

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

Blenheim-Gilboa Pumped Storage Project
New York Power Authority

Project No. 2685

**COMMENTS OF SCHOHARIE COUNTY
ON THE NEW YORK POWER AUTHORITY'S
PROPOSED STUDY PLAN**

Steven D. Wilson
Gene Kelly
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
E-mail: swilson@harrisbeach.com

Attorneys for Schoharie County

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On April 10, 2014, the New York Power Authority (“NYPA”) filed with the Federal Energy Regulatory Commission (the “Commission”), a *Notification of Intent to File an Application for New License and Pre-Application Document* (“PAD”) for the Blenheim-Gilboa Pumped Storage Project (the “BG Project”) located on the Schoharie Creek, in the Towns of Blenheim and Gilboa, Schoharie County, New York.¹ NYPA is utilizing the Commission’s Integrated Licensing Process (“ILP”) to relicense the BG Project.²

On September 22, 2014, NYPA filed its Proposed Study Plan (“PSP”). Section 5.12 of the Commission’s regulations provides that interested parties may file comments on the PSP within 90 days of the PSP being filed.³ Schoharie County (the “County”), by and through its counsel Harris Beach PLLC, hereby submits its comments on the PSP.

COMMENTS

In the Notice of Intent, filed April 10, 2014, NYPA proposed its preliminary study plans for the BG Project. These studies included: (1) Historic Structures Study, (2) Phase 1A

¹ Blenheim-Gilboa Pumped Storage Project New York Power Authority, NOI/PAD of New York Power Authority for the Blenheim-Gilboa Pumped Storage Project No. 2685 (FERC Apr. 10, 2014).

² See 18 CFR Part 5.

³ 18 CFR § 5.12.

Archaeological Survey, (3) Literature-Based Assessment of Fish Entrainment and Turbine Passage Survival, and (4) Recreation Use/User Contact Study and Assessment of Effects the Project has on Recreation Use.

The Commission issued its Scoping Document 1 on June 4, 2014, and held scoping meetings on July 7, 2014, at the Gilboa-Conesville Central School in Gilboa, New York, and on July 9, 2014, at the Best Western Inn in Cobleskill, New York. According to NYPA, based on feedback received during the scoping process, the study plans included in the Notice of Intent were enhanced and two additional studies were included at the request of stakeholders.⁴ Building on the previous list, the studies now include (5) Effect of Project Operations on Downstream Flooding Study, and (6) Socioeconomics Study. Although NYPA expanded the scope of certain studies and added two additional studies, the requests of multiple stakeholders for additional studies were rejected.

The County appreciates that NYPA has expanded its preliminary list of proposed studies to reflect certain concerns raised by interested stakeholders. The County believes, however, that the scope of NYPA's proposed studies remains inadequate to fully address and analyze the environmental and economic impacts that the BG Project has on its surroundings. As a general matter, the scope of the proposed studies should be initially broad to capture any possible impacts that the BG Project poses.

The County submits the following comments on the scope of the various studies proposed by NYPA.

A. Historic Structure Survey

According to NYPA, the purpose of the historic structures survey is to identify cultural resources that (1) may be eligible for listing in the National Register of Historic Places

⁴ PSP, at 1.

(“NRHP”), (2) were previously determined eligible for listing, or (3) are listed in the NRHP. The geographic scope of this study is limited to the BG Project’s Area of Potential Effects (“APE”).⁵ NYPA defines the APE as the lands enclosed by the BG Project’s boundary or lands outside the BG Project’s boundary where project construction and operation or project-related recreational development or other enhancements may cause changes in the character or use of historic properties.⁶ The County requests that the Commission ensure that NYPA does not narrowly construe the APE in its evaluation and limit the scope of the studies to merely the BG Project’s boundaries or other areas only in which project operations could occur. More specifically, the County requests that the APE be defined to include the Towns of Fulton, Broome, Middleburgh, Schoharie, and Esperance. In addition, the County requests specifically that the Blenheim covered Bridge be reviewed and addressed in this study.

B. Archaeological Survey

With respect to the Archaeological Survey, the County’s concerns also focus on the APE. As part of this study, NYPA states that it will consult with the New York State Historic Preservation Office to identify the BG Project’s APE investigation area. The County requests that the Commission direct NYPA to define the APE broadly enough to encompass any potentially affected area including the areas listed in Point A, above.

C. Fish Entrainment/Protection Assessment Study Plan

Fishery Studies

According to the New York State Department of Environmental Conservation (“NYS DEC”), the Schoharie Creek flows for 86 miles through three counties before entering the Mohawk River at the village of Fort Hunter. The upper 27 miles above Schoharie Reservoir, all

⁵ PSP, at 10.

⁶ PSP, at 3.

in Greene County, are considered trout water, with a fish barrier dam at mile 60. Below the reservoir, Schoharie Creek is considered a warm water fishery, with bass and walleye being the predominant species of interest to most anglers.⁷ The PSP states that NYPA is proposing to merely conduct a “literature-based entrainment/impingement and turbine survival study to qualitatively assess potential fish entrainment and turbine survival at the Project.”⁸

A literature-based study is simply insufficient to adequately evaluate the feasibility of mitigating or eliminating fish mortality through the implementation of alternative methods of fish screening. The Commission should require the completion of a field study that more fully evaluates technologies that are available to prevent or mitigate negative entrainment/impingement impacts to fisheries caused by large volume industrial water intakes. The NYS DEC’s Bureau of Fishery Habitat maintains a team of biologists who work to mitigate the adverse aquatic impacts resulting from the operation of industrial and commercial water intakes.⁹ NYPA should consult with this team in the design and execution of any such field study to ensure that it is conducted in accordance with currently accepted methodologies. The objective of this study should be to improve the level of understanding of technologies that are available to mitigate fish mortality at the project site and to require as a condition of re-licensure of the facility the incorporation of best technologies available (“BTA”) into the BG Project’s future operation. A mere literature-based review would also fail to capture the expertise and experience of the NYS DEC’s field biologists, most of whom are not published.

Incorporation of BTA would serve the public interest by improving the quality of the fishery, thereby promoting more effective resource management and enhancement of the BG Project’s contribution to the region’s draw as a recreational asset.

⁷ See http://www.dec.ny.gov/docs/fish_marine_pdf/pfrschoharie.pdf.

⁸ PSP, at 25.

⁹ See <http://www.dec.ny.gov/animals/32847.html>.

The 1975 agreement that NYPA touts as serving as the model for its historic regime of recreation/conservation flows is outdated and cannot continue to serve as the standard for flow releases for the next 30-50 years. NYS DEC fisheries biologists who could be consulted on the adequacy of current flow releases can provide ample evidence of the inadequacy of historic flow regimes to sustain a functional fishery habitat. The Commission should order the study of the feasibility of implementing a regime of conservation/recreation releases during the periods of traditionally low flow to improve the quality of the fishery and to enhance opportunities for recreation uses of the Schoharie Creek downstream of the project site.

In order to assess the adequacy of the current regime of flow management, the Commission should order the applicant to conduct field studies to assess the results of prior protection, mitigation and enhancement measures on the vitality of the fishery and on the adequacy of such measures on the promotion of public recreation on the Schoharie Creek. Such study should focus specifically on fish surveys conducted by DEC to determine whether fish propagation is being affected by the current regime.

D. Effect of Project Operations on Downstream Flooding Study

The Commission should require NYPA to examine the feasibility of making changes to the way in which the project site manages water retention and flow, with a concentrated focus on attenuation of high volume flows associated with extreme weather events. Of all the areas in the state impacted by recent years' extreme weather events, few if any have felt the effects more than the Schoharie Valley. Hurricane Irene and Tropical Storm Lee devastated large swaths of the County. Much of this devastation persists over three years later despite the massive infusion of investment by our state and federal governments, not to mention the localities most directly affected. The loss cannot be measured purely by examining the value of homes, businesses and

infrastructure that has been destroyed. Because of the increasing frequency and severity of such extreme weather events, part of what New York State's Governor Cuomo has termed "the new normal," it is imperative that infrastructure such as the subject project facility be examined for its potential to offer the ability to prevent or, at the very least, mitigate this kind of future damage.

On September 22, 2014, New York enacted the Community Risk and Resiliency Act, mandating consideration of future physical climate risks caused by, *inter alia*, flooding. The Community Risk and Resiliency Act requires advance planning to ensure that investment in critical infrastructure is undertaken in a manner that reflects an awareness of the likely effects of climate change and resulting major storms that it is spawning with increasing frequency. This Act reflects the new awareness of the importance of public infrastructure and the role it must play in the development of strategies to adapt to evolving weather patterns. The Commission should accordingly require a detailed analysis of the potential for the facility to serve as a tool to offset the effects of extreme weather on the Schoharie Valley and, by extension, the Mohawk Valley.

The County previously requested that NYPA conduct a Flood Mitigation Study. NYPA, however, summarily rejected this request citing that water releases from the BG Project equal water inflows upstream of the BG Project and that the BG Project has no significant flood control capability.¹⁰

The County requests that the Commission direct NYPA to evaluate its flood mitigation capabilities. Flooding has been and remains a significant concern of the communities surrounding the BG Project. The relicensing proceeding presents an opportunity for NYPA to evaluate the BG Project's impact on flooding as well as ways in which the BG Project could be operated in emergency situations to assist in flood control and management.

¹⁰ PSP, at 40.

Dam Safety

Given the fact that Hurricane Irene and Tropical Storm Lee represented at least a 500 year storm event, the Commission should revise each of its analyses of risks associated with the facility to reflect the effect of a similar or worse storm event, and should include in such analyses an evaluation of measures that could be incorporated to offset or minimize the negative effects of such a storm event. The assumptions of the past are simply no longer adequate to serve as planning tools for the future. Given the 30-50 year period for which this project could be re-licensed, it is imperative that the planning measures being used to protect the public be forward-looking, not rooted in the assumptions of the past, many of which are demonstrably outdated and irrelevant.

Perhaps the most important risk factor associated with the project facility is the risk of dam failure. The Commission must require an assessment that incorporates the risk of more frequent and severe weather events. Public safety hangs in the balance.

In this regard, the County requests that the Commission require that NYPA conduct a study that incorporates the knowledge accumulated by all agencies that played a role in the extreme weather events of the past several years. No one agency possesses the sum total of such knowledge; it is resident in multiple agencies at all levels of government. A study that fails to assess this multi-layered base of knowledge will be simply inadequate to achieve the objective of ensuring that the project facility has been thoroughly examined and determined to be safe.

According to NYPA, several stakeholders provided comments during the scoping phase related to dam safety at the BG Project.¹¹ More specifically, stakeholders, including the County, raised concerns regarding the adequacy of the Tainter gates and spillway in passing a Probable Maximum Flood (“PMF”) event. Relying on the Commission’s monitoring of dam safety

¹¹ PSP, at 40.

requirements, including Part 12 of the Commission's regulations, NYPA rejected the stakeholders' requests for additional analysis of these issues.¹² According to NYPA, Part 12 of the Commission's regulations sets forth the Commission's dam safety program for evaluating all water-retaining project facilities, including structures, spillways, gates, and foundations.

The County recognizes that the Commission has in place comprehensive dam safety regulations. Numerous stakeholders, however, remain concerned over such issues as they relate to the BG Project. NYPA should not be allowed to unilaterally reject concerns raised by numerous stakeholders. The County requests that NYPA be directed to initiate a separate study to identify areas of concern related to dam safety.

Schoharie Creek Management

The Commission must require analysis of the impact of the project facility on the entire run of the Schoharie Creek. When constructed over 40 years ago, the project facility was not subjected to the quality of scrutiny that such a project would have to undergo today.

One of the most noteworthy changes that has been evident to those who have long-term connections to Schoharie County is the buildup of material in the bed and along the banks of the Schoharie Creek and its tributaries. Such material includes all manner of debris, such as trees, boulders, gravel, and soil, to name but a few. This material often impedes the flow of the stream and clogs areas with limited passage, such as bridges, culverts and curves in the stream bed.

As this BG Project approaches the expiration of its licensure, it is imperative that the Commission mandate a study on the effect that the project has had on the natural functions of the Schoharie Creek. To the extent that such study reveals the opportunity to offset any of these effects, it is incumbent on the Commission to impose upon the applicant the duty to take such measures to mitigate adverse impacts as are within its capabilities to restore the functioning of

¹² PSP, at 40-44.

the Schoharie and its tributaries to the condition they would be in, but for the continuing presence of the facility.

NYPA acknowledges in the PSP that certain stakeholders requested that NYPA analyze flow issues in the Schoharie Creek below the BG Project. NYPA further states that this same request was made by the US Fish and Wildlife Service but that a specific study request was not made. NYPA again dismissed the stakeholders' requests. The County requests that the Commission thoroughly examine the potential impacts that the BG Project poses to the Schoharie Creek.

E. Socioeconomic Study

According to the PSP, NYPA proposes to build upon the socioeconomic information contained in the PAD by studying socioeconomic resources associated with the BG Project.¹³ The geographic scope of the study, as proposed, includes the State of New York as a whole, Schoharie County, the taxing-entities in which the BG Project is located,¹⁴ and adjacent areas as appropriate. Although the study proposes to include neighboring communities, it proposes only to do so insofar as those communities provide first responder services. The County believes that there should be no such limitation on the inclusion of neighboring communities. Neighboring communities should be evaluated for possible inclusion in the proposed study regardless of whether first responder services are provided. Such neighboring communities include the Towns of Fulton, Schoharie, Esperance and Broome. NYPA should not be allowed to foreclose the possibility that these communities are impacted by the BG Project simply on the basis of first responder services.

¹³ PSP, at 33.

¹⁴ The taxing entities are: the Town of Blenheim, the Town of Gilboa, the Gilboa-Conesville School District, and Schoharie County. PSP, at 33.

Despite consuming public resources, the County believes that NYPA fails to contribute fairly to the tax base of the taxing entities. Despite taking roughly one-third of the local community's taxable property when the project was constructed over 40 years ago, the true financial impact to the county has never been quantified.

The communities of Schoharie County are almost entirely rural, places where a significant percentage of residents earn their living either farming or working for businesses that provide direct support to agricultural pursuits. As is often the case in such communities, there is a lack of non-agricultural employment opportunities. Local residents have often observed that few, if any, local residents are employed at the project facility. Accordingly, not only does the facility fail to pay its fair share of taxes, the project also makes no material contribution to the local economy through its significant payroll.

The Commission must address these realities by requiring the applicant to fund a study that comprehensively evaluates the full economic impact that the siting of this project has had and continues to have on Schoharie County.

CONCLUSION

The County appreciates the opportunity to submit comments on NYPA's PSP and look forward to working with NYPA and other interested stakeholders to develop a proposal for a new license that adequately balances the needs of NYPA, the surrounding communities and the environment.

HARRIS BEACH PLLC

Attorneys for Schoharie County

/s/ _____

Steven D. Wilson

Gene Kelly
677 Broadway, Suite 1101
Albany, NY 12207
Tel: (518) 427-9700
Fax: (518) 427-0235
E-mail: swilson@harrisbeach.com
gkelly@harrisbeach.com

Document Content(s)

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