on the accompanying drawings

H-4492-2 and H-4491-2. The inspection of the work will be in charge of the Resident Engineer of The J.C. White Engineering Corporation, who will be in constant

ADEQUACY OF SPILLWAY:

The maximum flood in the last 18 years, estimated from the records of the United States Geological Survey, was about 25,000 sec.ft. on March 3, 1902. The drainage area at Dashville is about 750 sq. mis., the main valley being in general a rolling grazing country containing near the State Line a large swampy tract called the "Drowned Lands", so that in the design of the spillway a maximum discharge of 50,000 sec.ft. was assumed to be ample. A larger flood however could do no damage as the dam is for the most part only a few feet high, with practically no

24r. Record
way below
flows on nearby
streams.
Mh 3,02
736 x 32.4
23820
Esopus-Golden
192 S.M. gave
21,400 ± 111.5
cfs/S.M.
13yr. Recd.

385 S.M.

pondage, and the ends abut into solid rock ledges. The resulting height over the spillway crest for a flood of 50,000 sec.ft., allowing for the velocity of approach, would be about 10 feet. ✓

NATURAL FOUNDATION:

The foundation for the power house and dam throughout is an exposed bastard trap rock free from objectionable faults and seams.

STABILITY:

The maximum spillway section was designed for a 10' depth over crest and according to the methods given in Chapter VII of "Engineering for Masonry Dams" by W.P.Creager, C.E. The dam will be well keyed into the rock foundation to prevent sliding.

INSPECTION:

The inspection of the work will be in charge of the Resident Engineer of The J.C.White Engineering Corporation, who will be in constant attendance.

ACCOMPANYING MAPS:

U.S.Geological Survey Topographical Map, Rosendale Quadrangle.

The J.C.White Engineering Corporation Dwg. No. H-4491-2.

" " " " " " H-4492-2.

EXHIBIT B

ARMcK-F.

July 19, 1922.

Dam No. 778, L. Hudson

The United Hudson Electric Corporation,
50 Market Street,
Poughkeepsie, N. Y.

Gentlemen:

We have received from your engineer, F. B. Maltby, three prints in duplicate, marked H-5275-3, H-5276-4 and H-5310-1, and application for the construction of a concrete dam 100' high by 670' long at Sturgeon Pool on the Wallkill river, one mile below Rifton, this dam to be founded entirely upon sandstone ledge. We have marked this dam upon our records as No. 778, Lower Hudson Watershed.

We will require a report from your engineer on each section of the bed and banks as soon as excavated, concerning the character of the material, the hardness and perviousness; the roughness and shoulders to resist shear; the proposed dimensions of the cutoff walls and provisions against sliding and under seepage.

The construction of this dam is approved in so far as the matter involves the jurisdiction conferred upon this office by Chapter LXV of the Consolidated Laws, and Chapter 647, Laws of 1911, Section 22, and permission is given for the construction of this work up to November 2, 1924. This approval shall not be deemed to authorize any invasion of property rights, either public or private, in carrying out the above work; nor to create any claim against the State of New York; nor to be considered as authorizing the flooding of State lands, nor as acquiescing in the flooding of such lands.

If flashboards are to be used in the spillway, they should be so designed as to give way entirely before the pond level reaches two-thirds the depth of the spill, so that the whole spillway may be available for floods. The design of these flashboards, giving the span of the supports and dimensions of the parts, should be submitted to and approved by this office before they are used.

7/19/22

We return herewith one set of prints of plans submitted,
stamped on the back with our approval.

Please acknowledge the receipt of this letter and advise
us when you start the above work.

Very truly yours,

FRANK M. WILLIAMS,
State Engineer

By _____
Deputy State Engineer.

Copy to
Mr. F.B. Maltby,
c/o J.G. White Engr. Corp.
Rifton, N. Y.

Enclosure.

*Shipping Tag # 8 given to Mr. Maltby June 17, 1922
G R M*

EXHIBIT C

Chap. 298.

AN ACT to amend the conservation law, with respect to docks and dams.

Became a law April 25, 1916, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

L. 1911, ch. 647, § 22, as amended by L. 1914, ch. 315, amended.

Section 1. Section twenty-two of chapter six hundred and forty-seven of the laws of nineteen hundred and eleven, entitled "An act relating to conservation of land, forests, waters, parks, hydraulic power, fish and game, constituting chapter sixty-five of the consolidated laws," as amended by chapter three hundred and fifteen of the laws of nineteen hundred and fourteen,¹ is hereby amended to read as follows:

§ 22. Structures for impounding water; inspection of docks; penalties. No structure for impounding water, not a part of the canal system of the state, and no dock, pier, wharf or other structure used as a landing place on waters not a part of the canal system of the state, shall be erected or reconstructed by any public authority or by any private person or corporation without notice to the commission, nor shall any such structure be erected, reconstructed or maintained without complying with such conditions as the commission may by order prescribe for safeguarding life or property against danger therefrom. No order made by the commission shall be deemed to authorize any invasion of any property rights, public or private, by any person in carrying out the requirements of such order. The commission shall have power, whenever in its judgment public safety shall so require, ²to make and serve an order directing any person, corporation, officer or board, constructing, maintaining or using any structure hereinbefore referred to, to remove, repair or reconstruct the same within such reasonable time and in such manner as shall be specified in such order, and it shall be the duty of every such person, corporation, officer or board to obey, observe and comply with such order and with the conditions prescribed by the commission for safeguarding life or property against danger therefrom, and

¹ Section 22 was also amended by L. 1913, ch. 736.

² Words "and after a hearing either on its own motion or upon complaint," omitted.

every person, corporation, officer or board failing, omitting or neglecting so to do, or who hereafter erects or reconstructs any such structures hereinbefore referred to without submitting to said commission and obtaining its approval of plans and specifications for such structures when required so to do by order of the commission³ or who hereafter fails to remove, erect or to reconstruct the same in accordance with the plans and specifications so approved shall forfeit to the people of this state a sum not to exceed five hundred dollars to be fixed by the court for each and every offense; every violation of any such order shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense. This section shall not apply to a dam where the area draining into the pond formed thereby does not exceed one square mile, unless the dam is more than ten feet in height above the natural bed of the stream at any point or unless the quantity of water which the dam impounds exceeds one million gallons; nor to a dock, pier, wharf or other structure under the jurisdiction of the department of docks, if any, in a city of the first class.

§ 2. This act shall take effect immediately.

Chap. 299.

AN ACT to amend the public lands law, in relation to the disposition of lands and structures owned by the state for canal purposes and no longer necessary or useful therefor.

Became a law April 25, 1916, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty of chapter fifty of the laws of nineteen hundred and nine, entitled "An act relating to the public lands, constituting chapter forty-six of the consolidated laws," is hereby amended to read as follows:

L. 1909, c.
50, § 30
amended

§ 30. Unappropriated state lands defined. The term "unappropriated state lands," as used in this chapter, includes all state

³ Words "when required so to do by order of the commission," new.