

January 13, 2023

Via E-Filing

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

Black Mesa Pumped Storage Projects (FERC Nos. 15233, 15234, and 15235)
Motions to Intervene and Comments

Dear Secretary Bose:

On November 1, 2022 the Federal Energy Regulatory Commission (FERC or Commission) issued public notices for Nature and People First Arizona PHS, LLC's (NPFA) Preliminary Permit Applications (PPA) for the Black Mesa Pumped Storage Project (PSH) – East (East Project), Black Mesa PSH – North (North Project), and Black Mesa PSH – South (South Project), setting a deadline of 60 days for filing motions to intervene and comments. Motions to intervene were filed by the Navajo Nation, Grand Canyon Trust (the Trust), American Rivers, and Navajo Tribal Utility Authority (NTUA). An additional motion to intervene was filed jointly by the Center for Biological Diversity, Diné Citizens Against Ruining our Environment, and Tó Nizhóní Ání. Pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Rule 213 of Practice and Procedure, 18 C.F.R. § 385.214, NPFA herein addresses these motions and comments.

American Rivers asserts that NPFA's PPA applications do not provide comprehensive descriptions of the project and studies that will be undertaken to evaluate feasibility and potential cumulative impacts of what appears to be a single project comprised of multiple developments. NPFA considers the potential projects to be distinct, individual projects and therefore submitted separate PPAs to the Commission for consideration to maintain the potential to develop separate projects. The purpose of a preliminary permit is to secure the permit holder's priority for application to license a hydropower development while it studies the feasibility of the project, including studying potential impacts. Should a permittee file a license application, such impacts, including cumulative effects, would be addressed in the FERC licensing process and National Environmental Policy Act (NEPA) assessment.

American Rivers also identifies a concern that NPFA's proposed procedures for notice and consultation with the Navajo Nation and Hopi Tribe are inadequate. As stated in the Commission's October 15, 2020 Order Issuing Preliminary Permit and Granting Priority

to File License Application¹ “a preliminary permit does not grant a permittee the right to enter lands” and it is the permit holder’s responsibility to arrange access to a proposed site for purposes such as conducting resource studies. NPFA has been consulting with the Navajo Nation for the past three years, and coordinating with the Navajo Tribal Utility Authority. In addition to multiple meetings, NPFA has:

- Presented to the Nation Council's Natural Resources and Development Committee;
- Met with representatives from the Nation's Environmental Protection, Economic Development and Natural Resources agencies;
- Confirmed with the Nation Department of Water Resources that there is potentially water available for pumped hydro storage projects; and
- Received resolutions from Chilchinbeto Chapter to support land withdrawal and a lease between a project and the Nation.

The Navajo Nation identifies potential effects of the proposed projects and the need for consultation, which NPFA would conduct under a preliminary permit. The Trust take no position on the PPAs because it recognizes the purpose of a preliminary permit. Similarly, the NTUA take no position on the PPAs, recognizing the potential projects will affect NTUA and the Navajo Nation, but also acknowledging the potential benefits of an “environmentally, economically, and culturally responsible energy development on and around Navajo land. This is in exact alignment of NPFA’s mission of creating energy development that is beneficial to nature and the people of the region.

The Center for Biological Diversity (the Center), Diné Citizens Against Ruining our Environment, and Tó Nizhóní Ání, provide numerous comments casting doubt on the viability of the potential projects. The Center also makes numerous other assertions about the applications being misleading, lack of environmental justice information, and critiques of project layouts and capabilities. NPF is aware that a source(s) of water for initial fill and periodic recharge will need to be determined and that transmission and distribution infrastructure would need to be upgraded; NPF is in no way being deceptive. Potential locations for the projects were reviewed by Kleinschmidt and SWCA. These firms are highly reputable consulting firms, working on a national scale. Kleinschmidt specializes in hydropower design and permitting, including pumped storage facilities. SWCA is a specialist in environmental assessment and permitting.

Consistent with PPA assessments, preliminary information is still approximate, such as references to average elevations as opposed to those that would be determined specific site topology. NPFA agrees with comments that a 2 GW project will require 500 kV transmission lines and that existing substations will need to be modified, which would be

¹ 173 FERC ¶ 61,047

studied in detail under a preliminary permit, with only a high level analysis being common within a Preliminary Permit Application.

As identified in the above referenced October 2020 preliminary permit issued by FERC, the purpose of a preliminary permit is to reserve the permit holder's ability to file a license application while the consultation and study process is conducted. In this case, that includes discussions with stakeholders to finalize a project beneficial to the community, economy and environment. As such NFPA will consult with the Navajo Nation, affected Chapters, local people, environmental groups, utilities, and regulators as the process proceeds. NFPA will also conduct necessary permitting required by the Navajo Nation and other regulating agencies.

As our company name, Nature and People First Arizona PHS, LLC spells out, we intend to put nature and people first. NFPA note that our design reduces impacts in two ways: co-locating reservoirs and solar projects is a dual use of the land and using solar panels on the reservoirs reduces evaporation. NFPA intend as part of the project to address biodiversity and the quality of ecosystems. Moreover, it is our intent that the water infrastructure we construct will also serve the Nation's drinking water, agriculture, grazing and industrial needs.

As such, while NPFA does not object to any of the requests for intervenor status, NPF believes that the PPAs sufficiently address the content requirements of 18 CFR §4.81. Issuance of preliminary permits for the projects will enable NPFA to fund and conduct the necessary studies and consultation to fully evaluate the viability of the projects.

If you require additional information, please contact me at (781) 491-5364 or at Denis.Payre@natureandpeoplefirst.com or Peter Wallis at (978) 831-7030 or pwallis314@gmail.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Denis Payre', with a horizontal line underneath it.

Denis Payre
President and CEO
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