

David Townsend, President of CLIC, provided this update:

During the evening of the 31st of May a bill was introduced into the Maine Legislature to authorize the transfer of ownership of the US side of the Forest City Dam from Woodland Pulp LLC. to the State of Maine. Within the bill, it states that the Maine Department of Administrative and Financial Services will own the dam but that it will be managed by the Maine Department of Inland Fisheries and Wildlife (DIF&W). One of the recital (introductory) clauses to the bill provides that this action will permit the State of Maine to “regulate the water in East Grand Lake to ensure recreational and habitat-related purposes;”

Interestingly, one of the other recital clauses to the bill describes that this legislation is needed to address an “emergency” situation due to the need to expedite this transfer of title in order to “stay the proceedings related to the application to surrender the dam that is pending at the Federal Energy Regulatory Commission.” Of course, this reference is to the application by Woodland Pulp to surrender its license to own and operate the Maine side of the dam at Forest City Maine and to decommission that dam by permanently removing the two gates on the US side of the dam.

Under the rules of the Maine Legislature statutes, or resolutions such as this one, once passed by the legislature, do not come into effect until the passage of 90 days following the adjournment of the legislature itself. An exception to this timing rule is provided for emergency situations. In an emergency, a statute or a resolution can come into effect upon the date specified within the bill itself. This bill states that the legal authorization, to accept the transfer of title to the US side of the Forest City Dam, may be acted upon just as soon as the bill is voted upon and passed.

Now, the really important question is how the transfer of ownership of the US portions of the Forest City Dam will act so as to stay the current proceedings before FERC? First, if the State of Maine is going to accept a transfer of Woodland's 30 year FERC license that was granted to the mill in the Fall of 2015, that transfer must be approved by FERC through an open process. Yes, that would change the nature of the proceeding from an application of license surrender to an application of license transfer (to another entity). And, the proposal to decommission the dam by removing gates would form no part of this new application to FERC. The prospect of the State of Maine owning and operating the Forest City Dam as a FERC Project seems highly unlikely.

When Woodland Pulp decided to surrender its new 30 year license for the Forest City Project last December, the company stated that it was doing so because the terms and conditions of the license imposed by FERC were too burdensome and costly considering the very modest benefits the operation of the dam provided to its two hydropower generation sites located far downstream. At this point, it seems very unlikely that the State of Maine would agree to be bound by these onerous and expensive license conditions when the benefits to the state would be indirect in nature, such as the benefits from rescuing an important employer in a Maine county that is facing many economic challenges.

The second option that could involve a transfer of Woodland Pulp's license to the State of Maine would not be through a 'stay' of the current surrender proceedings before FERC, but a continuation of those proceedings to their very conclusion. Through the FERC license surrender process, the Commission would have to accept the surrender of Woodland Pulp's license; FERC would then have to agree to cease to regulate the Forest City Dam as a FERC Project and then look around to see if another owner and regulator could be found so that the important public policy benefits (such as conservation,

environmental, navigation, flood control, recreational and shoreline owner benefits) provided by the operation of the Forest City Dam could continue. If the State of Maine, made it known that it was prepared to own, operate and regulate the US side of the Forest City Dam, FERC may well oversee this proposed transfer of title and then this regulator would forever bow out. To participate in such a title transfer and handoff of regulatory control, FERC historically has required that the surrendered project never again be used to produce hydroelectric power (on site) or, in the case of non-generating projects, never permit its gates to be operated so as to contribute to the generation of hydroelectric power at facilities located at another site.

Of course, in the case of the Forest City Dam, all CLIC Members and most other stakeholders want the dam to be operated much as it has in the past. If this dam is operated on roughly the same drain and fill cycles as we have enjoyed in the past, those operational cycles will incidentally augment hydropower generation at Woodland Pulp's two electrical generation sites located downstream. This result has the potential to invalidate the proposed transfer of title and operational plan for this dam.

In previous FERC cases with similar factual situations, the Commission has not permitted the FERC license to be surrendered (and agreed to terminate all FERC regulation) even when the proposed operation of the dam at issue will augment the downstream generation of hydropower to a very small extent. Of course, some of those decided cases involved situations where the original FERC licensee was proposing to surrender its FERC license but continue to own and operate the dam at issue but with a steadfast promise to focus only upon public policy objectives.

One hopes that if the current license surrender case involving the Forest City Dam will be helped by the facts that Woodland Pulp will be proposing to transfer the title to another entity (the State of Maine) which will manage the dam through one of its departments (Maine DIF&W) and that the new Republican appointees as FERC Commissioners will be moved by the fact that the historic operation of the Forest City Project has augmented the downstream generation of hydroelectric power to a very small extent (somewhere between a 2.4 to 3.4 percent increase in power generation).

The explanation offered immediately above does not really present an emergency-based need for special legislation, and the explanation is premised upon working within FERC's license surrender policy and, as such, will not require or produce a 'stay' of FERC's current proceedings. When this puzzling situation was presented yesterday afternoon to an executive at Woodland Pulp, he explained that once this legislation is passed, the State of Maine will legally challenge FERC's jurisdiction to regulate the Forest City Dam. The State will assert that if the title to a FERC project is transferred to a US state government which plans to manage that dam through one of its own departments for public policy objectives, and the state will not generate hydroelectric power at the site or intentionally operate the dam so as to enhance hydroelectric power generation at another site, that FERC has no legal foundation to continue to regulate the dam at issue. This executive concluded his comments by asserting that CLIC should get behind this legislative proposal to transfer Woodland's title to the State and actively support it when it is debated by the Maine Legislature.

As President of CLIC, I expressed the view that I thought that this legislation offered an important alternative to the current proposal by Woodland Pulp before FERC to surrender its license for the US side of the Forest City Dam and decommission the dam by removing its two US gates. But I pointed out that nothing within this proposal contained a binding commitment that CLIC and other stakeholders could rely upon into the future, by which the Forest City Dam would continue to be operated much as it

has in the past. In the recent past, I strongly urged certain executives from Woodland Pulp to reveal the identity of the party who was to acquire the title to the FC dam so that CLIC and other stakeholders could enter into a memorandum of understanding (MOU) agreement with the proposed owner on how the dam would be operated into the future. I was asked to wait until the details of the ownership transfer with the new owner were concluded. Now I am/ we are/ being asked to support a legislative proposal that offers good potential for a solution but no binding assurances that we will have a voice in the terms and conditions of the operation of the dam going forward. If Woodland Pulp is really stepping away from the operation of this dam, why would they not accommodate the creation of a connection between the local stakeholders and the future owner and operator of the FC dam? If the State of Maine is really acquiring the FC dam in order to ensure the continuance of the historic public policy objectives associated with this dam why not actively engage the stakeholder base about the future operations of the dam? During these exchanges with Woodland's executives, I pledged the active support of CLIC to assist the new owner with the operational aspects of the FC dam.

Those leading this initiative from Woodland Pulp and the State of Maine need to realize that their proposal to transfer the ownership and management of the Forest City Dam to the State, and then to challenge FERC's legal jurisdiction to continue to regulate the dam, may be significantly advanced if they first secure a broad base of stakeholder support for their plans. When a regulator or a court is faced with (legalistic) jurisdictional challenges, those challenges often present residual functional concerns: Functional concerns involve questions such as, "If the current regulator ceases to have jurisdiction, will important aspects of its regulatory mandate fall between the cracks?" or "If a new regulatory program is to replace the current one, will important and vulnerable interests be inadequately represented and protected?" When these types of questions are raised, the presence of broad stakeholder support for the change in jurisdiction helps to ally such concerns and the absence of broad stakeholder support fuels these types of concerns.

It was apparent from the comments of those who attended the public meeting held at the North Lake Community Centre on the 1st of April that they did not want a short term solution or a proposal that relied upon general assurances that our interests will be accommodated. CLIC will continue to seek an active and meaningful role for local stakeholders in the future operation of the Forest City Dam. If binding assurances regarding stakeholder participation in the future operation of the Forest City Dam are forthcoming, and CLIC is prepared to support this proposed legislation at the Statehouse at Augusta, we will get the message out to CLIC members and to ChipLakeNews readers, and invite everyone to join us as we support of this potential solution. David Townsend.

EDITOR: Don't let this stuff get you down, folks. I am (and have been) optimistic about the final outcome of the FC dam issue and I think that all will turn out well. It's hard for me to believe that with all those who have their finger in the pie now, the scenario that we all dread will be the final result ... but we can't let down our guard and just hope that it turns out well. We still have to be vigilant to all possible outcomes and be ready to raise our voices (again) and get off our chairs, should things take a turn for the worse. The lake community has mostly come together in real action to (appropriately) save the operation of the FC dam ... let's not let all that energy and action go to waste. Stay tuned. What has occurred to date is still "preliminary."