



Upper Monongahela River Association, Inc.

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Reply to:
Wallace Venable, Chief Technical Officer
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January 15, 2014

Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N. E.
Mailcode PJ – 12.1
Washington, DC 20426

Re: Draft License Applications for Six Monongahela River Water Power Projects by Free Flow Power (FFP):

Charleroi Lock & Dam Hydroelectric Project, FERC Project No. 13767
Maxwell Lock & Dam Hydroelectric Project, FERC Project No. 13766
Grays Landing Lock & Dam Hydroelectric Project, FERC Project No. 13763
Point Marion Lock & Dam Hydroelectric Project, FERC Project No. 13771
Morgantown Lock & Dam Hydroelectric Project, FERC Project No. 13762
Opekiska Lock & Dam Hydroelectric Project, FERC Project No. 13753

Dear Secretary Bose:

The Upper Monongahela River Association (UMRA) is a not-for-profit corporation with a primary focus on river-based recreation. Because environmental and economic issues affect recreation, UMRA is involved in many river-related issues. Most of UMRA's directors and officers are engineers or scientists, and each has decades of professional and personal experience with river-related issues.

UMRA supports hydro-power, but only when thorough analysis shows that the builders will fully pay the costs of the project, including proper real estate acquisition costs, impacts on wildlife, and impacts on community resources.

We have very strong reservations about the FFP assumptions about the Morgantown site. We also have concerns about the lack of properly detailed planning at other sites, particularly with regard to recreation.

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UMRA has refrained from commenting earlier in this process for several reasons:

1. It is expensive for communities, agencies, and private interest groups to prepare professional quality responses to any permit application. This is particularly true when the applicant submits plans which are only a general concept. UMRA has been waiting for plans which are significantly concrete to allow a professional response.
2. Free Flow Power promised that a Recreational Resources Management Plan "will be completed during the winter/spring of 2013 and issued concurrent with the draft License Application in 2013." We believed that our comments would be most valuable if based on the information in this document.
3. We know that early submission of comments of a broad nature which do not match the applicant's real intents increases the workload of the FERC. UMRA seeks to assist agencies by providing local knowledge without adding undue workload.

Based on past work, UMRA has a great familiarity with the Morgantown and Opekiska sites, and a general familiarity with the other sites. UMRA's comments will be focused primarily on the sites we know best.

Real Estate Concerns Applicable to the Morgantown Site

In Exhibit E, Section E.9.3 of the Morgantown Application FFP makes the following incorrect and highly misleading statement:

"The Project will be primarily contained within lands managed and maintained by USACE."

In fact the project is to occupy about 4.5 acres which have never been owned, maintained, or managed by the USACE and essentially no USACE land.

The land which FFP proposes to utilize is on a railroad right-of-way, not a simple bicycle path. These lands were purchased about 1880 - before construction of any Corps facilities in Morgantown - by the Fairmont, Morgantown & Pittsburgh Railway. The lands continue to be held by the successors and assigns of that company.

Currently the surface is owned by the West Virginia State Rail Authority (a part of the government of the State of West Virginia) and the City of Morgantown. The surface is managed by the rail-trail groups listed in the FFP application.

The subsurface and air rights were retained by CSX when the surface was sold to the State Rail Authority and Morgantown. CSX collects significant income in exchange for the granting of utility rights of way along or across their property and aggressively exploits its interest. The potential costs involved in even crossing CSX property do not appear to be listed in the application's financial data.

Much more importantly, this right-of-way is "rail banked." This means that the corridor is maintained intact for future re-use as a rail line. While it is unlikely that a freight-hauling railroad will ever be re-installed, the high rate of growth along the Monongahela River in West Virginia may lead to a future development of a light rail transportation system connecting Clarksburg, Fairmont, and Morgantown, and possibly linking to the national AMTRAK system at Connellsville, PA. Incidentally, railroad operations, hiking-biking trails, and utility lines do share some railroad rights-of-way.

Removal of the parcel desired by FFP from the corridor breaks the entire right-of-way. If this happens, many of the other individual parcels may revert to the successors of the 19th Century owners. Such an event is likely to precipitate millions of dollars worth of legal activity.

The value of the parcel sought by FFP is not the \$125,000 they suggest for the small acreage to be used for the plant, but the value of the total corridor destroyed by their proposed actions. We suspect that the value of this corridor may well exceed \$125,000,000.

We accept that there might be a potential of moving the corridor to the east, eliminating Morgantown's 9/11 Memorial park. This is not a cheap move since the revised corridor would have to be shaped to acceptable railway grades, and of sufficient length to provide for curves acceptable for rail use. There are also many utility lines on this land. In addition, the proposed FFP parking area could not, by federal regulation, be placed within the displaced right-of-way.

PETITION:

We hereby request that the FERC require FFP to present a clear plan for the acquisition of the real estate to be used, correctly identifying property ownership, and with reasonable cost estimates for the purchase before FERC approves any application for the Morgantown Lock & Dam Hydroelectric Project, FERC Project No. 13762.

We believe that an in-stream placement – replacing a Tainter Gate – is the only practical location for a hydro-power plant at the Morgantown Dam.

We are not so intimately familiar with the Point Marion site. We know that the same rail corridor passes this site. From the maps we have it appears that the power plant would fall on the right-of-way, but we have no knowledge of the Pennsylvania laws and ownership status. We believe that the similarities to Morgantown are great enough that FERC should act with caution there as well.

PETITION:

We hereby request that the FERC require FFP to present a clear plan for the acquisition of the real estate to be used, correctly identifying property ownership, and with reasonable cost estimates for the purchase before FERC approves any application for the Point Marion Lock & Dam Hydroelectric Project, FERC Project No. 13771.

Lack of a True Recreational Resources Management Plan

In its July 10, 2012 letter to the Secretary of the Federal Energy Regulatory Commission, Free Flow Power promised the following:

“2.5 Recreational Resources Management Plan

2.5.1 Study Goals

The proposed Monongahela River Projects will have the potential to affect recreational use and access within the vicinity of the proposed Projects. These potential effects could occur both during the project construction period, and during the operation and maintenance of the proposed Projects. For example, construction period effects could include temporary access restrictions needed to address public safety concerns, and project design and operations could alter flows near river access points. Such potential effects will, however, be considered in the powerhouse design and construction planning phases in order to minimize, and where necessary mitigate for, both short and long term effects.

The Recreation Resources Management Plan (RRMP) will assess the potential effects of the Projects on use and access of existing recreation facilities both during construction and under future operations, and provide plans for mitigation of any adverse effects that may be identified. The Plan may also incorporate enhancements to existing facilities that may be necessary to ensure adequate public access to projects waters over the term of the license.

The RRMP will include an inventory of existing facilities and seasonal use patterns, an assessment of how project construction and future operations may affect use of these facilities, proposed mitigation for any identified construction and/or operations related impacts, and potential recreation access enhancements.

Specifically, the RRMP will:

- Summarize the existing recreation facilities present at the project;
- Assess whether the project construction phase will interfere with facility use, or require any special accommodations to ensure safe public access or to allow for construction;
- Assess whether future operation of the project after construction will affect use of existing facilities;
- Provide a proposed mitigation plan for each existing facility that addresses all construction and operations related impacts, and;
- Provide plans for any proposed recreation facility enhancements, including anticipated costs and implementation schedule.

2.5.5 Schedule

The RRMP will be completed during the winter/spring of 2013 and issued concurrent with the draft License Application in 2013."

FFP's applications for these projects contains an appendix titled "Preliminary Recreational Resource Management Plan for Monongahela River Locks And Dams Hydroelectric Projects Including: Charleroi No. 4, Maxwell, Grays Landing, Point Marion, Morgantown And Opekiska Prepared for Free Flow Power & Chester Engineers by Skelly & Loy" which is dated October 2013.

This document is not a "Recreational Resource Management Plan" since it contains no plans at all, other than a definition of the projected recreational impact zones for the projects.

It is a "Report on a Survey of Current Recreational Usage" at the proposed sites. Recreational users surveyed were not given an outline of proposed changes at the sites, and could not give their reactions to any changes.

No indications of any changes to current recreational facilities, either formal or informal, are given in this so-called plan.

No proposals for either improvements or remediation are outlined in this document.

User numbers were apparently established on the basis of two evening visits of two to four hours at sites. No information about general patterns of hourly or daily variation can be established from these data, nor can total user numbers.

The Skelly & Loy "Preliminary Recreational Resource Management Plan for Monongahela River Locks And Dams Hydroelectric Projects" fails to fulfill FFP's promises. It addresses only the first of the five listed points and promised actions.

In Section E.2.4.2. of its Morgantown application, (and in similar sections of the other applications) FFP states

"FFP proposes to develop a Recreational Resources Management Plan (RRMP) that will assess the effects of Project construction on recreational resources at the Project and plan for minimizing and mitigating these effects during construction and over the term of the license. The RRMP will be based on final engineering plans and will address potential effects related to construction timing, equipment, material, and waste storage and site access."

We interpret this as a bold statement that their only plan for recreation is to attempt to minimize public annoyance after plans have been completed and that no consideration will be made of public comments as to how site design might be shaped to improve public access, etc.

PETITION:

We hereby request that the FERC require FFP to present a completed Recreational Resources Management Plan to the public and allow adequate time for comment before approval of any of the permits listed above.

At most of the sites, FFP may be correct in stating that limited access to fishing is the primary damage, though not the only, damage to community recreation..

It is essential to note that although the sites involved are very small, these tail waters are among the best public fishing waters in the United States. The turbulence generates high levels of fish activity. Access to these waters by boat is restricted by the Corps because of the real dangers of the dam discharges or overflows. While there are many other places where one can "drop a line in some water," there are no comparable fishing sites within 30 miles of these locations.

Construction of the proposed plants will result in a real dollar value of the loss to each community. It should clear that there is a dollar loss equal to the the number of days of access lost multiplied by the number of persons involved each day multiplied by the value of a day of fishing.

For access denied during construction, an estimate of the days to be lost should be included in the permit application, and a method of compensation for additional lost days should be included.

"Goin' fishin'" probably has unitary value (rather than an hourly one) which is similar to a round of golf, or attending a ball game or concert. We estimate this at \$35, which turns out to be about the same as the charge for a day of fishing on a "headboat" on the coast or Great Lakes. It also is about the same as 3 hours wages for many folks.

On this basis, an average daily use by 5 fishermen has a value of approximately \$32,000 for a six month construction period.

FFP has conducted studies of recreational use at the various sites. The purported RRMP provided appears to be based primarily on surveys of user opinions, rather than on a scientific analysis of usage. (One form actually says numbers reflect those surveyed, not all individuals present.) In addition, surveys appear to have been conducted during early evening hours which may or may not properly reflect fishing activity numbers. We demand additional studies of greater detail which accurately reflect usage patterns.

Interpreting the survey results that 11% of 197 people counted on the two survey days were fishing, a minimum average of about 10 fishers per day would appear to be appropriate at Morgantown. Since only evening hours were observed, the actual number fishing in an entire day might be more on the order of 20 to 30. Based on that, we suggest that the temporary loss of fishing access at Morgantown alone has a value of \$60,00 to \$120,000, not the \$10,000 right-of-way suggested by the FFP. We feel that this is a very conservative estimate of losses since it is based on only six months of access closure during a planned three year construction period. From our own experience we know that the local fishing season runs from March through November, a total of nine months.

If any access is permanently denied, the loss is a recurring one and an annual compensation should be required.

We have have not estimated the dollar value of closure or restriction of the rail-trail, but this is a

real loss and should be detailed. It is not “minimal” because of the high year-round trail use.

PETITION:

We hereby request that the FERC require FFP to include in its RRMPs (either separately or collectively) solid data on the annual use of the tail waters fishing areas and the rail trail and estimated values of public loss of recreation which reflect this information. Such revision should be completed before FERC issues any approval of applications for FERC Projects No. 13767, 13766, 13763, 13771, 13762, or 13753.

With regard to Recreation at the Opekiska site:

UMRA has been working with the Corps on the potential construction of a canoe portage at Opekiska. This is necessary because national Corps policies eliminated lock operation for recreational boats at this location beginning in October 2012. Security considerations, as well as the length of the portage, make the lock side of the river unattractive for the portage route.

In addition, with the closure of the Hildebrand and Opekiska Locks to recreational traffic there is no public boating access to the Hildebrand Pool. UMRA has been developing plans to create small boat access through the construction of launching sites. The downstream side of a portage route at Opekiska, along with public parking in the power plant area, could serve as a launching facility for hand-carried boats.

The lack of boating access to the Hildebrand Pool resulting from the lock closures also means that the shoreline provides the only public access to the Opekiska tailwaters fishing.

We feel that inclusion of moderately low cost options during the design phase could make a portage route a practical inclusion to the water intake and discharge zones. To defer this to a post construction add-on would, at the least, add greatly to costs. We also think that an accurate calculation of community recreational loss values during construction might indicate recreational mitigation costs should be high enough to offset any construction cost increases.

PETITION:

We hereby request that the FERC require FFP to include planning for a canoe portage at the Opekiska site as a part of their Recreational Resources Management Plan for Opekiska Lock & Dam Hydroelectric Project, FERC Project No. 13753.

Finally we note with concern that as recently as 8 January 2014 FFP was circulating a document to concerned citizens in the Monongahela valley which includes the statement

"The project is situated at the Hoague-Sprague Dam, a timber-crib structure similar in design and age to the dams located at the Monongahela River project sites."

(It appears that this document was created for FFP by Alan Topalian on 8 January 2014)

The dams at which these projects would be located have all been constructed since about 1950, and none is "a timber-crib structure." Earlier comments by the Pittsburgh District, USACE have pointed out FFP's erroneous statements regarding the character of the dam structures. FFP's various employees and consultants appear to have serious internal communications problems.

Sincerely,

Wallace Venable

FERC ID #F264431

Chief Technical Officer

Upper Monongahela River Association