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November 14, 2016

Via First Class Mail

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Secretary Bose:

Re: *Project 2685: Blenheim-Gilboa Pumped Storage Power Project,*
Town of Blenheim Comments on Recreation and Socioeconomics Study

Our office represents the Town of Blenheim (the "Town") in the above-referenced re-licensing proceeding for the Blenheim-Gilboa Pumped Storage Power Project (the "Project"). On September 16, 2016, the New York Power Association ("NYPA") filed an "Updated Study Report for Recreation and Socioeconomics Studies" (the "USR") in furtherance of the re-licensing process. Pursuant to 18 CFR § 5.15, and the timeline set by the order of the Federal Energy Regulatory Commission ("FERC") dated September 6, 2016, the Town hereby files the following comments and study dispute/request to modify the USR.

I. NYPA's Proposed Revised Study Plans.

As part of the re-licensing process, NYPA was required to file a proposed study plan identifying the issues relevant to the Project, and describing the plan and methods by which those studies would be conducted. 18 CFR § 5.11. NYPA filed its initial study plan for the Project on September 22, 2014. Later, on January 20, 2015, NYPA filed a revised study plan. Revised Study Plan, P-2685-026 (Jan. 20, 2015), *available at* http://www.bg.nypa.gov/Lists/RelicensingDocuments/Attachments/154/BG%20RSP.pdf. Among other things, the revised study plan discussed the purpose and scope of the recreation and socioeconomics studies to be completed by NYPA with respect to the Project. *See* Revised Study Plan, §§ 2.4, 2.6.

The stated goals and objectives of the recreation study were to:

- Determine the amount and types of recreation use at the Project;

- Interview the recreating public to determine users perceptions with regard to their use of Project recreation sites and facilities;

- Evaluate recreational demand at the Project and determine if the existing Project recreation sites and facilities are meeting the current demand; and

- Evaluate the effects of Project operation and maintenance on recreation use at the Project and the usability of the Project recreation sites and facilities, including the effects of debris accumulation on recreation access.

Id. at § 2.4.3.

The stated goals and objectives of the socioeconomic study were to:

- Develop a demographic and economic profile of the current conditions of the Local and Neighboring Communities and to describe the socioeconomic character of those communities;

- Evaluate potential socioeconomic effects on the Local and Neighboring Communities resulting from the Project's operations and the Power Authority's tax-exempt status;

- Evaluate potential economic effects associated with the Local and Neighboring Communities providing first responder services; and

- Evaluate potential socioeconomic effects on the Local and Neighboring Communities, the region, and the State resulting from the operation of the Project.

Id. at § 2.6.3.

The Revised Study Plan was approved by FERC on February 19, 2015. Study Plan Determination for the Blenheim-Gilboa Pumped Storage Project, *available at* http://www.bg.nypa.gov/Lists/RelicensingDocuments/Attachments/164/2.19.2015StudyPlanDetermination.pdf.

II. Overview of Applicable Regulations.

Requests for modification of an approved study plan can be made in accordance with 18 CFR Part 5 *et seq*. Upon a showing of good cause, FERC may direct that an ongoing, approved study should be modified if: (1) the study was not conducted as provided for in the approved study plan; or (2) the study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way. 18 CFR § 5.15(d). Other relevant factors to be considered include in conjunction with a study modification request include:

- The goals and objectives of the requested modification;

- Any relevant public interest considerations regarding the proposed study;
- Existing information concerning the subject of the study proposal, and the need for additional information;
- The nexus between project operations and effects (direct, indirect and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;
- How any proposed study methodology is consistent with generally accepted practice in the scientific community; and
- Considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

18 CFR § 5.9.

III. The Town's Requests for Modification of the USR.

The USR fails to adequately address the goals and objectives stated in the FERC-approved study plan, and should be revised. 18 CFR § 5.15(d). As outlined below, we believe there is a need for recalculation of one section of the study, including improving the input for the study, and a need to address several other omitted issues.

A. Correction of the Expenditure Level if the Plant was Taxable

In Section 7 of the USR NYPA evaluates the "Effects of the Power Authority's Tax-Exempt Status on the Local Communities," including calculating the economic impact of the Project in terms of the hypothetical benefit to the Town if the Project was taxable. An essential – and limiting – assumption of the study is that a poor rural community would not increase its expenditures a single penny even if its tax base were suddenly almost quadrupled, from $35 million to $135 million. The USR does not indicate a source of this convenient limiting assumption, and we are unable to find any economic study principles or controlling FERC decisions justifying this approach. Under the NYPA model the host community would not utilize increased tax base to upgrade a single snowplow or playground or the myriad other services the community provides, let alone entertain new services.

That this is not realistic can be demonstrated by reviewing those New York communities that have received re-licensing host agreements or similar host agreements with power generators such as wind farms. While many have put the additional funds to use reducing taxes as NYPA models, all have increased some services, or improved roads or parks. And while we recognize the underlying facilities are not comparable, under the NYPA USR model the entire Canalside development in Buffalo, funded in large part by NYPA, would not exist.

By "[h]olding tax revenues in each taxing jurisdiction constant"[1] NYPA has undervalued the revenue flows that would be received if the project (or a private substitute) were taxable. As a result, the USR underestimates the benefit that would be received if the Project represented private rather than public investment. NYPA can use the New York State Comptroller's database of every municipality in New York to identify communities with similar revenue bases to the hypothetical community and thus recalculate the potential Project benefits in a more realistic manner.

B. Failure to Properly Address Plant Valuation

On June 17, 2016, FERC issued a determination on prior requests for study modifications for the Project. http://www.bg.nypa.gov/Lists/RelicensingDocuments/Attachments/182/6.17.2016_FERCDetermination.pdf. With respect to the issue of valuation, and in response to requests that NYPA be required to retain an independent appraisal firm to determine the project's value, FERC stated "there is not enough information regarding the valuation of the project and how this information would be used in the analysis of the project's socioeconomic effects. Therefore, it is premature to comment and/or provide a recommendation on the need to modify the project's valuation methodology until the Socioeconomic Study is completed and a report is filed." *See* FERC determination at pages 14-15.

The tax-exemption analysis in the USR considers two valuations: a valuation based on information provided by the Schoharie County Real Property Tax Services Office ("SCRPTSO"), and an alternative valuation calculated using the value of undeveloped land in Blenheim and Gilboa to identify hypothetical tax payments that might be realized by the taxing jurisdictions in the absence of the B-G Project"—i.e. the value of the land if the project wasn't built at all. USR at p. 47. Presumably, the first scenario attempts to estimate the economic effect the Project would have on the host municipalities if the facility were a privately-owned, tax paying enterprise. These effects directly implicate the first economic study goal/objective discussed above.

However, the USR fails to explain the basis for its use of the valuation of the Project provided by SCRPTSO, upon which the USR's tax effect analysis is based. USR at 48-51. Given the nine-figure plus estimated valuation of the Project by SCRPTSO, and the potential variance in economic impact caused by valuation fluctuations at such high dollar amounts, NYPA should be required to verify that valuation through an independent analysis and appraisal. To explain, in the Town of Blenheim, the USR estimates that the Project, if taxable, would nearly quadruple the Town's property tax base. USR at p. 47 ("The addition of the B-G Project would increase the town of Blenheim's taxable value from $37.7 million to $138.3 million."). A 10% increase or decrease in Project valuation would therefore raise or lower the Town's tax base by more than $10 Million.

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[1] USR at 48.

Clearly, the tax-exempt status of the Project creates a night and day scenario for the Town (and other municipalities) in terms of economic effect. Absent a professional, independent appraisal of the Project to confirm its valuation, the USR cannot properly evaluate the potential socioeconomic effects resulting from the Project's tax-exempt status.

FERC's previously-raised concern about whether the valuation methods in the USR sufficiently considered the potential socioeconomic effects of the Project's tax-exempt status was well founded. The proper valuation of the Project is critical to assessing the real dollars and cents impact on the host communities. Therefore, the USR should be modified to include an independent, third-party appraisal of the Project so that the real effect of the tax exemption can be quantified, studied, and confirmed.

C. Failure to Consider the Value of Avoided Carbon Emissions

One of the unquestioned benefits of the Project is that the energy contributed to the grid is carbon emission free. The USR should be modified to reflect this benefit, using the social cost of carbon or similar tool to value the benefit of the avoided emissions from the Project.

The requirement for understanding project greenhouse gas ("GHG") emissions is well established in the courts[2] and in FERC rulings[3], particularly in the context of cost benefit analysis.[4] Here, however, we deal with an issue just as important as GHG emissions: specifically avoided GHG emissions. To our knowledge FERC has not articulated a policy on review of projects that avoid emissions, but to the extent GHG emissions are an environmental impact that must be quantified in project reviews, so are avoided emissions an essential element of the overall GHG emissions picture. Moreover, the social cost of carbon is an appropriate tool to make the required evaluation. As FERC has noted:

> The social cost of carbon has been defined as "an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year." In general, the social cost of carbon increases over time in response to greater climatic change in the future, and a lower assumed discount rate results in a smaller reduction to future gross environmental damages and thus in a higher social cost of carbon per metric ton of carbon produced. Technical Support Document: Technical Update of the Social Cost of Carbon for

[2] *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174 (D. Colo. 2014).

[3] *Sabine Pass Liquefaction, LLC,* Order Granting Authorization Under Section 3 Of The Natural Gas Act And Issuing Certificate, 151 FERC ¶ 61,012 (2015).

[4] COUNCIL ON ENVIRONMENTAL QUALITY, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Review, Aug. 1 2016 at https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf, The USR encompasses many of the goals of a cost benefit analysis.

> Regulatory Impact Analysis Under Executive Order 12866, Interagency Working Group on Social Cost of Carbon, United States Government, issued February 2010, at page 1, revised in May 2013 and November 2013 (2010 Technical Support Document).[5]

As noted above, one of the stated goals of the USR is to "[e]valuate potential socioeconomic effects on the Local and Neighboring Communities, the region, and the State resulting from the operation of the Project." The absence of a valuation of the avoided emissions leaves the USR incomplete, as one of its most important benefits is ignored.

The importance of avoided emissions from a NYPA facility is now established in New York law by the Orders of the New York State regulator, the Public Service Commission. In its August 1, 2016 Order Adopting a Clean Energy standard,[6] the PSC Order created the concept of zero emissions credits, and further established eligibility for subsidies to certain generators, specifically four of the state's nuclear facilities. However, current eligibility for actual subsidies is not the issue. The USR is required to quantify all significant benefits, and the zero-emissions environmental attributes of the Project are a valuable commodity that must be included in the report.

Thus, while the PSC ruling does not require NYPA to calculate a valuation of avoided emissions in this matter, it held that "the value of avoided carbon emissions is most accurate if tied to the value of the avoided external damage, or the value of avoiding the carbon emissions that would be emitted if zero-carbon generators are replaced by other generators."[7] FERC has noted the social cost of carbon is a useful tool in the *Sabine Pass Liquefaction, LLC* rulings, and although in that matter the issue was the environmental impact and thus FERC relied upon the EPA-derived GHG inventory, it noted the social cost of carbon as a valid tool. Here, where the FERC-mandated objective is quantification of Project benefits to the local, state, and global environment, the social cost of carbon methodology adopted by the PSC is an appropriate tool to address this stark omission from the USR.

D. Failure to Consider Economic Effects of Negative Perception

The reality of the Project is the impact on the perception of potential investors and residents as to the suitability of the host community for significant projects, or homes and small business. The effect of the threat posed by the earthen dam above the Town can be confirmed in reviewing discussions with professional site selection teams. The New York Court of Appeals has recognized that the negative perception of disamenities, even if there is no basis for the perception, must be considered in property values. *See Crisculoua v. Power Authority of State of New York*, 81 N.Y.2d 649, 652-53 (1993) (holding that evidence of fear in the marketplace related to the potential health risks from exposure to power lines is admissible with respect to determining the effect of the

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[5] *Sabine Pass Liquefaction, LLC*, Order Denying Rehearing, 151 FERC ¶ 61,253, at n. 89 (June 23, 2015).

[6] Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, NY PSC, ORDER ADOPTING A CLEAN ENERGY STANDARD, August 1, 2016.

[7] *Id*. at 150-1.

valuation of property, even if that fear ultimately turns out to be unreasonable). Here the NYPA stands as a shadow over investment in local property and slows economic growth. Indeed, numerous Court decisions,[8] as well as FERC agency decisions,[9] have acknowledged that hydroelectric generating facilities/dams have the potential to negatively impact nearby property values. So regardless of whether or not the Project does decrease property values in this instance, it is a socioeconomic effect that must be examined by the USR.

Professional appraisers applying Uniform Standards of Professional Appraisal Practice standards can quantify the impact of a disamenity like a dam on a specific geographic area. NYPA's study does not evaluate the very real impact of a potential loss of life and property in the event of a dam failure, leaving the study short of its mandated objective to wholly “evaluate potential socioeconomic effects on the Local and Neighboring Communities, the region, and the State resulting from the operation of the Project.” Therefore, the USR should be modified to include this analysis.

IV. **<u>Conclusion.</u>**

The Town is committed to working with NYPA, FERC, and the other interested Project stakeholders to reach a mutually agreeable proposal for the relicensing of the Project. Thank you for your time and consideration.

Respectfully submitted,

Daniel A. Spitzer

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[8] *Cloverport Sand & Gravel Co., Inc. v. U.S.*, 6 Cl. Ct. 178, 191, 97-98 (1984);.*Arneson v. City of Fargo*, 331 N.W.2d 30, 38 (N.D. 1983); *Kentucky Hydro Elec. Co. v. Woodward*, 287 S.W. 985, 990-91 (1926).

[9] *In re Georgia Power Company*, 74 FERC P 62146, 1996 WL 157949, at *71 (1996) (finding that drawdown caused by pumped storage hydroelectric facility could cause a potential loss in nearby property values); *In re Brazos River Authority*, 48 FERC P 61290, 1989 WL 262323, at *51 (1989) (discussing affect proposed hydroelectric dam facility would have on nearby property values)