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22 August 2011

Chairman Jon Wellinghoff
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Subject: Smith Mountain Project P-2210-211
Shoreline Management Plan (SMP)
NOTICE DISMISSING REQUEST FOR REHEARING AS PREMATURE

Reference: UNITED STATES OF AMERICA 136 FERC ¶ 61,110
FEDERAL ENERGY REGULATORY COMMISSION (August 16, 2011)

Dear Chairman Wellinghoff,

This letter is not a request for rehearing of the referenced order.

I appreciate the prompt reply to the request for a Rehearing. Perhaps my request was premature, as suggested by the Commission's Secretary; however the response does not address the merits of the request or the serious concerns that remain, as expressed in the record. Am I to interpret the Commission's dismissal notice as there is still a possibility for a technical conference? Was Mr. Wright's response to Congressman Hurt also premature?

As I understand the organization, the Director of the Office of Energy Products, Mr. Wright reports directly to yourself and fellow Commissioners, and is responsible for both Hydro Licensing and Hydro Compliance, among all other energy products. Mr. Wright's authority is extensive as he can issue uncontested licenses without the Commission's involvement. Consequently the compliance staff reporting to Mr. Wright, assigned to the update of the SMP for the Smith Mountain Project (P-2210-207), obviously has received direction to: (1) not prepare for a technical conference, and (2) not to revisit the entire SMP currently under staff review.

The issues of merit concerning the need for a technical conference were stated in my request for a rehearing, although I did not place them under the heading **Statement of Issues**, as required by section 385.713(c)(2) of the Commission's regulations, 18 C.F.R. § 385.713(c)(2) (2011). I will list those issues below for clarification.

1. Scope of the SMP review and revision should not be arbitrarily limited by the Director of the Office of Energy Products ...

In its SMP guidelines FERC writes: *"The SMP should be monitored and reviewed on a regular basis to determine how effective it is in accomplishing the licensee's goals, and to respond to new or evolving situations or conditions."* [See Guidance for Shoreline Management Planning at Hydropower Projects, April 2001]

In the license order, Article 413 directed Appalachian Power to file an update of the plan [SMP] to include, specific provisions in the habitat management plan approved in the license ... as well as setbacks (or buffers) between commercial/residential and resource protection areas, **at a minimum** [emphasis added].

The SMP steering committee, with staff knowledge and direction, met for over a year and produced a roadmap of changes to the SMP that could make the SMP acceptable and encourage the formation of a partnership between Appalachian Power and stakeholders. The Commission went so far as to grant Appalachian Power a six (6) month extension of time, until 31 December 2011, to file a revised SMP with the Commission.

The Director of the Office of Energy Products' current position to now limit the scope of the SMP review effectively negates the work of 14 separate agencies, groups, and individuals comprising the SMP Steering Committee that met over the course of 14 months. His position is a reversal of his earlier direction, for which no explanation was offered.

2. The 31 December 2010 Draft SMP under review by staff does not have the agreement of the SMP Steering Committee and other stakeholders ...

Director Wright, in his response to Congressman Robert Hurt stated: *"In response to the [Commission] notice, over 90 letters were filed in the proceeding, expressing a wide range of comments on the shoreline management plan."*

On March 17, 2011, the Commission issued a public notice of the application soliciting comments, motions to intervene, and protests with an April 15, 2011 deadline for filing comments. Of the 77 stakeholder, organization and agency comments filed that specifically addressed the 31 December 2010 Draft SMP, 75 supported the Tri-County Relicensing Committee (TCRC) comments and the accompanying matrix (Road Map) without reservation. Such unanimity is rare and reflects strong agreement rather than a *"wide-range"* of comments.

3. Near unanimous agreement and endorsement of stakeholders should encourage adoption of the comments submitted by TCRC and endorsed by Steering Committee members ...

A well-crafted SMP does result in a stakeholder and licensee partnership.” [See Guidance for Shoreline Management Planning at Hydropower Projects, April 2001].

The road map for SMP changes could foster a partnership between Appalachian Power and stakeholders to protect mutual interests, respect private property rights, and protect scenic, recreational, and environmental attributes of the project.

After nearly seven years of implementation, the SMP has failed to achieve a partnership between stakeholders and your licensee. Consequently, in the words of the Commission, the current SMP is not *“well-crafted.”*

The road map of comments, if implemented, would actually reduce the cost of SMP permitting and enforcement as it would be consistent with Federal, State and local regulations and eliminate unnecessary, unenforceable, ineffectual, unsupported, and overly burdensome regulations.

Recommendations and Conclusion

Mr. Chairman, I see great benefit to all parties to convene a technical conference. The comments filed by stakeholders are explicit, constructive and well-supported. The burden of SMP regulation comes with little if any corresponding benefit. Directing Appalachian Power to continue to impose unnecessary regulations, results in greater cost to your licensee, which runs counter to the Commission’s stated Mission: ***Reliable, Efficient and Sustainable Energy for Customers.*** -- *Assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.*

It has always been my experience that a face to face meeting with knowledgeable staff and educated and experienced customers is the most efficient and effective means to constructively confront issues and develop positive solutions; where avoidance leads to increased distrust and prolonged confrontation.

FERC staff was not a participant in the SMP update process; consequently it is/was not privy to the detailed deliberations among steering committee members and your licensee. Commission staff has a fraction of all information available and a very limited perspective, as it reviews the current SMP draft behind closed lines of communication. The SMP Steering Committee had the equivalent of 150 plus years of direct experience with the current SMP and many, like me, also participated in the detailed relicensing studies and related discussions.

Much of the rationale that Appalachian Power employees used to reject 90% of the steering committee comments on the final draft was that this five year SMP review was only an update, since the Commission had approved the current SMP first in 2005 and again with the new license order. I am hopeful that the Commission is more proactive than this and believes in the continuous improvement of every license and plan it orders, and is agreeable to following its own guidance regarding the development and periodic review of shoreline management plans.

I respectfully again request the Commission convene a technical conference pursuant to the 18 C.F.R. § 385.601 regarding shoreline management matters at Appalachian Power Company’s Smith Mountain Pumped Storage Project (P-2210). I believe a technical conference involving DHAC Staff, the Commission’s

Alternative Dispute Resolution Staff, Appalachian, TCRC, and other interveners will contribute to the efficient resolution of pending disputes regarding these matters, and hopefully the prevention of future disputes.

Sincerely,

A handwritten signature in black ink that reads "William C. Brush". The signature is written in a cursive style with a large, prominent "W" and "B".

William C. Brush

Cc: The Honorable Robert Hurt (via email)