

APPENDIX A

STAFF RESPONSE TO COMMENTS ON THE DRAFT EIS

The Commission issued a draft EIS on July 13, 2006, and the U.S. Environmental Protection Agency's notice of availability was issued on July 21, 2006. Comments on the draft EIS were due September 19, 2006. The following entities filed comments:

<u>Entity</u>	<u>Filed Date</u>
U.S. Department of Commerce	August 8, 2006
William L. Ross	August 22, 2006
Anonymous	August 22, 2006
Rena Kimble	August 22, 2006
Ronald H. Moline	August 22, 2006
Niagara University	August 22, 2006
Edward Rutkowski	August 22, 2006
Public Power Association of New Jersey	August 22, 2006
Public Power Coalition	August 22, 2006
Lewiston-Porter Central School District	August 23, 2006
U.S Environmental Protection Agency	August 29, 2006
County of Westchester	September 1, 2006
Niagara Falls Housing Authority	September 13, 2006
Terry Yonker	September 14, 2006
U.S. Department of the Interior	September 15, 2006
New York Electric and Gas Corp. and Rochester Gas and Electric Corp.	September 18, 2006
New York Office of Parks, Recreation, and Historic Preservation	September 19, 2006
Eastern Niagara Power Project Alliance	September 19, 2006
Crandall Johnson	September 19, 2006
Seneca Nation of Indians	September 19, 2006
Public Power Coalition	September 19, 2006
Buffalo Niagara Riverkeeper	September 19, 2006
Municipal Electric Utilities Association of New York State	September 19, 2006
New York Power Authority	September 19, 2006
Mary Cooke	September 19, 2006
Town of Tonawanda	October 17, 2006
New York Power Authority	October 23, 2006

<u>Entity</u>	<u>Filed Date</u>
City of North Tonawanda	November 13, 2006
Advisory Council on Historic Preservation	November 29, 2006

In this appendix, we provide responses to those comments, and indicate how we have modified the text of the final EIS, if appropriate.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Habitat Conservation Division
James J. Howard Marine
Sciences Laboratory
74 Magruder Road
Highlands, New Jersey 07732

August 1, 2006

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2006 AUG -8 A 9 23

REGULATORY COMMISSION

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Re-licensing request for the Niagara Project; FERC# 2216-066; by New York Power Authority; Niagara River in Niagara County, New York

Dear Ms. Salas:

We have received the draft environmental impact statement (DEIS) for this project, and have determined that no endangered or threatened species under the jurisdiction of the National Marine Fisheries Service (NOAA/F) are present in the immediate area of the proposed activity. In addition, no essential fish habitat has been designated in the project vicinity pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Due to limited staff availability, we regrettably are unable to participate in the ongoing DEIS review that FERC is conducting as part of its re-licensing process. While we are unable to provide detailed comments at this time, we wish to acknowledge our support for the recommendations provided by the U.S. Department of Interior this past March regarding the need for conducting habitat protection and restoration in wetlands and installing fish attraction structures in key portions of the local aquatic habitat. In particular, we advocate inclusion of all reasonably available measures that enhance local habitat values and functions for diadromous species, forage fish, and other aquatic prey items.

Thank you for coordinating your project information with us. Should you wish to discuss these comments further, please contact Diane Rusanowsky at (203) 862-6504.

Sincerely,


Stanley W. Gorski
Field Offices Supervisor



Summary of Comments on 15753769.tif

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06_FERC# 2216-066; NYPA_Niagara Hydroelectric Project

cc: USFWS - Cortland
USEPA - Region 2
HCD: - Milford
NYSDEC - Albany
NYSDOS - Albany



NIAGARA COUNTY LEGISLATURE
NIAGARA COUNTY COURTHOUSE
175 HAWLEY STREET
LOCKPORT, NY 14094-2470

ORIGINAL
WILLIAM L. ROSS
Chairman

JAMES B. SOBCZYK
Clerk
(716) 439-7000
(716) 439-7124 Fax

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August 17, 2006

Federal Energy Regulatory Commission
Attn: Magalie R. Salas
888 First Street, N.E.
Washington, D.C. 20426

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FEDERAL ENERGY
REGULATORY COMMISSION

Re: Project No. 2216-066

To Whom It May Concern:

As Chairman of the Niagara County Legislature and President of the Niagara Power Coalition, I would like to express my support for NYPA's licensing proposal for the Niagara Power Project and the associated settlement agreements.

The Robert Moses Niagara Power Project is the largest single source of safe, clean, reliable renewable power in the Northeast and provides electricity to thousands of homes and businesses throughout the region. In addition, the comprehensive package of settlement agreements represents NYPA's commitment to the various interests represented throughout the relicensing process. The settlement reached with the Niagara Power Coalition will bring financial, economic and quality of life benefits to Niagara County for the next 50 years. First, the host community agreement will compensate communities for the accommodation and resources allocated to the project over the life of the license. Funding from this settlement agreement will support recreation projects, tourism enhancements, and create opportunities for economic development.

Second, Greenway funds have been allocated to implement the goals and objectives of the Niagara River Greenway. As part of the Greenway settlement, Niagara County will strive to create upland and inland connections to the Niagara River. A Greenway Plan is currently being developed to identify how the region's parks, trail systems and green spaces can be interconnected as means of providing increased opportunities for recreation, tourism and interpretation. Greenway projects will link people with these resources and attractions and build upon underutilized assets our communities have to offer. Complementary to the Greenway effort, Habitat Improvement Projects (HIPs) will be implemented to mitigate the negative impacts fluctuating water levels have had on the aquatic environment. These projects will help to reduce shoreline erosion, rejuvenate fish populations and improve water quality. When all is said and done, the Greenway will create a healthier environment and make our communities better places to live and work.

* ATTACHMENTS/eLibrary



Lewiston-Porter Central School District

Aiming Higher

August 16, 2006

Federal Energy Regulatory Commission
Attn: Magalie R. Salas
888 First Street, N.E.
Washington, D.C. 20426

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SECRETARY
2006 AUG 23 A 9 21
FEDERAL ENERGY
REGULATORY COMMISSION

Re: Project No. 2216-066

To Whom It May Concern:

The purpose of this letter is to express Lewiston-Porter Central School District's support for the NYPA's licensing proposal and the associated settlement agreements. We believe the comprehensive settlement arrived at through NYPA's Niagara Relicensing Process will provide tremendous benefits for the Niagara Region.

The benefits of the settlement agreement to Lewiston-Porter Schools is significant:

1. The host community agreement will compensate communities for the accommodation and resources allocated to the project over the life of the license. Funding from this settlement agreement will support recreation projects, tourism enhancements and creates opportunities for economic development.
2. Greenway funds have been allocated to implement the goals and objectives of the Niagara River greenway. As part of the Greenway settlement, Lewiston-Porter Central School District has been striving to develop projects that are consistent with the Greenway Concept.
3. Additionally, low-cost power is yet another benefit the Niagara Power Project brings to Lewiston-Porter Schools resulting in reducing the tax burden to our school community.

FERC staff should be commended for their in-depth, comprehensive analysis of the impacts of NYPA's relicensing proposal and coordination of studies that have led to the development of the Draft Environmental Impact Statement. We are aware that this report represents thousands of hours of research and analysis on issues from aquatic ecosystems to aesthetic resources and adequately addresses the impacts of the project relative to requirements of the National Environmental Policy Act.

We urge FERC to continue its support of the relicensing alternative proposed by NYPA as this is critical to realizing the benefits provided by the license application and settlement at the expiration of the current license.

Sincerely,

Don W. Rappold, Interim Superintendent/
Asst. Superintendent for Administrative Services

cc: Board of Education
Sam Ferraro

Don W. Rappold, Assistant Superintendent for Administrative Services
4061 Creek Road, Youngstown, NY 14174
Phone: 716-286-7241 Fax: 716-286-7877 Email: rappoldd@lew-port.com

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1888

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2006 AUG 29 P 3:00

REGULATORY COMMISSION

AUG 23 2006
AUG 23, 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St. NE, Room 1A
Washington, DC 20426

Class: EC-2

Reference: FERC Project No. 2216-066

Dear Ms. Salas:

The Environmental Protection Agency (EPA) has reviewed the draft environmental impact statement (DEIS) for the relicensing of the Niagara Project (CEQ #20060299), located on the Niagara River in Niagara County, New York. This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, PL 91-604 12(a), 84 Stat.1709), and the National Environmental Policy Act (NEPA).

Project Description:

The DEIS was prepared by the Federal Energy Regulatory Commission (FERC) in response to the Power Authority of New York (Power Authority) filing an application for a new license for the 2,755 megawatts (MW) Niagara Project. Diverting water from the Niagara River 2.6 miles upstream of Niagara Falls and releasing it back to the River about 5 miles downstream of the Falls, the project includes the 240 MW Lewiston Pumped Storage Plant and the 2,515 MW Robert Moses Niagara Power Plant. Located in an international waterway, it is subject to the jurisdiction of the International Joint Commission pursuant to the 1909 Boundary Waters Treaty, and operates in accordance with the 1950 Niagara River Water Diversion Treaty, both between the United States and Canada.

Along with the DEIS, the Power Authority filed an Offer of Settlement that includes four separate agreements: (1) a relicensing agreement with measures the settlement parties request be included in a new license; (2) a host community agreement; (3) an agreement between the Power Authority and the Tuscarora Nation; and (4) a power allocation agreement between the Power Authority and neighboring states. The major components of the proposed action include: (1) funding for eight habitat improvement projects (HIP)s upstream within the project-affected fluctuation zone of the Niagara River; (2) funding for unspecific future habitat enhancement and restoration projects through a habitat enhancement and restoration (HERF) fund; (3) funding to upgrade the City of Niagara Falls water treatment system Fall Street Tunnel; (4) funding for recreation facility improvements; (5) removing eight parcels of land from the current project boundary; (6) no change in the project's mode of operation.

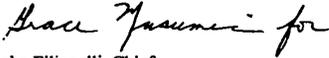
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The Niagara River has been designated an Area of Concern (AOC) in the Great Lakes, and we believe that some of the Settlement Agreement provisions for funding habitat projects will work towards rehabilitating the Niagara River AOC and removing some of the beneficial use impairments. However, EPA is concerned that the DEIS has not fully examined the cumulative impacts to water levels in the Chippawa-Grass Island Pool and upriver once the Ontario Power Generation's Niagara Tunnel Project is completed. As per 40 CFR Section 1508.7, "cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. According to Ontario Power Generation, the Niagara Tunnel Project will divert another 500 cubic meters of water from the Niagara River to the Sir Adam Beck hydroelectric project in Canada when it is completed in 2009. At a minimum, the DEIS must discuss the future impacts to the Niagara River's water quality, sediment movement, groundwater flow, erosion, and upriver water levels that may arise from the operation of both the Niagara Project and the new flow to the Sir Adam Beck facility.

In summary, based on our review and in accordance with EPA policy, we have rated this DEIS as EC-2, indicating that EPA has environmental concerns and that the DEIS does not contain sufficient information regarding cumulative impacts for EPA to fully assess environmental impacts.

Thank you for the opportunity to review the DEIS for the project. If you have any questions concerning EPA's comments, please contact Lingard Knutson at (212) 637-3747.

Sincerely yours,



John Filippelli, Chief
Strategic Planning Multi-Media Programs Branch

Enclosure

Author: Staff
Subject: Response
Date: 12/13/2006 7:33:07 AM

To our knowledge, the Niagara Tunnel Project was not mentioned during the scoping process. However, we have added the Niagara Tunnel Project to the cumulative effects section under Water Resources. Based on our review, the tunnel project would not affect the water quality, sediment movement, groundwater flow, erosion, or water levels in the river because management of the Chippawa-Grass Island Pool would not change. Though the tunnel project would increase Canadian generating capacity, it would not affect the Canadian share of water for generating purposes or the amount of water going over the falls, which are both set by international treaty. The increased capacity would allow the Canadians to divert more water either when the U.S. can not use its full share or during extreme and short-term weather events when more water is available in the Niagara River.

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SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION
Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommend for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1-Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analysis, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."



Andrew J. Spano
County Executive

Office of the County Attorney

Charlene M. Indelicato
County Attorney

September 1, 2006

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: New York Power Authority
Niagara Power Project No. 2216-066

Dear Secretary Salas:

In response to the Commission's "Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests" issued by the Commission on October 19, 2005, Westchester filed a further Motion to Intervene and Protest on December 16, 2005, which motion was granted allowing Westchester to participate as a party in the above-captioned relicensing proceeding.

Westchester believes that it is important that the benefits that are derived from low-cost hydroelectric power be shared with businesses and residents throughout the State of New York. In light of the claims by various parties that they alone should receive the benefits of the low-cost hydropower produced by the Niagara Power Plant it is respectfully requested that you consider the position of Westchester, as stated in its December 16, 2005 motion, before you take final action on the licensing of the above project.

NYPA presently has contracts with three upstate investor-owned utilities for the provision of this hydropower to the exclusion of other investor-owned utilities in the state. Those utilities argue that they and their customers alone should continue to receive the benefits of that low cost power when their current contracts end in 2007. There is no reason that they should receive the benefit of this low-cost power to the detriment of those living in the rest of the state, especially those living in the Con Edison service territory, which has one of the highest electric rates in the continental United States.

The Niagara Redevelopment Act requires that low cost hydropower be made available to residential customers with the "widest possible use" (16 U.S.C. §836(b)(1)). In addition, Section 1005 of the New York Power Authority Act states that development of hydro-electric power from the Niagara Project "shall be considered primarily as for the benefit of the people of the

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White Plains, New York 10601

Telephone: (914)995-2660 Website: westchestergov.com

Page: 8

Author: Staff
Subject: Response
Date: 12/18/2006 7:35:31 AM

The current license for the Niagara Project includes two power allocation-related articles. Article 20 requires that the licensee (in order to assure that at least half of the project power is available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers) give preference and priority to public bodies and non-profit cooperatives within economic transmission distance. Article 21 requires that the licensee make a reasonable portion of the project power (up to 20 percent and subject to the preference provisions of Article 20) available for use within reasonable economic transmission distance in neighboring States. Whether these articles are included in the new license would be addressed by the Commission in its decision on the application. However, neither of these articles specifies to which specific entities NYPA is to make project power available. In addition, the impacts of whether or not specific power sale contracts are renewed in the future was not addressed because we don't know which contracts will or will not be renewed.

In addition, the sale of power to three upstate investor-owned utilities is only one part of the three types of power allocation. Half of the project's firm power is allocated to municipal and rural cooperative utilities in New York State and other states. The project's operation creates and sustains a large number of jobs and contributes approximately \$1 billion in gross Regional Product and almost \$600 million in personal income to which the residents and businesses of New York share.

state as a whole...". The benefits of low cost hydroelectric power from the Project should be allocated equitably among all of the users within New York State, including those residents and businesses located in Westchester. Accordingly, the Commission should review the power allocation issue before issuing a license to assure that all residents and businesses of New York State share in the benefits to be derived from low cost hydropower.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Stewart M. Glass
Senior Assistant County Attorney

SMG/me

cc: Parties: by e-mail or U.S. Mail

This page contains no comments



Niagara Falls Housing Authority

Administrative Offices: 744 Tenth Street • Niagara Falls, NY 14301
Phone: (716) 285-6961 • Fax: (716) 285-3407 • TDD: 1-800-545-1833 x405
Website: www.nfha.org Email: nfha@nfha.org

Stephanie W. Cowart, Executive Director

ORIGINAL

September 6, 2006

- Commissioners
- William M. Paterson
Chairman
- Cynthia A. Bianco
Vice Chairman
- Carmelette M. Rotella
Secretary
- John F. Panza
- Anthony S. Restaino
- Annie M. Porter
- Vivian M. Watkins
- Randall P. Sinatra
Counsel

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Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: Niagara Project (P-2216-066)

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FEDERAL ENERGY
REGULATORY COMMISSION

Dear Ms. Salas:

As Executive Director of the Niagara Falls Housing Authority, (NFHA) I want to thank you for the opportunity to address the Federal Energy Regulatory Commission regarding the 50-year relicensing agreement for the New York Power Authority. Under the host community agreement, the City of Niagara Falls will receive low cost power city owned buildings and economic development in addition to receiving \$850,000 in cash a year and \$510,000 a year for recreation improvements consistent with the Greenway Plan for the entire 50-year agreement.

While I am extremely disappointed in how the relicensing process was conducted - we would have preferred that organizations and neighborhoods directly impacted by the Niagara Power Plant be specifically compensated in the new license - I appreciate the opportunity to comment.

The NFHA has provided safe, decent affordable housing in the City of Niagara Falls for more than 60 years. The NFHA owns and operates 847 public housing units within five communities - Packard Court, Center Court, Harry S. Jordan Gardens, Henry E. Wrobel Towers and Anthony Spallino Towers with approximately 1,500 residents. Two of the communities, Jordan Gardens and Center Court, as well as the Housing Authority's Doris W. Jones Family Resource Building, are located in what is known as the Highland Avenue area of Niagara Falls. Located in Census Tract 202, this area consists of approximately 50 city blocks occupied primarily by minority residents. It's an area plagued by drugs and crime, absentee landlords, brownfields and vacant industrial buildings - some of those vacant industries benefited from low-cost power years ago. The Highland Avenue area has 13 churches, two community centers, a community garden, a

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park and thousands of long-time residents. Additionally, train tracks, a bridge and a viaduct serve as borders to this community.

An estimated 35 percent of housing authority residents, ages 18 to 40, receives some type of welfare assistance and about 34 percent of the 366 families are unemployed heads of household with several young children in the home. These residents have low- to very-low incomes, little education, few home management skills and low motivation to participate in educational opportunities. It is their children and those of similar circumstance in the nearby neighborhoods who are served each day. The mission – in addition to providing quality housing - is to break this continuing cycle in the community by targeting literacy, academics and life skills in structured after school and adult job training programs.

By any number of indicators, the area surrounding the NFHA communities has been under considerable distress for a number of years. Socioeconomic conditions in and around the City of Niagara Falls have changed profoundly over the last 40 years due to major plant closings, rising unemployment, and a lower wage for the jobs that have remained. These social changes have struck residents of the NFHA with particular harshness, increasing levels of poverty as well as social and familial disruption.

In response to these circumstances, the NFHA constructed two community centers – the Doris W. Jones Family Resource Building and the Packard Court Community Center – within Niagara Falls urban areas. The Resource Building is just a few miles from the Niagara Power Plant. These community centers have become a beacon of hope and empowerment, offering job training and development initiatives, two Universal Pre-Kindergarten programs, after-school tutorial programs, senior citizen clubs, healthcare opportunities, parenting skills classes, financial literacy programs, GED training, computer instruction and an array of social and recreational activities.

The NFHA is making a difference. Since implementing a Certified Nursing Program for city residents two years ago, 59 have participated in the program, 26 are certified New York State nursing assistants and 18 are currently working in their field. The Niagara Falls City School District chose the Resource Building as a fifth site for the community-based Universal Pre-Kindergarten program because of our strong reputation in the community. The State University of New York Advanced Technology Training and Information Networking Lab, which has been open since 2004 and located at the Resource Building, is one of the busiest computer job training labs in New York State.

While there is obviously a significant need for services in this community, the NFHA also is facing significant financial challenges. There is a perception that federally subsidized agencies are wealthy, but that is not the case. With federal funding on the decline each fiscal year, it has become more and more difficult to meet the needs of our residents and those in the community we serve. Jobs and programs are in jeopardy of being cut further under the current fiscal budget and the conditions show no signs of improving, which means services we strive to provide each day will be greatly impacted.

The NFHA will be requesting funds from the New York Power Authority to allow us to continue operating and providing quality housing and programming to all residents.

The Power Authority property is very close to the Highland Avenue area, which has been affected and neglected by its operations for many years, yet the relicensing agreement does not take that into consideration. Instead, this community will be forced to go to the City of Niagara Falls to request funding to support initiatives and improvement plans along with others who have not been impacted in the same manner and should not be given the same consideration.

This process must be changed. Until it does, the Housing Authority is poised and willing to work with the City of Niagara Falls to ensure the settlement funds allocated to them are utilized appropriately and for the betterment of each resident and neighborhoods most effected – including the Highland Avenue area.

This agreement is a unique opportunity that shouldn't be whittled away. Funds from the New York Power Authority relicensing agreement should not be used for one-shot deals, but instead for thoughtful, targeted programs and initiatives – whether it's roads and sewer lines, people, property, housing or programs.

This community will hold the New York Power Authority accountable to its new license. Thank you.

Very truly yours,

NIAGARA FALLS HOUSING AUTHORITY



STEPHANIE W. COWART
Executive Director

Author: Staff
Subject: Response
Date: 12/11/2006 7:41:36 AM
Your comments echo those of several commentors who see the project as responsible for adverse economic conditions in the surrounding area. Many view this hydroelectric project relicensing, perhaps because the project is owned and operated by an agency of the State of New York, as an opportunity to fund various community programs. While we understand there is a great deal of frustration with some of the socioeconomic conditions in the area, the low-cost power the project produces is viewed, by staff, as beneficial. Staff do not view the decisions made by the businesses that have used project power, however negatively they have affected the area, as a project effect. The project's effects include diversion of flow around Niagara Falls, contribution to water level fluctuations, and groundwater routing via the project's underground conduits. The staff's recommended measures are meant to address these affects while enhancing pubic access to project lands and waters.

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Niagara River Corridor Ecology Center Proposal

By Terry L. Yonker*

A partnership of individuals, educational institutions, and charitable nonprofit organizations from Erie and Niagara Counties proposes the establishment of the Niagara River Corridor Ecology Center. Envisioned is a charitable non profit center that is devoted to the preservation and the restoration of the Niagara River Ecosystem. The Center would provide opportunities for research, education, and interpretation of the Niagara River, the Niagara Gorge, Niagara Falls, and related shoreline components of the ecosystem and serve as a resource for information and programmatic support to federal, state, and local agencies. The Center would include the following components:

- A Botanical Center for the study, propagation, and restoration of native plant species within the Niagara River Ecosystem.
- A Bird Observatory for the study, protection, and restoration of habitat for migratory and resident bird species within the Niagara River Ecosystem and the Niagara Corridor IBA
- An Aquatic Center for the study, protection, and restoration of aquatic habitat and native aquatic species within the Niagara River Ecosystem.
- A Climate Center for the study of impacts from climate change and adaptive strategies to protect the Niagara River Ecosystem and Great Lakes.
- A Natural Science Center devoted to other scientific studies and Natural History interpretation.

* Terry Yonker is the immediate past president of the Buffalo Ornithological Society, education chairman of the Western New York Climate Action Coalition, member of the Wind Action Group, past executive director of the Lake Erie Alliance, past executive director of Great Lakes United, past executive director of the Michigan Audubon Society, former environmental policy advisor to Michigan Governor William G. Milliken, and current president of Marine Services Diversified, LLC, a marine environmental consultant and avian research firm located in Youngstown, NY. He resides at 139 Jackson Street, Youngstown, NY 14174 (716)745-9129 email: terryyonker@cs.com

This page contains no comments

September 14, 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: DEIS for the Niagara Power Project (No. 2216-066)

Dear Mr. Salas:

The DEIS for the Niagara Power Project (No. 2216-066) is deficient in several regards.

The Niagara Power Project is a critical component of the State of New York effort to promote alternative power generation from renewable sources. Hydroelectric power is a key renewable energy resource that provides peaking power to the New England Power Pool. It also provides the unique opportunity to balance power production from other key renewable energy sources in the region such as utility sized wind and solar generating facilities. That being said the New York Power Authority (NYPA) has the responsibility to generate hydroelectric power with as few negative environmental impacts on the Niagara River Ecosystem as possible. That includes producing hydroelectric power as efficiently as possible within its current allocation of water from the Niagara River under the 1950 Niagara River Water Diversion Treaty. Further, "in addition to the power and development purpose for which licenses are issued (e.g., flood control, irrigation, water supply), the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of aspects of environmental quality (Page1 of the DEIS)."

Efficiency. NYPA announced several years ago that it would proceed with retrofits to the Robert Moses Power Plant to improve generating efficiency. That project is nearly complete. At the same time NYPA announced that it would not expend \$500 million to improve the efficiency of the Lewiston Pumped Storage Plant. Improving the efficiency of the Lewiston Plant would add to the peaking capacity of the Niagara Power Project, improve its ability to balance other renewable energy sources in the region such as wind and solar generating facilities, and produce more power from the water that is allocated by treaty, an amount which is already at its limit for the United States. This is even more important as the Sir Adam Beck Power Plant on the Canadian shore increases its water withdrawal from the upper Niagara River to the maximum

amount allowed under the 1950 Niagara River Diversion Treaty. To justify the negative impacts to the Niagara River Ecosystem, NYPA must demonstrate that it is operating at the highest level of efficiency. It should be required to make the needed upgrades to increase operating efficiency at the Lewiston Plant by 25%, the same increase in efficiency achieved by the Robert Moses Power Plant upgrade.



Author: Staff
Subject: Response
Date: 12/18/2006 7:40:46 AM
Exhibit H of the license application describes the feasibility of upgrades to the Lewiston Pump Generating Plant and that it was determined not to be cost effective and therefore not proposed. The study for the Lewiston Pump Generating Plant included pumping and generating efficiency improvements, re-timing discharges the Robert Moses Power Plant and increasing peak hour generation and peak load capacity. The study found that upgrades could be made to the 12 generating units that would increase peak load energy, but those upgrades would simply cost more than the increase in power would be worth. The Power Authority is not required to operate at the highest level of efficiency but at a reasonable level.

Conservation. Nowhere in the DEIS is energy conservation addressed. It is the same issue as generating efficiency. If we accept some degradation of the Niagara River Ecosystem because of water diversion and power generation, we need to make certain that every kilowatt hour utilized is utilized in the most efficient manner. The Settlement Agreement reached with the Niagara Power Coalition allocates low cost power to coalition members, but makes no requirements on the members to conserve. The Commission staff is correct in not supporting settlement agreements that are non-specific about how settlement funds and allocated power can be used. Ratepayers end up with almost no benefits: they pay higher rates to support the Settlement Agreement and achieve little mitigation of environmental damages associated with power production. The Commission should require changes in the Settlement Agreement to better reflect the Commission's charge to include greater emphasis on conservation and efficiency in the final license when issued.



Author: Staff
Subject: Response
Date: 12/13/2006 8:16:13 AM
FPA Section 15(a)(2)(c) requires the Commission to consider the extent of electric consumption efficiency programs in the case of license applicants engaged primarily in the generation or sale of electric power. NYPA is such an applicant. This issue would be addressed in any order issued by the Commission on the license application.

Please note, however, that the Commission's enforcement of a hydro license is directed to the licensee, not non-licensee recipients of the project's allocated power.

Water Supply. The DEIS assumes little change in net basin water supply while acknowledging the fact that fluctuations in levels occur in the Great Lakes Basin, Lake Erie, and the Niagara River. The problem is that the DEIS does not address the issue of long term reductions in net basin water supply due to climate change and the impact this will have on power production and the ability of NYPA to meet its Settlement Agreement commitments over the next 50 years. A recent report by the Lake Erie LaMP discussed the likelihood that the water surface area on Lake Erie will decrease by 15% over the next several decades due to climate change. One NYPA official was quoted as saying that such a reduction in area would reduce the water available for power production by more than 25%. The DEIS should address this issue directly and determine whether or not a 50 year Settlement Agreement and Operating License is supportable. If NYPA reduces its generation of power by 25%, revenue received cannot possibly support \$1.5 billion Settlement Agreement without major economic disruption in the region. The Commission should set the term of the Operating License to no more than 20 years and require that the term of the Settlement Agreement also be changed to 20 years. There is little uncertainty about predicted impacts from climate change on the Great Lakes, only the extent of those impacts in the totality of the Great Lakes Basin Ecosystem. All climate change models conclude that water levels in the Great Lakes will decline significantly over the next several decades (estimates range between one and three meters) and that net basin water supply will be significantly reduced. The International Joint Commission recognized water level reductions due to climate change as a major concern in the Great Lakes Water Levels Reference Study, especially the potential impact on hydroelectric power production on the Niagara, St. Marys, and St. Lawrence Rivers.



Author: Staff
Subject: Response
Date: 12/13/2006 8:19:09 AM
We acknowledge the predicted future declines in Great Lakes water levels. With regard to environmental effects in the project area, however, there would be none unless the IJC changes operation of the Chippawa-Grass Island Pool or allocation of flows over the falls.

Author: Staff
Subject: Response
Date: 12/11/2006 7:43:17 AM
Pursuant to section 15(e) of the Federal Power Act, new licenses are issued for a period not less than 30 years nor more than 50 years from the date of issuance. However, all licenses issued now include a standard article that allows the Commission to reopen a license if conditions warrant. Please also note, however, in reference to the \$1.5 billion you attribute to the settlement agreement, that many of those settlement items are not intended by the settling parties to be included in the license, nor are they recommended by staff for inclusion in the license. Sections 4.0 and 5.0 of the EIS discuss the staff-recommended measures and their associated costs. The Commission will only enforce compliance with the measures that are included in the license.

Specific Projects. The Commission staff raised serious objections to the open ended funding mechanism included in the Fish and Wildlife Habitat Enhancement and Restoration Fund because it did not list specific projects or specific outcomes to be achieved. Those of us who participated in the settlement process were told by NYPA that they would not agree to include specific projects other than HIP projects in the final settlement. The NREC had requested that

the establishment of an Ecological Center be included in the Ecological Settlement to provide the capacity for research, restoration, and interpretation of the Niagara River Ecosystem and to more thoroughly address the negative impacts of power production within the ecosystem. Clearly, NYPA either refused to follow Commission guidelines on specificity or succumbed to pressure by some stakeholders to avoid placing any restrictions on the use of settlement funds and low cost power. The Commission should send the Settlement Agreement back to NYPA to resolve this issue and to suggest that NYPA be receptive to the inclusion of such important projects as the Ecological Center in the agreement. The proposed Niagara River Ecology Center proposal was submitted by me at the FERC Niagara Falls hearing on the DEIS and is attached to this letter.

HIPS. Each Habitat Improvement Project must receive an individual environmental assessment of its possible impacts. Some HIP's (e.g. Fish Attraction Structures) will have significant impacts on the Niagara River besides providing fish habitat. The structures will also restrict flow within the Niagara River, an issue that will have to be addressed by the International Joint Commission, Coast Guard, and U.S. Army Corps of Engineers. These projects were added to the Ecological Settlement without much scientific discussion or an environmental impact assessment. Environmental impact assessments should be required by the Commission for all projects supported by Settlement Agreement funds, including projects that are funded or partially funded by NYPA and that are included in the Niagara Greenway plan.

Finally, it should be noted, and specifically acknowledged, that not all stakeholders in the settlement process agreed to or signed the final Settlement Agreement. To my knowledge, among the more notable of the stakeholders (and NREC members) that did not agree to the Settlement Agreement are the Buffalo Ornithological Society, Wind Action Group, Niagara Heritage Partnership and the Niagara Frontier Wildlife Habitat Council. Those who have signed the Settlement Agreement have pledged to support the Agreement and the License Application at the risk of subjecting themselves to civil action if they fail to support any part of it, including the Host Community Agreement that has little positive impact on the restoration of the Niagara River Ecosystem following 50 years of water diversions and power production. The Commission should require NYPA void the Settlement Agreement. The Commission should continue the current license until the settlement issues are fully resolved.

Sincerely,

Terry L. Yonker
139 Jackson Street
Youngstown, NY 14174
(716) 745-9192
Email: terryyonker@cs.com

Author: Staff
Subject: Response
Date: 12/13/2006 8:23:18 AM
Regarding the Ecological Center proposal - When we review settlement agreement measures, our preference is for measures that would protect, mitigate, or enhance resources for which a project effect has been identified (see 116 FERC ¶61,270). We also consider whether adequate public access is provided to project lands and waters for recreational purposes consistent with the Commission's policy on recreational development as stated in section 2.7 of the Commission's regulations. The ecological center you propose would focus on research, education, and interpretation on the Niagara River, and would not, it appears, address an identified project effect.

Author: Staff
Subject: Response
Date: 12/13/2006 8:39:03 AM
The DEIS discusses the anticipated environmental affects of the HIPs. While individual HIPs would likely require additional permits the HIPs would be designed and constructed in consultation with appropriate state and federal resource agencies. If significant unanticipated environmental concerns are raised during design and construction, the consulted resource agencies could comment on the need for modifications.

Author: Staff
Subject: Response
Date: 12/11/2006 7:45:14 AM
The Commission is not a signatory to the settlement agreements, and as such, cannot void them. We understand that some stakeholders are not signatories to the settlement agreements, and, while we may prefer as wide a consensus as possible, licensees are free to enter into settlement discussions and settle with whomever they choose. Our task is to decide what measures, be they part of a settlement or not, are reasonable to include in the project license.



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
408 Atlantic Avenue – Room 142
Boston, Massachusetts 02210-3334



Page: 17

Author: Staff
Subject: Response
Date: 11/21/2006 9:23:34 AM
We have revised the FEIS text in an effort to address these inconsistencies.

September 15, 2006

9043.1
ER-06/729

Magalie Salas, Secretary
Federal Energy Regulatory Commission
Mail Code: DLC, HL-11.2
888 First St., NE
Washington, DC 20426

RE: COMMENTS
Niagara Project, FERC No. 2216-066
Draft Environmental Impact Statement
Niagara River, Niagara County, New York

Dear Ms. Salas:

The U.S. Department of the Interior (Department) has reviewed the July 2006, "DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)" for the Niagara Project (Project), located on the Niagara River in Niagara County, New York. The Department, through its three bureaus, the U.S. Fish and Wildlife Service (Service), the National Park Service (NPS), and the Bureau of Indian Affairs (BIA), participated in the Alternative Licensing Process and signed the Relicensing Settlement Agreement Addressing New License Terms and Conditions (Relicensing Agreement). Bureaus and Offices of the Department contributing to this correspondence include the Service, NPS, and BIA, as well as the U.S. Geological Survey, Office of the Solicitor, and the Office of Environmental Policy and Compliance.

Although there are several settlements involving nearly all of the parties that participated in the relicensing process, the National Environmental Policy Act (NEPA) still requires the Federal Energy Regulatory Commission (FERC) to conduct a meaningful analysis of the Project's impacts. The Department is concerned that the DEIS remains a very superficial analysis of the largest hydropower project in the country subject to FERC licensing. We have the following comments on the DEIS.

General Comments

The DEIS does not reference the Offer of Settlement and its component agreements in an accurate or consistent manner. The Offer of Settlement filed by the New York Power Authority (Power Authority) on August 18, 2005, included four separate settlement agreements, each addressing distinct issues and each with different signatories. In addition, only the provisions of the Relicensing Agreement are intended to be included in the new license. In several places, the DEIS uses the terms "Offer of Settlement" and "Relicensing Agreement" interchangeably, while in other places the DEIS refers to "a" settlement agreement, or "the Settlement." This creates confusion about the settlement provisions intended to be included as license articles. It may also



create the impression that the Department concurred with, or approved, measures in the agreements to which it is not a party.

In most instances, the correct reference is to the Relicensing Agreement. References to the "Offer of Settlement," "settlement," "settlement agreement" and "the Relicensing Agreement" throughout the DEIS should be checked and revised as necessary. Specific agreements should be referenced by name for clarity. For example, page xix states that the Power Authority filed an "Offer of Settlement" signed by the parties listed in footnote 7. Footnote 7 also refers generically to the "settlement." The parties listed in footnote 7, however, are signatories to the Relicensing Agreement only, and not to any broader settlement or umbrella document. Indeed, there is no such document. This reference should be corrected to accurately reflect the structure of the Offer of Settlement.

Similarly, page xx, paragraph 3, accurately describes the Offer of Settlement as including four separate agreements. When read with the reference discussed above, however, this paragraph leads to the erroneous conclusion that the parties listed in footnote 7 are signatories to each of the four agreements. Paragraph 3 of page xx should be revised to accurately reflect the structure of the Offer of Settlement. The description should also include the settlement agreements between the Power Authority and Niagara University and the Power Authority and the City of Buffalo/Erie County, which were submitted on May 26, 2006, and June 21, 2006, respectively, after submission of the application for new license.

The recommended alternative would not include the Habitat Enhancement and Restoration Fund (HERF) in the license, because "...it is unclear whether the funds would be used to address a project effect..." DEIS at page 154. At the same time, the DEIS correctly acknowledges that the HERF is a mandatory condition of the New York State Department of Environmental Conservation's Section 401 Water Quality Certification, and, therefore, "...would become a condition of any license issued for the project." *Id.* Nevertheless, FERC staff goes on to state that it does not see the need for the Ecological Standing Committee (ESC) – a critical component of the Relicensing Agreement that will establish the organization of both the Habitat Improvement Projects Fund as well as the HERF. Failure to include the ESC would jeopardize the carefully negotiated structure for managing *both* funds. The components and structure of the Relicensing Agreement, including the ESC, are fundamental to the Department's support for a new 50-year license for the Niagara Project. The DEIS offers no reasoned analysis for not including the ESC as a license requirement. In order to preserve the Relicensing Agreement, it should be included as a license requirement.

Specific Comments

Page 13, Historic Properties – Section 4.3, Appendix A: This section includes "TN" as a party to be consulted regarding habitat improvement projects or public access improvements. This is an apparent reference to the Tuscarora Nation, although "TN" is not defined previously in the document. In any event, the Tuscarora Nation - as a Federally-recognized Indian tribe and sovereign government - should be spelled out in full throughout the DEIS.

Also, the National Park Service should be added to the list of agencies that will be consulted in development of the Historic Properties Management Plan. Three National Historic Landmark properties are in the immediate vicinity of the project and may be affected by recreation, land use, or environmental projects specified in the license.

Page 32, U.S. Tributaries, 2nd paragraph, sentence 3 states: "This augmentation flow ranges from a high of approximately 3 cfs in the summer to zero in the winter and spring." This is erroneous. The cited 3 cfs is due entirely to regulated discharges from the Lewiston Reservoir

Page: 18

Author: Staff
Subject: Response
Date: 12/11/2006 7:46:31 AM
It didn't seem to make sense to recommend the ESC when we were not also recommending the HERF. To reiterate, we do not recommend the HERF because it is an open-ended fund that could be used for unspecified projects which may not be linked to a project effect. However, because it is a mandatory certification condition, it would be included in the new license.

Author: Staff
Subject: Response
Date: 11/30/2006 9:00:29 AM
The text has been revised.

Author: Staff
Subject: Response
Date: 12/5/2006 8:06:31 AM
We have added the U.S. National Park Service as a party to be consulted during development of the historic properties management plan.



3

and does not include augmentation from groundwater recharge as implied by this paragraph. It is the release from Lewiston Reservoir that varies from 0 to 3 cfs seasonally. While the cited study (URS et al. 2005a) does note the groundwater recharge of Gill Creek from Lewiston Reservoir, the study does not specify any amount of recharge. The rate of recharge from the groundwater into Gill Creek is a complex interaction based on the level of Lewiston Reservoir, the rate of precipitation recharge of the groundwater aquifer, and the specific level(s) of the aquifer(s) which can fluctuate daily, weekly, and seasonally.

Page 37: In the paragraph beginning “Discharge to...” the 3rd sentence is incomplete (lacks a verb).

Pages 45 - 46, Groundwater Contamination: It is of interest that BTEX has been detected within saline waters in deep aquifers in the Lockport Group east of the Lewiston Reservoir. We question whether the BTEX is derived from gasoline, which has a density lighter than water. Some formations of the Lockport Group are petroliferous and it is possible that the BTEX is derived from naturally-occurring compounds. Measurement of tritium concentrations in these waters would provide some additional information on the age of ground water that could support one of these two hypotheses.

Page 52, Niagara Falls Water Board Capital Improvement Fund: The DEIS does not adequately analyze a mitigation measure that may result in the most significant alteration in the direction and rates of groundwater flow in the project area since construction of the project's intake conduits and the conduit drainage system. The Final EIS should include a more fully developed analysis of the potential changes to groundwater flow patterns and contaminant transport that may result from the Falls Street Tunnel (FST) improvements, the direct and cumulative effects that may result, beneficial or adverse, and the monitoring program to be implemented. Outreach to the broad-based agency, governmental, and industrial community involved in the analysis, pumping, and treatment of groundwater in the area will be important. This represents an excellent opportunity for the Power Authority to provide a forum for obtaining input from directly involved or affected stakeholders (Gloria Sosa, EPA, Remedial Project Manager, oral communication, 2006). More detailed considerations follow:

- The proposed action, if successful, would remove a principal discharge point for water and contaminants that presently flow towards the exterior conduit drainage system (ECDS) associated with NYPAs conduits. The ECDS serves as a north-south groundwater divide, separating the regional flow system into two parts. Ground water east of the ECDS flows southward from the Niagara Escarpment towards the Niagara River and the ECDS, while ground water west of the ECDS flows to the Niagara River gorge, the Forebay Canal, the ECDS and the FST (Yager, 1996). South of the cross-over area, water from the Niagara River flows around the east and west sides of the grout curtain surrounding the conduit intake structure and towards the FST (Yager and Kappel, 1998). A large portion of the flow entering the ECDS discharges to the FST in the cross-over area—this water is presently treated by the Niagara Falls wastewater treatment plant, except during storm events when the plant capacity is exceeded and stormwater is discharged to the Niagara River downstream of the falls (Richard Roll, oral communication, Niagara Falls Water Board, 2006).
- If the ECDS/FST discharge point is removed, the resulting hydraulic gradient between the Niagara River and the Forebay Canal will direct the flow of water and contaminants entering the ECDS northward to the Forebay Canal.
- The proposed grouting of the cross-over area includes slip-lining (or similar methodology) about 1,000 feet of the FST with the conduit section at the center of the

Page: 19

Author: Staff
 Subject: Response
 Date: 11/21/2006 9:26:05 AM
 We have revised the text to correct and clarify the flow situation in Gill Creek.

Author: Staff
 Subject: Response
 Date: 11/21/2006 9:27:14 AM
 We have corrected this error.

Author: Staff
 Subject: Response
 Date: 12/13/2006 8:44:11 AM
 We agree. However, this analysis is not likely to be useful unless some current or future decisions will be made to address BTEX contamination. It is true that BTEX can be associated with a LNAPL (light non-aqueous phase liquid), but BTEX also readily dissolves in groundwater and could be present due to migration of a dissolved phase plume. Therefore tritium analysis would not be recommended unless this issue is of significant concern.

Author: Staff
 Subject: Response
 Date: 12/13/2006 8:47:32 AM
 We have modified the text to address the information, predictions, and recommendations discussed in the bullets below. Because of the potential consequences of the FST improvements, and the complexity of groundwater flow patterns in the area, which make accurate predictions difficult, we are recommending in the FEIS that NYPAs monitor groundwater to assist in managing the FST grouting project.

lining project. The expected result of this work is to significantly reduce infiltration of ground water and any associated contaminants to the FST from ground water flowing directly to the cross-over area, or through the ECDS to the FST.

- Ground-water levels could rise by as much as 10 ft in the cross-over area if the grouting is successful and water does not find new pathways to the FST via fractures or man-made pathways in the bedrock. This rise in water levels could reduce the hydraulic gradient towards the cross-over by as much as 50 percent, reducing the rate of ground-water flow through the area.
- It is unknown whether balancing weirs in the Falls Street pump-station sumps have been sealed. These weirs were designed to provide a hydraulic connection between the water level in the ECDS and the water levels within the conduits. An increase in water level in the cross-over area could, therefore, induce flow from the ECDS to the conduits. The elevation relationships between the sumps would need to be investigated to assess this possibility.
- Richard Roll (Niagara Falls Water Board) points out two potential beneficial effects of sealing the FST in the cross-over area. First, reducing the infiltration of water to the FST will effectively increase the capacity of the wastewater plant, allowing it to capture and treat more water during storm events and thereby reduce the release of contaminants to the Niagara River. Second, reducing the hydraulic gradient through the cross-over area would decrease the rate of ground-water flow offsite from hazardous waste disposal sites adjacent to the ECDS, including the Dupont and Occidental sites along Buffalo Ave., and the Frontier, Dupont and CECOS sites north of Niagara Falls Blvd. Changes to hydraulic gradient, ground-water levels, and stormwater treatment capabilities may necessitate operational modifications (e.g., to pumping regimes) at these hazardous waste sites (Gloria Sosa, EPA, oral communication, 2006).
- These potential benefits would be partially offset by the additional untreated discharge of ground-water contaminants that will continue to enter the ECDS from these sites and flow to the Forebay Canal. The quantity of this loading is unknown, but it is likely that dilution with river water entering the Forebay Canal from the conduits and the Lewiston Reservoir will result in contaminant concentrations that are below detection.
- As an aside, we note a potential complication with determining the rates and directions of ground-water flow in the cross-over area. Several sources of data indicate that a zone of high transmissivity within the bedrock with a high degree of vertical fracturing passes through the cross-over area. This zone was first delineated by Johnston (1964) and was subsequently described by Yager and Kappel (1987). Additional study (unpublished) indicates that the zone extends northeastward N50E toward the Niagara Escarpment and is possibly associated with a basement structure identified using aeromagnetic data. This zone of high transmissivity could serve as a preferential path for water and contaminants flowing within horizontal bedrock fractures and could also provide vertical hydraulic connection between adjacent horizontal fractures.
- As is indicated by the preceding comments, ground-water flow in this portion of Niagara Falls is quite complex and the rates and directions of flow are controlled by a number of natural and man-made boundaries. An assessment of the effectiveness of the proposed action would benefit from continuing study of how sealing the FST affects the flow system. A data collection program should be designed to monitor changes in water levels and contaminant concentrations both in the cross-over area and along the ECDS between the FST and the Forebay Canal.

This page contains no comments

Page 54: "Big Sixmile" is spelled "Big Simile" in this section.

Page 55: In the last paragraph add "tailrace" after "Robert Moses Plant" for consistency. This location is referenced as "the Robert Moses Plant tailrace" elsewhere in the DEIS.

Page 81, Lewiston Reservoir: The first two sentences of this paragraph concern only Lewiston Reservoir. The rest of the paragraph appears to address the Project as a whole. It is unclear how the species numbers listed relate directly to the Reservoir. We recommend providing additional Reservoir-specific information, as appropriate.

Pages 81-82: The last sentence on page 81, as it continues on page 82, has a bracket error (i.e., missing a bracket).

Page 84, Invasive Species: Purple Loosestrife is misspelled as Purple Loosestrive.

Page 93, Rare, Threatened, and Endangered (RTE) Species: In this section and in a separate letter dated July 18, 2006, the Commission has determined that the recommended alternative, including various wetland and fishery enhancements, is not likely to adversely affect the Federally-listed (threatened) bald eagle (*Haliaeetus leucocephalus*). The U.S. Fish and Wildlife Service (Service) concurs with this determination.

Except for the bald eagle and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the Endangered Species Act. Therefore, no further Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) coordination or consultation with the Service is required. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York is available for your information at <http://nyfo.fws.gov/es/section7.htm>. If the licensing action is not completed within 90 days from the date of this determination, we recommend that you check the information on this website to ensure that the listed species presence/absence information is current.

The bald eagle is listed as threatened by the State of New York. The New York State Department of Environmental Conservation contact for the bald eagle is Mr. Peter Nye, Endangered Species Unit, 625 Broadway, Albany, NY 12233 (telephone: 518-402-8859).

Page 99, Oral History: The tone of this paragraph by the Commission needs correction. Insertion of words such as "albeit subjective" and "anecdotal information" are unneeded phrases that belittle this effort and the general value of oral histories. The tone of the DEIS presentation of this topic continues a tone initiated in the Phases 1A and 1B reports. The BIA has taken issue with these reports in their comments to the Power Authority.

A good part of this oral history concerned documenting the memories of Tuscarora members who actually lived through and experienced the construction of the Niagara Project. European and American history is rife with the written documentation of such oral histories; participants, through written letters or written renditions of oral presentations, described events they experienced. An autobiography of, or written letters from, a historic figure, which may be widely cited by historians, is nothing more than the "subjective" and "anecdotal" mental recollections of an individual put to pen and ink.

Page: 21

Author: Staff
Subject: Response
Date: 12/13/2006 8:47:53 AM
We have corrected this error.

Author: Staff
Subject: Response
Date: 11/21/2006 11:03:38 AM
We have made this change to the text.

Author: Staff
Subject: Response
Date: 12/13/2006 8:48:33 AM
We have revised the text to provide the needed clarification.

Author: Staff
Subject: Response
Date: 12/13/2006 8:48:41 AM
We have corrected this error.

Author: Staff
Subject: Response
Date: 12/13/2006 8:48:48 AM
We have corrected this error.

Author: Staff
Subject: Response
Date: 11/30/2006 9:02:56 AM
We have deleted those terms.

Page 101, 1st paragraph, line 3: The “?” after “that” should be deleted.

Page 102, Historic Buildings and Structures, Paragraph 3: Technically, the Niagara Project will not be eligible for listing in the National Register for a few more years. Once the Project meets the 50-year criteria, it will likely be eligible. We suggest changing references from “is likely eligible” to “will likely be eligible”.

Page 127, paragraph 6: The word “Discovery” is misspelled.

Page 130-131, paragraph 6: Data for the City of Niagara Falls should be included in the table of “Selected socioeconomic characteristics for the project area.”

Page 138, Tuscarora Nation: The dollar amount of the settlement for the Tuscarora Nation was \$21.8 million, not \$12.8 million.

Pages 138-139, Our Analysis, Paragraph 2: The Department disagrees with the sentence “We do not believe... Niagara Project.” The Department believes that at least the Tuscarora Nation has suffered, and continues to suffer, disproportionately from the presence of this Project. The first sentence of this paragraph diminishes the events surrounding the construction of the Niagara Project - including the taking of Tuscarora land - and the impacts of its continued operations. The Department agrees with the last sentence of the paragraph stating that the Tuscarora Nation has signed a settlement agreement indicating that their issues, at least in part, have been addressed. Nevertheless, the settlement does not relieve the Commission of its obligation to conduct a meaningful NEPA analysis of the direct, indirect, and cumulative effects (including past effects) of issuing a new license for the Niagara Project.

The DEIS ignores other environmental justice communities to which Executive Order 12898 applies – namely the Seneca Nation of Indians and the Tonawanda Seneca Nation. While neither has specific lands that abut the Project, both have extensive cultural and historic ties to properties included in and abutting the project boundaries. Of most importance is the bypassed reach of this Project. This area is a culturally critical site for the Seneca. In addition, the Seneca Nation of Indians was not included in the distribution list for the DEIS even though they have participated in this relicensing effort.

Page 151, Tuscarora Agreement: The Department does not necessarily object to including in the recreation plan the \$150,000 upgrade of the Power Vista Visitors Center for a Native American exhibit. Similarly, the Department does not object to including this settlement obligation in the Project license. Nevertheless, the funding obligation and the management of these funds should remain separate from the Parks and Recreation Fund outlined in the Relicensing Agreement. The Tuscarora Nation has no involvement in the management of the Parks and Recreation Fund and is not a signatory to the Relicensing Agreement.

Page 153, paragraph 3, line 7: The reference to Secretary of the Interior' *Guidelines for Rehabilitating Historic Buildings*, should be revised to read "Secretary of the Interior's *Guidelines for Treatment of Historic Properties*."

Page 153: The title “Measures Not Recommended” has “Measures” misspelled.

Figures 3-1, 3-3, and 3-5: Each of these figures depicts the boundaries of the Tuscarora Nation Reservation. A dispute exists as to the correct location of the southern boundary in regard to lands currently occupied by transmission lines. These transmission lines are not Project features; rather, they are part of the regional distribution system operated by National Grid. The Energy

Page: 22

Author: Staff
Subject: Response
Date: 11/30/2006 9:03:55 AM
The text has been corrected.

Author: Staff
Subject: Response
Date: 12/13/2006 8:49:51 AM
The text has been revised as requested.

Author: Staff
Subject: Response
Date: 12/13/2006 8:50:01 AM
The text has been corrected.

Author: Staff
Subject: Response
Date: 11/21/2006 11:26:23 AM
We have added the data to the table.

Author: Staff
Subject: Response
Date: 11/21/2006 11:27:31 AM
We have corrected the error.

Author: Staff
Subject: Response
Date: 12/11/2006 7:47:30 AM
We do not dispute that the Tuscarora were adversely affected when the project was constructed, and the project's existence likely serves as a visible reminder of those events.

Author: Staff
Subject: Response to comment
Date: 12/18/2006 7:42:50 AM
In the environmental justice section, we tried to focus on the communities that have been most directly affected by the project. We address all of the tribes' interests in the cultural resources sections of the EIS. We have reviewed the mailing list and note that the project mailing list did include an entry for the Seneca Nation. We are not sure why the list in section 8.0 of the DEIS did not. We will correct this in the FEIS.

Author: Staff
Subject: Response
Date: 12/11/2006 7:50:11 AM
The agreement between the Power Authority and the Tuscarora Nation and the Relicensing Agreement are two separate agreements. It is not the Commissions intent to combine the two agreements. We are less concerned about which fund the monies come from than whether the measure should be in the license.

Author: Staff
Subject: Response
Date: 12/13/2006 9:11:59 AM
The referenced text has been revised.

Author: Staff
Subject: Response
Date: 12/13/2006 9:12:14 AM
The referenced text has been corrected.

7

Act of 2005 requires the Department of the Interior to conduct an audit of all energy easements and energy transmission corridors located on Indian lands and lands that once were tribally owned. The intent of this audit is to determine the legality of such easements and the legitimacy of any reimbursement for the lands and/or easements. The Department requests that Figures 3-1, 3-3, and 3-5 be footnoted to indicate that only Project features and boundaries should be considered accurately depicted.



Page: 23

Author: Staff
Subject: Response
Date: 12/13/2006 9:32:26 AM
None of the referenced project features show the location of an energy easement or transmission corridor. Due to their scale, these figures are only meant to give the reader an indication of the location of the project in relation to other area features.

Page 157, Section 5.3: Please note that the Erie Canalway National Heritage Corridor Preservation and Management Plan has been finalized and was signed by the Secretary of the Interior on June 26, 2006. The Final EIS should reference the Erie Canalway National Heritage Corridor Preservation and Management Plan in the list of Comprehensive Plans, with the following Contact Agency: Erie Canalway National Heritage Corridor, National Park Service, U.S. Department of the Interior, Waterford, New York.



Author: Staff
Subject: Response
Date: 12/13/2006 9:33:46 AM
On November 8, 2006, Commission staff contacted the office of the Erie Canalway National Heritage Corridor. The Erie Canalway National Heritage Corridor Preservation and Management Plan is being revised and is not available. If and when the plan is submitted to the Commission, it will be considered for its consistency with section 10(a)(2)(A) of the Federal Power Act and 16 U.S. C. § 803.(a)(2)(A) for a comprehensive plan.

* * *

The Department appreciates the opportunity to comment on the DEIS for the Niagara Power Project. Please feel free to contact me at (617) 223-8565 if I can be of any assistance.

Sincerely,

Andrew L. Raddant
Regional Environmental Officer

References

Johnston RH, 1964, Ground water in the Niagara Falls area, New York: State of New York Water Resources Commission Bulletin GW 53.

Yager RM, 1996, Simulated three-dimensional ground-water flow in the Lockport Group, a fractured dolomite aquifer near Niagara Falls, New York: US Geological Survey Water Supply Paper 2487.

Yager RM and Kappel WM, 1987, Detection and characterization of fractures and their relation to groundwater movement in the Lockport Dolomite, Niagara County New York: in Khanbilvardi RM and Fillos J, eds., Pollution, risk assessment and remediation in groundwater systems, Scientific Publications, Washington DC.

Yager RM and Kappel WM, 1998, Infiltration and hydraulic connections from the Niagara River to a fractured-dolomite aquifer in Niagara Falls, New York: Journal of Hydrology 206:84-97.

This page contains no comments

UNITED STATES OF AMERICA

Before the

FEDERAL ENERGY REGULATORY COMMISSION

New York Power Authority)
)
) **Project No. 22216-066**
) **Niagara Power Project**

**COMMENTS OF
NEW YORK STATE ELECTRIC & GAS CORPORATION
AND ROCHESTER GAS AND ELECTRIC CORPORATION
ON DRAFT ENVIRONMENTAL IMPACT STATEMENT**

On July 14, 2006, the Commission issued a Draft Environmental Impact Statement ("DEIS") analyzing the application for a new license for the Niagara Power Project (the "Project") filed in this proceeding by the New York Power Authority ("NYPA"). These comments are submitted on behalf of New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") (collectively, the "Companies") pursuant to the Notice of Issuance of the DEIS, which required that written comments be filed by September 19, 2006. 71 Fed. Reg. 43,149 (July 31, 2006). In these comments, the Companies respectfully suggest that the DEIS' consideration of socioeconomic and cumulative impacts is inadequate under both the Federal Power Act and the National Environmental Policy Act, because it fails to consider the effect on the Companies' residential customers of the withdrawal of Project power.

This page contains no comments

THE COMPANIES

RG&E is a combined electric and gas utility that provides electric service to 650,000 customers in a nine-county region in upstate New York centered on the City of Rochester. <http://www.rge.com/rgeweb/webcontent.nsf/company/Profile>. NYSEG is a combined electric and gas utility that provides electric service to 848,000 customers in a 42-county region in upstate New York extending across the Southern Tier from portions of Erie and Niagara Counties to the Catskills and including separate service territories along the eastern border of New York State. <http://www.nyseg.com/nyseg.web/webcontent.nsf/company/ServiceArea>.

HISTORY OF THE PROCEEDING

The Niagara Project was licensed by the Federal Power Commission ("FPC") on January 30, 1958, for a term of 50 years, expiring on August 31, 2007.¹ On August 18, 2005, NYPA filed an application ("Application") for a new license for the Niagara Project.² The next day, August 19, 2005, NYPA filed an Offer of Settlement and Explanatory Statement accompanied by four settlement agreements.³ These settlement agreements were entered into by NYPA and a total of 29 other parties. The Companies did not sign any of these agreements.

¹ *Power Authority of the State of New York*, 19 FPC 186 (1958), *superseding* 18 FPC 344 (1957). The 50-year term of the license ran from the September 1, 1957, effective date of the superseded order.

² New York Power Authority Application for New License, Niagara Power Project, FERC No. 2216-066 (Aug. 18, 2005).

³ Niagara Power Project Relicensing Offer of Settlement and Explanatory Statement, Project No. 2216-066 (Aug. 19, 2005).

This page contains no comments

On October 19, 2005, the Commission issued a Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests.⁴ On November 7, 2005, the Commission issued a Notice of Intent to Prepare Environmental Impact Statement for the Project.⁵ That notice stated that the Commission would consider comments filed with the Commission on the Application and Offer of Settlement. In response to that Notice, the Companies on December 16, 2005, filed Comments in Opposition to Application for New License (“December 2005 Comments”). On February 7, 2006, the Commission issued a Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendation, and Prescriptions (“REA Notice”).⁶ In response to the REA Notice, the Companies filed comments on April 4, 2006 (“April 2006 Comments”). As noted, the Commission issued the DEIS on July 14, 2006. It held a public hearing on the DEIS in Niagara Falls on August 17, 2006.

BACKGROUND

The Niagara Project was developed pursuant to a special act of Congress, the Niagara Redevelopment Act (“NRA”), which directed the FPC to issue a license to NYPA “for the construction and operation of a power project with capacity to utilize all of the United States share of the water of the Niagara River permitted to be used by

⁴ *Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests*, Project No. 2216-066 (Oct. 19, 2005).

⁵ *Notice of Intent to Prepare Environmental Impact Statement*, Project No. 2216-066 (Nov. 7, 2005).

⁶ *Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendation, and Prescriptions*, Project No. 2216-066 (Feb. 7, 2006).

This page contains no comments

international agreement.”⁷ The NRA obligated NYPA to allocate power to particular classes of customers:

[i]n order to assure that at least 50 per centum of the project power shall be available . . . primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use, the licensee in disposing of 50 per centum of the project power shall give preference to public bodies and nonprofit cooperatives within economic transmission distance.⁸

Congress further directed NYPA to provide for resale rates for Project power in a manner consistent with this language. These provisions of the NRA were included in the Commission’s original license for the Project. Moreover, they have been included as proposed license articles in the Relicensing Settlement Agreement Addressing New License Terms and Conditions filed by NYPA (“Relicensing Settlement Agreement”) on August 19, 2005.⁹

NYPA is a public body created under New York law and charged with providing benefits to consumers from power generated by the Project. Specifically, Section 1005(5) of its enabling statute, the Public Authorities Law of the State of New York (“PAL”), authorizes and directs NYPA to develop, maintain, manage and operate the Niagara Project and states that “in the development of hydro-electric power [from the Project] such projects shall be considered primarily as for the benefit for the people of the state as a whole and particularly the domestic and rural consumers to whom the power can economically be made available.”¹⁰ As with the NRA, the PAL allows NYPA to

⁷ Public Law 85-159; 16 U.S.C. § 836(a)(2005).

⁸ *Id.* at § 836(b)(1).

⁹ Relicensing Settlement Agreement, App. A at A-7.

¹⁰ New York Public Authorities Law, NY CLS Pub. Auth. § 1005(5).

This page contains no comments

contract for the sale, transmission, and distribution of Project power on terms consistent with the foregoing policy. Consistent with the NRA's focus on the provision of rates benefiting electric consumers, the PAL also specifies that the resale rate for Project power shall be "no higher than those [rates] at which the power was purchased from the authority."¹¹

For more than 40 years, the Companies have purchased large blocks of power from the Niagara Project and have sold this power to more than one million residential consumers across upstate New York, without markup and without profit, as the statute requires. Specifically, NYSEG purchases 110 MW of Firm Power and 150 MW of Peaking Power from the Project. RG&E purchases 65 MW of Firm Power and 35 MW of Peaking Power.¹² These contracts expire on August 31, 2007, along with the license for the Project.

The Application filed in August 2005 did not specify whether NYPA intends to extend these existing contracts with the Companies. Rather, the Application stated that the disposition of the power "has not as of this date been determined."¹³ As described in the April 2006 Comments,¹⁴ NYPA has refused to enter into negotiations to extend the existing contracts or to commit that any part of such allocations will continue for the benefit of the Companies' residential customers once a new license for the Project has

¹¹ *Id.* at § 1005(5)(g).

¹² As explained in the April 2006 Comments, the Companies' customers receive the benefit of this allocation through a non-bypassable wire charge, regardless of their choice of electricity supplier. April 2006 Comments at 5-6.

¹³ Application at B-25.

¹⁴ April 2006 Comments at 19-22.

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been issued. In contrast, NYPA has entered into agreements with purchasers in neighboring states,¹⁵ and with various other parties to settlement agreements.¹⁶

If the NYSEG and RG&E contracts for Project power are not extended, more than one million residential customers of NYSEG and RG&E will experience severe adverse socioeconomic impacts. All residential customers will see a significant increase in their electric rates. In their December and April Comments, the Companies provided evidence that the total value of the contracts to their customers this year alone would be more than \$100 million. Loss of the contracts would result in rate increases of as much as 8.7% for NYSEG's customers, and 14.2% for RG&E's customers.¹⁷

The socioeconomic impact on the territory served by the Companies will be equally severe. The gross regional product in the Companies' combined service territories would decline by \$97 million/year. Wages and salaries would decline by more than \$40 million/year. Almost 1,200 jobs would be lost and 2,326 residents would be compelled to move elsewhere.¹⁸ Unquestionably, as the evidence provided by the Companies concluded, the loss of NYPA power "will have a highly adverse effect on

¹⁵ Relicensing Settlement Agreement Addressing Allocation of Niagara Project Power and Energy to Neighboring States (filed Aug. 19, 2005) ("Neighboring States Agreement").

¹⁶ Thus, NYPA has agreed to provide 25 MW of firm power and associated energy to the host communities or their designees, 1 MW to the Tuscarora Nation, and 3 MW of firm power to Niagara University. DEIS at 135-137.

¹⁷ April 2006 Comments at 8-10. If the value of allocations from NYPA's St. Lawrence Project, which are covered by the same contracts as the Niagara allocations, is included, the rate increases for NYSEG's customers would be as much as 14.5%, and for RG&E's customers, as much as 25.7%. *Id.*

¹⁸ April 2006 Comments, Attachment 2 at 7-8. This analysis was based on the same report prepared by NERA Economic Consulting, *The Past, Present and Future Socioeconomic Effects of the Niagara Project (Aug. 2005)*, submitted by NYPA and relied on by the DEIS. DEIS at 133. Moreover, since wholesale electric prices have increased significantly since the report on which this analysis was based was prepared, the socioeconomic impacts of the loss of Niagara power will be significantly greater.

This page contains no comments

customers at a time when energy costs continue to escalate and the economy in the Companies' service area continues to struggle."¹⁹

There is no justification in the relevant law for ignoring these adverse impacts on the Companies' residential consumers. Neither the NRA nor the PAL provides that the economic benefits of the Project should be reserved for the exclusive benefit of customers of municipal and cooperative systems, to the exclusion of other residential customers. Rather, the drafters of both the NRA and the PAL indicated that the intended beneficiaries of the Project are the "people of the state as a whole" and "particularly the domestic and rural consumers" of the state. In contrast to the preference language elsewhere in the statute, this language gives no advantage to public power groups, municipal plants, rural cooperatives, or investor-owned utilities. In short, the residential customers of the Companies are also part of a specially-protected class under both the NRA and the PAL. Yet, the DEIS contains no discussion of the impact of power allocation on the Companies' customers under the new license, and no discussion of how withdrawal of the power will affect their interests.

COMMENTS

The continued availability of Project power to the Companies' residential customers is an issue that should have been discussed in the DEIS. It is an issue in this proceeding pursuant to the provisions of Section 15 of the Federal Power Act²⁰ and the National Environmental Policy Act ("NEPA").²¹ The Commission will have to

¹⁹ April 2006 Comments, Attachment 1 at 12.

²⁰ 16 U.S.C. § 808 (2005).

²¹ 42 U.S.C. §§ 4321 *et seq.* (2005).

determine whether NYPA's studied refusal to develop the record on this issue requires that the record be reopened so that further evidence can be provided for consideration in the final environmental impact statement ("FEIS"). At the very least, this issue should be discussed in the FEIS on the basis of the evidence provided by the Companies in their earlier Comments.

A. The Allocation of Project Power to the Companies' Customers is an Issue that Should Have Been Addressed in the DEIS.

Section 15 of the Power Act sets forth criteria that the Commission must evaluate in issuing a new license. It requires the Commission to consider "the need of the applicant over the short and long term for the electricity generated by the project . . . to serve its customers, including . . . the reasonable costs and availability of alternative sources of power, taking into consideration . . . the effect on the provider (including its customers) of the alternative source of power."²² As Customers for 40 years, the Companies and their residential consumers fall squarely within the concerns addressed by this provision. In addition, in the case of an application for a new license by an existing licensee, such as NYPA, the Commission must also consider the licensee's "record of compliance" with the terms of the existing license, and actions by the licensee related to the project "which affect the public."²³ Withdrawal of power from the Companies will affect their customers, who are members of the public; and this is an action by the licensee that the Commission must consider. Withdrawal of Project power from the

Author: Staff
Subject: Response to comment
Date: 12/14/2006 2:53:27 PM
Section 1.2.2 of the DEIS included a discussion of the need for and use of the project's power. Section 3.3.8 discusses the allocation of project power.

Author: Staff
Subject: Response to comment
Date: 12/13/2006 10:06:06 AM
In accordance with Section 10 and 15 of the FPA, the Commission's order on the license application will discuss NYPA's record as a licensee with respect to the following: (1) conservation efforts; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission service; (7) cost effectiveness of plans; and (8) actions affecting the public.

²² 16 U.S.C. § 808(a)(2)(D) (2005). Contrary to NYPA's earlier assertion (*The Power Authority of the State of New York's Answer to Comments and Protests*, Project 2216-066 (Jan. 3, 2006)) that Section 15 concerns competition at relicensing, Section 15 expressly provides that the Commission is to consider the factors listed "whether or not more than one application is submitted for the project." 16 U.S.C. § 808(a) (2005).

²³ 16 U.S.C. § 808(a)(3) (2005).

This page contains no comments

Companies would force them, and their customers, to rely on more expensive alternative sources of power. This impact on customers and members of the public is a factor that the Commission must consider in relicensing the Project.

Finally, NEPA requires the Commission to consider the impact of withdrawing Project power from the Companies' customers. Fundamentally, NEPA requires that the Commission's final environmental impact statement ("FEIS") contain "sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a 'hard look' at environmental factors, and to make a reasoned decision."²⁴ Socioeconomic impacts must be considered, when they are "interrelated" with the action under consideration.²⁵ NEPA also requires the Commission to analyze cumulative impacts. A "cumulative effect" is defined as

"the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*"²⁶

Further, NEPA requires a cumulative impact analysis of reasonably foreseeable future actions, whether or not they have actually been proposed.²⁷ As discussed below, sales to

²⁴ *Tongass Conservation Society v. Cheney*, 924 F.2d 1137, 1140 (D.C. Cir. 1991) (quoting *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988)).

²⁵ "When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. 40 C.F.R. § 1508.14(2005). See *City of Rochester and Genesee-Finger Lakes Regional Planning Board v. U.S. Postal Service*, 541 F.2d 967, 973 (2nd Cir. 1976) (consideration of socioeconomic impacts wholly neglected).

²⁶ 40 C.F.R. § 1508.7 (emphasis added). Thus, regardless of the forum in which the issue of power allocation will ultimately be resolved, consideration of the issue is required in this DEIS. NEPA and Section 15 of the Power Act both require the Commission to consider the matter during relicensing and in the NEPA process.

²⁷ *Fritiofson v. Alexander*, 772 F.2d 1225, 1243 (5th Cir. 1985).

This page contains no comments

the Companies' customers fall within both headings; yet they were considered under neither.

B. The DEIS Failed to Consider the Impact of Withdrawing Project Power from the Companies' Customers.

In preparing the DEIS, Commission Staff recognized that one of the key impacts of relicensing the Niagara Project is the economic effect of the allocation of power from the Project, and that it was necessary for the DEIS to consider this subject in its analysis of socioeconomic impacts. However, as it stands, the DEIS's evaluation of socioeconomic impacts will not provide an adequate basis for the Commission to reach a decision, because the DEIS overlooked and failed to consider one key aspect of those socioeconomic effects – the effect on the Companies' customers of the loss of power from the Project.

The DEIS discussion of socioeconomic impacts is 11 pages long, most of which is devoted to extolling the benefits that flow from the Project's low-cost power. However, while the benefits of the power are plain, the critical socioeconomic issue in this relicensing is not their existence, but their distribution. Unfortunately, the DEIS is silent on this subject.

This omission is surprising. The DEIS notes (at 6) that the Companies filed comments in response to the REA Notice, and states that the comments "are addressed in the appropriate resource area sub-sections of section 3.0 of this DEIS." In fact, though, sections 3, and 3.3.8 (Socioeconomics) in particular, are silent on the concerns raised by the Companies. In fact, the DEIS contains absolutely no discussion of the impacts of a reallocation of Project power during the term of the new license.

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For instance, the DEIS draws comparisons with New York State as a whole, in order to highlight the benefits of the Project. Yet, the DEIS (at 130) defined the Project area as Erie and Niagara Counties, thereby excluding the majority of the service territory of NYSEG and the entire territory of RG&E. The DEIS notes the distressed economic conditions in Erie and Niagara Counties and in the undefined region described as “western New York.” It does not demonstrate, however, that distressed conditions are limited to these two counties, or that residents there differ in some material way from their neighbors to the east and south. Thus, the DEIS seems to define the Project area to exclude the population of nearly 2.9 million people in the Companies’ service territories. Of the nearly 2.9 million people served by the Companies, only 218,000 live within the two-county Project area as defined in the DEIS. Yet the DEIS does not explain why only this smaller group should be considered. In fact, this arbitrary definition of the “affected environment” bears no relationship to the actual distribution of Project power or of the effects of any reallocation of that power.

The DEIS notes (at 132) that the current license requires the Project to make at least 50 percent of the project power available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural customers. The DEIS then notes that half of the Project’s firm power is allocated to preference customers, and that 250 MW are sold to investor-owned utilities. The DEIS also states (at 131) that low-cost Project power is responsible for 172,000 jobs state-wide and goes on to note (at 133) that NYPA’s consultant, NERA, had performed “a specific assessment of the economic impact of these jobs that are tied contractually to the project.” However, apart from the

This page contains no comments

passing reference to sales to investor-owned utilities, the DEIS does not discuss the use, benefit, or loss of the power represented by these sales.

The DEIS concludes (at 133) that “[t]he low-cost power and direct spending from the project have brought jobs and, with those jobs, an associated increase in residents relative to the situation that might exist if the project were not present.” Further discussion, however, is limited to impacts on Erie and Niagara Counties. The DEIS then states:

The relicensing agreement includes two proposed license articles under which the current license requirements for allocation of project power would continue through a new license term. *Assuming at least half of the project's low-cost power continues to be allocated to the local region*, the benefits of low cost power that have accrued to the local area and region during the past license term would continue through a new license term.

DEIS at 134 (emphasis added). This assumption suggests that the authors of the DEIS may misunderstand what the record shows about the allocation of the future benefits of Project power. If the authors of the DEIS meant to assume the continued availability of power now sold to the Companies, there is no record basis for the assumption. Indeed, the only record evidence supports the opposite conclusion, namely that sales to the Companies will *not* continue. Yet, there is no discussion whatsoever of this impact of this eventuality and no explanation how “the benefits of low cost power that have accrued to the local area” would in fact continue during the new license. On the other hand, if the DEIS is referring only to the power allocated to preference customers, as described on page 133, then it is simply disregarding the sales to the Companies. By disregarding these sales, the DEIS has assumed away the key critical impact that it should be evaluating.

The record evidence shows that the loss of Project power will have a dramatic adverse impact on the Companies' one million residential consumers, who are members of the class to be benefited by the Project. The DEIS paints a rosy picture of the benefits flowing from Project power but nowhere discusses what happens when that flow is cut off, as the record suggests it will be. Certainly, NYPA has given no record support for any other conclusion and, in light of this, the DEIS can only consider the possibility that sales to the Companies will in fact cease when the current license expires.

Even if sales to the Companies are characterized as "cumulative effects," they should have been considered in the DEIS. For instance, the DEIS characterized power sales to the host communities, the Tuscarora Nation, and Niagara University as cumulative effects of the relicensing. Even if Staff determined that sales to the Companies should not be considered along with other sales and socioeconomic effects, in sections 3.3.8.1 and 2 of the DEIS, as they should have been, they would have to have been included as cumulative impacts in section 3.3.8.3, along with other power sales.

In discussing the many side agreements entered into by NYPA as part of the relicensing settlement, the DEIS states (at 137) that the agreements "would have cumulative socioeconomic benefits for the communities adjacent to and/or near the project." Similarly, the DEIS notes that allocations of low-cost power under the side agreements would "benefit economic development" and "support the economic recovery of the region by keeping energy costs low."

Of course, the converse is also true. The *withdrawal* of allocations of low-cost power from the Companies will undermine economic development and hinder the economic recovery of the region. Unfortunately, the DEIS does not consider both sides

Page: 36

Author: Staff

Subject: Response

Date: 12/18/2006 7:45:05 AM

The current license for the Niagara Project includes two power allocation-related articles. Article 20 requires that the licensee (in order to assure that at least half of the project power is available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers) give preference and priority to public bodies and non-profit cooperatives within economic transmission distance. Article 21 requires that the licensee make a reasonable portion of the project power (up to 20 percent and subject to the preference provisions of Article 20) available for use within reasonable economic transmission distance in neighboring States. Whether these articles are included in the new license will be addressed in the Commission's decision on the application. Neither of these Articles specifies to which specific entities NYPA is to make project power available. In addition, the impacts of whether or not specific power sale contracts are renewed in the future was not addressed because we don't know which contracts will or will not be renewed. In addition, while we agree that if a particular entity's contract is not renewed that entity could be adversely affected; however, that amount of project power would presumably go to another entity(s) which could benefit. As such, the net effect, would be insignificant.

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of this equation. As a result, the record simply does not contain the facts that the Commission must have to make an informed decision in this matter.

CONCLUSION

The DEIS in this proceeding provides an inadequate analysis of the socioeconomic impacts of the relicensing of the Niagara Project. Specifically, the DEIS considers only the beneficial impact of low-cost power from the Project and nowhere takes into account or considers the negative impact that will result from the loss the same low-cost power that is now sold to more than one million customers of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation. The record in this proceeding should be reopened to enable the parties to present additional evidence on this subject and the FEIS should be revised to include this information.

Respectfully submitted,


Jeffrey A. Rosenbloom

*Counsel for New York State Electric & Gas
Corporation and Rochester Gas and
Electric Corporation*

Of Counsel: Thomas E. Mark

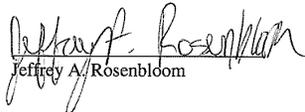
Dated: September 18, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing "Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation on Draft Environmental Impact Statement" to be served, either electronically or via first class mail, upon all parties on the official service list maintained by the Commission for Docket No. P-2216-066.

Dated at Rochester, NY this 18th day of September, 2006.


Jeffrey A. Rosenbloom



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

September 11, 2006

RECEIVED BY THE SECRETARY
SEP 19 P 3:45
NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Ms. Salas:

Re: FERC No. 2216-066
Niagara Power Project Relicensing
Erie & Niagara County, New York
03PR01037/06PR0688

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). The SHPO has reviewed the Draft Environmental Impact Statement (FERC/DEIS - 0198D) dated July 2006 in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended.

Based upon this review, the SHPO is pleased to offer the following comments and recommendations:

1. Include literature search and sensitivity assessment after Phase IA
2. It may be helpful to clarify 3.3.5.1 Affected Environment (page 96) by rewording the second sentence in the second paragraph to read, "The investigation area includes locations that may be affected by water level fluctuations, including associated upland areas that may be impacted by project features. Erosion is the only identified project affect at this time. These areas include locations within the project boundary...."
3. Under Archaeological Resources (page 96)
 - a. insert "known" before archaeological sites in the first sentence
 - b. foot note 9 reword to say, "Sensitive areas are those zones that are being affected or could be affected by erosion."
 - c. add within 1 mile of the investigation area after "A total of 201 known sites were identified..."
4. Spell out Office of Parks, Recreation and Historic Preservation (OPRHP) following its first usage (page 97). It may be helpful to indicate that the OPRHP is known as the State Historic Preservation Office.
5. Change Fort Niagara Light to Fort Niagara Lighthouse

ORIGINAL

Page: 39

Author: Staff
Subject: Response
Date: 11/30/2006 9:27:31 AM
The text has been revised.

Author: Staff
Subject: Response
Date: 11/30/2006 12:07:43 PM
The description of the investigation area was agreed to early in the planning process and was used to conduct the field surveys. It would not be appropriate to revise the description. Project effects, such as potential erosion, and our recommendations are discussed in section 3.3.5.2 Environmental Effects and Recommendations and section 5.1.6 Historic Properties Management Plan.

Author: Staff
Subject: Response
Date: 11/30/2006 12:09:46 PM
The text has been revised to address items 3-6.



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

6. Since level of disturbance is unknown and must be systematically documented, we would recommend that a portion of the first paragraph on page 103 is reworded to read, "The improvements planned for the recreation sites are at established sites that were modified when the sites were constructed. However, there is still the possibility that there are significant undiscovered properties, especially in areas where new construction would occur."
7. The SHPO does not recommend an intensive buildings and structures survey as indicated in the following sentence in *Historic Buildings and Structures* (page 102), "In the next phase of the investigation, the Power Authority proposes to assess potentially eligible buildings and structures located within the investigation area for their eligibility for the National Register."
8. Please add, "on an as needed basis in consultation with the SHPO" after "The Power Authority plans additional investigations..." in the second sentence of the last paragraph on page 97.
9. Change Criterion A to Criteria A and D in the last sentence of Historical/Architectural Properties (page 98).
10. The historic properties noted in the section Properties listed in the National Register of Historic Places (page 98) does not appear to be complete.
11. Add "National Historic Landmark" after Niagara Falls Reservation in the third sentence under Properties listed in the National Register of Historic Places (page 98).
12. Under *Our Analysis* (page 101) add, "process to address cultural resources associated with future projects prior to construction".
13. The SHPO recommends that the HPMP include a Native American consultation protocol that will be followed for future undertakings.

The SHPO appreciates the opportunity to comment on this information. Please telephone me at ext. 3280 with any questions you may have.

Sincerely,

Nancy Herter
Historic Preservation Program
Analyst, Archaeology

cc. John Costello, FERC (faxed this day to 202-219-2152)
Laura Dean, ACHP
Neil Patterson, Tuscarora Nation
Christine Abrams, Tonawanda Seneca Nation
Kathy Mitchell, SNI THPO

- Author: Staff
Subject: Response
Date: 11/30/2006 12:10:36 PM
The section is a description of the Power Authority's proposal to assess potentially eligible buildings and structures located within the investigation area for their eligibility for the National Register of Historic Places. In section 3.3.5.2 Environmental Effects and Recommendations of the EIS we address the SHPO's recommendation to limit the investigation of historic structures to the current list of properties listed in or eligible for the National Register at this time and additional consultation and surveys can be conducted as needed in the future. In section 5.1.6 Historic Properties Management Plan (HPMP) of the EIS, we provide our analysis of the Power Authority's proposal and the SHPO's recommendation. We conclude that additional evaluation of historic structures should only be required in the event of construction projects that involve buildings and structures 50 years or older in order to determine eligibility for the National Register and any possible effects. We recommend that this task be included in the HPMP.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:11:11 PM
See response to item 7.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:11:42 PM
The text has been revised.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:12:27 PM
The Adam Power Plant Transformer House National Historic Landmark was inadvertently omitted from the list. It has been added.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:13:15 PM
The text has been revised.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:13:57 PM
These tasks are addressed in the items that the Power Authority proposes to include in the HPMP. As proposed, the HPMP includes measures for the protection and preservation of historic properties, treatment of previously unidentified properties during project-related construction. However, specifically identifying what action the Power Authority will undertake regarding cultural resources when planning construction activities will further clarify what would be included in the HPMP. We have revised the EIS to include this task to be addressed the HPMP.
-
- Author: Staff
Subject: Response
Date: 11/30/2006 12:14:41 PM
In the EIS, we recommend (this is also stipulated in the PA to be executed between the Commission, SHPO, and the ACHP) that the Power Authority consult with the Tonawanda Seneca Nation, Tuscarora Nation, and Seneca Nation of Indians, among others, in the development and implementation of the HPMP. This consultation also includes identification and evaluation of historic properties, determination of effects, and ways to avoid, minimize or mitigate adverse effects, and coordination during implementation of the HPMP. To clarify how the consultation will transpire we have revised the EIS to recommend that the HPMP and PA include a procedure specifying how the consultation will occur. Specifying a consultation procedure in the HPMP eliminates the necessary of entering formal consultation, pursuant to section 106, with the SHPO for future activities.

This page contains no comments

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

New York Power Authority) Project No. 2216-066
Niagara Power Project)
Relicensing and Settlement Proceeding)

**EASTERN NIAGARA POWER PROJECT ALLIANCE
SUBMISSION OF COMMENTS TO
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Pursuant to a July 14, 2006 Notice of the Federal Energy Regulatory Commission's ("Commission") issuance of a Draft Environmental Impact Statement ("DEIS") for the relicensing of New York Power Authority's ("NYPA" or "Licensee") Niagara Power Project ("Project"), the Eastern Niagara Power Project Alliance ("ENPPA" or "Movant"), an unincorporated association of municipal governments and school districts located in Niagara County, New York, hereby submits its preliminary comments to the DEIS. These comments are preliminary in nature as it is expected that the Commission will issue in the very near future a policy statement on the use and approval of settlements in licensing proceedings. Specifically, the Commission has issued a Sunshine Notice that it may take up for consideration at its September 21 public meeting agenda item H-1 – "PL06-5-000 Settlements in Hydroelectric Licensing Proceedings under Part I of the Federal Power Act." As there is no advance draft of this long expected policy and given the significant role that settlements are intended to play in the Project's relicensing, ENPPA respectfully reserves its right to comment on the settlement policy and the implications thereof upon the settlements filed to date in this proceeding within a reasonable time after the settlement policy's issuance.

ENPPA is a formal party to the relicensing proceeding, and has filed previously comments and a protest to the Project's relicensing. ENPPA represented by its Chairman, Mayor Michael Tucker, City of Lockport, attended the August 17, 2006 public hearings and provided public comments critical of the DEIS. ENPPA, though comprised of communities located in Niagara County, is not represented by Niagara County, which is a member of the Niagara Power Coalition ("NPC").

Though some could say that the DEIS is fatally flawed, it is better to state at this juncture that the DEIS is incomplete. In particular, several of its key analyses, *e.g.*, socioeconomic impacts upon local communities, project power benefits, impacts upon tributaries, are either truncated and/or based on incomplete or inaccurate information. These deficiencies have prevented the Commission through the DEIS from having taken the requisite "hard look" at the environmental consequences of a proposed action. *See, e.g., Kleppe v. Sierra Club, 427 U.S. 390, 410, n.21, 49 L. Ed. 2d 576, 96 S. Ct. 2718 (1976).* These deficiencies reflect Staff's undue reliance upon the settlements and Alternative Licensing Process ("ALP") and what appears in many relicensing proceedings to be a crusade to justify the use of ALP, and by extension the newest version -- the Integrated Licensing Process, by a fanatical-like adherence to proposed schedules for issuing a final order.

Thus, the DEIS' consideration of alternatives is narrow, myopic and reflects the undue influence of the settlements and the obvious bias of Staff to use the ALP as justification of a predetermined outcome rather than as a means for analysis of the environmental impacts of the relicensing action under consideration. The most significant flaws of the DEIS are its failure to provide sufficient information for the assessment of cumulative impacts associated with the Project upon the local communities comprising Niagara County and in particular those

Page: 42

Author: Staff

Subject: Response

Date: 12/11/2006 8:05:39 AM

Please see our response to the Housing Authority and Terry Yonker. We believe we did conduct an independent analysis of the effects of relicensing the project and that our DEIS recommendations bear that out. Specifically, there are items in the side agreements that we think should be included as license requirements; likewise, there are measures in the relicensing agreement that we do not recommend be required in the license. Regarding alternatives, we typically assess a no-action alternative, the licensee's proposal, and a staff alternative. In this case, we added a composite alternative that includes the mandatory water quality certificate conditions.

represented by ENPPA. In this regard the DEIS assessment of socioeconomic impacts from NYPA's continued operation of the Project, which are assessed in the previously filed FMY 2004 report, is inadequate. Indeed, the DEIS fails to even acknowledge the FMY report's existence thus prompting the Mayor of the City of Lockport to provide at the August 17, 2004 public hearing additional copies of the report for their inclusion in the hearing's record.

Another failure of the DEIS is its almost rote adoption of the application's project economics. Thus, the economic value of the Project's power is grossly understated and the ability of the Project to make future allocations is blurred by the obfuscation employed in the DEIS as to what power is meant by the terms firm, available for allocation, maximum net capacity, etc. How else does one explained that the DEIS has the Project's installed capacity at (existing) 2,755 MW, NYPA uses approximately 2400 MW and 1880 MW as the allocation that is dependable for firm distribution. Yet, how all of these numbers relate to the soon to be complete Project capacity up grades and the implications there of for additional allocations and/or sales is either left not assessed or the nomenclature is less than precise and/or contradictory. Staff should sort out and define common terms, *e.g.*, installed capacity, maximum net capacity, firm sale, non-firm sales, etc.

The need for the DEIS is provide clear definition of terms is amply demonstrated by the use of the term firm power. Usually this term does not need definition. A review of the FDR settlements clearly shows sample contracts for the provision of firm and non-firm power. Yet, a cursory look at the three settlements affording the deliver of firm power to NPC, Niagara University and the Tuscarora Nation shows either no qualifies to those terms or explicit and detail qualifies tied to load characteristics, *e.g.* Niagara University. As note elsewhere, the need for clear and unambiguous definitions is necessary as these settlements propose to be migration

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Author: Staff
Subject: Response
Date: 12/11/2006 8:06:40 AM
Please see our response to NYSEG and RG&E. The EIS includes an assessment of the anticipated socioeconomic effects of continued project operation. We acknowledge that it is a broad overview, but believe it is sufficient for guiding decisions on what measures to include in a new license.

Author: Staff
Subject: Response
Date: 12/6/2006 8:16:42 AM
DEIS section 4.1 explains the Commission's approach to evaluating the economics of hydropower projects, and the parameters used in the analysis. The section clearly states that the purpose of analysis is to provide a general estimate of the potential power benefits and costs of a project and reasonable alternatives to project power. The estimate is one factor that helps to support any Commission decision concerning the public interest with respect to the proposed license.

of project related impacts or any claims asserted as such, *see, e.g.* Host Community Settlement Agreement. It is clear, with regard to the Host Community Settlement Agreement, that there is a very real, material dispute taking place with regard to the delivery of firm power. *See* attached news paper article. The dispute involves whether NYPA will deliver 25 MW of firm power or 17.5 MW after applying a load factor of 70%. The public interest would be served by Staff clarifying the exact amount of power to be delivered at any one time to each settling party, any restrictions thereon, or additional costs, and then assessing whether the public interest is served by the settlements either as they are directly involved in the relicensing process or “related” thereto and must still be considered in the DEIA.

The DEIS also fails to note that the annual average generation, after completion of the current project up-upgrades is expected to be 15,000,000,000 kWh – not 13,700,000,000 kWh. For example the PDEA at 1-4, states that the dependable capacity is approximately 2400 MW and that the expected annual generation will be 15,000,000 MWh over the term of the new license. *See, also* PDEA at 4-96. Clearly, the expected annual generation used in the DEIS assessment of Power and Economics of the Project (DEIS Section 4.0) needs to be identified and used consistently through out.

Furthermore with regard to Section 4.0 the entire analysis needs to be revised to reflect:

1. A value for energy that is more likely to persist at the on-set of the Project’s new license term. Use of historical data, three years, (DEIS at 141) to arrive at an energy component value of \$42.18 per MWh (2007\$) significantly under values and thereby skews the analyses provided in Section 4.0 and the conclusions drawn there from. Recent market data, obtained from the market data website posted by NPC’s energy consultants representing, consistently show significantly higher average annual energy values for the NYISO’s Western Zone. Two

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Author: Staff
Subject: Response
Date: 12/6/2006 8:16:24 AM
On page 135 of the DEIS it states “firm power and associated energy to the host communities of 25 MW. The amount of power to be delivered to each settling party is to be decided through negotiations with the Power Authority and not mandated by the Commission.

Author: Staff
Subject: Response
Date: 12/6/2006 8:13:04 AM
The DEIS consistently states the generation value based on record and given in the application. A slightly higher future generation value was presented in the PDEA. If the higher value were used in the analysis it would only yield a proportionately higher set of economic values, but there would not be any changes in the order of value to the alternatives.

Author: Staff
Subject: Response
Date: 12/18/2006 7:47:33 AM
As explained in DEIS section 4.0, the Commission’s approach to evaluating the economics of hydropower project’s uses current costs with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The value of the Project’s power is stated and explained in DEIS section 4.1, Table 4-2 as \$49.09 per MWh. The commenter points to much higher values from market data referencing long-term forward markets which is inconsistent with the Commission’s approach. The same market data provided by the commenter lists real-time market prices of \$38.46 and \$62.89 per MWh, the average of those values being \$50.67 per KWH, and there is also listed a pair of Day-ahead market values of \$44.88 and \$52.78 per KWH, the average of which is \$48.83 per KWH. Both sets of values bracket the one used in the DEIS and further validate its use.

This page contains no comments

recent market reports would put a range of values just for energy of approximately \$80.00 - \$75.00 for 2007, \$75.00 - \$68.00 for 2008, and \$70.00 - \$66.00 for 2009. Copies of the two market reports for September 8 and 18, 2006 are attached. Though one can argue about future rates, it is clear that the DEIS' figures are not even in the ballpark.

2. Further, Staff should reconsider the use of an average, blended rate for peak and non-peak generation. The Project clearly is designed to produce more power at a higher value during peak periods. Hence, a blended, or as referred to "all-hours average price" (DEIS at 142) should not be used as it also contributes to undervaluation of the Project's power benefits, etc.

3. Staff should perform the same calculation with in puts for taxes as if owned by a private entity. Such inputs would include state and federal income taxes, sales taxes and property taxes. Though such inputs will affect over all cost of production of project power, the implications thereof upon the net poser benefits should also be assessed so that the public can better understand the tremendous capability of the Project to enhance the local economies (*See* DEIS at V, Forward). It is respectfully submitted that the Project was to serve, and should serve, the public interest of stimulating local economies, a promise made in the 1950's that is yet to have come to fruition. *See* FMY 2004 Report, 9 – 48. The ability of the Project to enhance local economies and to mitigate the loss of tax revenues is significantly more than the contributions noted in the DEIS at 132, which amount to less than \$19,000,000 since 1990.

The FMY report utilizes as its basis the NYPA report -- "The Past, Present and Future Socioeconomic Effects of the Niagara Project" (referred to as NERA, 2004), submitted by NYPA and referred to by the DEIS (*e.g.*, DEIS at 133). Thus, the DEIS should have addressed the FMY report's assessment that the project's has had and will continue to have detrimental impacts upon the local communities and Western New York. *See* FMY 2004 Report, 48 – 51. As

This page contains no comments

noted in the FMY report and in the previously filed comments and protest of ENPPA, the local communities have suffered a serious and protracted economic decline by the failure of the Project to delivery upon its promises of economic prosperity that were to flow from the Project's furnishing to local industries and businesses low cost power. This decline has been exacerbated by the tax-exempt status of NYPA that allows NYPA to decline to make payments in lieu of taxes to offset the approximately \$53,000,000 in current real property taxes that a private, non-tax exempt licensee of the Project would be required to pay. Of this amount, ENPPA's members would have been benefited by the County's portion of those taxes that would have approximated \$20,000,000 a year in the near term.

An

environmental Impact Statement ("EIS") must adequately address the environmental consequences of the proposed project. 40 CFR §1502.16. Significant consequences to be assessed are economic and social impacts (direct, indirect, and/or cumulative). 40 CFR §1508.8(b). The Commission has acknowledged its duty to make such assessments in relicensing proceedings. *Georgia Power Company, Order Issuing New License*, 74 FERC ¶ 62,146 (1996); *JDJ Energy Company, Order Issuing Original License*, 69 FERC ¶ 62,034 (1994). Under Section 10(a) of the federal Power Act, the Commission must make a broad public interest inquiry that includes economic considerations. For example in *Clark-Cowlitz Joint Operating Agency v.FERC*, 826 F.2d 1074, (12.C. Cir. 1987), the disparity in the cost of power paid by consumers was required to be assessed. In the instant proceeding, the disparity created by the settlements' allocations of power and payments to some local communities that have settled and those still affected adversely by the present and future operation of the Project needs to be assessed. The non-settling communities, a significant portion of which make up

ENPPA, continue to suffer economic decline, abandonment of industrial jobs, the proliferation of Brownfields draining further local resources, etc.; yet, these communities that have shouldered too the development of the project through tax exemption receive no assistance and are further disadvantage by having no redress for higher school and local taxes in contrast to the settling communities. DEIS at 137 payments and allocations of power to settling parties could **“decrease municipal and school taxes and benefit economic development, infrastructure, education, and other projects”** (emphasis added).

The DEIS is inadequate because it fails to adequately disclose, analyze and mitigate direct and indirect impacts of the Project upon Gill and Fish Creeks. These creeks, locate above and below Niagara Falls and the area that they originally encompassed before construction of the Lewiston reservoir provided a natural conduit for the passage of eels and reptiles around the falls. Thus, it is interesting to note a significant short coming of the DEIS is its failure to mention the anticipated designation of Lake Ontario as critical habitat for the North American Eel even though the DEIS acknowledges the presence of this eel in the project area. *See* DEIS at 61, Table3-2. USFWS is presently considering the listing of the American Eel (*Anguilla rostrata*) under the Endangered Species Act. (Federal Register Vol. 70, No. 128; July 6, 2005). This species is historically present in the Niagara River upstream and downstream of the Niagara Project, and may have been impacted in some way by the construction and operation of the project. I see no discussion of that issue in the DEIS. Individuals of this species may spend as much as 20 years in freshwater before returning to the ocean to spawn. The decline in recruitment of adult silver eels to the spawning population has been precipitous.

Quite clearly, the Niagara River and tributaries, including Gill and Fish Creek, represented important habitat at one time for the resident American Eel population. The loss or

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Author: Staff
Subject: Response
Date: 11/21/2006 1:48:43 PM
 We have revised the text to describe the historical role of Gill and Fish Creeks in eel passage

This page contains no comments

compromise of this important upper tributary habitat to maturing juvenile eels represents an on-going impact. In addition, there is no discussion of turbine mortality to migrating adults returning to the ocean to spawn and there is no discussion of these issues in the DEIS. The lack of these discussions is glaring as the Niagara and FDR projects have the potential for significant adverse and cumulative impacts upon the American Eel population.

Staff should take into consideration the impacts of the Project upon current restoration and mitigation plans involving these same creeks and waters as part of the Restoration Plan for Love Canal. Thus, ENPPA incorporates by reference and makes a part of its comments as if set for fully herein the July 2005, *restoration Plan and Environmental Assessment for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Sites*, prepared by the U.S. Department of Interior, Fish and Wildlife Service, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, and New York State Department of Environmental Conservation. This Restoration Plan and EA are available at .

The DEIS does mention the Hyde Park Dam as a barrier and seeks to avoid any discussion of the potential for enhancements by its statements that the dam was constructed prior to the Project. Yet, it is clear, that the Project has significantly altered the creeks resulting in their re-channeling, etc. The casual observe will note that both creeks are more like storm conduits than stream-like channels affording habitat. Both creeks are nearly choked completely in some areas by invasive plants, garbage and other debris. Staff should reassess the creeks and develop mitigation that will restore the ability of the creeks to serve as habitat and as a means for passage around the falls.

NEPA's clear mandate is that an EIS must analyze direct, indirect, and

cumulative economic impacts resulting from a Project's relicensing. 40 CFR 51508.8. The DEIS fails to meet this standard by its reliance upon settlements as affording an adequate means of mitigation... hence, the DEIS fails to assess the ability of the Project to mitigate and enhance the local economies of the non-settling communities by the allocation of low cost power and/or the funding of infrastructure projects.

When Section 4.0 is revised, the Public will learn that the Project's power benefit approximated \$1,000,000,000 a year. Very little of this benefit is provided to the resident of Niagara County. Instead it is disbursed for the most part to industries in Erie County and certainly to benefit of Southeastern New York. Cheap power that is not dispersed is sold in the market and generates significant revenues for the State, but nor the communities of Niagara County.

Glaring problem in the DEIS is its failure to address the issued water quality certificate's condition that the Commission issue a 50-year license term. *See* DEIS at 14. ENPPA has petition the state court for review of this certificate. In short, ENPPA is challenging NYDEC's denial of a hearing wherein the issue of conditions requiring the Federal Government's issue of a license with a 50-year term among other issues to be raised in a hearing setting. The DEIS' failure to address the states' usurpation of the Commission's sole authority to set license terms violated long-established Commission policy and infringes upon its authority in a manner not authorized under the Clean Water Act. *See City of Tacoma v. FERC*, __ F. 3rd __, WL 2411362 (C.A.D.C.)(August 22, 2006). In essence, the ENPPA challenge calls into question whether NYDEC has complied with its responsibilities under the Water Quality Act for notice and hearing, etc. *Id.*

Author: Staff
Subject: Response
Date: 12/11/2006 8:11:37 AM
Please see our response to the Housing Authority.

Author: Staff
Subject: Response
Date: 12/13/2006 10:49:34 AM
Please see our response to NYSEG and RG&E on the issue of power allocation. Niagara County will certainly benefit from the Host Community Agreement, to which it is a signatory. That agreement includes a measure that would send 25 MW of project power to the "Host Communities".

Author: Staff
Subject: Response
Date: 12/11/2006 8:12:39 AM
If the Commission does not think a certification measure (such as license term) is valid, it would address that issue in the order it issues on the license application.

As note in its previously filed comments, no new capacity or generation is being proposed. The current upgrade was undertaken as a result of a change to a previously approved Project expansion that was subsequently abandoned and should not be considered in this proceeding's determination of a license term. *See Georgia Power Company*, 111 FERC ¶ 61,183 (2005). Further, the mitigation being offered as part of the licensing process is not significant enough to warrant a term in excess of 30 years. Moreover, even considering mitigation offered outside of the license, the amounts offered are inadequate to mitigate adverse socio-economic impacts of the Project and the failure of the Project to create and sustain economic development in the region.

In light of the above, the DEIS needs to be revised to address the proposed license term and NYDEC's use of the water quality certificate to dictate to the Commission a license term significantly in excess of what is warranted under established Commission policy. Thus, ENPPA must point out the fact that the DEIS has improperly concluded that the Commission should issue a 50-year term. Specifically, the DEIS recommends issuance of a license "as required by international agreement and **the terms of the Settlement's relicensing agreement.**" DEIS at 146 (emphasis added).

The implicit adoption of a 50-year term by Staff in its DEIS calls into question whether any of the NPV calculations have been skewed. All of the NPV calculations in the DEIS, like those performed by Staff in section 4.0, should disclose the parameters upon which they are based – term, discount, etc. The calculations should not be adopted from the reticence application without disclosure of how these important calculations were made.

As noted earlier, the DEIS does not address any significant alternatives to the proposed action. Section 10 and Section 15 require the Commission to issue licenses that make

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Author: Staff
Subject: Response
Date: 12/11/2006 8:13:56 AM
The text cited from page 146 of the DEIS is a generalization - the specific measures recommended and not recommended by staff are discussed on pages 147-155. The length of a new license term is not addressed there because we typically leave the discussion of license term for the order. The scope of our analysis, as stated on page 21, is 30-50 years which covers any term the Commission may determine is appropriate for a new license.

Author: Staff
Subject: Response
Date: 12/18/2006 7:49:56 AM
DEIS Section 4.1 in Table 4-1 explains that the period of economic analysis is 30 years and lists the parameters used in the staff's economic analysis. There is neither discussion nor recommendation of a license term in Section 5.0 Conclusions and Recommendations.

the best comprehensive use of a resource. NYPA's refusal to expand and make use of available capacity at the site violates the standards of the FPA and would preclude issuance of a license to NYPA. Moreover, NYPA's failure to develop more of the project has negative financial impacts and could lead to wastage of the river's hydro potential especially in light of Canada's plans to be a significantly larger intake for its project.



Author: Staff
Subject: Response
Date: 12/13/2006 2:17:17 PM
As noted above, Exhibit H of the license application describes the feasibility of upgrades to the Lewiston Pump Generating Plant and that it was determined not to be cost in effective and therefore not proposed. The study for the Lewiston Pump Generating Plant included pumping and generating efficiency improvements, re-timing discharges the Robert Moses Power Plant and increasing peak hour generation and peak load capacity. The study found that upgrades could be made to the 12 generating units that would increase peak load energy, but those upgrades would simply cost more than the increase in power would be worth.
It is incorrect to correlate the Power Authority not proposing to increase capacity at the Niagara project in this proceeding, with Canada's plans to enlarge the intake for its project, as Canada taking that potential power away from the U.S. The division of flows and limits on the amount of water used are set by international treaty and organizations set up from that treaty.

The findings in the Commission's earlier order that allowed NYPA to abandon a proposed expansion plan are no longer controlling or valid. *Power Authority of the State of New York*, 71 FERC ¶ 62,009 (1995) The assumptions on which the Commission relied have changed. Further more, even non-firm power that could be developed through plant expansion could be used for economic stimulation of local communities.



Author: Staff
Subject: Response
Date: 12/18/2006 7:50:29 AM
Order 71 FERC ¶ 62,009 is independent of this proceeding.

ENPPA recommended in its previous comments that the Commission considered the alternative of Federal takeover of the project. In making this request ENPPA noted that NYPA had stated at 2-9 of the PDEA:

Par 2.3.1 Federal takeover and operation of the Project would require congressional approval and while this fact alone does not eliminate this alternative from further analysis, there is no evidence to indicate that federal takeover should be recommended. No party has suggested that federal takeover of the project would be appropriate and no federal agency has expressed interest in operating the project."

The DEIS asserts that this alternative is not feasible because NYPA is a municipality. DEIS at 16. This legal position needs to be supported as there is a clear need to assess whether Federal takeover would result in domestic and rural customers receiving project power at costs that are the lowest rates reasonably possible without incurring the costs associated with the largess exhibited by NYPA as documented in the attached newspaper articles. It is expected that the requisite assessments for Federal takeover would include, at a minimum, a cost of service study



Author: Staff
Subject: Response
Date: 12/11/2006 8:15:00 AM
The support for Federal Takeover not being a reasonable alternative is Public Law 278, also know as the Act of August 15, 1953 (67 Stat. 587) whereby Congress barred federal takeover of projects owned by a state or municipality.

that would determine the actual cost to produce project power ready for transmission at the project's substation, and a study of the impacts upon costs to all customer classes for the incursion of additional project expenses in the form of additional mitigation such as PILOTs paid to local communities, additional mitigation and the expenses associated with the August 19, 2005 Offer of Settlement. The need for such assessment is readily apparent when one notes that the value of power (2007) is stated as \$42.18 MWh. PDEA, Table 5-1, p. 5-2., DEIS at 141. Yet, today, NYPA charges NYSEG a cost of \$4.92/MWh for energy and \$2,090/MW-month for capacity. Clearly, there appears to be a "disconnect" in costs and pricing if today a utility receives power (just for energy even), for disbursement to its customers as a pass-through, at a cost higher than the projected value of power. Certainly, how these costs are allocated to the utilities, which pass them on to several members of ENPPA needs to be assessed by the Commission as it appears that those customers are not receiving the full benefits of NYPA's low cost power in accordance with the NRA. The loss of these benefits is egregious when one considers that NYPA's other customers are subsidized by NYPA's exemption from the payment of local taxes for the Niagara Power Project.

The Commission's assessment should also examine the basis for the annualized costs for the proposed license. See Table 5-3, PDEA at p. 5-4. Despite a claim made therein that a detailed discussion of the major cost components are provided in the PDEA at sections 4-1 and 4-2, there is a need to justify to the customers and the public *why the 30-year annualized costs for relicensing (estimated) are \$3,544,000 per year*, which is 43% of the total costs of \$8,074,000, exceeds the ecological package's cost by more than \$1,300,000 per year and is four times more than the recreational package. Further, all costs of the settlements should be

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Author: Staff
Subject: Response
Date: 12/13/2006 11:05:35 AM
There is no Table 5-3 in the DEIS.

We do not include the costs of the side agreement measures in our analysis of the alternatives unless the measure is proposed to be included in the license (proposed action - relicensing agreement measures), is recommended by staff (staff alternative) or is mandatory (composite alternative).

This page contains no comments

reflected even if the various provisions or the settlements themselves are not to be made part of the issued license. These costs analysis are absent form Section 5 of the DEIS.

As noted in its previous comments, a further assessment should also include an assessment of the impacts of NYPA's current power allocation and contracting policies upon existing customer classes and the potential for additional customers entitled to receive preference power. At present, these policies are less than clear cut on the availability of power (firm and non-firm)¹ for existing or new customers, even when not constrained by New York legislation. In particular, the use of long term contracts, without the clear-cut ability to take back power for expansion of customer classes entitled to preference power, has lead to the needless pitting of one community against another in securing for their individual communities low cost power.

¹ The licensee should provide clear and consistent definitions for its use of the terms, firm, non-firm and dependable. For example at page 5-1 of the PDEA, NYPA states that the plant has a net *dependable* capacity rating of 2,400 MW. However, for allocation of power, and for claiming at the same to be fully allocated, NYPA uses the amount of 1880 MW as firm capacity available for allocations of firm power. Yet, at page 5-2 of the PDEA, NYPA refers to 2,400 MW as the Dependable Maximum Net Capability (DMNC). Furthermore, it is noted that NYPA in the Power Allocation Settlement also allocates peaking firm power and non-firm energy services. Thus, a better picture needs to be presented of the availability of all types of power to serve all present and potential customer classes.

This page contains no comments

CONCLUSION

Wherefore, for the above stated reasons, the Eastern Niagara Power Project Alliance respectfully requests that the Commission accept these comments and take appropriate action by revising the DEIS to accommodate the concerns raised herein

Respectfully Submitted on behalf of the Eastern Niagara Power Project Alliance:

By: Paul V. Nolan, Esq.
Counsel to Eastern Niagara Power Project Alliance

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, and the July 14, 2006 Notice, I hereby certify that I have this day caused the foregoing to be served by first class mail and by electronic service, as appropriate, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Respectfully submitted this 19th day of September 2006.
Eastern Niagara Power Project Alliance

By: Paul V. Nolan, Esq.
Counsel to Eastern Niagara Power Project Alliance
5515 17th Street North
Arlington, VA 22205-2272

Tel. 703-534-5509
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Email. pvn@pvn@aol.com

FROM : IRONWORKERS #9

FAX NO. : 716 285 5739

Aug. 31 2006 01:04PM P2

August 31, 2006

Paul V. Nolan
5515 North 17th Street
Arlington, Virginia 22205

Dear Sir,

I am writing regarding the stated position of the New York Power Authority as contained on pages 76-77 of the DEIS. Their assertion is that the conditions impeding the passage of fish upstream in Gill Creek pre-dated the Power Project. I believe this is false.

While there was a dam dating from Depression era public works which created Hyde Park Lake, there were control gates which were used to control the water level. These gates were manually controlled and were opened during high water flow in the Spring and allowed for migration upstream. Fish, eels and turtles could and did travel from the upper Niagara River through these channels on either side of the dam.

I have a photo from a local magazine which shows a Tuscarora boy holding a large pike from the creek in 1949 or 1950. My recollection is that in 1957 or 58 my father and I observed that the migration had stopped. I will attempt to obtain photos or other proof of the dam and spillways that had previously existed.

Very truly yours,

Crandall Johnson



Page: 55

Author: Staff

Subject: Response

Date: 11/21/2006 1:54:02 PM

We have revised the text to describe the historical role of Gill Creek in fish passage and to document your recollections of the effect the project had on fish passage.



FLUENT ENERGY

403 Main Street • Suite 630 • Buffalo, NY 14203 • tel. 716.842.1710 • fax. 716.842.1705

Daily Market Updates

Date Issued 09/07/06

Results from 09/06/06

This page contains no comments

Buffalo

Sept-07	Sept-08	Sept-09	Sept-10	Sept-11
Mostly Sunny 80/66	Partly Sunny 82/68	Partly Sunny 84/66	Partly Sunny 78/64	Partly Sunny 72/62

New York City

Sept-07	Sept-08	Sept-09	Sept-10	Sept-11
Partly Sunny 76/57	Partly Sunny 78/58	Partly Sunny 76/55	Partly Sunny 68/51	Partly Sunny 70/57

Stock Market

	Prev. Day	Symbol	Close	Change
		Dow Jones	11,406.20	-63.08
		NASDAQ	2,167.84	-37.86
		SP500	1,300.26	-12.99

Gas / Oil Futures Market

NYMEX Pricing (\$/Dth)		
Month	Settlement	Change
Oct-06	5.994	-4.5
Nov-06	8.019	-6.0
Dec-06	9.939	-11.0
Jan-07	10.574	-11.0
Feb-07	10.624	-10.5
Mar-07	10.449	-10.5
Apr-07	8.429	-3.5
May-07	8.279	-3.5
June-07	8.369	-3.5
July-07	8.474	-3.5
Aug-07	8.566	-3.3
Sept-07	8.661	-3.3

NYMEX Winter Options (\$/Dth)		
Month	Strike	Premium
Nov-06	8.00	0.950
Dec-06	9.95	1.352
Jan-07	10.60	1.658
Feb-07	10.60	1.924
Mar-07	10.45	2.104

NYMEX Crude Oil Price: Light, Sweet Crude Oil October - \$67.50 (\$/b)	
NYMEX Current 12 Month Average Oct. 2006 - Sept. 2007 \$8.865 / - 0.062 Dth	

NYMEX Winter Strip Average	
Nov, Dec 2006	
Jan, Feb, Mar 2007	
\$9.921 / - 0.098 Dth	

Links and Resources:
 Wall Street Journal: www.wsj.com NYSEG: www.nyseeg.com
 NYMEX: www.nymex.com PSC: www.psc.state.ny.us
 NYISO: www.nyiso.com RG&E: www.rge.com
 NYSERDA: www.nyserd.com ConEd: www.coned.com
 NGRID: www.nationalgridus.com Weather: www.weather.gov
 NFG: www.nationalfuelgas.com

Electric Market

Date	Hr.	Zone A (West) (\$/MWhr.)		Zone B (Genesee) (\$/MWhr.)		Zone J (N.Y.C.) (\$/MWhr.)	
		DAM	RTM	DAM	RTM	DAM	RTM
9/6/06	0	32.28	25.04	33.04	25.89	36.62	28.75
9/6/06	1	29.83	25.30	30.64	26.22	34.07	29.10
9/6/06	2	27.21	26.36	27.87	27.25	30.91	30.14
9/6/06	3	27.09	21.15	27.69	21.85	30.49	24.10
9/6/06	4	27.55	19.21	28.23	19.86	31.39	21.86
9/6/06	5	32.23	59.62	32.84	61.85	36.15	68.96
9/6/06	6	38.17	53.62	39.72	56.28	45.60	63.55
9/6/06	7	39.94	55.78	41.22	58.54	46.77	66.45
9/6/06	8	40.96	41.20	42.81	43.35	49.94	49.64
9/6/06	9	46.32	46.71	48.24	49.25	61.14	57.09
9/6/06	10	49.83	42.98	51.89	45.42	69.76	53.80
9/6/06	11	54.51	41.16	56.68	43.51	74.96	52.02
9/6/06	12	55.49	53.84	57.63	57.10	75.96	66.52
9/6/06	13	54.75	50.56	56.85	53.11	76.98	72.44
9/6/06	14	54.00	39.25	56.33	40.27	76.99	73.23
9/6/06	15	54.00	54.11	56.39	57.17	77.00	66.77
9/6/06	16	53.68	54.50	55.87	57.52	77.52	66.54
9/6/06	17	53.41	53.46	55.53	56.43	76.97	65.89
9/6/06	18	48.38	52.72	50.31	55.76	71.40	65.20
9/6/06	19	49.18	55.81	51.38	59.10	67.16	68.97
9/6/06	20	50.23	56.53	52.41	59.97	65.59	69.03
9/6/06	21	47.41	49.63	49.08	52.63	59.13	61.12
9/6/06	22	39.73	49.60	41.21	52.34	46.64	60.69
9/6/06	23	35.43	39.13	37.04	40.93	42.55	46.99
Daily Average		43.40	44.47	45.04	46.73	56.74	55.37

Long-term Forward Markets, September 6th (\$/MWh)

Market	Oct-06	Nov-06	Q406	Jan/Feb 07	Mar/Apr 07	May-07	Jun-07	July/Aug 07	Sep-07	CY07	CY08	CY09
N.Y. Zone - J	86.25	98.05	96.45	141.45	107.15	94.05	102.85	134.25	100.00	115.30	111.55	108.20
N.Y. Zone - A	56.40	67.55	68.70	95.05	76.30	67.15	72.15	84.50	68.75	80.70	75.75	70.55



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Daily Market Updates

Date Issued 09/18/06

Results from 09/15/06

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Buffalo

Sept-18	Sept-19	Sept-20	Sept-21	Sept-22
Mostly Sunny 81/61	Rain 66/48	Mostly Cloudy 60/45	Partly Sunny 59/46	Partly Sunny 68/54

New York City

Sept-18	Sept-19	Sept-20	Sept-21	Sept-22
Mostly Sunny 84/68	Scattered Showers 77/58	Partly Sunny 70/56	Partly Sunny 67/54	Mostly Sunny 70/58

Stock Market

	Prev. Day	Symbol	Close	Change
		Dow Jones	11,560.77	+33.38
		NASDAQ	2,235.59	+6.86
		SP500	1,319.87	+3.59

Gas / Oil Futures Market

NYMEX Pricing (\$/Dth)		
Month	Settlement	Change
Oct-06	4.982	+9.0
Nov-06	6.364	-10.3
Dec-06	7.774	-27.3
Jan-07	8.504	-26.8
Feb-07	8.569	-26.3
Mar-07	8.464	-23.8
Apr-07	7.314	+16.2
May-07	7.274	+16.2
June-07	7.384	+16.7
July-07	7.499	+16.7
Aug-07	7.604	+16.9
Sept-07	7.714	+17.4

NYMEX Winter Options (\$/Dth)		
Month	Strike	Premium
Nov-06	6.40	0.687
Dec-06	7.85	0.964
Jan-07	8.50	1.267
Feb-07	8.50	1.504
Mar-07	8.50	1.617

NYMEX Crude Oil Price: Light, Sweet Crude Oil October – \$63.33 (\$/b)	
NYMEX Current 12 Month Average Oct. 2006 - Sept. 2007 \$7.454 / - 0.004 Dth	

NYMEX Winter Strip Average	
Nov, Dec 2006	
Jan, Feb, Mar 2007	
\$7.935 / - 0.229 Dth	

Links and Resources:
 Wall Street Journal: www.wsj.com NYSEG: www.nyseeg.com
 NYMEX: www.nymex.com PSC: www.psc.state.ny.us
 NYISO: www.nyiso.com RG&E: www.rge.com
 NYISERDA: www.nyiserd.com ConEd: www.coned.com
 NGRID: www.nationalgridus.com Weather: www.weather.gov
 NFG: www.nationalfuelgas.com

Electric Market

Date	Hr.	Zone A (West) (\$/MWhr.)		Zone B (Genesee) (\$/MWhr.)		Zone J (N.Y.C.) (\$/MWhr.)	
		DAM	RTM	DAM	RTM	DAM	RTM
9/15/06	0	33.97	39.10	34.93	39.89	37.87	43.21
9/15/06	1	32.13	42.07	32.87	43.02	35.57	46.79
9/15/06	2	31.22	41.60	31.84	42.45	34.42	46.07
9/15/06	3	30.60	38.07	31.30	38.83	33.98	41.97
9/15/06	4	31.10	31.85	31.78	32.51	34.25	35.02
9/15/06	5	35.00	33.97	35.92	34.81	38.78	37.65
9/15/06	6	41.92	42.39	42.79	43.86	46.82	48.55
9/15/06	7	50.67	49.19	51.35	50.90	56.32	56.36
9/15/06	8	54.17	55.87	54.89	57.77	60.30	64.32
9/15/06	9	57.61	53.30	58.25	54.95	66.21	61.24
9/15/06	10	54.48	45.87	56.51	48.05	65.03	54.19
9/15/06	11	54.07	45.22	56.01	47.49	64.66	53.67
9/15/06	12	54.06	44.97	56.06	47.22	64.61	53.85
9/15/06	13	54.02	45.93	55.90	48.42	72.00	55.40
9/15/06	14	54.15	44.07	55.96	46.48	73.61	53.00
9/15/06	15	53.61	46.69	55.47	48.89	65.30	55.11
9/15/06	16	53.42	41.25	55.46	43.22	64.74	48.74
9/15/06	17	52.48	44.89	54.32	46.94	63.77	53.11
9/15/06	18	51.13	43.73	52.75	45.82	61.00	52.08
9/15/06	19	52.93	49.45	54.92	51.81	63.67	59.31
9/15/06	20	52.34	44.58	54.13	46.67	62.66	52.66
9/15/06	21	50.19	43.16	50.60	44.55	57.92	49.31
9/15/06	22	43.16	35.21	43.69	36.45	47.89	40.43
9/15/06	23	38.86	46.04	39.93	47.57	45.00	53.00
Daily Average		46.55	43.69	47.82	45.36	54.85	50.63

Long-term Forward Markets, September 15th (\$/MWh)

Market	Oct-06	Nov-06	Q406	Jan/Feb 07	Mar/Apr 07	May-07	Jun-07	July/Aug 07	Sep-07	CY07	CY08	CY09
N.Y. Zone - J	73.15	82.10	83.00	122.10	96.00	89.60	97.60	124.15	94.20	104.75	102.60	102.00
N.Y. Zone - A	49.85	55.45	57.25	78.45	65.75	61.00	64.05	74.35	62.85	69.25	68.75	67.20



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Daily Market Updates

Date Issued 09/19/06

Results from 09/18/06

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Buffalo

Sept-19	Sept-20	Sept-21	Sept-22	Sept-23
Scattered Showers 68/50	Rain 58/45	Mostly Sunny 62/46	Partly Sunny 68/54	Rain 62/57

New York City

Sept-19	Sept-20	Sept-21	Sept-22	Sept-23
Scattered Showers 79/60	Partly Sunny 72/54	Mostly Sunny 67/54	Partly Sunny 70/58	Partly Sunny 75/62

Stock Market

Symbol	Close	Change
Dow Jones	11,555.00	-5.77
NASDAQ	2,235.75	+0.16
SP500	1,321.18	+1.31

Gas / Oil Futures Market

NYMEX Pricing (\$/Dth)		
Month	Settlement	Change
Oct-06	4.942	-4.0
Nov-06	6.256	-10.8
Dec-06	7.806	+3.2
Jan-07	8.336	-16.8
Feb-07	8.391	-17.8
Mar-07	8.261	-20.3
Apr-07	7.511	+19.7
May-07	7.461	+18.7
June-07	7.571	+18.7
July-07	7.681	+18.2
Aug-07	7.771	+16.7
Sept-07	7.871	+15.7

NYMEX Winter Options (\$/Dth)		
Month	Strike	Premium
Nov-06	6.25	0.662
Dec-06	7.75	0.996
Jan-07	8.35	1.217
Feb-07	8.45	1.411
Mar-07	8.30	1.573

NYMEX Crude Oil Price: Light, Sweet Crude Oil October - \$63.80 (\$/b)	
NYMEX Current 12 Month Average Oct. 2006 - Sept. 2007 \$7.488 / + 0.034 Dth	

NYMEX Winter Strip Average	
Nov, Dec 2006 Jan, Feb, Mar 2007 \$7.810 / - 0.125 Dth	

Links and Resources:
 Wall Street Journal: www.wsj.com NYSEG: www.nyseeg.com
 NYMEX: www.nymex.com PSC: www.psc.state.ny.us
 NYISO: www.nyiso.com RG&E: www.rge.com
 NYSERDA: www.nyserd.com ConEd: www.coned.com
 NGRID: www.nationalgridus.com Weather: www.weather.gov
 NFG: www.nationalfuelgas.com

Electric Market

Date	Hr.	Zone A (West) (\$/MWhr.)		Zone B (Genesee) (\$/MWhr.)		Zone J (N.Y.C.) (\$/MWhr.)	
		DAM	RTM	DAM	RTM	DAM	RTM
9/18/06	0	34.50	22.15	34.57	22.78	37.00	25.07
9/18/06	1	31.89	24.73	31.99	25.37	34.73	28.11
9/18/06	2	30.22	24.99	30.41	25.55	33.41	28.20
9/18/06	3	29.68	23.01	29.78	23.48	32.49	25.76
9/18/06	4	29.40	24.74	29.55	25.35	32.12	27.86
9/18/06	5	31.77	33.29	32.17	34.28	35.17	37.64
9/18/06	6	36.34	38.18	37.42	39.92	41.74	44.63
9/18/06	7	43.69	35.82	44.88	37.33	50.17	41.29
9/18/06	8	48.98	45.51	50.88	47.21	57.22	51.52
9/18/06	9	49.55	47.54	51.70	49.41	67.14	61.94
9/18/06	10	52.05	46.00	54.43	47.79	73.42	67.74
9/18/06	11	53.79	51.37	56.35	53.15	78.72	93.42
9/18/06	12	53.37	57.49	55.97	59.47	78.29	75.96
9/18/06	13	53.12	56.44	55.70	58.15	73.43	70.98
9/18/06	14	52.69	59.51	55.00	61.48	69.49	68.06
9/18/06	15	53.85	57.17	56.27	58.93	71.06	87.23
9/18/06	16	53.65	62.37	56.08	64.56	71.22	76.28
9/18/06	17	51.76	52.95	54.16	54.80	73.22	65.44
9/18/06	18	50.98	50.54	53.53	52.22	69.32	57.67
9/18/06	19	51.25	53.68	53.82	55.64	69.54	63.42
9/18/06	20	51.21	52.43	53.19	54.15	67.55	61.31
9/18/06	21	47.94	47.83	49.43	48.97	64.23	55.69
9/18/06	22	43.93	48.72	45.31	49.87	55.51	56.23
9/18/06	23	37.43	41.76	38.13	42.70	43.47	46.95
Daily Average		44.71	44.09	46.28	45.52	57.49	54.93

Long-term Forward Markets, September 18th (\$/MWh)

Market	Oct-06	Nov-06	Q406	Jan/Feb 07	Mar/Apr 07	May-07	Jun-07	July/Aug 07	Sep-07	CY07	CY08	CY09
N.Y. Zone - J	71.15	81.95	82.85	120.10	98.00	91.10	99.60	125.15	95.25	105.20	102.55	101.75
N.Y. Zone - A	49.35	55.25	57.05	77.05	67.75	61.85	66.05	76.35	63.85	70.25	68.70	66.80

This page contains no comments

THE BUFFALO NEWS

City&Region

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SANBORN

Distribution of cheap power still being negotiated

By GAIL FRANKLIN
NEWS NIAGARA BUREAU
9/14/2006

SANBORN - The Niagara Power Coalition spent more than \$85,000 of taxpayers' money this summer on attorneys who are settling the terms of the low-cost power allocation included in its 2005 agreement with the New York Power Authority.

Fluent Energy consultant David Koplas was to present some options for receiving the power at a Wednesday meeting of the seven-member coalition. However, the group decided to close the meeting to the public.

The coalition is made up of Niagara County, the City of Niagara Falls, the towns of Lewiston and Niagara, and the Niagara Falls, Niagara-Wheatfield and Lewiston-Porter school districts.

"There are proposals back and forth, and if our negotiation strategy is revealed, it might take some steam away," said F. Warren Kahn, attorney for the Lewiston-Porter School District. "We're clarifying some points."

Kahn was referring to a host community settlement with the Power Authority that all coalition members signed last year in support of an application to operate the Niagara Power Project for 50 more years. Clarification of an existing contract is not covered by the state's Open Meetings Law, and Kahn said the public will be able to know more "when the clarifications are finalized."

Niagara County Legislature Chairman William L. Ross, chairman of the coalition, said last month that some members might seek cash payments for the value of their shares of the 25 megawatts of cheap hydropower they will receive under the 50-year agreement.

Ross has said one of the issues with last year's agreement with the Power Authority is that it doesn't mention "load factor," which has been described by authority officials as the ratio of a customer's average use to its peak use.

For example, Power Authority spokesman Michael Saltzman said that since a municipal building doesn't have the same power needs at night or on weekends as it does during the weekday, "it will have a relatively low load factor . . . contrasted with a multishift manufacturer that might have a load factor of 75 percent or more."

Ross has said the issue of load factor may prevent the coalition member from actually receiving all the power it signed up for.

Attorney Pietra G. Lettieri of the Buffalo law firm Harris Beach, which represents the coalition, divulged no details. She simply reiterated that a second contract is needed regarding the at-cost power portion of the coalition's 2005 agreement with the Power Authority, which also included cash payments.

Harris Beach was paid \$86,000 during July and August for its legal services. Lettieri says the closed session fell under "attorney-client privilege," and Koplas was allowed to speak because he is an agent of the law firm.

While Fluent Energy has in the past been paid by Harris Beach, the financial update handed out at Wednesday's meeting included a direct bill to the coalition from the energy consultant

group for \$11,520, and Harris Beach has submitted a new September bill for \$7,844. The group's checking account before paying those bills is at \$21,997.

Negotiations on the power distribution contract have been ongoing since June, and the at-cost power is set to flow Sept. 1, 2007.

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PRESIDENT'S OFFICE

September 19, 2006

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: Comments on Draft Environmental Impact Statement for
Hydropower Relicensing for FERC Project No. P-2216-066**

Dear Secretary Salas:

The Seneca Nation of Indians appreciates the opportunity to comment on the Draft Environmental Impact Statement ("DEIS") for the Niagara Power Project (the "Project"). The Seneca Nation has closely monitored the relicensing process for the Project and continues to have serious concerns with respect to the approach the New York Power Authority ("NYPA") and the Federal Energy Regulatory Commission ("FERC") have taken, in particular the refusal to acknowledge that this project has direct impacts on the Seneca Nation and its members. As a result of this refusal, the DEIS is seriously flawed.

The flaws in the DEIS have their genesis in the United States' rough shod effort to impose the Project on the region half a century ago and the close-mindedness that was prevalent then appears to have survived to this day. The DEIS infirmities revolve around the following:

- lack of meaningful consultation by NYPA on impacts of the project in the context of cultural, political, historical, aesthetic, and environmental issues;
- lack of alternatives that take into consideration the historical and contemporary presence of the Seneca Nation of Indians;

This page contains no comments

Letter to Secretary Magalie R. Salas
Comments of Seneca Nation of Indians on FERC No. 2216-066
September 19, 2006
Page 2

- the Area of Potential Effect for the project is construed too narrowly.

In light of these serious shortcomings, explained further below, the draft EIS is infirm.

Lack of Meaningful Consultation

An issue that is of great concern to the Seneca Nation of Indians is the lack of meaningful consultation by NYPA on impacts of the Project in the context of cultural, political, historical, aesthetic, and environmental issues relating to the Seneca. The Seneca Nation recognizes the importance the NYPA has placed upon the Project's impacts on and relation to the Tuscarora Nation. Even careless readers can understand the NYPA's use of the Tuscarora Nation in its evaluation of Native American concerns, in light of the proximity of the Tuscarora Nation to the Project and the history of the Project's imposition on the region, which lead to the unlawful condemnation of Tuscarora lands to support the Project. But noticeably Nevertheless, which begs the question: what about the concerns of the Seneca Nation and Tonowanda Seneca Nation?

Practically any brief history of the Niagara Region will include the Seneca people, as it is our historical presence and our legends and myths, many of which are tied to the very landscape of the region, that many tourist venues use to fascinate the public. Even the NYPA uses the vast wealth of Seneca history to promote this region within the confines of the Power Vista. As such, it is odd that the main Native Nation represented in the DEIS is the Tuscarora Nation. While we cannot and will not speak for the Tuscarora Nation or Tonawanda Seneca Nation, we would ask the NYPA to not use the Tuscarora Nation to speak for all Native Nations in this region.

The political importance of the Niagara Region to the Seneca Nation also cannot be overemphasized. In historical times the Seneca Nation used this area as a "Western Door" to be opened or shut against other Native Nations. In contemporary times, the Seneca Nation has reopened this "Western Door" through enterprise to everyone. These enterprises have, in turn, opened the door for the revitalization of this entire region.

FERC should not be offered one Native Nation's input as indicative of all interested Native Nation parties either. Instead, the NYPA should renew its efforts to consult with the Seneca Nation, and if willing, the Tonawanda Seneca Nation. A continued failure and refusal to do so will mean that FERC will be making its decision on incomplete information. The underlying purpose of the National Environmental Policy Act was to ensure that government decision makers had sufficient information and an appropriate range of options before them so that they can make informed decisions. This fundamental purpose under the NEPA will be thwarted in the absence of meaningful and appropriate consultation with the Seneca Nation and the Tonawanda Seneca Nation.

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Author: Staff
Subject: Response
Date: 12/18/2006 7:52:37 AM
The Alternative Licensing Process was used to develop the application for a new license. This process included numerous meetings with stakeholders, including the Seneca Nation of Indians, Tonawanda Seneca Nation, and the Tuscarora Nation to identify issues and discuss what surveys and reports would be necessary to adequately assess the project's effects on social, economic, and environmental resources (see the Phase 1B Cultural Resource filed September 7, 2006, for a list of the meetings and meeting attendees and letter dated May 4, 2006, from the New York Power Authority to Don L. Klima, Director, Advisory Council on Historic Preservation documenting consultation under section 106). In addition, drafts of the surveys and reports as well as the application were circulated for review and comment.

Author: Staff
Subject: Response
Date: 12/18/2006 7:54:26 AM
It was not the intent of the DEIS to provide a history of the three Nations. Rather a brief description of the region along with the results of the archaeological surveys and potential effects of project operation on historic properties is described. The Tuscarora Nation is mentioned in the EIS within the context of the relicensing settlement between the Power Authority and the Tuscarora Nation. A brief discussion of the history of the Iroquois (Haudenosaunee) League in the project area has been included in section 3.3.5.1 of the EIS.

Author: Staff
Subject: Response
Date: 11/30/2006 12:20:34 PM
We recommend in the EIS and it is a stipulation of the programmatic agreement (PA) to be executed between the Commission, State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) that the Power Authority consult with the Tonawanda Seneca Nation, Tuscarora Nation, and Seneca Nation, among others, in the development and implementation of the historic properties management plan (HPMP).

Letter to Secretary Magalie R. Salas
Comments of Seneca Nation of Indians on FERC No. 2216-066
September 19, 2006
Page 3

The Niagara and Buffalo Creek Territories are Sovereign Land of the Seneca Nation

Within the past four years, the Seneca Nation of Indians has successfully re-acquired several acres of land within the City of Niagara Falls had those lands converted to sovereign status. The Seneca Nation also has successfully re-acquired several acres of land within the City of Buffalo within or in close proximity to the Buffalo Waterfront. Specifically, in accordance with the Seneca Nation Land Claims Settlement Act (25 U.S.C. § 1774 et seq.), the Seneca Nation has re-acquired lands within the Cities in restricted fee status. Moreover, under the terms of the "Nation-State Gaming Compact between the Seneca Nation and State of New York", the State has facilitated the re-acquisition of Seneca landholdings within the City of Niagara Falls through use of the State's eminent domain authority. The re-acquired restricted fee lands within the Cities of Niagara Falls and Buffalo are part of the sovereign lands of the Seneca Nation.

Interestingly, the current DEIS does not include the mention of the Seneca Nation's Niagara Territory. It seems inconsistent to omit the tremendous impact the Seneca Nation has had over time on the Niagara Region, especially since our Niagara Territory is located less than 1 mile from most major Project works and less than 1/8 of a mile from the Niagara Falls. Essentially, by omitting the Seneca Nation from any meaningful aspect of the DEIS, the NYPA has omitted the most important historical people of the region and the impact the Project has on renewed sovereign presence and our future in the Niagara Region.

It is simply incomprehensible that the City of Niagara Falls and the Tuscarora Nation would each be considered a host community, but the Seneca Nation, within sovereign lands within the City of Niagara Falls and very near proximity to Project works, would not be—and indeed would be largely ignored. The EIS must include the Seneca Nation's Niagara Territory in its calculus and, as such, the Seneca Nation necessarily must be so included as a host community. If consultation had occurred between the Seneca Nation and NYPA, then a statement denoting the nature of these lands would have been included in the DEIS. Thus, any impact to these lands is to be determined during meaningful consultation with the Seneca Nation.

Power Allocation and Side Agreements Discussions is Not Entirely Forthcoming

In Section 3.3.8.1, Allocation of Project Power, the DEIS states:

The current license for the Niagara project (Articles 20 and 21) requires the Power Authority to make at least 50 percent of the project power available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power is to be made available at the lowest rates reasonably possible and

Author: Staff
Subject: Response
Date: 12/11/2006 8:17:22 AM
Our understanding is that the genesis of the term "host community" was through the ALP process. It is not a term developed by Commission staff. We have tried to accurately describe the Seneca Nation's interest in the Niagara Project.

Author: Staff
Subject: Response
Date: 12/11/2006 8:18:12 AM
Please see our response to NYSEG and RG&E regarding power allocation. We do not anticipate that a new license would require allocation of project power to specific entities.

Letter to Secretary Magalie R. Salas
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September 19, 2006
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in such manner as to encourage the widest possible use. When disposing of this half of the project power, the Power Authority is to give preference and priority to public bodies and non-profit cooperatives within economic transmission distance.

The discussion continues with how power is allocated nearby and a description of the side agreements that were entered into with impacted communities to mitigate some of the impacts of the Project. Side agreements include agreements with the Tuscarora Nation, the City of Niagara Falls and surrounding school districts, and even for Buffalo Waterfront revitalization efforts. The discussion also mentions the provision of power to several investor-owned utilities that re-sell the power to residential consumers.

The Niagara Region was once a preferred setting for industrial and manufacturing companies because of the availability of cheap power to produce needed materials. However, the Region has seen a significant decline of these businesses and thus less use of expansion power. The Western New York region has now gone from being an industrial area to one which has had to move towards the tourism and recreation business as evidenced by the commissioning of the Greenway by New York State. With the allocation of expansion power to smaller industrial companies there appears to also be a slight change in what type of companies receive this power. Indeed, NYPA has also changed policy as to what companies receive expansion power by allocating this power to a non-manufacturing company. It is noted in the Brattle Group study that GEICO has received an allocation of expansion power. The allocation of expansion power has not been equitable or fair.

The Seneca Nation has become one of the largest employers in Niagara County and Western New York with its businesses located throughout Western New York. The Seneca Nation is not an outside company looking to save itself a few dollars to its own benefit then move out of the area with its savings in tow when the market changes. The Seneca Nation has been and will always be connected to this area. And the "widest possible use" can be best encouraged by ensuring that established governments and entities "within economic transmission distance," such as the Seneca Nation, receive an allocation or other preference in power. That the Seneca Nation has not been afforded such a preference is further indicative of the impacts the Project has on the Nation—but the DEIS does not present this. The absence of a side agreement for the benefit of the Seneca Nation and its members in the relicensing process, and the absence of any explanation why, is further evidence of the inadequacy of the DEIS.

The Area of Potential Effect

The Area of Potential Effect developed unilaterally by NYPA is too narrowly construed. The Seneca Nation has expressed its concerns in this regard long before the

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production of the DEIS. NYPS has consistently failed to effectively address the Nation's stance on this issue—having not addressed the issue adequately in the DEIS or any other document. It is through this overly narrow determination of the Area of Potential Effect that the NYPA has largely excluded and ignored the Nation and the Project's impacts on the Nation.



Author: Staff
Subject: Response
Date: 12/18/2006 7:57:03 AM
Pursuant to section 106 of the National Historic Preservation Act, the Commission must take into account whether any historic properties within the project's area of potential effect (APE) could be affected by the proposed new license. Section 106 defines the APE as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE was defined to be consistent with that definition with input from the Power Authority, SHPO, ACHP, Tonawanda Seneca Nation, Tuscarora Nation, and Seneca Nation of Indians (the definition of the APE, among other items, was discussed at the meeting of the cultural resource working group held on April 21, 2004).

With the City of Niagara Falls and the County of Niagara to be included, but the Nation to be excluded, is to effectively create a "donut hole" within the area to carve out the Nation as being impacted. Moreover, to make special consideration for the Buffalo Waterfront, which is several miles south of the Seneca Nation's Niagara Territory and directly adjacent to the Seneca Nation's Buffalo Creek Territory, but to ignore or otherwise exclude the Seneca Nation from the calculus further exacerbates the problems. This certainly would not withstand scrutiny and the Nation urges NYPA and FERC to revisit this issue.



Author: Staff
Subject: Response
Date: 11/30/2006 12:24:19 PM
The lands owned by the Seneca Nation of Indians that are located within the cities of Niagara Falls and Buffalo were not addressed in the EIS because the nearest parcel is located about one mile from the intake structure, which is the closes project facility. We determined that operation of the project does not have an effect on the lands owned by the Seneca Nation of Indians.

* * * * *

Nya'weh (thank you) for your careful and meaningful consideration of these comments. The Seneca Nation of Indians remains ready, willing and able to engage in meaningful consultation with NYPA and/or FERC to ensure that more adequate information is gathered and presented to FERC in the NEPA process concerning the full range of adverse impacts on the Seneca Nation and the myriad of options available to mitigate the impacts.

Sincerely,

Barry E. Snyder, Sr.
President

This page contains no comments

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

New York Power Authority)
Niagara Project) Project No. 2216
Relicensing Proceeding)

**COMMENTS OF THE PUBLIC POWER COALITION (PPC) IN RESPONSE
TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR
THE NIAGARA PROJECT NO. 2216**

I. INTRODUCTION

The National Environmental Policy Act (NEPA), requires federal agencies to prepare an Environmental Impact Statement (EIS) that takes a "hard look" at the environmental consequences of a proposed action. *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21, 49 L. Ed. 2d 576, 96 S. Ct. 2718 (1976). The Commission's draft EIS (DEIS) for the Niagara Project No. 2216, however, does not even muster a passing glance at the substantial environmental and socio-economic impacts that the continued fifty year operation of this 2400 MW behemoth will inflict on the five communities -- the City of North Tonawanda, the City of Tonawanda, the Town of Tonawanda, the Town of Grand Island and the Town of Amherst -- located within a fifteen mile radius of the project and which comprise the Public Power Coalition (PPC). Specifically, NYPA's continued operation of the Niagara Project and the accompanying, multimillion dollar settlement packages enriches NYPA and the surrounding communities at the direct expense of the 275,000 residents of the PPC communities. Because of

their close proximity to the Niagara Project, the PPC communities (in contrast to other stakeholders that received settlement awards) suffer impacts such as erosion, sedimentation and fluctuating temperatures caused by project operation. The DEIS excuses NYPA from mitigating impacts like erosion or fluctuating temperatures and instead, shifts the burden to the PPC communities to clean up the environmental damage caused by project operation. And the NYPA settlement packages, comprised of cheap power and money for infrastructure and recreational projects, give the Host Communities and the City of Buffalo an overpowering advantage over the PPC communities in the competition for new residents, industry and tourism.

The DEIS remains silent on all of these impacts. In fact, even the Environmental Protection Agency (EPA) rated the DEIS as an EC-2,¹ which indicates that "EPA has environmental concerns and that the DEIS does not contain sufficient information regarding cumulative impacts for EPA to fully assess impacts."²

Our comments will detail the multiple deficiencies in the Commission's DEIS. These include:

¹ According to the EPA filing, EC stands for "environmental concerns," *i.e.*, that EPA has identified significant environmental impacts while Category 2 represents insufficient information, *i.e.*, the DEIS does not contain sufficient information to allow EPA to fully assess the impacts.

² EPA Comments on FERC Project No. 2216 (August 29, 2006) (available on FERC electronic library).

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Author: Staff
Subject: Response
Date: 12/11/2006 8:19:50 AM
 Please see our response to the Housing Authority and our response to NYSEG and RG&E on similar issues.

(a) The DEIS does not require NYPA to spend a single dime to mitigate the extensive erosion that the DEIS concedes was "probably caused by project operation." Instead, the PPC communities are left to bear the costs of cleaning up NYPA's mess. And the DEIS entirely ignores the costs borne by the PPC communities as a result of project operation and the lack of any mitigation. *Asheley Creek Phosphate Co. v. Norton*, 420 F.3d 934 (9th Cir. 2005)(finding that an EIS must examine economic impacts that are "tethered" to environmental consequences of operation.).

The DEIS does not examine the added costs borne by the PPC communities to mitigate operational impacts of the plant. These costs, detailed in Appendix A, at 6-10 include the cost of infrastructure projects to address erosion, sedimentation and fluctuating water levels. Other significant costs relate to electric power and chemicals needed to operate PPC members' wastewater treatment facilities, since project operation increases stream velocity, thus limiting the stream's ability to accommodate chemical and biological loadings.

(b) The DEIS studies, in particular those relating to erosion and sedimentation in the Upper Niagara River do not comport with accepted scientific methodology. Nor does the DEIS independently verify studies submitted by NYPA.

(c) The DEIS ignores the crippling economic impact that the PPC communities will suffer compared to neighboring communities which have been the beneficiaries of generous NYPA settlements. The NYPA settlements enormously disadvantage the PPC communities, since the settlement recipients can apply the NYPA payouts to fund infrastructure and community revitalization projects and use low cost power to lure industry. By contrast, PPC, which does not receive the same influx of funding will lose out to the NYPA "endowed communities" in competition for new residents, industry and tourism. Moreover, the same "economic hardships" described in the 2004 report by FMV Associates, "*The Impact of NYPA's Niagara Project on the County of Niagara and its Communities*,"³ which lead to NYPA's settlement offer to the Host Communities apply with equal force to the PPC Communities.

Author: Staff
Subject: Response
Date: 12/18/2006 7:57:34 AM
The DEIS did not find extensive erosion, rather, the DEIS states that relicensing studies showed that only about 3 percent of the upper back and shoreline is eroding. The DEIS (see sections and 3.3.1.2 and 3.3.2.2) notes that erosion in the upper and lower Niagara River is caused primarily by water level fluctuations which are due to a variety of factors including: U.S. and Canadian power generation, flow surges from Lake Erie, precipitation patterns, wind, ice, and water levels in Lakes Erie and Ontario. The DEIS goes on to note that the primary erosional forces are waves caused by wind and boating traffic as well as river currents. Granted, the DEIS acknowledges that water level fluctuations can influence erosion rates, and the project plays a part in influencing water level fluctuations. However, these water level fluctuations average less than 1.5-foot per day. The project, however, would only be the cause of a portion of these fluctuations. Even if we were to assume the project causes 50 percent of the fluctuation, we would then only be talking about less than a foot of fluctuation from project operation. Such a small level of fluctuation borders on insignificant, especially when you consider the size of this project. Absent the settlement agreement or a proposal by NYPA, we may not have recommended any measures to address erosion.

Author: Staff
Subject: Response
Date: 12/13/2006 2:13:03 PM
We consider the studies adequate to describe the ongoing effects of continued project operation, in combination with other factors. The studies conducted were designed in consultation with numerous stakeholders including state and federal resource agencies. While they may not precisely quantify the percentage of erosion and sedimentation that is attributable to project operations, we are not convinced that any study, regardless of scope and cost, could provide such precise information.

Author: Staff
Subject: Response
Date: 12/11/2006 8:32:21 AM
Some communities will certainly benefit from the side agreements negotiated by NYPA. How those funds will be used is unknown. In addition, even if we could predict how the funds are going to be used and, based on that, predict the effect on the non-settling communities of not receiving like compensation, such information would not help inform our decision on what measures to recommend for a new license. The bulk of these side agreement measures do not address an identified project effect.

³ The FMV Report was attached to the Motion to Intervene, Protest and Comment of the Eastern Niagara Public Power Association (ENPPA), filed on December 19, 2005 and now lodged in the Commission's electronic library. Given the already significant size of the record in this case, PPC will not re-file the FMV Report but will simply reference the version that has already been filed in the record.

(d) The DEIS does not address cumulative impacts, such as the upcoming Ontario Hydro construction upgrades at the Adam Beck Station. For that reason, among others, EPA graded the DEIS as a sub-par EC-2.

Author: Staff
Subject: Response
Date: 12/13/2006 2:18:56 PM
Please see our response to EPA on this issue.

(e) The DEIS does not address reasonable alternatives to the NYPA proposal such as: (1) the alternative of issuing a 30 year license as required by the Federal Power Act and applicable FERC precedent as opposed to NYPA's preferred 50 year alternative; (2) the alternative of upgrading project capacity as proposed by NYPA back in 1989⁴ or (3) the alternative of providing a settlement to the PPC communities of the same scope and magnitude as those offered to the Host Communities, the City of Buffalo, Niagara University and the Tuscarora Nation. Failure to consider these viable alternatives - which comprise the "heart" of the EIS analysis - violates NEPA and CEQ regulation to PPC communities along with other entities and alternative of no settlement for

Author: Staff
Subject: Response
Date: 12/11/2006 8:33:27 AM
Please see our response to Eastern Niagara and the Housing Authority on similar issues. The DEIS (executive summary footnote 6) acknowledges the most recent upgrade to the project's turbine generators which was approved by the Commission in 1993, and is nearly complete.

(f) The DEIS does not examine the impacts of NYPA's non-payment of taxes on the PPC communities, in particular, the City of North Tonawanda which is located in the same county (Niagara County) as the Niagara Project.

Author: Staff
Subject: Response
Date: 12/18/2006 8:01:44 AM
The DEIS acknowledges that NYPA does not pay state sales or local property taxes. We have included additional information on this in the FEIS. If there is sufficient interest in entities like NYPA paying such taxes, that interest would best be directed to the state and local governments because the issue is not a federal issue, and would exist whether or not the project is undergoing relicensing.

(g) The DEIS does not reflect the requirements of the Niagara Redevelopment Act which was intended to provide low cost power to local communities and stimulate growth and prosperity for all communities, not just a select few.⁵

Author: Staff
Subject: Response
Date: 12/6/2006 8:23:56 AM
The DEIS has a discussion reflecting the requirements of the NRA in Section 3.3.8 "Socioeconomics" and explains specific requirements (Articles 20 and 21) that the Power Authority allocate power to contribute to local and regional prosperity. In Section 3.3.8.3 a list of proposed measures, including power, from side agreements is given which would have cumulative socioeconomic benefits for the communities in the local area.

Increasingly, courts are stringently enforcing NEPA requirements, and they do not shy from overturning agency EIS as insufficient.⁶ These recent

⁴ *Power Authority of the State of New York*, 46 FERC ¶ 62,322 (1989)(order approving NYPA upgrade).

⁵ A more detailed discussion of impacts are set forth in Attachment B (line by line criticism of DEIS and focus table of impacts specific to Grand Island).

⁶ See, e.g., *Great Basin Mines v. Hankins*, 2006 U.S. App. LEXIS 19298 (9th Cir. 2006)(finding BLM's cumulative impact analysis insufficient); *National Audobon Society v. Department of Navy*, 422 F.3d 174 (4th Cir. 2005)(finding Navy

decisions make clear that the Commission's DEIS, in its current form, will not survive the harsh light of judicial review. Accordingly, the PPC communities request that the Commission hold hearings to evaluate the expected impacts of project operation and (a) revise the DEIS or conduct a second scoping session and prepare a Supplemental EIS (SEIS) to correct the deficiencies and consider a variety of alternatives and hold hearings on the expected impacts or alternatively, (b) order NYPA to enter into settlement discussions with PPC and to offer a settlement package of the same magnitude as that extended to other entities to mitigate the disproportionate physical and economic impacts of continued project operation on PPC members.



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Author: Staff
Subject: Response
Date: 12/11/2006 8:40:59 AM
We believe the DEIS adequately assesses the effects of continued operation of this project. Perhaps additional information could have been generated on socioeconomic issues, but we believe the information presented in the DEIS is sufficient to inform a decision on what measures should be included in a new license.

II. BACKGROUND

The Public Power Coalition (PPC) is an alliance of five communities that abut the Niagara River or one or more of the River's main tributaries. The five PPC members -- the City of North Tonawanda, located in Niagara County, New York and the City of Tonawanda, the Town of Tonawanda, the Town of Grand Island and the Town of Amherst, are all located within a fifteen mile radius of the project. By virtue of their proximity to the project, these communities, with a

EIS insufficient and remanding for preparation of Supplemental EIS); *Davis Mountain Trans Pecos Heritage Association v. FAA*, 2004 US App. LEXIS 21267 (5th Cir. 2004)(unpublished)(finding that agency failed to take hard look at impact of wave vortices on surface structures and to adequately address mitigation); *Sierra Club v. Flowers*, 423 F. Supp. 2d 1273 (S.D. Fla. 2006)(finding Corps EIS deficient where Corps relies unquestioningly on applicant's data without any attempt at independent verification.)

combined population of over 275,000, have endured impacts such as flooding, water fluctuations, sedimentation and erosion during the project's past fifty years of operation and will continue to bear these impacts if the Commission approves NYPA's proposed Relicense Application and Offer of Settlement, filed on August 18, 2005. Moreover, though the Niagara Power Project was originally intended to deliver low cost power to residential, commercial and industrial customers within a thirty mile radius of the plant, the five coalition communities now face some of the highest electric rates in the country. And the adverse economic impacts of project operation are further compounded by NYPA's extension of multi million dollar settlement packages to surrounding communities which hinders PPC's ability to compete to attract new residents and industry through lower taxes and low cost power, new infrastructure and other amenities.

As PPC emphasizes throughout these comments, the DEIS ignores all of these impacts, which leaves the Commission and NYPA two choices. The Commission can either order NYPA to generate an adequate EIS which will waste an additional two or three years and \$46 million (the cost and duration of the ALP proceeding) and *then* pay millions of dollars to mitigate the adverse project impacts. Or, the Commission can require NYPA to negotiate the terms of mitigation with the PPC communities now and offer a settlement package comparable to that extended to other entities in the vicinity. In the absence of either of these remedies, the EIS will not survive judicial review and a new license will not issue.

Author: Staff
Subject: Response
Date: 12/13/2006 2:21:13 PM
We understand the PPC communities are exposed to these impacts, however we note that most of these impacts would have occurred even without the project's existence. Given the project's relatively minor contribution to water level fluctuations compared to other factors, it is clear that many of these impacts have been caused by the fluctuations of the Great Lakes water levels, storms, and changes in land use which have altered stormwater runoff patterns within the tributaries' basins as well as reduced the riparian vegetation that historically protected erosion-prone areas.

Author: Staff
Subject: Response
Date: 12/11/2006 3:23:37 PM
Please see our response to NYSEG and RG&E on power allocation. We addressed the issue of the side agreements in our response above.

Author: Staff
Subject: Response
Date: 12/13/2006 2:23:53 PM
Any judicial review of a FERC licensing decision would typically occur after the Commission has issued the license and any rehearings are addressed. However, the only significant issue that EPA found in their review of the DEIS was a lack of information on cumulative effects due to the proposed Canadian hydro tunnel expansion project which is addressed in the FEIS.

This page contains no comments

III. ARGUMENT

A. The DEIS does not address all of the project's environmental impacts nor does it require mitigation for those impacts that are identified

The Commission's regulations governing preparation of an EIS require staff to summarize the significant impacts of the proposed actions and "any mitigation measures proposed by the applicant, as well as additional mitigation measures that might be more effective." In addition, the Commission must comply with the CEQ Regulations implementing NEPA,⁷ which require an EIS include discussions of the proposed action's direct and indirect effects and their significance (40 C.F.R. § 1508.8) and means to mitigate adverse environmental impacts. (40 C.F.R. § 1502.14(f); § 1502.16(h)). Finally, the Commission must evaluate "reasonably foreseeable significant adverse impacts." Where prediction of future impacts is not feasible due to lack of information, the Commission must explain the affects of incomplete information on its analysis. 40 C.F.R. § 1502.22. The Commission's EIS falls short of all these requirements.

1. Impacts not addressed

PPC has prepared an extensive analysis of the DEIS and identified the impacts specific to PPC members. The PPC DEIS Analysis is attached to these comments as Appendix A. Here, we summarize the various impacts experienced

⁷ See 18 C.F.R. § 380.1 (stating that Commission will comply with CEQ regulations in addition to its own regulations implementing NEPA).

by the PPC communities that are either overlooked or not adequately evaluated

by the DEIS:

a. Erosion and Sedimentation

i. The DEIS does not predict future erosion rates



In evaluating erosion and sedimentation caused by project operation, the DEIS relies heavily on a Shoreline Erosion and Sedimentation Assessment Study prepared by NYPA.⁸ (DEIS, p. 24-47). With regard to erosion in the Upper Niagara River, the DEIS states:

Only 3 percent of the upper river shoreline or river bank within the study area has been identified as eroding (Baird, 2005). The lack of more widespread river bank erosion is partly due to the extent of shoreline protection. Approximately 63 percent of the upper river shoreline within the study area is protected by some form of structure (i.e., steel sheet pile wall, rip rap, concrete block, etc.). [DEIS at 24]

Similarly, 3 percent of Tonawanda Creek and 5 percent of Ellicott Creek were identified as eroding, 83 percent and 20 percent of their respective shorelines protected by manmade structures [DEIS at 25]. *See also* PPC Analysis, Appendix A.

Despite the fact that NYPA is seeking a 50 year license, the DEIS makes no effort to predict the rate of erosion for the next fifty years (or even for the next five years, for that matter). The DEIS does not explain its failure to evaluate

⁸ Elsewhere in this pleading, we discuss explain that Commission staff erred by relying exclusively on applicant prepared studies without any attempt to independently verify the results. *Sierra Club v. Flowers*, 423 F. Supp. 2d 1273 (finding Corps EIS deficient where Corps relies unquestioningly on applicant's data without any attempt at independent verification).

Author: Staff
Subject: Response
Date: 12/18/2006 8:02:52 AM
Correct, the study scope did not include measuring past or predicted erosion rates. However, we do not agree that doing so is necessary to describe the effects of relicensing the project given our baseline is existing conditions. No changes in project operation are proposed or recommended, so there would be no change in project-related erosion and sedimentation rates under the alternatives assessed.

This page contains no comments

obvious, foreseeable impacts such as future erosion and sedimentation, and indeed no justification exists for this glaring omission.⁹ Computerized modeling studies are readily available that predict future erosion and sedimentation. In fact, some of these studies have even been developed Baird and Associates, NYPA's contractor, at the request of the International Joint Commission, which establishes the operating protocol for the Niagara Project.¹⁰

Without studies predicting future rates of erosion and sedimentation at the Niagara Project, the DEIS is worthless, because understanding the present condition of the shoreline tells us nothing about impacts to the environment over the next fifty years.

Given that the DEIS acknowledges that shoreline erosion in the tributaries is attributable to project operation (DEIS at 49), the failure to evaluate how future project operation will impact erosion rates is fatal and renders the DEIS invalid.

⁹ As noted *supra*, the CEQ regulations require federal agencies to evaluate reasonably foreseeable impacts. Where data on foreseeable impacts is unavailable, agencies must explain whether such data can be collected and if not, how the absence of data impacts the agency's analysis. 40 C.F.R. § 1502.22.

¹⁰ See, Shoreline and Erosion Study prepared by Baird and Associates, 2005: "During the past five years Baird & Associates ([2001](#), [2003b](#)) has completed extensive studies on shoreline response to fluctuating water levels for the Lake Michigan Potential Damages Study. Baird has also participated in the International Joint Commission's study on Lake Ontario and the St. Lawrence River ([Baird 2002a](#), [Baird 2002b](#)). For cohesive shorelines, these investigations have focused on quantifying historical shoreline recession and down cutting rates over both the short and long term. In addition, numerical modeling has been applied to predict future shoreline response for scenarios of high and low lake levels. The purpose of this modeling is to investigate the role of water levels on erosion over periods of months to over 100 years." Baird does not explain why these studies were not performed specifically for the Niagara Project.

ii. DEIS ignores PPC's contributions to present, negligible erosion

The DEIS concludes that the project's impacts on erosion are negligible due in part to extensive stretches of shoreline protection, [DEIS at 24-26].

Appendix A details some of the projects undertaken by various PPC communities to abate the impacts of erosion. Appendix A at 5-10. The DEIS does not acknowledge that but for the efforts of the PPC communities, far more shoreline would have eroded, nor does it recognize that PPC's considerable expenditures to self-mitigate erosion are a significant economic impact of past and future project operation. *Asheley Creek Phosphate Co. v. Norton*, 420 F.3d 934 (finding that an EIS must assess economic impacts that are "tethered" to environmental consequences of operation.)

b. Temperature fluctuations, quality and velocity

Again relying fully on NYPA's studies, the DEIS shows that the tributaries of the Niagara River experience temperature changes ranging from -6.5 to +2.3 degrees Celsius per hour. Increase and decreases of water temperatures, and the rates at which these temperatures changes occur, affect water and wastewater treatment processes. Variations in water temperature complicate the control systems that maintain consistent process control and chemical dosaging, leading to increases in the cost of operating water and waste water treatment facilities.

Water withdrawals can also increase a stream's velocity. Increased velocity in turn affects the operation of wastewater treatment plants. Because

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Author: Staff
Subject: Response
Date: 12/11/2006 3:24:51 PM
We addressed erosion above.

plant discharges are regulated based upon the concentration of pollutants, diffusion rates in the receiving streams affect the streams' ability to accommodate chemical and biological loadings. An increase in water velocity extends discharge plumes, changes sedimentation rates and alters downstream turbidity. This results in an increase in treatment chemicals required, leading to additional operational costs. See Appendix A, pp. 3-4 (describing increase costs associated with water treatment facilities). The DEIS does not discuss any of the water quality related impacts caused by project operation. Nor does the DEIS mention the added costs that the PPC communities incur to treat wastewater as a result of temperature fluctuations and changes in velocity resulting from project operation.

NYPA's study of flow fluctuations suffers from the same infirmities as its erosion control and sedimentation studies.

c. Flow fluctuations

The varying flow fluctuations caused by the project constitute a significant impact. Flow fluctuations cause the problem of erosion, discussed supra. But flow fluctuations have also contributed to flooding (the shoreline of Grand Island has between 450-620 parcels impacted by the flood plain, Appendix at 9) and bank stabilization problems along Tonawanda and Ellicott Creek in the Town of Amherst. Appendix at 3-4. The DEIS lacks adequate information on the extent to which flow fluctuations are attributable to project operation. The DEIS states that:

Author: Staff
Subject: Response
Date: 12/13/2006 2:30:58 PM
The DEIS discusses water quality effects on pages 49 and 50. At the time the DEIS was written, staff had no data on PPC community costs related to water quality. Regardless, it is not clear what portion of these fluctuation-related effects are attributable to project operation. Due to the fluctuation limits in the Chippawa-Grass Island pool (1.5 ft. per day), it would seem that the majority of fluctuation-related effects are due to causes other than project operation.

Author: Staff
Subject: Response
Date: 12/13/2006 2:31:24 PM
We responded to this issue above.

Water level and flow fluctuations in both the upper and lower Niagara River are influenced by a number of factors. Natural factors include flow surges from Lake Erie, wind, ice conditions, regional and long-term precipitation patterns and water levels of Lake Erie and Lake Ontario, as well as manmade factors such as boat wakes and navigation diversion for the New York State Barge Canal. Because the influence of these factors on water levels is interrelated and dynamic, it is difficult to determine the exact amount of fluctuation that is attributable to each factor. Therefore, for many of the analyses that were conducted for re-licensing the Niagara Project, the reported water level fluctuations in the Niagara River include the influences from all the factors. [DEIS at 19]

And the DEIS does not propose mitigation to address adverse impacts of fluctuating water levels.

NYPA argues that it is impossible to assess the impact of project operation on flow fluctuations - notwithstanding that DOI itself argued that NYPA's operation contributes to fluctuations. However, the CEQ regulations require the Commission to discuss the problem of missing information and explain the impact of the absence of information on the analysis. The Commission's DEIS does not.

d. Community specific impacts

The Project creates a variety of impacts specific to each of the five PPC communities. Appendix A details these impacts at pp. 5-10 and we incorporate this discussion by reference. The DEIS does not discuss any of these impacts.¹¹

¹¹ For additional criticism of deficiencies in DEIS analysis of erosion, see Appendix B, Table of Impacts, specifically Comment 16 (pointing out that *rate* of erosion, not necessarily percentage of shoreline is key impact); Comment 18 (pointing out that discussion on factors influencing erosions rates for actively eroding areas near Grand Island are too general in nature); Comment 20 (emphasizing that DEIS contains no evidence to support that "operational water

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Author: Staff
Subject: Response
Date: 12/13/2006 2:32:07 PM
 We responded to this issue above.

2. **The DEIS does not mitigate or otherwise address the impacts of the foregoing impacts to the PPC communities**

a. **The DEIS ignores the PPC communities' mitigation efforts**



Author: Staff
Subject: Response
Date: 12/11/2006 3:26:04 PM
 The DEIS does not find that there would be significant adverse impacts from continued project operation. We addressed the project's contribution to shoreline erosion above.

While the DEIS concedes that the project will have significant adverse impacts, the DEIS does not discuss mitigation measures, in violation of the CEQ regulations. 40 C.F.R. § 1502.14(f); § 1502.16(h) (requiring EIS to discuss mitigation). The DEIS notes that the projects undertaken by the PPC (at great initial cost and continuing maintenance and/or replacement cost to the individual municipalities) have prevented more extensive erosion. For example, the City of Tonawanda recently completed a \$2.4 million project to replace a 900-foot section of sheet pile retaining wall along the Riverwalk. Following a recent inspection of the completed project, the United States Army Corps of Engineers (Corps) has recommended that the City evaluate the adjoining 500-feet of retaining wall potentially for similar replacement. The Corps has not evaluated the sheet pile retaining wall along the Canal starting from the confluence of the Niagara River and the Canal; however, it is reasonable to assume that the structure will require replacement well before the proposed 50-year license agreement expires. In addition, the concrete block located along the remainder of the river shoreline have eroded to the point that significant rebar has been exposed. The City faces the cost of rehabilitation or replacement of the concrete

level fluctuations are not as significant as those caused by other vectors"); Comment 24 (DEIS does not address impact of lowering river levels); Comments 26-30 (noting deficiency of DEIS in assessing impacts to fish habitat).

block in the near future. None of the costs associated with the maintenance and or replacement of these structures are addressed in the DEIS.

Additional evidence of unreimbursed municipal expenditures related to NYPA operations involves the Town of Tonawanda. The Niagara River is classified as a Class A – Special receiving stream. Therefore tertiary treatment is mandated at its wastewater treatment plant. Operating costs for this treatment totaled 23.55% of the plant’s \$1.5M 2005 fiscal year budget. Electrical costs for the plant and related lift stations were \$1.69M. Total costs for environmental protection, absorbed by Town residents were \$6.36M. In 1978 the Town expended \$68M to construct its tertiary treatment plant. Since the plant was constructed, an additional \$8M in new equipment has been spent. Going forward, additional expenses associated with Watershed Management and Sanitary Sewer Overflow (SSO) Abatement will be incurred. In 2005 the Town expended over \$1M to prepare a New York State Department of Environmental Conservation mandated engineering report to comply with SSO regulations. It is anticipated compliance with this plan over the next forty years will exceed \$200M.

Based on current Geographic Information System (GIS) data, and consistent with the shoreline project area as defined in Section 3.3.1.1 of the DEIS, the PPC determined its member communities contained the following shoreline impacted by Niagara Project / NYPA operations:

Author: Staff
Subject: Response
Date: 12/11/2006 3:26:58 PM
Based on this comment, it is unclear what project effect is being related to the Town of Tonowanda’s need to treat wastewater.

Author: Staff
Subject: Response
Date: 12/11/2006 3:27:41 PM
We do not dispute the shoreline measurements cited. We discussed the erosion issue above.

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Town of Amherst	35 miles
Town of Grand Island	41 miles
City of Tonawanda	8 miles
Town of Tonawanda	12 miles
City of North Tonawanda	13 miles
Total PPC shoreline in NYPA/DEIS area	109 miles

Compared to PPC affected shoreline, host community and City of Buffalo / Erie County shoreline impacted by NYPA operations is as follows:

City of Buffalo Peace Bridge north to city line	7.74 miles
Erie County Peace Bridge north to county line	103.74 miles
City of Niagara Falls, Town/Village of Lewiston	17.45 miles

As measured north on the Niagara River corridor starting at the Peace Bridge, a measurement consistent with the shoreline impacted by Niagara Project operations as defined in the DEIS, shoreline ratios between settlement communities and PPC municipalities are as follows:

PPC / City of Buffalo	109 / 7.74 miles	PPC communities contain 14 times the amount of impacted shoreline as the City of Buffalo
PPC / Erie County	109 / 103.74 miles	PPC communities contain 1.05 times the amount of impacted

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		shoreline as Erie County.
PPC / Town /Village of Lewiston and City of Niagara Falls	109 / 17.45 miles	PPC communities contain 6.25 times the amount of impacted shoreline as the Town/Village of Lewiston and the City of Niagara Falls.

Although PPC municipalities contain several times the amount of impacted shoreline host community / settlement communities do, and several times the corresponding costs to operate, maintain and improve infrastructure directly impacted by past and future NYPA operations, PPC entities are the only communities excluded and not fairly reimbursed by NYPA in the form of settlement agreements. Since PPC communities are more severely impacted by NYPA operations relative to settlement communities, the degree of inequity is compounded. The DEIS contains absolutely no provisions to mitigate this inequitable economic impact.

b. The HERF is not an adequate source of mitigation

The DEIS offers but one shred of utterly inadequate mitigation for all of the impacts just described:

We note that the stream bank erosion that is documented in the tributaries, some of which is probably attributable to past and ongoing project operations, could potentially be addressed via restoration or enhancement projects funded through the HERF proposed by NYPA. *This would depend upon whether the ESC recommended funding for such a project.* [Section 3.3.2.2 of DEIS at 49].

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Any proposed HERF (Habitat Enhancement and Restoration Fund) project would have to be approved by the Ecological Standing Committee (ESC). The PPC does not have direct representation on this committee. The recommended solution does not guarantee that the HERF would be used to address the erosion caused by the project. In fact, it appears highly unlikely that the funds would be used in this manner. Funds should be set aside specifically to address the problems that are caused by the project. The proposed solution to address stream bank erosion caused by the project is not acceptable.

Moreover, NYPA's proposal does not even begin to address the damage to the PPC communities. The HERF funds are intended to restore habitat used by fish and avian populations, and not to erect shoreline protection to guard the PPC communities against flooding and loss of shoreline property. Nor would the HERF funds compensate the PPC communities for the added costs of water and wastewater treatment.

Aside from the ridiculous suggestion that PPC ask for HERF money to address fluctuating water levels and erosion problems in their communities, the DEIS proposes no other mitigation for impacts such as the cost of wastewater treatment or any of the community specific impacts discussed in Appendix A.

Author: Staff
Subject: Response
Date: 12/13/2006 2:33:20 PM
 We responded to this issue above .

B. The DEIS violates the CEQ guidelines because it does not rely on accepted scientific methodology or current information, nor does FERC attempt to independently verify NYPA's studies

1. Lack of accepted scientific methodology

The CEQ Regulations require agencies to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. §1502.24. Though agencies retain some flexibility to select their own methodology, the selected approach must be reasonable. *Baltimore Gas & Electric v. Natural Res. Defense Council*, 462 U.S. 87, 100-01, 76 L. Ed. 2d 437, 103 S. Ct. 2246 (1983)(deferring to agency methodology when reasonable).

Here, the DEIS approach to evaluating the extent of erosion resulting from project operation does not conform to accepted practices. As mentioned earlier, sophisticated modeling devices have been developed to predict erosion rates, yet neither NYPA nor its contractors employed these techniques here. 

2. No effort by FERC to independently verify NYPA's studies

The DEIS is also deficient because the Commission relied exclusively on studies retained by NYPA contractors. *See Sierra Club v. Flowers*, 423 F. Supp. 2d 1273 (S.D. Fla. 2006)(finding Corps EIS deficient where Corps relies unquestioningly on applicant's data without any attempt at independent verification.) Courts allow the use of information by the private applicant, but require the agency preparing the EIS exercise overall responsibility, and where

the information is credibly challenged as inaccurate, impose a duty to investigate independently. *Id.*, 423 F.Supp. 2d at 1339.

Here, the DEIS quotes verbatim from many of NYPA's studies and does not examine other materials or literature that criticize NYPA's approach. As *Sierra Club v. Flowers* shows, Commissions cannot blindly adopt applicant studies without any analysis of its own.

Moreover, the Commission has a duty to undertake an independent investigation because the gaps in the studies that NYPA performed undermine the credibility of the analysis and results. Among other things, NYPA's studies did not employ state of the art methodology to predict future erosion rates nor do they studies attempt to identify the causes of flow fluctuation. The limited scope of the studies justify performance of additional studies to verify NYPA's results.

C. The DEIS does not examine the comparative economic disadvantage that PPC communities will experience as a result of the payouts to surrounding communities.

1. Description of factors giving rise to economic disparity

To secure relicensing of the Niagara Project, NYPA offered huge settlements to so-called stakeholders¹² to ensure their support for the project. The terms of the Settlement Agreements are contingent upon stakeholders'

¹² We refer to some of the stakeholders as "so-called" because few of the stakeholder groups that have secured settlement are actually impacted, both physically and economically, by project operation to the same extent as the PPC communities.

Author: Staff
Subject: Response
Date: 12/13/2006 2:34:01 PM
We responded to this above.

Author: Staff
Subject: Response
Date: 12/11/2006 3:28:40 PM
These comments have been addressed above.

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commitment to support the project as well as Commission approval of NYPA's proposed license application.

The DEIS (pp. 135-137) summarizes the various terms of the settlements as follows (PPC has highlighted those provisions which specifically place it at a competitive disadvantage).

- Greenway Ecological Fund for creating and improving conservation and ecological projects along Niagara River Basin. \$16,179,645 NPV;
- establish a Land Acquisition Fund with a value of \$1 million for the purpose of purchasing parcels of land identified by the New York DEC;
- establish a State Parks Greenway Fund to support the construction and/or rehabilitation of parks, recreation and related facilities. The fund would have a value of \$48,538,934 (NPV 2007), and be funded in the amount of \$3 million annually for the term of the license;
- **establish a Host Communities Fund (HC Fund) for the benefit of the host communities. The HC Fund, would have a value of \$89,929,000 (NPV 2007), and be funded in the amount of \$5 million annually for the term of a new license after an initial payment of \$8 million; the purpose of the fund is to benefit the City of Niagara Falls, Town of Niagara, Town of Lewiston, Niagara County, and three local school districts.**
- **provide firm power and associated energy to the host communities (or to entities designated by the host communities to receive such power and energy on their behalf) of 25 MW at the Power Authority's cost-based rate for Niagara Project power and energy;**
- **establish a Host Community Greenway Recreation/Tourism Fund to support the construction and/or rehabilitation of parks, recreation and related facilities. The fund would have a value of \$48,538,934 (NPV 2007), and be funded in the amount of \$3 million annually for the term of the license;**
- establish a Tuscarora Nation Fund with a total value of \$21,824,176 (NPV 2007), over which the Tuscarora Nation would have sole and absolute discretion over all expenditures and investments, as well as all

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associated management and administrative responsibilities; Tuscarora Nation, the purposes of which are to meet the Tuscarora Nation's current electricity requirements and accommodate reasonable increased electricity requirements of the Nation during the term of a new license; provided, however, that under no circumstances would the Power Authority allocate more than a total of 1 MW (with associated energy at the Tuscarora Nation's actual load factor) to the Tuscarora Nation;

- develop and implement, in consultation with the Tuscarora Nation and other parties, a scholarship and internship program to promote educational opportunities;
- establish an Erie County Greenway Fund to support the construction and/or rehabilitation of parks, recreation and related facilities. The Power Authority would make annual payments to the fund of \$2 million;
- **pay the New York Empire State Development Corporation \$1 million annually for Buffalo waterfront revitalization activities;**
- **pay the Erie Canal Harbor Development Corporation (ECHDC) \$4 million for waterfront development and revitalization activities;**
- consult with ECHDC, fund a feasibility study, and attempt to obtain a new location for the storage and maintenance of the ice boom, subject to the approval of the IJC; the parcel of land currently used for this purpose would then be conveyed to the ECHDC;
- **establish a Buffalo Waterfront Development Fund with annual payments of at least \$2.5 million to support economic development and revitalization activities within the vicinity of the Buffalo waterfront; and**
- **establish a "Niagara University Capital Fund" with a value of \$9.5 million, a "Landscape Development Fund" of \$1 million, convey a 24-acre of land located to the university, and make available to Niagara University 3 MW of firm project power.**

As the foregoing list shows, the Settlement Agreements provide a cornucopia of benefits to neighboring communities. The Host Communities receive a package of cost based power and \$89 million to be spent as the

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communities choose. The City of Buffalo, which is located twice the distance from the Niagara Project as the PPC communities and apparently does not experience any adverse impacts of operation, gets millions of dollars to revitalize its waterfront and support economic development. Both the tribes and Niagara University get a share of cheap project power, notwithstanding that the Niagara Redevelopment Act (discussed *infra*) originally intended local *communities* to benefit from low cost power.

The Settlement Agreements also provide money for greenway projects and parks. But this funding does not help the PPC communities. For starters, there is no guarantee that the PPC communities will receive any of the Greenway or recreational funds; they must apply for that money and compete against other communities, including the Host Communities and City of Buffalo, which already receive money from NYPA. Second, money to establish parks and recreation does not mitigate the impacts of project operation to the PPC communities. Setting up a park does not help PPC communities protect their shorelines against erosion; developing a bike path does not help PPC pay for the added cost of water and wastewater treatment. NYPA's funding of greenways and recreation makes for positive Public Relations, but does not address the serious damage caused by the NYPA project.

More seriously, the added influx of revenues to these other communities puts the PPC communities at a serious competitive disadvantage. PPC will lose residents and industry to other communities, which can lure them with cheap

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power and revitalized infrastructure. And costs for remaining residents of PPC will increase, because under the present project proposal, PPC must bear the burden of mitigating impacts of project operation, such as increased erosion and wastewater treatment operating costs.

The DEIS does not examine the socio-economic impact of providing millions of dollars to all entities surrounding the project, except for the PPC communities. The DEIS (at p. 137) acknowledges the positive socio-economic benefits of the settlement agreements to the entities that received them. But it completely ignores the negative impact of these selective settlement agreements on the PPC communities, which did not receive anything.

2. The same hardship that justified NYPA's Settlement with the Host Communities apply with equal force to the PPC Communities

The DEIS offers no evidence indicating NYPA relicensing will mitigate or improve the widely recognized economic disparity between upstate and downstate New York, especially from the perspective of the PPC. This is a missed opportunity that warrants remedy, since this disparity is compounded by the fact PPC communities are subsidizing power rates for downstate New York areas, because PPC municipalities are not fairly compensated for remediating impacts caused by NYPA operations, and the DEIS does not indicate fair compensation will be provided PPC communities over the next 30-50 years.

High energy costs are often cited as barriers to improved and increased economic development activity. The Business Council of New York State, Inc.

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notes in a 23 June 2005 memorandum, "Electric power costs continue to be a significant competitiveness issue for New York State businesses and especially for manufacturers. Industrial facilities often face in-state power rates two to three times higher than those paid by out-of-state competitors." According to a March 2006 report entitled "Unshackle Upstate," between 1990 and 2004 upstate New York lost 33% of its manufacturing jobs, while upstate taxes are 22% higher than the national average and local property taxes are 55% higher. Whether measured by job retention/creation, municipal tax base stability and growth or public tax revenue to support public services, upstate New York lags downstate New York. Upstate New York includes PPC communities found in the Buffalo-Niagara Falls Standard Metropolitan Statistical Area (SMSA). For example, in its "Just the Facts" report, The Public Policy Institute of New York State, Inc. (Institute) notes from 1995-2005 private sector employment in New York rose 8.7% (U.S. Bureau of Labor Statistics) over the same period of time, job growth in upstate New York was 4.8%, less than 47 of the 50 states. The national average was 14.1%. In its "Could New York Let Upstate Be Upstate?", the Institute documents job growth from 1990-2003 in New York State was +2.3%, while the Buffalo-Niagara Falls SMSA suffered a 0.4% decline.

The DEIS not only fails to offer measures to mitigate the economic impact caused by NYPA operations on PPC communities, but actually creates new economic distress for PPC municipalities. With the settlement agreement with host communities referenced in 3.3.8.3, PPC's are now placed in a worsened

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competitive position for economic development activity, even measured against fellow Buffalo-Niagara Falls SMSA communities.

Host communities as defined in Section 3.3.8.3 of the DEIS includes the Niagara Power Coalition, City of Niagara Falls, City of Niagara Falls School District, Town of Lewiston and Town of Niagara. Although the term “host community” does not include the City of Buffalo or Erie County, NYPA chose to reach settlement agreements with those communities as well. This means that PPC communities really impacted by NYPA operations, representing over 270,000 residents, are the only impact communities not selected by NYPA for settlement agreements.

In the DEIS, NYPA essentially adopts the definition of host community as contained in a research 2004 report entitled “The Impact of the New York Power Authority’s Robert Moses Niagara Power Project on the County of Niagara and its Communities” (Report), prepared by FMY Associates, Inc. (FMY), Los Angeles, CA. Based on the fact the definition of “host community” in settlements referenced in the DEIS and the Report, one must conclude NYPA found the economic hardship case found in the Report compelling enough to reach voluntary settlements. Perhaps in the economic hardship case for Buffalo-Niagara Falls SMSA entities found in the City of Buffalo and Erie County were equally compelling for NYPA to reach agreement with those governments. Unfortunately, PPC communities, in the same SMSA, equally distressed, and more impacted by NYPA operations have been ignored relative to a fair

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settlement with NYPA. Because meaningful economic hardship distinctions cannot be made among Buffalo-Niagara Falls SMSA communities, it is grossly unfair to include a small number of impact municipalities as represented by the PPC, whose combined population almost equates to the second largest city in New York State. Because the DEIS host communities were awarded a Host Community Fund with a net present value of \$89.9M, these communities have a significant economic advantage over PPC, on a relatively small economic development field. Host communities now have a dedicated stream of reliable NYPA income to service capital improvement debt. PPC communities do not. In some cases PPC debt will have to be incurred to address projects required to mitigate NYPA operations. In addition, these long-term streams of NYPA income will stabilize and enhance credit ratings assigned to host community municipal credit ratings and bond offerings, lowering related interest costs. Host community projects will be more "bankable," certainly in relation to PPC projects, all other considerations equal. All of these considerations, at the expense of neighboring PPC communities, no mention is made in the DEIS of host communities sharing revenue or assets with PPC communities. If there are no requirements to do so in the settlements why would host communities do so? Why would NYPA now ask PPC communities to expect revenue from the already approved settlements, when NYPA did not make such sharing a requirement and condition of the host community settlements?

The 25 MW of NYPA cost-based energy provided host communities or their designees in the settlement agreements certainly is an economic development tool to attract and retain private investment. PPC communities have no comparable tool to use. Once again, they are placed at an economic development disadvantage, made possible because of previous NYPA settlements and NYPA's unwillingness to treat PPC communities in a fair and equate manner. The measures outlined in the DEIS therefore do not mitigate impact caused by NYPA operations on PPC communities, but actually creates new obstacles for those same impacted municipalities.

3. Environmental Justice and Equal Protection Issues

Technically, the disparate treatment of the PPC communities does not violate the principles on Executive Order No. 12898 (February 11, 1994) which requires federal agencies to consider disproportionate impacts on low income and minority communities. Still, the concept of environmental justice is grounded on equal protection, and the principle that similarly situated communities are entitled to similar treatment must apply.¹³ Here, communities similarly situated to the PPC communities (and in fact, some, which are even less impacted by the project) are receiving differential and preferential treatment.

¹³ See *THE FEDERAL ENERGY REGULATORY COMMISSION AND ENVIRONMENTAL JUSTICE: DO THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE CLEAN AIR ACT OFFER A BETTER WAY?*, Jason Pinney, Boston College Law Review, online at http://www.bc.edu/schools/law/lawreviews/meta-elements/journals/bcealr/30_2/03_TXT.htm (discussing origins of Environmental Justice and FERC's failure to comply).

Author: Staff
Subject: Response
Date: 12/11/2006 3:30:33 PM
 While communities may receive differential treatment under the settlement, none of the side-agreement measures styled as community payments are being recommended for inclusion in a new license; therefore, it is unclear how the Commission is treating the communities differentially.

Commission approval of this differential treatment violates the principles behind the Environmental Justice Act and potentially, the Fourteenth Amendment of the United States Constitution.

D. The DEIS does not examine cumulative impacts of project development

Ontario Power, which operates the Sir Adam Beck Project, the Canadian counterpart to the Niagara Project, is about to embark on construction of a third tunnel which will divert additional water to maximize generation at the Adam Beck facility.¹⁴ As the Ontario Power website describes, the tunnel will be excavated under the City of Niagara Falls and divert more water from the Niagara River. See <http://www.opg.com/ops/NTDevPower.asp> (project details on Niagara Project). The PPC communities have not conducted our own analysis of project impacts, but based on the size and duration of the massive excavation, not to mention additional flow diversion from the river, substantial impacts are inevitable. Yet the NYPA DEIS makes no mention of this project; it is as if it does not exist.

Ontario Generation's Niagara Tunnel Project is a cumulative impact which must be addressed in the DEIS. A cumulative impact is defined in 40 C.F.R. § 1508.7 as the impact on the environment which results from the incremental

¹⁴ See, e.g., <http://www.niagarafrontier.com/tunnel.html>; also "Big Job for Big Becky," *Niagara Falls Review*, May 19, 2006 (describing Adam Beck construction project); International Board of Control Report to the IJC (March 2005), online at www.ijc.org/rel/boards/niagara/niagara105.pdf (describing plans for Adam Beck Project).

Author: Staff
Subject: Response
Date: 12/13/2006 2:35:11 PM
Please see our response to EPA on this issue.

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impact of the action when added to other past, present, and reasonably foreseeable future actions. In *Great Basin Mine Watch v. Hankins*, the Ninth Circuit articulated the following standard for review of cumulative impacts:

A proper consideration of the cumulative impacts of a project requires some quantified or detailed information; general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided. The analysis must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects. Defendants must do more than just catalogue relevant past projects in the area. In assessing cumulative effects, the environmental impact statement must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and difference between the projects, are thought to have impacted the environment.

2006 US App. LEXIS 19298 at *44. Applying this standard, the Ninth Circuit found Bureau of Land Management (BLM)'s EIS for a proposed mining project insufficient where it contained only five sentences of conclusory analysis on the cumulative impacts of operation of other mines located in close vicinity.

Here, the DEIS does not even devote five words, let alone five sentences to the Niagara Tunnel project, which will inevitably affect operations at the Niagara Power Project and impact the surrounding environment. As this online photograph (<http://www.niagarafontier.com/image/labelmap.jpg>) shows, both the Adam Beck Plant and Niagara Power Project are directly adjacent to each other. And the DEIS itself describes that NYPA and Ontario Generation coordinate generation between the plants:

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Section 3.3.1.3 states: "In addition to the Niagara Project, Ontario Power Generation operates the Sir Adam Beck Hydroelectric Project. Together, the projects contribute to shoreline erosion by causing fluctuation of water levels in both the upper and lower rivers" (Section 3.3.1.3, DEIS, p. 30).

The DEIS leaves the following questions about impacts unanswered:

Construction Impacts (short term)

--How will excavation of a massive tunnel impact water quality, toxicity and sedimentation in the Niagara River?

--What impact will ongoing construction have on NYPA's generation output?

--Will NYPA have to reduce generation or reduce project operation to accommodate construction of the Adam Beck project and if so, what are the anticipated costs of reducing power generation?

Operating Impacts (longer term)

--How will changes in diversion of water impact flow fluctuations in the Niagara River?

--Will withdrawal of water affect velocity (thus reducing stream ability to absorb pollutants?)

--Will diversion cause additional fluctuations and erosion?

--What impacts will tunnel excavation have on ice formation and ice induced flooding?

NYPA will likely argue that it did not evaluate these impacts because they were not identified by stakeholders during the ALP. However, NYPA's failure to evaluate these impacts does not take the Commission "off the hook." The CEQ regulations require federal agencies like the Commission to evaluate all

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cumulative impacts and cases like *Great Basin Mine Watch*, *supra*, show that courts take the cumulative impact analysis seriously. By any standard, the Niagara Tunnel excavation is a cumulative impact. It is a foreseeable (indeed it is an ongoing) future action that will have long term repercussions for the entire Niagara River basin area. The Commission's negligence in overlooking this "elephant in the living room" is inexcusable and constitutes a flagrant violation of NEPA and the CEQ regulations.

E. The DEIS violates NEPA and Section 1502.14 of the CEQ Regulations by failing to examine viable alternatives to NYPA's preferred proposal

The section on alternatives is "the heart of the EIS." 40 C.F.R. § 1502.14. Among other things, the Commission must "rigorously explore and objectively evaluate alternative" and include alternative mitigation measures in its analysis. *Id.* Here, the DEIS omits discussion of three reasonable alternatives to the NYPA proposal: (1) the alternative of issuing a 30 year license as required by the Federal Power Act and applicable FERC precedent as opposed to NYPA's preferred 50 year alternative; (2) the alternative of upgrading project capacity as proposed by NYPA in 1989 or (3) the alternative of providing a settlement to the PPC communities of the same scope and magnitude as those offered to the Host Communities, the City of Buffalo, Niagara University and the Tuscarora Nation. We briefly discuss these alternatives below.

1. Thirty versus fifty year license

The Commission's present policy is to issue 30 year licenses where no major construction is required and 50 year licenses for large projects involving complicated permitting and construction issues.¹⁵ NYPA does not propose any project upgrades or changes in project operation that would justify a fifty year license. Nevertheless, NYPA seeks an exception to the Commission's policy on the duration of licenses, arguing that all of the money that NYPA has agreed to pay as part of its various settlement packages justifies a longer license term.¹⁶

The Commission has before it an obvious alternative: a thirty year license or a fifty year license. The fifty year license promises far more damaging impacts. Under the fifty year license and the Settlement Agreements that NYPA has locked up, NYPA will continue to operate the project "as is" for another half century. As part of the settlements, the New York Department of Environmental Conservation (NYDEC) and other communities accepted one time settlement

¹⁵ See, *William Arkoosh*, 114 FERC ¶ 72,270 (2006) ("The Commission's general policy is to establish 30_year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40_year terms for projects with moderate amount of such activities; and 50_year terms for projects with extensive measures. Projects like this one that entail construction of a new dam generally receive a 50 year license. Because this license authorizes construction of a new dam, a new powerhouse, and a new transmission line, a 50 year license term is appropriate.").

¹⁶ The amounts offered in the settlement package represent pocket change to NYPA. In the first quarter of 2006, the Niagara Project generated \$40 million in profit. NYPA uses excess money from the Niagara Project to fund projects throughout the state of New York.



Author: Staff
Subject: Response
Date: 12/11/2006 3:31:06 PM
We discussed the issue of license term in our response to Eastern Niagara. Please note, as cited in your footnote 15, that the amount spent on environmental measures is also a factor in the Commission's decision on license term. However, our analysis of project economics, for each alternative assessed, only includes those measures that would be in the license under that alternative. For example, under NYPA's proposal or the settlement alternative, only the measures in the relicensing agreement are included as costs.

offers, in exchange for which they gave up any rights and obligations to review project impacts or seek changes to operation in the future. The settlement is reminiscent of the types of licenses that the Commission issued seventy years ago, which did not contain reopener clauses and restricted the Commission's ability to mitigate new impacts that did not emerge until many years after the license issued. *See, e.g., Platte River Whooping Crane Critical Habitat Maintenance Trust v. Federal Energy Regulatory Commission*, 876 F.2d 109 (D.C. Cir. 1989) (holding that lack of reopener in license precludes Commission from changing a license mid-term to impose new conditions to mitigate impacts resulting from long term project operation).

PPC opposes issuance of either a 30 year or a 50 year license under the terms presently demanded by NYPA. But in the event that the Commission decides to issue the license to NYPA, at the very least, the appropriate alternative is to limit the license to a thirty year term rather than the proposed fifty year term to spare PPC members and the surrounding community two additional decades of adverse environmental impacts and the associated costs.

2. Upgrading project capacity

In 1989, the Commission approved NYPA's proposal to upgrade the Niagara Power Plant by 625 MW. *See Power Authority of the State of New York*, 46 FERC ¶ 62,322 (1989). Six years later, in 1995, NYPA withdrew the proposal, claiming that it would not need additional capacity until 2009 and thus the upgrade was not economically justified. 71 FERC ¶ 62,009 (1995).

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Author: Staff
Subject: Response
Date: 12/13/2006 2:37:50 PM
 We addressed the capacity upgrade issue above.

The Commission should consider NYPA's withdrawn capacity upgrade as an alternative to its present relicensing proposal. Although NYPA did undertake a more modest upgrade, the Commission must evaluate whether the Niagara Project produces sufficient capacity to meet NYPA's needs. Moreover, increasing power generation would make more low cost power available to the PPC communities, which now pay some of the highest power rates in the country. Requiring capacity upgrades at the NYPA project is a reasonable alternative and one that the DEIS should, but does not, address.

3. Extending settlement offer to PPC communities



An EIS must examine alternatives to the proposed action and proposed mitigation. One alternative to the existing proposal is to require NYPA to extend to the PPC communities a Settlement Package of the same scope and magnitude as those provided to other entities. A Settlement Package that compensates PPC communities for the future costs of mitigating project impacts (such as erosion, lost shoreline and other impacts described in Appendix A), that provides PPC with low cost power to operate wastewater treatment plants and other municipal facilities, and that gives PPC members substantial monetary compensation to invest in infrastructure projects to revitalize their communities will put PPC on equal footing with surrounding entities. Moreover, this type of settlement package will ensure that revitalization of Western New York takes place region wide, rather than leading to improvement in some places and resulting in brown fields and increased costs and depleted communities in others.

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Author: Staff
Subject: Response
Date: 12/11/2006 3:32:06 PM
 We addressed these issues above.

Giving the PPC communities a Settlement Package is an obvious alternative to the proposed mitigation that has been overlooked by the DEIS.

- F. **The DEIS does not examine the impacts of NYPA's non-payment of taxes on the PPC communities, in particular, the City of North Tonawanda which is located in the same county (Niagara County) as the Niagara Project.**

One community, the City of North Tonawanda, is located in Niagara County where the Niagara Project is sited. NYPA is a tax exempt entity that occupies vast lands in Niagara County. The NYPA project purchases an estimated \$56 million worth of goods and services in Niagara County but does not pay sales tax. Also, because NYPA sells electricity at reduced rates to private industry, they too pay reduced tax amounts on energy. All of this results in artificially reduced sales tax to the City of North Tonawanda as well as other PPC members which host industry that receives low cost NYPA power. The reduced tax revenues means that the City of North Tonawanda and other affected PPC members must find money from other sources to offset the impact of NYPA's nonpayment of taxes. Some municipal power authorities, such as the Long Island Power Authority (LIPA) are required by statute to make payments in lieu of taxes. No similar requirement applies to NYPA.

The DEIS briefly evaluates the impact of NYPA's tax exempt status. However, it concludes that these adverse economic impacts are, to some extent,

Author: Staff
Subject: Response
Date: 12/11/2006 3:32:38 PM
We addressed this issue above.

offset by the Settlement Agreements.¹⁷ But the DEIS does not examine the economic impact of NYPA's tax exempt status on communities like the City of North Tonawanda, which will not receive the benefits of a Settlement Agreement.

G. The DEIS does not reflect the requirements of the Niagara Redevelopment Act which was intended to provide low cost power to local communities and stimulate growth and prosperity for all communities, not just a select few.

The Commission must comply with the provisions of the Niagara Redevelopment Act (NRA) in issuing a new license for the Niagara Project. The NRA provides, in relevant part that:

(1) To assure that *at least* 50 percent of project power [from the Niagara Project] is available for sale and distribution for the benefit

¹⁷ We note that the DEIS' analysis is flawed in this regard. NYPA's Report, *The Past, Present and Future Socioeconomic Effects of the Niagara Power Project* states:

The Project also affects residents of local jurisdictions through its exemption from taxation. If the exemption were removed, the ultimate impacts on residents would depend on the decisions of local taxing authorities as well as the specific outcome of negotiations between these authorities and NYPA. **Based on our estimates of the potential taxable values of Project lands and facilities, we calculate that the additional revenues due to removing the exemption could range from approximately \$2 million per year if taxes were levied on only the unimproved Project lands to \$53 million per year if taxes were levied on the current value of the Project lands and facilities.**

For a 50 year license, NYPA's tax payments could range from \$100 million to over 2.6 billion dollars. In this context, the proposed settlement with the Host Communities for \$89.9 million and power valued at \$92.7 million is a savings for NYPA over what it would spend if it were obligated to pay PILOTs.

Author: Staff
Subject: Response
Date: 12/13/2006 2:38:12 PM
We addressed this issue in our response to NYSEG and RG&E. Compliance with the current license would be addressed in any order issuing a new license.

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of consumers, the licensee in disposing of 50 percent of project power the project power shall give preference and priority to public bodies and nonprofit cooperatives within economic transmission distance.

(2) The licensee shall make a reasonable portion of the project power subject to the preference provisions of paragraph (1) available for use within reasonable economic transmission distance in neighboring States, but this paragraph shall not be construed to require more than 20 percent of the project power subject to such preference provisions to be made available for use in such States.

The NRA was intended to bring low cost power and attract industry to the Niagara region. Unfortunately, this promise has not been realized for the PPC communities, which pay some of the highest rates for power in the state of New York. None of the PPC communities are “preference customers” because they do not own their distribution systems. As such, they do not qualify for the extremely cheap preference rates accorded under the NRA to preference customers.

The NRA allocates 445 MW of “replacement power” for industry within 30 miles of the project. But apparently, NYPA has already allocated this power. There are also 250 MW of power available as expansion power. Sales of expansion power, to companies within a thirty mile radius of the project are authorized by New York law.

The DEIS does not examine the impacts of NYPA's failure to comply with the purposes of the NRA. Among other things, the DEIS must examine:

—the economic impact on the PPC communities of NYPA's failure to provide them with low cost power, as it has to preference

customers and the entities which are beneficiaries of the Settlement Agreement;

--the impacts of an alternative to the present proposal, whereby NYPA allocates a larger portion of low cost power to PPC members;

--whether NYPA's present operation and management of the project complies with the requirements of the NRA.¹⁸

H. The Commission must conduct another scoping session or prepare a Supplemental EIS 

All of the deficiencies and gaps in the DEIS suggest that the underlying Scoping Session and Scoping Document was inadequate. At this point, however, revisiting the Scoping Process does not make sense. Instead, the Commission should simply start anew and either convene a second scoping session to address impacts that were overlooked (including those identified by the EPA) or prepare an SEIS that addresses all of the impacts that were missed. But the Commission must consider remedying these defects because as currently written, the DEIS will not pass muster with a reviewing court.¹⁹

Author: Staff
Subject: Response
Date: 12/11/2006 3:34:47 PM
 We have added additional information to the cumulative impacts assessment to address EPA's comments. We don't see how conducting another scoping session would generate comments significantly different than those we've received in response to the DEIS.

¹⁸ It is not clear whether the issue of NYPA's compliance with applicable law is appropriately examined within the context of the DEIS or as part of the Commission's decision on issuance of the license. Section 15 of the FPA requires the Commission to consider an applicant's fitness in issuing a license and non-compliance with applicable law is indicative of lack of fitness.

¹⁹ As discussed, the PPC communities would accept a Settlement Agreement from NYPA to address these impacts as an alternative to preparing an SEIS.

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IV. CONCLUSION

For the reasons discussed herein, the Commission's DEIS is grossly inadequate and in violation of the provisions of NEPA, the CEQ regulations and judicial precedent. To cure these deficiencies, the Commission must evaluate the impacts on the PPC communities, specifically the cost of mitigating adverse project operational impacts and the economic disadvantage to PPC resulting from NYPA's Settlement Agreements with neighboring entities. In addition, the Commission must verify information submitted by NYPA and require NYPA to conduct additional studies so that the Commission can assess the impact of future project operation on erosion rates and water quality. Alternatively, the Commission can bypass these measures for the time and instead, order NYPA to enter into good faith negotiations with the PPC communities to provide a Settlement Package of the same scope that has been extended to other entities. Unless the Commission takes these measures, the PPC communities ask the Commission to reject NYPA's application for a new license.

Respectfully submitted,

/s/ Carolyn Elefant

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Town of Grand Island and Town of Amherst

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**APPENDIX A TO PPC COMMENTS ON NYPA DEIS
PROJECT NO. 2216
EXECUTIVE SUMMARY**

The Public Power Coalition (PPC) was formed as an alliance of five communities that either abut the Niagara River or one or more of the River's main tributaries. The five members – the City of North Tonawanda, the City of Tonawanda, the Town of Tonawanda, the Town of Grand Island and the Town of Amherst – are all located within a fifteen mile radius of the Niagara Power Project, on the Niagara River, in Niagara County, New York. Because of their proximity to the Project, these communities, with a combined population of over 260,000, have experienced a series of impacts from the operation of the Project, including water fluctuations, sedimentation, and erosion. The five communities have all expended resources and completed projects in response to the impacts experienced by project operation.

Project operation contributes to fluctuations in the upper Niagara River, which influences tributary water levels. The extent of influence of Niagara River water levels extends along the lengths of the tributaries through the five communities. Fluctuating water levels, in turn, affect such processes as erosion, sedimentation, flooding, and conditions such as water turbidity, temperature, and habitat quality.

In response, the communities have completed and paid for shoreline protection and maintenance projects. And because project operation is not anticipated to change with the relicensing, the project will continue to contribute to fluctuation-related erosion, an impact that the communities must therefore pay to mitigate against.

Project operation has also influenced the operation of wastewater and water treatment plants in the communities. Increases and decreases of water temperatures, and the rates at which these temperature changes occur, affect water and wastewater treatment processes. Variations in water temperature complicate the control systems that maintain consistent process control and chemical dosaging, leading to increases in plant operational costs. Water withdrawals also increase a stream's velocity, resulting in the extension of discharge plumes and a change in downstream turbidity. This leads to an increase in treatment chemicals required and additional plant operation costs.

As a result of project operation, the combined cost borne by the PPC communities totals nearly \$1 billion (as a result of erosion, sedimentation, turbidity, water level and temperature fluctuations, and lack of low-cost power as required by the existing operating license). The communities are therefore seeking monetary compensation for past and anticipated future damages.

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I. Introduction

The New York State Power Authority's (NYPA) Niagara Power Project has been operating for over forty years and is a significant asset to the Western New York region. While hydropower is a clean and renewable energy source, there are impacts associated with the Project's continued operation on surrounding waterways and communities. NYPA is currently seeking a new 50-year operating license for the Project and as part of the relicensing process, it must consider impacts.

The Public Power Coalition (PPC) was formed as an alliance of five communities that either abut the Niagara River or one or more of the River's main tributaries. The five members – the City of North Tonawanda, the City of Tonawanda, the Town of Tonawanda, the Town of Grand Island and the Town of Amherst – are all located within a fifteen mile radius of the Niagara Power Project, which is located on the Niagara River, in Niagara County, New York (see Figure 1). Because of their proximity to the Project, these communities, with a combined population of over 260,000, have experienced a series of impacts from the operation of the Project, including water fluctuations, sedimentation, and erosion.

On April 10, 2006, the Public Power Coalition submitted a motion to intervene in the relicensing proceedings. This motion was granted by the Federal Energy Regulatory Commission on May 19, 2006. This report is intended to summarize and present the impacts experienced by the five communities, both collectively and individually, and to document the costs associated with the impacts. The continued documentation of impacts and associated costs will help facilitate PPC's participation in the relicensing process.

II. Summary of Impacts

The five communities have all expended resources and completed projects in response to the impacts experienced by project operation. Impacts experienced by all of the communities are described below. Specific community impacts are described in Section III.

I. Water Level Fluctuations

Many of the impacts experienced by the five communities are as a result of fluctuating water levels in the Niagara River and its tributaries. Fluctuations in the upper Niagara River, approximately 1.5 feet per day, are the result of a number of factors, including the diversion of water for project operation from the Chippawa-Grass Island Pool located at the north end of Grand Island (DEIS, pgs. 32 and 47).

According to the Draft Environmental Impact Statement developed by NYPA, fluctuations in the upper Niagara River in turn influence tributary water levels (DEIS, pg. 32). These tributaries include Woods, Gun, and Spicer Creeks in the Town of Grand Island and Tonawanda and Ellicott Creeks in the Towns of Tonawanda and Amherst and the Cities of North Tonawanda and Tonawanda (see Figure 2). The median daily water level fluctuations in the tributaries were estimated to be 0.5 feet, however, the exact zone of influence of Niagara River water levels on

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Tonawanda and Ellicott Creeks was not determined. A conservative estimate was made of the potentially affected length of these creeks; the influence of Niagara River water levels on Tonawanda Creek was determined to be 13.7 miles, and the influence on Ellicott Creek was determined to be 7.3 miles (DEIS, pg. 48).

Fluctuating water levels, in turn, affect such processes as erosion, sedimentation, flooding, and conditions such as water turbidity, temperature, and habitat quality.

The issue of increased water treatment costs undertaken by PPC communities as a result of turbidity is a serious one. Engineers from PPC communities have estimated a combined impact of \$1,150,000 per year (as a result of an additional 10% cost incurred to treat water impacted by Niagara Power Project operations). For instance, the Town of Tonawanda has a flow of 4.210 billion gallons of water per year at a cost of \$2,848,741.00 Town of Amherst residents and businesses, on the other hand, purchase approximately 20 billion gallons of water per year from Erie County at an estimated cost of \$50 million per year; the cost of this water is inflated due to increased processing costs incurred by Erie County as a result of Niagara Power Project operations.

2. Erosion / Sedimentation

Erosion of islands and banks/shoreline in the upper Niagara River and its tributaries is largely caused by water level fluctuations resulting from a number of factors, including Project operation (DEIS, pg. 26). The Shoreline Erosion and Sedimentation Assessment Study background study completed by NYPA details the extent of erosion in the upper Niagara River and its tributaries and is summarized below. Areas experiencing erosion, as well as erosion scarps, are shown in Figure 3.

- In the upper Niagara River, 3% of the shoreline was identified as eroding. The lack of more widespread erosion was partially attributed to the extent of shoreline protection structures, present on approximately 63% of the shoreline.
- The two longest continuous reaches of erosion in the upper Niagara River were identified at the north end of Grand Island, at the north end of Buckhorn Island, and on the east side of Grand Island opposite Tonawanda Island.
- Approximately 3% of Tonawanda Creek was identified as eroding. Again, a large portion of the creek is protected by some form of structure or dumped stone, found on approximately 83% of the shoreline.
- Approximately 5% of Ellicott Creek was identified as eroding and 20% of the Creek is protected.
- Several tributary creeks located in Grand Island were studied and shown to be experiencing erosion: Woods Creek, Gun Creek, Spicer Creek, and Big Sixmile Creek. Approximately 1% of Woods Creek is eroding and 3% is protected by localized structures. For Gun Creek, approximately 26% is eroding and 11.5% is protected with a

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variety of structures. 10% of Spicer Creek is eroding, while Big Sixmile Creek is experiencing approximately 7% erosion.

- Accepted costs for erosion control in PPC communities is \$1,000 per foot of shoreline. PPC communities have documented 109 miles of shoreline in their communities, encumbering them with \$576 million in known erosion control responsibilities over the next 50 years (in addition to the numerous erosion control projects already undertaken by individual PPC communities over the past 50 years).

NYPA concluded that the Project's impact on erosion is negligible due in part to shoreline protection, efforts that have been completed and paid for by the PPC communities. In addition, NYPA's report notes the presence of damaged shore protection structures. It was concluded that these damaged structures were the result of inadequate design or construction to accommodate fluctuating water levels, fluctuations due in part to Project operation.

Because Project operation is not anticipated to change with the relicensing, NYPA assumes that the Project will continue to contribute to fluctuation-related erosion (DEIS, pg. 28). The five communities will therefore continue to bear the effects and associated costs of erosion related to Project operation. NYPA does acknowledge this cost as well as a potential remedy: "We note that the stream bank erosion that is documented in the tributaries, some of which is probably attributable to past and ongoing Project operations, could potentially be addressed via restoration or enhancement projects funded through the Habitat Enhancement and Restoration Fund proposed by the Power Authority" (DEIS, pg. 49). In recognition of erosion caused in part by Project operation, NYPA has proposed several Habitat Improvement Projects (HIPS) intended to address erosion (DEIS, pg. 27).

3. Water Temperature, Quality, and Velocity

Studies completed by NYPA show that the tributaries of the Niagara River can experience temperature changes ranging from -6.5 to +2.3 degrees Celsius per hour, mostly in the lower reaches of the tributaries near their confluence with the Niagara River. In the shoals of the upper Niagara River, temperature changes ranging from -4.1 to +4.4 degrees Celsius per hour were observed (DEIS, pg. 41). Increases and decreases of water temperatures, and the rates at which these temperature changes occur, affect water and wastewater treatment processes. Variations in water temperature complicate the control systems that maintain consistent process control and chemical dosing, leading to increases in plant operational costs.

Water withdrawals also increase a stream's velocity. Increased velocity in turn affects the operation of wastewater treatment plants. Because wastewater treatment plants' discharges are regulated based upon the concentration of pollutants, diffusion rates in the receiving streams affect the streams' ability to accommodate chemical and biological loadings. An increase in water velocity extends discharge plumes, changes sedimentation rates, and alters downstream turbidity. This results in an increase in treatment chemicals required, leading to additional operational costs.

4. Effects on Aquatic Habitat

The overall quality of aquatic habitat is influenced by many of the impacts described above: fluctuating water levels, erosion, water temperature, and water quality. By diverting water from the upper Niagara River and returning it downstream, operation of the Project affects aquatic habitat. The habitats most influenced by water level fluctuations are near shorelines and along the perimeter of islands (DEIS, pg. 69). It has been noted that "water level fluctuations may impact those species that have immobile life stages (e.g., egg stages, nesting, hibernation) and therefore could be susceptible to short-term habitat changes" (DEIS, pg. 78).

III. Specific Community Impacts

1. City of North Tonawanda

The City of North Tonawanda, population 33,362 (2000), is surrounded on three sides by the Niagara River, Tonawanda Creek/NYS Barge Canal, Bull Creek and Sawyer Creek. These water bodies are demonstrably affected by water level fluctuations caused by NYPA's power generation activities. As previously discussed, water level fluctuations affect erosion and water temperature, which in turn impact aquatic and terrestrial habitat.

Project operation has increased the cost of operation of the City of North Tonawanda's Wastewater Treatment plant. Wastewater discharges are regulated based upon concentration of pollutants which disperse at different rates depending upon factors such as stream velocity and sedimentation. NYPA's operation of the Project means that the stream cannot accommodate the same level of chemical and biological loading from North Tonawanda's plant, so the city must use additional chemical additives, which increases the cost of treatment. The impacts associated with NYPA project operation on water velocity, temperature, and turbidity has led to increased operational costs for the Wastewater and Water Treatment Plants. Likewise, increases and decreases of water temperature in the Upper Niagara River caused by Project operation also increases the cost of the City's wastewater treatment facilities.

The City of North Tonawanda, like other PPC members, has spent significant amounts mitigating NYPA impacts. In the past three years alone, the City has spent more than \$1 million dollars¹ for sedimentation removal and shoreline remediation projects, including:

1. Construction of barrier islands at Gratwick Riverside Park	\$500,000
2. Shoreline protection project for Gratwick Riverside Park (2004)	\$250,000
3. Sedimentation removal at main water intake (2005)	\$120,000
4. Sedimentation removal at the confluence of Ellicott and Tonawanda Creeks	\$94,000

¹ All costs provided were compiled by professional engineers and/or technical staff of the PPC communities.

Author: Staff
Subject: Response
Date: 12/11/2006 3:36:20 PM
We addressed the erosion and water level fluctuation issues above which, from a project effects perspective, have not been found to be significant. As such, it would seem to be more reasonable that the costs of water treatment are borne by the entities that discharge pollutants into the water.

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| 5. Fisherman's Park erosion repair (anticipated costs) | \$100,000 |
| 6. Future cost to protect Gateway Point (anticipated costs) | \$3,000,000 |

In the 1970's, North Tonawanda upgraded the Waste Water Treatment Plant (WWTP) to meet the criteria for the best use of the Niagara River. Included in best use requirements, New York Power Authority's use of water established the standards that North Tonawanda's WWTP was designed and permitted for. The SPEDS permit reflected the best use policy, including NYPA's withdrawal of the Niagara River water, which in turn drove process chemical costs beyond those if NYPA did not exist. It is the City's position that partial costs of design, construction, and operation are attributed to NYPA activities down river. Those activities are reported and covered under the Niagara River Pollution Control Board's reports and those of the International Joint Commission (IJC). It is the City's position that the following apportioned costs are directly attributed to NYPA's activities:

1. North Tonawanda WWTP construction costs debt service on \$3 million of \$10 million bonded indebtedness is calculated at \$0.7 million for a total of \$3.7 million.
2. Operational costs increases, that include energy and chemical usage costs of the North Tonawanda WWTP, are estimated to be 10 percent of the annual cost of \$800,000, that equates to \$80,000 annually over the past 24 years, equaling a total of \$1.92 million.
3. Personnel cost at the North Tonawanda WWTP based upon advanced treatment technology required are estimated to be 3 persons at an average annual salary with benefits costing \$35,000 per annum per person, equaling \$2.52 million in the past 24 years.
4. Over the duration of the NYPA licensing agreement, the City of North Tonawanda has lost its industrial base, has been unable to retain existing industry, or entice new industry due to the lack of a low cost power allocation, and the benefits derived from it. As a result, the tax burden has shifted dramatically from industrial to commercial and residential. The loss of industry has caused a loss in population that was projected in the 1970's to be 55,000 by this time, and has resulted in a reduction in population to 33,000 presently. The loss of industry has changed the City from an urban center to a primarily suburban center. The population now works outside the City, leading to increased costs in personal transportation, transportation infrastructure, increased demand on natural resources, and increased pollution. Approximately 10,000 vehicles per day leave the City to find work elsewhere at an additional cost of approximately \$20 per week. This equates to personal costs to residents of the City of over \$10 million annually.

In contrast to the four other PPC members, the City of North Tonawanda is located in Niagara County, where the Niagara Project is sited. NYPA is a tax exempt entity that occupies vast lands in Niagara County. The NYPA project purchases an estimated \$56 million worth of goods and services, most of which occur in Niagara County. The absence of sales tax revenue is significant and is not offset by reduced electric rates or replacement power. Also, because NYPA sells electricity at reduced rates to private industry, they in turn pay reduced sales tax amounts on

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energy. All of this results in artificially reduced sales tax revenues to the City. Loss of this revenue has the effect of shifting the burden of municipal services towards taxable landowners within the City.

Niagara County also provides many services not enjoyed or available to North Tonawanda residents. North Tonawanda has to maintain infrastructure such as fire, police, garbage, and water that are not reflected in the benefit included to Niagara County.

2. City of Tonawanda

The City of Tonawanda, with a population in 2000 of 16,136, sits directly on the East Channel of the Niagara River in Erie County, New York, approximately eight miles from the intakes for the Niagara Power Project. The City is approximately 3.5 square miles in size, with 7.5 miles of shoreline, including the Niagara River, Tonawanda Creek, Ellicott Creek and Two Mile Creek. 643 residential properties and 68 commercial properties are in close proximity to the shoreline of the Niagara River, Tonawanda Creek, Ellicott Creek, or Two Mile Creek.

The City of Tonawanda is home to sizeable industrial or manufacturing employers which located in the City to take advantage of cheap power. Now, many of these businesses have departed, including: Spaulding Fibre, Remington Rand, Columbus McKinnon, Continental Can, Exolon, Colorforms, American Allsafe, APV Crepaco, Chemical Lehman, and Consolidated Freight. This has resulted in the creation of brownfields, the loss of thousands of jobs, and reduced property valuations, all of which have adversely affected the City's ability to raise revenue and provide necessary services.

The City has also borne the costs of mitigating Project impacts within the City. The City has spent roughly \$5 million over the past decade for costs such as water improvement and water treatment facilities, canal redevelopment and break wall and docking improvement projects that address problems such as sedimentation, erosion and poor water quality caused by the operation of the Project:

1. Electric costs, water treatment operations 1997 to 2004 (water plant closure Sept 2004)	\$861,377
2. Cost of chemicals (chlorine), water treatment operations 1995 to 2004	\$40,490
3. Capital costs, NYS Canal Harbor Redevelopment Project (1998-2001)	\$1,970,279
4. Debt service cost, Water Plant Improvement Project (1994)	\$756,061
5. Debt service cost, Water Intake Improvement Project (1997)	\$370,831
6. Debt service cost, Fremont Street Bridge Reconstruction Project (1998)	\$434,600
7. Debt service cost, River Edge Breakwall Reconstruction Project (2004)	\$2,211,644

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| 8. Capital costs, Ellicott Creek Docking Improvement Project (2001) | \$267,849 |
| 9. Estimated capital costs, Two Mile Creek Culvert Replacement Project (2006) | \$400,000 |

Erie County also provides many services not enjoyed or available to City of Tonawanda residents. The City of Tonawanda has to maintain infrastructure such as fire, police garbage, and water that are not reflected in the benefit included to Erie County.

3. Town of Tonawanda

The Town of Tonawanda, population 78,155 (2000), also sits directly on the East Channel of the Niagara River, just south of the City of Tonawanda in Erie County, New York and covers approximately 12 square miles. There is approximately 11.79 miles of shoreline in the Town: 6.01 miles along the Niagara River, 1.95 miles along Tonawanda Creek, and 3.83 miles along Ellicott Creek, tributaries to the Niagara River. There are 139 parcels along the shoreline, comprising a total of 1,058 acres. In addition, numerous industrial establishments including NRG, Huntley, GM Powertrain, Dupont and Dunlop Tire are located in close proximity to, or directly on the Niagara River.

The Town anticipates significant near-term capital expenditures to deal with the problems of erosion. The Town is currently reviewing the water quality, bank integrity, and conditions of structures related to Two Mile Creek and anticipates potential remediation costs of \$1,000,000. In addition, the Town is beginning a \$475,000 restoration project at Aqua Lane Park and Small Boat Harbor to replace a failing retaining wall and rehabilitate the shoreline.

The Town of Tonawanda operates both Wastewater and Water Treatment Plants. The impacts associated with Project operation on water velocity, temperature, and turbidity have led to increased operational costs for the Wastewater and Water Treatment Plants. Tertiary treatment is mandated at the Wastewater Treatment Plant, resulting in additional costs, \$1.5 million dollars in 2005. Electrical costs alone at the Wastewater Treatment Plant and Lift Stations in 2005 were approximately \$1.7 million dollars. Recent increases in electrical costs have significantly affected both water and sewer rates for residents and businesses.

4. Town of Grand Island

The Town of Grand Island lies directly between the East and West channels of the Niagara River, in Erie County, New York. The population of the Town in 2000 was 18,621. Several tributaries located in the Town are also affected by water levels and conditions in the Niagara River, including Woods, Gun, Spicer, and Big Sixmile Creeks.

The construction of transmission facilities from the Project has essentially cut the Grand Island community in half. The facilities cut a 128.7 acre swath through the Town and lie within lands

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that would have sustained medium to high density development as much of this land is within sewer districts. The corridor has not only taken up valuable land, but has also literally bisected properties, making them impossible to develop. The potential tax base loss cannot be dismissed, nor can the negative effects of this infrastructure be ignored as a handicap to development considering all the “stigma” effects of being adjacent to these facilities.

To a lesser extent, but also important, the shoreline of Grand Island has between 450 and 620 parcels impacted to different degrees by the 100-year flood plain. The regulation of waters for power production have most likely been a contributing factor to the inclusion of these lands into this hazard zone. Impacts on the community cannot be ignored as rates for coverage under the National Flood Insurance Program can be substantial and have been escalating.

Erosion and sedimentation affect the Niagara River at Grand Island, as well as the creeks that are tributary to it. As previously discussed, the two longest continuous reaches of erosion in the upper Niagara River were identified at the north end of Grand Island, at Buckhorn Island, and on the east side of Grand Island opposite Tonawanda Island. Private residences have also been affected, as homeowners must either dredge or move their docks in response to the erosion and sedimentation that have occurred.

5. *Town of Amherst*

The Town of Amherst is located in Erie County, New York and has a population of 116,510 (2000). It is bordered on the north by Tonawanda Creek, and Ellicott Creek runs through the center of Town. As previously discussed, water levels in these creeks are influenced by fluctuations in water level in the upper Niagara River, partially the result of Project operation. Because of elevations around the creeks, water level fluctuations potentially have a greater influence on surrounding properties (see Figure 4).

In October 2005, the Town of Amherst contacted FERC, asking for NYPA to conduct a low flow monitoring program for Tonawanda and Ellicott Creeks. In a letter dated September 27, 2005 to State Senator Mary Lou Rath and attached to the filing, Amherst wrote that the town was “expected to spend millions of dollars to clean up wastewater.” Amherst recommended that a low flow monitoring program would enable the Town to document the impact of each activity, including NYPA operations, on water levels in Tonawanda and Ellicott Creeks to enable it to allocate the clean up costs. NYPA objected to the Town’s request, as did FERC.

The questions raised in the Town’s request remain unanswered. The town has two SPDES permitted discharges into Tonawanda Creek from the Amherst Museum and the Town’s Water Pollution Control Facility. These SPDES permits require precise calculations as to the effects that discharges have on water quality. The effects of Project operation on water quality and level, and their impact on calculating the Town’s effluent limits, remain unknown.

In addition, Tonawanda Creek and Ellicott Creek both have serious bank stabilization issues caused by existing soil conditions and fluctuating water levels. Both of these waterways were documented by NYPA as having areas that are eroding. Hopkins Road and Tonawanda Creek Road in the Town have both experienced road failure due to bank instability and erosion from

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Ransom Creek (see Figure 5). The minimization of flooding and erosion was also identified as a guiding policy of the draft Local Waterfront Revitalization Program, jointly prepared by the Towns of Amherst and Pendleton for Tonawanda Creek. The program calls for actions to: minimize losses of human life and structures from flooding, minimize losses of and impacts to natural resources from erosion, and preserve and restore natural protective features.

Like the other PPC communities, the Town of Amherst has expended resources and completed capital projects in response to the impacts associated with fluctuating water levels on erosion and wastewater treatment.

- The total construction cost for filtration upgrades associated with tertiary treatment improvements at the Water Pollution Control Facility is estimated to be \$8 million dollars, every 20 years.
- Creek maintenance and storm water projects include:
 - Annual tributary maintenance costs, storm sewer district #26 \$400,000
 - Ellicott Creek Silt Removal \$300,000
 - Gott Creek Slope Protection \$240,000
 - Ransom Creek Flood Control Project \$19,000,000
 - Storm Water Management Improvements \$125,000

IV. Conclusions & Recommendations

To summarize, the five communities of the Public Power Coalition have suffered numerous financial burdens over the past 50 years of Niagara Power Project operations, and will continue to suffer known and predictable financial responsibilities in the future as a result of these operations. These burdens include:

- Lack of low-cost power from NYPA, as required by the existing operating license; this has grievously harmed the industrial and residential tax-base base and local economies of the PPC communities.
- Additional costs required for water treatment resulting from turbidity; on average, PPC communities expend \$1,150,000 per year in additional water treatment costs as a result of Niagara Power Project operations.

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- Additional costs for erosion control; the cost of erosion control has been shown to be \$1,000 per foot of waterfront, or \$11.5 million per year of additional costs for PPC communities as a result of Niagara Power Project operations.

To compensate for these unfunded mandates imposed by NYPA, the PPC communities require a settlement agreement as follows:

- \$5 million per year for water treatment and erosion control, for the duration of the license.
- \$5 million per year for economic development, for the duration of the license.
- A one-time payment of \$50 million for major flood control and erosion control projects PPC communities must undertake as a result of Niagara Power Project operations.
- 30MW of power per year (to be used by residents, municipalities, and businesses), provided at the same rate as power given to “host communities” under the proposed settlement, for the duration of the license.

These settlement funds would be divided by PPC communities according to population and other factors.

The Public Power Coalition would welcome the opportunity to enter into direct and official communication with both FERC and NYPA regarding this request.

Comments by E&E on behalf of Grand Island and PPC: DEIS for Niagara Project No. 2216

Comment No.	Page/Section	Resource Area	Comment
1.	NA	All Resource Sections	While the EIS provides analysis of potential impacts, the analysis is often general and does not consistently specify the type of impact (positive or negative), nature of impact (direct or indirect), its likelihood (unlikely, potential, or likely), duration (temporary or long-term), intensity, reversibility (irreversible or reversible), or significance (significant, moderate, or negligible). Impact discussions are vague and do not specify the project's contributions. Although these are relatively complex issues, as in the case of water fluctuation and resulting erosion, there is surely a way to characterize the river with the project (without environmental protection, mitigation, and enhancements) vs. the river without the project vs. the river with the proposed project (with environmental protection, mitigation, and enhancements). The emphasis of the EIS is to infer that the reader will review the technical reports, so it more or less incorporates the evaluations from those reports by reference. However, the references are so vague that the true natures of the impacts are not well developed in the EIS.
2.	NA	General	There is no discussion of potential impacts to air and noise resources from the Proposed Project. Please provide.
3.	NA	General – Global	The lack of access to figures handicaps the readers' abilities to adequately understand spatial context as well as locations of areas impacts.
4.	NA	General – Cumulative Effects	In general, the cumulative effects analysis has been general. Cumulative impacts are those that alone may not constitute a significant impact, but if they coincide/combine with consequences from past, present, and reasonably foreseeable future activities/project may result in an "accumulation" of the consequence to be significant. The conclusion that should be drawn is whether the proposed project will contribute to a cumulative consequence to the degree that the cumulative effect would

- Author: Staff
 Subject: Response
 Date: 11/27/2006 2:59:28 PM
 There would be no air or noise impacts from the proposed or recommended alternative.
- Author: Staff
 Subject: Response
 Date: 12/13/2006 2:42:49 PM
 The paper copies and CD ROM copies of the DEIS sent to the mailing list included the figures.
- Author: Staff
 Subject: Response
 Date: 12/18/2006 8:04:39 AM
 Comment noted. We believe the analysis is sufficient to guide decisions on a new license.

Comment No.	Page/Section	Resource Area	Comment
5.	Pg xx	Executive Summary/Alternatives Analysis	<p>be considered significant.</p> <p>The EIS should consider projects in the project area, as well as those projects in Canada from the past, present, and reasonably foreseeable future. Specifically, the analysis should include recently completed upgrades and the Niagara Tunnel Project (currently underway) at the Sir Adam Beck complex in Niagara Falls, Canada. Completion of the tunnel will enable the complex to produce an additional 1.6 terrawatt-hours of electricity per year, on top of the 194 megawatt peak output of the complex upgrades that were completed in May 2006.</p> <p>The EIS states that four alternatives were evaluated including 1) the proposed project, 2) a staff alternative that includes most of the proposed measures, 3) a composite alternative that includes staff recommended measures and 4) a no-action alternative.</p> <p>There was no consideration of feasible alternatives with lower or greater power consumption levels. It later states (on page 47) that the Power Authority does not propose any changes to project operations, certification does not require any project changes, and no entity has recommended changes in project operations.</p> <p>Pursuant to the National Environmental Policy Act (NEPA), governmental decision-makers must consider reasonable alternatives to a proposed action that could result in significant environmental effects. To be reasonable, the alternatives must:</p> <ul style="list-style-type: none"> ▪ Satisfy most of a proposed project's basic purpose and need; ▪ Avoid or substantially lessen any of a project's potential effects; and ▪ Be feasible from a technical and economic standpoint. <p>How was the proposed annual power generation of 13,700,000 MWh determined?</p>

Author: Staff
 Subject: Response
 Date: 12/11/2006 3:37:48 PM
 See our response to Eastern Niagara on the alternatives issue. The DEIS did not find that there would be significant environmental effects from continued project operation.

Author: Staff
 Subject: Response
 Date: 12/13/2006 2:43:26 PM
 See our response to EPA on this issue.

Comment No.	Page/Section	Resource Area	Comment
6.	Pg 7	Project Description	The No Action Alternative is defined on page 7 as being a continuation of the existing condition, and it is used as the baseline condition for analysis. This makes sense but it separates the discussion of the no-action alternative from the other alternatives. It might be clearer to discuss this as the Baseline Conditions and keep all the alternatives in the same section.
7.	Pg 7	Project Description, Section 2.1.1, Existing Project Facilities and Operation	A map of the facilities and underground conduits would be very useful here. It is understood that some maps were removed for security reasons however it appears that all graphics have been removed from review copies. Attempts to access figures were unsuccessful.
8.	Pg 11	Project Description, Section 2.2.1	The EIS states that the Power Authority does not propose any changes in project facilities or operation. The preceding sentence states that upgrades of the 13 power units were authorized in 1993, and will be completed in November 2006, and are included in the baseline conditions. Please describe operational increases in power generation capacity that have occurred and how those changes have affected the environment.
9.	Pg 11	Project Description, Section 2.2.1	There appears to be a contradiction. "The Power Authority does not propose any changes in project facilities or operation...Each of the original 150-MW units are to be upgraded to 193.5 MW." We assume this upgrade, for which it is reported approval was granted in 1993, is not considered a change because of the prior approval in 1993. If this is the justification for stating that there are no proposed changes in project facilities it seems to be a misleading argument. There may not be a change in the permit conditions that are under consideration, but there is no question that an increase by almost 25% is indeed a change in facilities.
10.	Pg 11	Project Description, Section 2.2.2	The Capital Improvement Fund to support rehabilitation of the Falls Street Tunnel seems like an infrastructure maintenance task, not a water quality improvement plan, and as such no credit for water quality improvement should be taken for this task.

- Author: Staff
 Subject: Response
 Date: 11/27/2006 3:05:49 PM
 We have already responded to this comment.

- Author: Staff
 Subject: Response
 Date: 12/11/2006 3:38:35 PM
 The No-action alternative or existing conditions is described in the affected environmental section of each of the resource discussions.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:11:58 AM
 We believe there are water quality enhancements that can be achieved by the FST grouting project.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:11:09 AM
 The current capacity is the amount currently authorized. The actual work is nearly complete (see footnote 6 of the DEIS executive summary).

- Author: Staff
 Subject: Response
 Date: 12/18/2006 8:05:50 AM
 The environmental effects of increasing the installed capacity of the Niagara Project were already described in the EA that was issued on the 1993 amendment.

Comment No.	Page/Section	Resource Area	Comment
11.	Pg 19 (first complete paragraph)	Environmental Analysis	The description of impacts associated with the historic operation of the facility is vague and surficial. What does it mean that water flows and fluctuations are consistent with the 1950 Treaty? Did the evaluation impacts examine changes to shorelines pre-1950 and then from start of operation to present?
12.	Pg 19 (second complete paragraph)	Environmental Analysis	Similar to the comment above, what were the fluctuations in water levels in the river prior to the 1993 Directive? Where they greater, less, and how have those changes affected shoreline erosion?
13.	Pg 19 (last paragraph)	Environmental Analysis	Inclusion of data by reference is acceptable, but the citation and reference must be clear and unambiguous. This paragraph has a citation of URS Corporation (URS) et al., 2005). The references section has 18 references identified as URS et al., with dates labeled 2005a, 2005b, 2005c, and lastly, 2005. It is not clear which of these four documents is being cited.
14.	Pg 20	Environmental Analysis	A map of the local Towns and jurisdictions is needed.
15.	Pg. 20	Local Environment	The statement that there are no census data for the Tonawanda Nation is not true. According to Wikipedia: "As of the census ² of 2000, there were 1,138 people, 398 households, and 284 families residing in the Indian reservation. The population density was 47.4/km ² (122.8/mi ²). There were 198 housing units at an average density of 16.6/km ² (42.9/mi ²). The racial makeup of the Indian reservation was 58.6% White, 9.3% Black or African American, 27.33% Native American, 0.53% Asian, 0.09% Pacific Islander, 1.32% from other races, and 2.81% from two or more races. Hispanic or Latino of any race were 1.32% of the population. "There were 398 households out of which 43.2% had children under the age of 18 living with them, 45.5% were married couples living together, 19.7% had a female householder with no

Page 4 of 12

- Author: Staff
 Subject: Response
 Date: 12/14/2006 3:05:09 PM
 The correct citation is URS et. al., 2005

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:12:49 AM
 The 1993 directive is cited because that's what established the current fluctuation regime. Additional information on historic fluctuations would not inform a decision on the new license.

- Author: Staff
 Subject: Response
 Date: 11/29/2006 3:38:25 PM
 Figure 3-1 shows the local towns and jurisdictions. As we said, this figure was included in the mailed CD ROM and hard copy versions and is available through the internet by following the directions on our website.

- Author: Staff
 Subject: Response
 Date: 12/11/2006 3:39:47 PM
 The DEIS, page 20, refers to the Tuscarora, not Tonawanda Nation. However, the statement in the DEIS is incorrect and we have removed it.

- Author: Staff
 Subject: Response
 Date: 12/13/2006 2:45:47 PM
 It means that minimum flows over the falls are consistent with the 1950 treaty requirements. Fluctuations within the Chippawa-Grass Island Pool, and a portion of the upper river, are necessary so that project operation does not disrupt the required flows over the falls. The evaluation of impacts starts with current conditions.

This page contains no comments

Comment No.	Page/Section	Resource Area	Comment
16.	Pg 24	Shoreline Erosion	<p>husband present, and 28.4% were non-families. 21.1% of all households were made up of individuals and 5.5% had someone living alone who was 65 years of age or older. The average household size was 2.86 and the average family size was 3.36.</p> <p>“In the Indian reservation the population was spread out with 34.3% under the age of 18, 13.7% from 18 to 24, 30.0% from 25 to 44, 14.3% from 45 to 64, and 7.7% who were 65 years of age or older. The median age was 26 years. For every 100 females there were 104.7 males. For every 100 females age 18 and over, there were 97.4 males.</p> <p>“The median income for a household in the Indian reservation was \$32,500, and the median income for a family was \$38,333. Males had a median income of \$33,281 versus \$25,074 for females. The per capita income for the Indian reservation was \$14,427. About 9.9% of families and 13.0% of the population were below the poverty line, including 13.4% of those under age 18 and 9.6% of those age 65 or over.</p>
			<p>We take exception to the assertion that “The lack of more widespread river bank erosion is partly due to shoreline protection.” This sentence implies that the normal state of affairs is eroding shorelines, and that engineered solutions (i.e. riprap) are the only way to prevent deterioration. Erosion is a natural process (e.g. the Niagara Falls represents a natural erosive condition) but the rate of erosion along the Niagara River is a consequence of fluctuating levels that have damaged natural habitats. Natural plantings and water level controls could also serve to control erosion. This conclusion is supported on Page 26, Section 3.3.1.2: “Erosion in both the upper and lower Niagara River is caused mostly by water level fluctuations resulting from a number of factors, including U.S./Canadian power generation, wind, natural flow</p>

Comment No.	Page/Section	Resource Area	Comment
17.		Shoreline Erosion and Erosion/Sedimentation	<p>variations, ice conditions, the water levels of Lake Erie..." It must be emphasized that the proposed action has historically caused damage to shorelines in the study area and this damage will continue to accrue in the future if the project is approved.</p> <p>In line with the above, the key is rate of erosion, not necessarily percentage of shoreline that is eroding especially when a large percentage of the shoreline is armored. Some discussion should be presented that provides detail of why so much of the shoreline in the upper river is armored (e.g., sea walls associated with urban development, rip rap along residential and recreational areas to slow rates of erosion, etc.). Is the prominent reason of why much of the shoreline in the upper river is armored because of the operation of power facility? Using a hydraulic model with land uses, the rate of erosion should be estimated for historic conditions and for future conditions. Has the increased power generation capacity increased rates of erosion as the upgraded units went on line, or is it a combination of increases of recreational boating traffic and water level flows and fluctuations? The analysis should be better developed and presented.</p> <p>Essentially, there is not enough detail regarding the potential for variability of effects on shoreline erosion given location along the river. There are statements later in the document that indicate the degree of fluctuation decreases upstream and provides an upper limit of project influence (upstream of Peace Bridge) but presumably there are stretches along the Upper River that experience greater fluctuations than other areas. Are those areas subjected to greater erosive forces, or is this essentially a relatively smooth continuum that does not allow for identification of areas that are exposed to greater erosive intensities?</p> <p>General comment – Figures would be helpful to assist reader in understanding where studies were conducted and where the two activities</p>

- Author: Staff
 Subject: Response
 Date: 11/27/2006 3:50:26 PM
 We have already responded to this comment.
- Author: Staff
 Subject: Response
 Date: 12/18/2006 8:06:47 AM
 We don't know that project operation is the "prominent" reason that the shoreline is armored.
- Author: Staff
 Subject: Response
 Date: 11/27/2006 3:52:41 PM
 Erosive forces are potentially unique to each location and the study did not address this question. However, it makes sense that, all other conditions being equal, sites closer in elevation to the Chippawa-Grass Island pool would be more affected by project-related fluctuations than sites farther upstream.

Comment No.	Page/Section	Resource Area	Comment
18.	Pg 27	(3.3.1.2) Environmental Effects and Recommendations – Section 3.3.1.2 Erosion/Sedimentation	eroding reaches are within the upper river. Discussions regarding the factors influencing erosion rates for the two actively eroding areas near Grand Island are too general in nature. What are “maximum water levels” and how are they increased (what is the causative factor)? What causes the “frequency of high levels” and how often do maximum water levels and greater frequencies of high water levels occur? Do high water levels refer to operationally high levels? How related are high levels and operations, and what is the periodicity of the high levels and do they occur at the times of day when recreation boat traffic is the greatest? [Yellow icon]
19.	Pg 27	Habitat Improvement Projects	The EIS states that the Project would contribute to water level fluctuations at the same rate as the past license term. It is unclear what the level of significance this direct impact would have (both short term and long term) on the wide, shallow, near-shore shelves on the upper river on Grand Island. [Yellow icon] These Projects address habitats at only three State-owned properties, and not along Grand Island, where the EIS discloses that there is a 3,000-foot length of shoreline that is exposed to erosion. [Yellow icon]
20.	Pg 28	Our Analysis	There is no evidence presented in the DEIS to support the assertion that operational water level fluctuations are not as significant as fluctuations caused by other vectors (e.g., boats, wind, ice, etc.). Why? that could be the case there is no supporting details that allows the reader to confirm the statement. [Yellow icon]
21.	Pg 31	Geology - Section 3.3.1.4. Unavoidable Adverse Impacts.	“None”? The preceding section clearly lays out unavoidable adverse impacts related to shoreline erosion and sedimentation. “None” is not appropriate text for this section. [Yellow icon]
22.	Pg 49	Water Quality – Water level fluctuations	“... it is not clear that a study could be designed to accurately attribute the percentage of fluctuation caused by each source of influence.” Unless one defines “accurately” with an unrealistic level of precision it is possible to partition the impacts to various sources. The one source that [Yellow icon]

- Author: Staff
 Subject: Response
 Date: 11/29/2006 9:57:30 AM
 [Yellow icon] The additional study was not recommended primarily because the data produced by the study would not have been necessary in order to determine the effect of the proposed action or action alternatives.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 3:11:02 PM
 [Yellow icon] We disagree. The limitations on fluctuations within the Chippawa-Grass Island Pool (1.5 feet per day), and the knowledge that wind and storm events can and do cause larger fluctuations, is the evidence to support this statement.

- Author: Staff
 Subject: Response
 Date: 11/29/2006 9:38:03 AM
 [Yellow icon] If the project continues to operate, it will continue to contribute to water level fluctuations to the same degree as it currently does. We have changed the text.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 3:06:35 PM
 [Yellow icon] Because IJC regulations limit fluctuations to 1.5 feet per day (more under extreme conditions), maximum levels and high levels in general are more related to wind and storms than any other factor. As such, frequency and patterns of their occurrence are essentially random.

- Author: Staff
 Subject: Response
 Date: 11/29/2006 3:42:26 PM
 [Yellow icon] We agree. Due to the large number of causes of water level fluctuations, it is somewhat unclear what level of significance this effect has had, or is having, or would have. This has not been studied, nor is it necessary to study this in the scope of this relicensing proceeding. We know from the restrictions placed on Chippawa-Grass Island Pool levels, that the project is not the dominant factor influencing water level fluctuations. And we know that project operational changes are not proposed or recommended so, therefore, no change would occur.

Comment No.	Page/Section	Resource Area	Comment
23.	Pg 49	Water Quality – Water level fluctuations	<p>is probably easiest to attribute is the water withdrawals by the project, because those volumes and periods of drawdown are measured with considerable accuracy. Upstream impacts may require the installation of more monitoring wells, but this is not a prohibitive cost.</p> <p>The EIS states that because no change in operations is proposed or recommended, water fluctuations in the upper and lower Niagara River and its tributaries would not change as a result of the proposal. Although the EIS states that the current license contains no operational requirements, the EIS should provide historic operational information (i.e. how much water was stored or diverted or released?).</p> <p>It is unclear what the impacts from previous water fluctuations have been to aquatic resources, including aquatic species. What were historic water levels prior to implementation of the project?</p> <p>The EIS compares potential project impacts from re-licensing to an environmental baseline that includes the operating project. Using this scenario, there will not be any environmental impacts or changes from the existing environment, since no change is proposed. The EIS should incorporate historic information so that a more accurate assessment can be conducted.</p>
24.	Pg 50	Water Quality – Water level fluctuations	<p>It is reasonable that raising the river level can flush high oxygen/water into low oxygen tributaries, but the DEIS does not address the converse, lowering the river level can reduce the water levels in tributary creeks at the point that pools can become isolated, stranding fish and lowering oxygen levels. This potential impact needs to be addressed.</p>
25.	NA	Water Quality	<p>Capacity is expected to increase by 35 MW with project upgrades. How much water is expected to be withdrawn once system upgrades are completed? How will this affect water fluctuation levels?</p>
26.	Pg 60	Aquatic Fauna	<p>Benthic macroinvertebrates are mentioned as "getting healthier" but no data are presented except for notes on freshwater clams. Reference is</p>

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:33:24 AM
 Given that the project has minimal effects on water quality and no changes in project operation are proposed, we think the section adequately describes the affected environment. We are not aware of more recent studies.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:28:55 AM
 We have modified the text to address this issue.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:29:59 AM
 This increase was assessed prior to the relicensing proceeding as noted earlier. However, there would be no change in fluctuation levels because the IJC regulates the levels in the Chippawa-Grass Island Pool.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:28:30 AM
 Because our baseline is current conditions, adding information on pre-project environmental conditions would not enhance our assessment of the effect of the proposed action or action alternatives.

Comment No.	Page/Section	Resource Area	Comment
			made to a 1997 DEC document that might be difficult to obtain. A table showing taxa and indicator status of each should be included since these fauna are used to describe water quality conditions. More recent studies should be included if available.
27.	Pg 67	Aquatic Habitat	Please list the RTE species.
28.	NA	Aquatic Habitat	Is there Essential Fish Habitat in the project area? Please map and describe.
29.	Pg 69-77	Aquatic Habitat	There is no mitigation proposed for Grand Island.
30.	Pg 73	Aquatic Habitat	It is not clear what the conclusion is in the EIS analysis regarding impacts associated with water fluctuations on aquatic habitat. What is the magnitude and duration of the impact?
31.	Pg 77	Aquatic Habitat, Section 3.3.3.3.	This section actually does not address Cumulative Impacts. It should discuss specific projects, both in the U.S. and Canada, current and proposed, and discuss the cumulative impacts. No specific projects are discussed. Instead it talks about general activities and then lists some mitigation activities. This is true for all of the Cumulative Effects sections.
32.	Page 79	Aquatic Habitat, Section 3.3.3.4. Unavoidable Adverse Impacts.	This section actually does not address Cumulative Impacts. The section says that the fish communities are not being impacted by entrainment because that is the current condition. The fact that fish get entrained is an adverse impact. The section should discuss the adverse impact and state that it is unavoidable.
33.	Pg 81	Terrestrial Resources	Please list the RTE species.
34.	Pg 97	Cultural Resources	The EIS states that additional field studies are planned to determine 1) whether archeological sites are present at locations of erosion, 2) if sites are present, which are eligible for NRHP listing, and 3) whether any of the proposed eligible sites for listing are impacts by project operations.
35.	Pg 99	Cultural Resources	When are these studies planned to take place and by whom? The EIS states that an oral history was obtained from the Tuscarora Nation to capture information regarding cultural resources not provided.

Page 9 of 12

- Author: Staff
 Subject: Response
 Date: 12/14/2006 9:01:36 AM
 See response to the Advisory Council on Historic Preservation.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 9:00:51 AM
 We have revised the text to include the species list.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 3:20:04 PM
 Mitigation projects could be recommended by the ESC and funded through the HERF. We also note that invasive species work under one of the HIPs would occur at the downstream end of Grand Island at Buckhorn Marsh and that the Beaver Island HIP is very close to the upstream end of Grand Island.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:58:59 AM
 Section 3.3.3.4 is separate from the cumulative effects section. We discuss project-specific entrainment on page 75-76. We did not specifically assess entrainment as a cumulatively affected resource.

- Author: Staff
 Subject: Response
 Date: 12/13/2006 3:09:16 PM
 The studies, which are being conducted by NYPA are ongoing. See section 7.0, Literature Cited of the EIS for information on the studies and reports. Pursuant to 36 CFR § 800.11 and CFR § 388.112 the reports are treated as confidential documents.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:52:06 AM
 The discussion on page 73 is on the anticipated effects of the HIPs which are meant to enhance resources affected by water level fluctuations.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:39:54 AM
 Per Commerce's letter dated August 1, 2006, there is no essential fish habitat in the project vicinity.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:38:12 AM
 We have revised the text to include a list of the species.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 8:53:16 AM
 We have added information on the Niagara Tunnel Project.

Comment No.	Page/Section	Resource Area	Comment
36.	Pg 103	Cultural Resources	through the other studies performed. What was the outcome of the research? How was this used? The Cumulative Effects section discusses measures agreed to by the Tuscarora Nation in the settlement agreement with the Power Authority. This section does not discuss incremental impact to cultural and historic resources from past, present, and foreseeable future projects.
37.	Pg 100, 104	Cultural Resources	The EIS states that there are no unavoidable adverse impacts. On page 100 (point 4), the EIS states, as part of the proposed Historic Properties Management Plan, "consideration and implementation of appropriate treatment that would mitigate any unavoidable adverse effects of historic properties within the APE". How can the EIS state that there are no unavoidable adverse impacts if 1) none of the planned archeological studies have taken place yet, and 2) treatment to mitigate adverse effects has not been defined yet (e.g., not all potential resources have been identified in the APE).
38.	Pg 109	Recreation	The EIS states that three separate surveys were conducted to document angling activities in the project area. However, no specific information was provided. When were the surveys conducted, how many were interviewed, and what were the findings? Who conducted the surveys? The EIS should contain this information, or incorporate by reference specific documents, as internet documents are not always readily available
39.	NA	Recreation	The proposed project will result in water fluctuations. Please provide analysis on the potential for recreational and commercial vessels to hit ground. If possible, please provide historical/numeric information on the frequency of this occurrence, and the potential economic impacts to area ports, harbors, and boat owners. Additionally, have any analyses been performed to determine if water level fluctuations have affected the longevity of docks due to the routine regime of having portions of the supports submerged, followed by air exposure?
40.	Pg 117	Recreation	The cumulative impact section does not discuss incremental impact to

- Author: Staff
Subject: Response
Date: 11/30/2006 12:30:33 PM
Section 3.3.6.1 of the EIS discusses the results of the fishing surveys. See section 7.0, Literature Cited of the EIS for information on the studies. The studies are available on the Power Authority's web site (<<http://niagara.nypa.gov>>).
-
- Author: Staff
Subject: Response
Date: 12/14/2006 1:19:06 PM
We acknowledge the discussion in the affected environment section for recreation resources focuses on current conditions. The primary historical affect on recreation in the project area would appear to have been when the hydro projects were constructed and water began to be diverted around the falls. Looking forward from the baseline, this effect would not change under a new license.
-
- Author: Staff
Subject: Response
Date: 12/18/2006 8:15:18 AM
An analysis of the potential impact to boating activities caused by water fluctuations was not identified by the stakeholders as an issue to be assessed. Thus, it was not analyzed as part of this proceeding. We are not aware of any analyses that has been conducted on how water fluctuations affect the longevity of docks.
-
- Author: Staff
Subject: Response
Date: 12/14/2006 11:25:26 AM
We have revised the section 3.3.5.4 text to address this issue.
-
- Author: Staff
Subject: Response
Date: 12/14/2006 11:14:29 AM
Section 3.3.5.3 states that these measures would enhance the opportunities for the Tuscarora Nation to share their history with others. This effect is something that cannot be quantified.

Comment No.	Page/Section	Resource Area	Comment
			recreational resources from past, present, and foreseeable future projects, including the proposed project.
41.	Pg 104-118	Recreation	Grand Island could benefit from enhanced recreational/tourist activities.
42.	Pg 123-126	Land Use	It is not clear why the Power Authority is proposing to remove 8 parcels from the project boundary, especially since at least one area provides access to the Niagara River shoreline. Again, a map showing the locations of the parcels is not included in the public review draft, so it is not clear where they are located (description provided on pages 126-127); presumably, none of these properties are located on Grand Island. Town of Grand Island should be added.
43.	Pg 130	Table 3-5	A description of relevant land management plans, including those from affected municipalities, including Grand Island (i.e. master plans, capital improvement plans), and state (resource management plans) and federal agencies (coastal zone management) should be included. Will the proposed project affect those plans, programs and/or policies? Is the proposed project consistent with these plans/policies?
44.	NA/ Pg 157	Land Use/ Consistency with Comprehensive Plans	The cumulative impact section briefly states that residences, roads and highways, and other development project could cumulatively affect visual resources. The EIS does not discuss potential cumulative impacts to land uses, but rather mitigation measures. Do the state and adjacent cities have existing and planned land use/activities or development projects that could, with the proposed project, cumulatively affect land uses, coastal uses, and visual resources?
45.	Pg 128, 134	Land Use	This section does not discuss conflicts with adjacent uses, and the potential for use conflicts. This should include the area's municipalities including Grand Island, and the Tuscarora Nation.
46.	NA	Land Use	How would the relationship of the proposed Land Management Plan work with other area plans?
47.	Pg 123-124	Land Use	The cumulative effects section discusses mitigation measures, and potential impacts from the proposed mitigation measures and not the incremental impact of past, present, and future projects, including the
48.	Pg 134	Socioeconomics	

Page 11 of 12

- Author: Staff
 Subject: Response
 Date: 12/14/2006 1:27:23 PM
 We believe the data presented is sufficient to describe socioeconomic conditions in the area.

- Author: Staff
 Subject: Response
 Date: 11/30/2006 12:35:10 PM
 All known effects of the project on adjacent uses, such as the project's effect on the visual setting of portions of Niagara University, are addressed in section 3.3.7.2 of the EIS. The effects of the project on the Tuscarora Nation are discussed in section 3.3.5.2.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 1:31:46 PM
 For consistency purposes, the proposed land management plan would be developed in coordination with other resource management plans that would be required.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 1:29:57 PM
 A complete list of approved comprehensive plans is available on the Commission's web site at <http://www.ferc.gov/industries/hydropower/gen-info/licensing/complan>. As explained in section 5.3 of the EIS there are 20 comprehensive plans that address various resources in New York. Three of those plans (see Table 5-2 of the EIS) address resources that are applicable to the Niagara Project. Based on our analysis, the project would be consistent with these plans.

- Author: Staff
 Subject: Response
 Date: 11/30/2006 12:34:35 PM
 Section 3.3.7.3 of the EIS discusses cumulative effects of the project along with other development activities on visual resources and land uses in the project area. Section 3.3.8.3 of the EIS discusses the Power Authority's proposal to provide funding for various enhancements in the Niagara Project region. Specific details regarding what facilities or projects the funding would be used are not yet available. As a result, we can not determine what effects the implementing the funding agreements would have on land uses. No state or local jurisdictions identified any projects that would cumulatively affect land uses, coastal uses, or visual resources.

- Author: Staff
 Subject: Response
 Date: 12/14/2006 1:20:50 PM
 Section 3.3.7.2 of the EIS provides a description of the Power Authority's proposal to remove the 8 parcels from within the project boundary and our analysis. Section 5.1.5 of the EIS explains our recommendation. None of the parcels, except Area 6, are needed for recreational access or for other project purposes, including operation and maintenance of the project. Therefore, we recommend that, except for Area 6, the parcels be removed from the project boundary. Figure 3.6 in the EIS shows the location of the 8 parcels. A map was included in the copies of the DEIS that were mailed.

Comment No.	Page/Section	Resource Area	Comment
49.	NA	Socioeconomics	Proposed project on socioeconomics. What is the cost incurred to the municipalities, agencies and other organizations for management and maintenance of the eight parcels proposed to no longer be part of the project? What costs are saved to the Power Authority by offering the parcels to adjacent landowners and local governments?
50.	Pg 137	Socioeconomics, Environmental Justice	Environmental Justice "analysis" does not include analytical steps outlined in the Executive Order, however no fault with the conclusions.
51.	Pg 139	Socioeconomics, Environmental Justice	The EIS states that over 300 hundred people are employed by the project. How many of these people are from an EI community?
52.	Pg 139	No Action Alternative	The EIS states that under this alternative, the project would continue to operate as it is currently, and that there would be no significant change to the environmental setting. The current license expires in August 2007. Upon license expiration, would operations at the facilities cease? What impacts would occur under this scenario?
53.	Pg 143 and 146	Staff Alternative	The EIS states that the recommended alternative is the Staff Alternative. The Staff Alternative did not include all of the mandatory conditions in the water quality certification, therefore a composite alternative, which includes the staff recommendations plus the mandatory certification requirements was developed. Why was the Staff Alternative selected if it does not fulfill mandatory water quality requirements? Why not the Composite Alternative?

Author: Staff
 Subject: Response
 Date: 12/14/2006 1:32:10 PM
 The socioeconomics section includes an affected environment section which addresses how the major parameters of population, age, income, labor, employment, and taxes have changed over time. The effects section, from a qualitative standpoint, does address the incremental cumulative effect of issuing a new license. The effects section also discusses the proposed project boundary changes and notes that returning certain project parcels to the local tax bases would be a benefit. Regarding environmental justice, it's unclear to us how the number of minorities employed by the project is an environmental justice issue in the context of relicensing.

Author: Staff
 Subject: Response
 Date: 12/11/2006 3:42:33 PM
 There is a separate staff alternative because staff typically do not necessarily agree with all mandatory conditions. Please note that the EIS is a decision guiding document, not a decision document. After the FEIS is issued, the Commission will issue a separate order that includes its decision on the license application.

Author: Staff
 Subject: Response
 Date: 12/14/2006 1:34:21 PM
 Upon license expiration, the Commission would automatically issue an annual license until the Commission acts on the license application. The annual license simply extends the current license for a year with the same conditions; there would be no change in project operation.

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**Comments of Buffalo Niagara Riverkeeper
on Draft Environmental Impact Statement
For Niagara Power Project
FERC Project No. 2216-066
New York
September 19, 2006**

Buffalo Niagara Riverkeeper (formerly Friends of the Buffalo Niagara Rivers) is a regional environmental organization dedicated to promoting public access to and use of our local waterways, as well as ecological restoration, protection and stewardship of the region's two principal rivers. Riverkeeper has actively participated throughout the Alternative Licensing Process for the Niagara Power project, heading a coalition of approximately thirty local environmental and conservation organizations.

Riverkeeper generally supports the Draft Environmental Impact Statement, and the relicensing settlement. We believe that the environment-related pieces of the settlement package will provide badly needed resources and expertise to improve fish and wildlife habitat, facilitate public access, and strengthen recreational and natural heritage activities in and along the Niagara River. We therefore urge FERC to move forward expeditiously to grant the license, so that the work of implementing the habitat improvement projects and other agreed-upon investments can begin. As in any complex proceeding of this nature, it is possible to propose more study or further analysis of impacts and alternatives. We do not believe that such further study would be useful or productive. Our endorsement of the license and settlement is a decision related to net benefit, and does not mean we agree with every element of the NYPA-sponsored environmental analysis, or that we find no merit in the stakeholders' critique of various studies. But the Alternative Licensing Process has been open and participatory, and the dozens of studies performed as a result of public scoping sessions provide a broad base on which to move forward with making real improvements in the river's natural resources.

We appreciate the opportunities that the Alternative Licensing Process has created for community groups like ours to participate in the relicensing of a facility that is vital to the welfare of this region in many ways—opportunities that would not have been available under the traditional licensing process. Being involved in this process has given us a much richer understanding of the Niagara Power Project and the river environment in which it operates, and hopefully has built the foundation for strong partnerships among stakeholders to improve our shared stewardship of the Niagara River.

We intend vigorously to defend all elements of the license and settlement designed to protect and restore the environment and ecology of the Niagara River, and will work to ensure that all future habitat projects funded in either the license or settlement address present and future impacts of the Niagara project. Working with our partnering organizations in the Niagara River Environmental Coalition, we will monitor this process closely to ensure that the public interest is protected.

However, there is one staff suggestion in the DEIS which we believe to be damaging both to this settlement, and to future use of the Alternative Licensing Process. We refer to the statement on page 152 that because some of the HIPs agreed upon lie outside the project boundaries, "the Commission may decide, for compliance purposes, to draw a project boundary around these areas."

We agree that the delineation of project boundaries is a murky issue, both in this proceeding and in FERC practice generally. From time to time, uncertainty about boundaries has complicated the task of reaching a settlement acceptable to a broad array of stakeholders. More detailed guidance from the Commission with respect to how those boundary lines should be drawn would be beneficial. But this proceeding is not the appropriate occasion to provide that guidance, for several reasons.

First and foremost, we submit that NYPA's Niagara Power Plant is a unique facility located in a unique setting, both in the Great Lakes and nationally. It relies upon a "reservoir" consisting of the four upper Great Lakes, stretching halfway across the continent. It is not a run-of-river dam, as most FERC-licensed facilities are. It has an ice control structure, the Niagara Ice Boom, more than 20 miles upriver, at the point where Lake Erie discharges into the Niagara River. Both the ice boom and the control structure regulating the Grass Island Pool above the falls are governed by an international control board under the auspices of the International Joint Commission pursuant to the Boundary Waters Treaty, with uncertain division of authority between FERC and the IJC. Diversions from the river are controlled by a fifty year old treaty and Act of Congress. It is also located within a highly urbanized, developed area, again unlike most FERC-licensed facilities. In this setting, any attempt to set precedent would inevitably create uncertainty about how principles developed at Niagara should be applied to more typical facilities elsewhere.

A second concern is the size of the facility and the complexity of the settlement. Niagara is one of the largest hydropower facilities in the nation, with multiple conflicting interests affected by the power project and involved in the alternative licensing process. The package of agreements reached in these proceedings may be vulnerable if the redrawing of project boundaries—which so far has been acceptable to all stakeholders—is suddenly and unilaterally altered by the Commission. Like many other stakeholders, we would request adequate notice of what the Commission proposes to do, and an adequate opportunity to challenge it, if the Commission on its own motion at this late stage decides to redraw negotiated project boundaries which have been guided by the relevant FERC authority available during the ALP. Commission staff members have been not only aware of these alternative licensing proceedings, but actively involved at many stages. If the Commission had substantial and valid concerns about the definition of project boundaries, it should not have permitted the Alternative Licensing Process to go forward without any notice of that concern. In addition to raising fairness and due process concerns, such a late intervention by the Commission would undermine use of the Alternative Licensing Process in future proceedings.

Author: Staff
Subject: Response
Date: 12/11/2006 3:43:45 PM
The Commission's policy statement on hydro settlement agreements provides some guidance on the project boundary issue (see 116 FERC ¶61,270). This is not a new issue with settlement agreements. Staff raised the issue in the DEIS because the Commission may ultimately decide to adjust the project boundary.

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Finally, we note that there is a much fairer and more effective way to clarify the issue of project boundaries. Because this is a question of broad public concern to licensees, local communities, and environmental advocates, involving matters of national significance, it would be both fairer and more effective to clarify the issue through a rulemaking proceeding or a general statement of policy, as provided by the Administrative Procedure Act, 5 U.S.C. 553. We therefore urge the Commission to reject the staff's suggestion on project boundaries, approve the settlement, and address the project boundary issue in a more appropriate proceeding.

Submitted for Buffalo Niagara Riverkeeper
by Barry Boyer
227 Olean Street
East Aurora, NY 14052

(716) 655-4273

This page contains no comments

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

POWER AUTHORITY OF THE)
STATE OF NEW YORK)

Project No. 2216
Niagara Power Project

COMMENTS OF THE MUNICIPAL ELECTRIC
UTILITIES ASSOCIATION OF NEW YORK STATE ON THE DRAFT
ENVIRONMENTAL IMPACT STATEMENT

INTRODUCTION

The New York Municipal Electric Utilities Association ("MEUA") is comprised of 42 municipal electric utilities. Those electric systems are "preference power" customers of the New York Power Authority's ("NYPA" or the "Authority") Niagara Project. The MEUA has participated in the Niagara Relicensing ALP since its inception and is a signatory to the Settlement Agreement. We offer these comments on the Draft Environmental Impact Statement ("DEIS") published by Federal Energy Regulatory Commission ("FERC") Staff in July, 2006.

DISCUSSION

The New York Power Authority owns and operates the Niagara Project, one of the engineering wonders of the world and the source of some of the least expensive electricity in the United States. The current FERC license for the project was issued in 1957, pursuant to the Niagara Redevelopment Act (16 USC § 836) and expires in August 2007. The Authority commenced the formal process of applying for a new license in mid 2001, when NYPA began an intensive outreach effort with all of the stakeholders that may have an interest in the relicensing

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process. In March, 2002, NYPA sought approval from FERC to utilize alternative licensing procedures (the "ALP"). The MEUA and dozens of other stakeholders supported NYPA's request to utilize an ALP. FERC subsequently approved NYPA's request to use an ALP. The first formal meetings of the stakeholders took place in December, 2002. Over the succeeding months, the stakeholders worked diligently on scoping project studies and later commenting on draft studies, among other things. Over the course of 2004 and into 2005 the stakeholders engaged in complex negotiations concerning the application and possible settlement. On August 18, 2005, NYPA filed its application for a new license. The next day it filed an Offer of Settlement and an Explanatory Statement concerning the Settlement. Since the August, 2005, relicensing filings, there have been several subsequent Settlements reached and filed with FERC. In February, 2006, FERC issued a notice that NYPA's Niagara Project application was ready for environmental review. In July, 2006, FERC issued its DEIS.

I. THE DEIS IS COMPLETE AND NO MATERIAL MODIFICATIONS ARE WARRANTED.

The FERC DEIS is an exceptionally comprehensive document. In the DEIS, FERC Staff concluded that (1) NYPA should be granted a new license for a 50-year term and (2) with only minor procedural exceptions, the license terms should be as set forth in the various Settlements.

FERC Staff's conclusions in the DEIS are well founded. The DEIS demonstrates that the minor adverse environmental impacts of the project have been more than fully mitigated through the various programs set out in the Settlements. Remarkably, all the stakeholders active in the ALP agree with that conclusion. Settling parties include the major customers of the Niagara Project – the 42 municipal electric system members of the MEUA, Power for Economic Prosperity ("PEP"), a coalition of 23 manufacturing concerns purchasing replacement and

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expansion power, and the Neighboring State Customer Group, representing the other state customers of the project (*i.e.*, Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, Pennsylvania and Ohio). Supporters of the Settlement include the New York State Department of Environmental Conservation (“NYSDEC”), the United States Department of the Interior, the New York State Office of Parks, Recreation and Historic Preservation, New York Rivers United, Friends of the Niagara River, the Host Communities, Niagara University, the Niagara Power Coalition, Niagara County, Erie County, the City of Buffalo, Niagara University, and many others.

Several entities that did not participate in the ALP and have not entered into a settlement now ask FERC not to issue a license, or, more accurately, to issue a license requiring NYPA to shower financial largesse upon them. They, for the most part, seek to tie their request for funding to two specific areas: the effect of water level fluctuations and the presence of brownfields in or around the Niagara frontier.

Water level fluctuation is a too-slender reed to bear the weight of their request. The studies undertaken over the course of the ALP demonstrated that the project may at most have a slight effect on water level fluctuation, but certainly less than the effect of wind and boats. Certainly, no costly mitigation is warranted when the effect of the project is less than that of other natural and recreational phenomena. Even so, NYPA has pledged tens of millions of dollars for environmental enhancement projects. NYPA’s financial commitment (funded of course by its customers) is dramatically in excess of anything required to mitigate the insignificant water level fluctuation caused by the Project. The DEIS rightly concluded, along with all the relevant resource agencies, such as NYSDEC and DOI, that nothing further is warranted. The assertion by some communities that they are entitled to compensation because

their shorelines face erosion pressure does not provide a rational basis to reject the well supported analysis and conclusions in the DEIS.

The brownfields problem is a serious one of great concern to all stakeholders, and of particular poignancy to the upstate communities that are members of the MEUA. Clearly there are closed manufacturing facilities in upstate New York. It is, however, nothing less than perverse to blame NYPA for the economic woes of the regional manufacturing base. Where would the remaining operating manufacturing plants be without NYPA's low cost power? The studies undertaken at great cost in the ALP demonstrated that the project is an enormous benefit to the region economically and to local manufacturing in particular. The representatives of those local manufacturing and process industries participated in the ALP and repeatedly cautioned the stakeholders that continued availability of low cost Niagara Project power is crucial to their survival. Far from being in any sense responsible for those firms that have left, NYPA is a major reason why those still in place can keep their doors open. The project creates \$8 billion in economic benefit, most of it locally. The economic effect of the project is unequivocally positive. There is simply no economic adverse impact to mitigate. To blame NYPA for the industries that have left is simply illogical.

II. UPSETTING THE SETTLEMENTS NOW WOULD DAMAGE THE ALP AND COMPLICATE FUTURE FERC RELICENSING.

As discussed, *supra*, a wide array of different stakeholders have arrived at Settlements supporting relicensing. Parties of diverse interests, such as customers, riverkeepers, local governments, school districts, resource agencies and the neighboring university all support relicensing and the Settlements reached through the ALP. They all caution against any

Author: Staff
Subject: Response
Date: 12/11/2006 3:44:46 PM
We consider the project's power a benefit as well.

Author: Staff
Subject: Response
Date: 12/11/2006 3:45:23 PM
We discuss this issue in our response to the Housing Authority and Terry Yonker.

expansion of NYPA's financial obligations. The stakeholders have been working for just about five years to get where we are today.

Certain parties have now come forward to ask for funding. But no matter how meritorious (not to say ubiquitous) the desire for money, no party is entitled to any further Niagara Project benevolence unless there is an identified adverse impact that is not already adequately mitigated through the existing Settlements. The DEIS correctly concluded that there are no adverse impacts that are not fully mitigated. The proponents of additional aid can find no support for their position in the studies or the DEIS. Indeed, we believe it is clear that the vast sums of money pledged by NYPA goes well beyond any plausible notion of mitigation, and is simply community and economic development assistance. Others may want such assistance too. But they can point to no flaw in the ALP, the Settlements or the DEIS that compels FERC to require such payments.

For example, there is no doubt that the cost of wastewater treatment is rising and can be burdensome to some communities. That does not mean that NYPA is responsible. The Great Lakes watershed is huge. Should NYPA pay all the costs of wastewater treatment throughout the watershed because that water goes over the falls? There is simply no nexus between those communities' waste water treatment expenses and the Niagara Project. Similarly, it is no doubt noxious to a mayor or town supervisor to have to grovel before the county legislature to "get a dime." (*See*, Transcript of the Hearing of August 17, 2006, p. 31). But surely NYPA and its customers cannot be asked to change that fact of civic life. NYPA should be praised for devoting so much money to local economic development and it was rational to include the Counties in that program. Again, there is no discernable adverse economic impact of the Niagara Project that requires further mitigation.

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Author: Staff
Subject: Response
Date: 12/11/2006 3:46:26 PM
 We discuss this issue above in our response to Public Power Coalition.

We urge FERC not to amend the DEIS and not to wander beyond the Settlements that support the Application.

Not only would a FERC mandate beyond the Settlements be unwarranted, it would create mischief in this and other relicensing proceedings. Every entity that wanted to participate in the long ALP was welcomed, and was heard. Despite the unsupported and unsupportable assertions of some, the process was open and no one who wanted to participate was excluded. As one of the speakers at the public hearing noted, "it is a remarkable accomplishment to have this many diffuse stakeholders on this kind of settlement get as far as we have in generating a consensus." (Hearing of August 17, Transcript, p. 65) As another participant explained, "everybody was allowed to participate." (Hearing of August 17, Transcript, p. 70) We believe the record supports the proposition that NYPA and FERC Staff did extremely well in carrying out an open process. FERC should not now disregard the total Settlement package simply because some entities now want more. To do so would be a great disservice to those who participated in good faith in the Niagara Project ALP, and would seriously compromise the integrity of the alternate licensing process in other relicensing proceedings.

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Author: Staff
Subject: Response
Date: 12/11/2006 3:47:34 PM
 We discuss this issue above in our response to Public Power Coalition.

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CONCLUSION

The DEIS is a thorough document and the conclusions reached therein are sound. No modifications or amendments are warranted. We urge FERC to adopt the DEIS and proceed to issue the license as set out in the Settlements.

Dated: September 19, 2006

Respectfully submitted,
READ AND LANIADO, LLP
Attorneys for the Municipal Electric
Utilities Association of New York State

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CERTIFICATE OF SERVICE

Pursuant to Section 2010 of the Commission's regulations, I hereby certify that I have this day served a copy of the foregoing comments upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: September 19, 2006

/s/ Steven Wilson
Steven D. Wilson
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518-465-9313

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

**POWER AUTHORITY OF THE)
STATE OF NEW YORK)**

**PROJECT NO. 2216-066
NIAGARA POWER PROJECT**

**COMMENTS OF THE
NEW YORK POWER AUTHORITY
ON THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Pursuant to the July 14, 2006 "Notice of Availability of the Draft Environmental Impact Statement for the Niagara Project and Intention to Hold Public Meetings" issued by the Federal Energy Regulatory Commission (FERC or Commission), the New York Power Authority (NYPA) submits comments on the Draft Environmental Impact Statement (DEIS) for the Niagara Power Project (Niagara Project). The recommendations set forth in the DEIS generally reflect the license terms and conditions proposed by NYPA. NYPA, therefore, respectfully requests that the Commission – consistent with the comments below – adopt the findings in the DEIS and issue a new fifty (50) year license to NYPA.

I. INTRODUCTION

In December 2002, NYPA formally initiated the Niagara Project relicensing pursuant to the alternative licensing procedures (ALP) approved by the Commission. NYPA's ALP was designed, in part, to foster stakeholder participation and promote collaboration during the scoping, study, and analysis of issues associated with the relicensing of the Niagara Project. As a result of the ALP, NYPA was able to file an

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Offer of Settlement with its license application in August 2005. The Offer of Settlement originally was comprised of four separate settlement agreements,¹ and has since been supplemented to reflect settlement agreements with Niagara University and Erie County stakeholders.² These settlements – whose terms are reflected in the DEIS as direct, indirect, and cumulative benefits – are a testament to the commitment made by NYPA and the ALP stakeholders to substantially improve the ecology and economy of the Niagara region.

In all material aspects, Staff's recommendations in the DEIS generally endorse NYPA's license application and the proposed license terms and conditions contained in the Offer of Settlement. There are, however, a few Staff recommendations that diverge from NYPA's licensing proposal. NYPA, therefore, is filing these limited comments to ensure the Commission's licensing order fully adopts the settlement agreements reached during the ALP. The terms and conditions of these agreements were carefully negotiated with stakeholders, and the settlements were specifically structured to comply with FERC precedent governing the appropriate scope and composition of license articles. NYPA respectfully requests that the Commission's final EIS and licensing order for the Niagara Project reflect the comments below.

¹ The Offer of Settlement filed on August 19, 2005 included: the Relicensing Settlement Agreement Addressing New License Terms and Conditions (Relicensing Settlement Agreement); (ii) the Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions; (iii) the Relicensing Settlement Agreement Between the Power Authority of the State of New York and the Tuscarora Nation; and (iv) the Relicensing Settlement Agreement Addressing Allocation of Niagara Project Power and Energy to Neighboring States.

² The Erie County/City of Buffalo Relicensing Settlement Agreement was filed on June 30, 2006 and the Niagara University Relicensing Settlement Agreement was filed on May 26, 2006.

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II. COMMENTS ON THE DEIS

A. THE DEIS PROVIDES A COMPREHENSIVE ANALYSIS OF NYPA'S LICENSE APPLICATION AND OFFER OF SETTLEMENT

As an initial matter, NYPA would like to commend FERC Staff on the scope and quality of the DEIS. The DEIS provides the Commission with a thorough, accurate, and comprehensive review of the impacts associated with the Niagara Project based on the extensive studies conducted during the ALP. The DEIS also meticulously captures the extent and reach of benefits that will flow to the Niagara region as a result of NYPA's proposed settlement measures. In particular, the DEIS' treatment of non-jurisdictional settlement measures – which are addressed in the discussion of cumulative impacts – clearly and concisely convey the range of NYPA's commitments to the region. As a result, the DEIS provides the necessary evidentiary support upon which the Commission can issue a new fifty (50) year license consistent with NYPA's proposed license terms and conditions.³

In a few instances, however, Staff recommended minor modifications to the licensing proposal. While some of these changes do not fundamentally alter the nature of the settlements,⁴ other elements of Staff's recommended alternative diverge significantly from the agreements reached by the settlement parties. NYPA's comments below are

³ NYPA's proposed terms and conditions are set forth in Section 3 and Appendix A of the Relicensing Settlement Agreement included as part of the Offer of Settlement.

⁴ For example, FERC Staff recommends that improvements to Art Park be excluded from the Project license and that a Tribal Exhibit at the Power Vista – which was an element of the settlement agreement with the Tuscarora Nation – be included as a term of the new license. The Staff alternative also recommends that the Gorge Parcel remain within the Project boundary. NYPA does not oppose these recommendations.

limited to those elements of Staff's alternative that depart from the proposed license articles and the Offer of Settlement.

B. HIPs SHOULD NOT BE INCLUDED IN THE PROJECT BOUNDARY

At the outset of negotiations with stakeholders, NYPA made known its interest in achieving a comprehensive settlement with stakeholders provided the agreements: (1) included support for a fifty (50) year license; (2) maintained existing Project operations; and (3) did not expand the Project boundary. All of the settlement parties agreed to these conditions, and the terms of the agreements expressly condition settlement on a licensing order that incorporates all three of NYPA's stated interests.

To that end, NYPA and the ALP stakeholders carefully crafted settlement measures (and attendant settlement language) to ensure that, among other things, the expectations of the settling parties would be reflected in the new license. With regard to the eight Habitat Improvement Projects (HIPs) proposed as part of the new license, NYPA was careful to structure this proposed settlement measure to ensure that it would not result in an expansion of the Project boundary.

Specifically, NYPA relied on Commission precedent which addressed mitigation measures outside of Project boundaries and articulated a policy that enhancement measures involving "one-time construction" generally were not included within a project boundary.⁵ Relying on this Commission policy, NYPA explicitly limited its HIPs

⁵ See *Pub. Util. Dist. No. 1 of Chelan County*, 107 FERC ¶ 61,280 (2004). (approving a settlement agreement that incorporated tributary enhancement projects outside the project boundary). The order articulated Commission policy regarding this issue, stating:

[the project boundary] does not define [the licensee's] responsibilities and does not always fully indicate the geographic extent of those responsibilities. Small areas outside of the project boundary needed for project purposes and requirements to carry out one-time actions outside the project boundary may not

Author: Staff
Subject: Response
Date: 12/11/2006 3:48:15 PM
Our comment on the HIPs potentially being in the project boundary was meant to make the reader aware that the Commission may decide to include the HIPs in the boundary depending on NYPA's operation and maintenance obligation under the license.

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obligation to a one-time construction commitment; Section 4.1.2 of the Relicensing Settlement Agreement Addressing New License Terms and Conditions (Relicensing Settlement Agreement) explicitly states: "The Power Authority's construction of the proposed HIPs shall be a one-time obligation occurring outside of the FERC Project Boundary. DEC shall undertake the monitoring, operation and maintenance of the identified HIPs, using monies from the HIPs Fund." Despite careful consideration of this issue by stakeholders, and the reliance on Commission precedent in drafting the HIPs settlement measures, the DEIS suggests that the Commission should consider including the HIPs within the boundary as Project islands for "compliance purposes."⁶

NYPA does not believe there is a compelling public interest that would require the Commission to depart from past practice. The action contemplated by NYPA under the proposed license is a discrete commitment that involves the construction of HIPs facilities: both the work and schedule are limited in scope and duration. Further, DEC will have ongoing responsibility for the constructed HIPs pursuant to the terms of the Relicensing Settlement Agreement.

Therefore, NYPA requests that the Commission incorporate the HIPs requirement of the Relicensing Settlement Agreement as proposed in the Offer of Settlement. In

require the locations where the acts are to be performed to be included within the existing project boundary. *Id.* at P 147-48.

See also Pac. Gas & Elec. Co., 97 FERC ¶ 61,084 (2001). The settlement for the Rock Creek-Cresta Project included environmental mitigation measures such as adding spawning gravel to a creek, removing portions of a weir, building spawning channels, and installing terraced planting sites. In approving the settlement, the Commission acknowledged that these actions would occur outside the project boundary. This was acceptable to the Commission because the activities "constitute basically one-time requirements, and the license therefore requires them without also requiring that the spawning grounds or channels, terraces, or weir be brought within the project's boundaries." *Id.* at n.48.

⁶ DEIS at 152.

doing so, the Commission will ensure that an important condition precedent to the settlements is met and the expectations of settlement parties are fulfilled. In the unlikely event that compliance issues arise in the future with regard to individual HIPS, the Commission has authority to subsequently address expansion of the Project boundary as necessary.

B. THE HERF AND LAF WILL BE INCLUDED IN THE NEW LICENSE

The water quality certificate issued by the New York State Department of Environmental Conservation (DEC) pursuant to Section 401 of the Clean Water Act includes conditions that require the establishment of a Fish and Wildlife Habitat Enhancement and Restoration Fund (HERF) and Land Acquisition Fund (LAF). Staff's alternative does not recommend that either measure be included in the license although the DEIS acknowledges that both settlement provisions are mandatory conditions established by the water quality certificate.⁷ As required under the Clean Water Act, NYPA notes that the HERF and the LAF will be included as conditions of the new license.⁸

C. THE ESC SHOULD BE INCLUDED IN THE NEW LICENSE

Pursuant to the Offer of Settlement,⁹ NYPA's proposed license articles include a provision requiring NYPA to establish an Ecological Standing Committee (ESC) comprised of representatives from NYPA, DEC, the U.S. Fish and Wildlife Service, the

⁷ DEIS at 154.

⁸ 33 U.S.C. § 1341(d) (2000). *American Rivers v. Vermont*, 129 F.3d 99, 110 (2d Cir. 1997) (holding that FERC had no choice but to accept the conditions imposed by the State, and it may not second-guess conditions "imposed by an independent governmental agency with special expertise."); *see also Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984).

⁹ Section 4.1.1, Relicensing Settlement Agreement.

Author: Staff
Subject: Response
Date: 11/29/2006 3:47:32 PM
We understand this.

Author: Staff
Subject: Response
Date: 12/11/2006 3:50:01 PM
Our recommendation that the new license not include the ESC was based on the premise that NYPA would have no involvement in O&M for the HIPS. If the ESC plays a significant role (guidance on development, construction, and implementation) for both the HIPS and the HERF, and NYPA has a representative on the ESC, it may be more difficult for the Commission to relieve the licensee from an operation and maintenance responsibility in the new license. Assuming the ESC becomes part of the license, it remains that the Commission can only enforce license requirements on the licensee.

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Seneca Nation of Indians, the Tuscarora Nation, the Tonawanda Seneca Nation, New York Rivers United, and the Niagara Relicensing Environmental Coalition.¹⁰ As set forth in the Relicensing Settlement Agreement, the ESC plays a significant role with regard to the HIPs and the HERF – two enhancement measures that will be included in the new license.¹¹

Specifically, the ESC will, among other things, provide guidance regarding the development, construction, and implementation of the HIPS.¹² The ESC also will have primary responsibility for identifying and selecting projects and activities funded by the HERF.¹³ In addition to the substantive role played by the ESC, the ESC will play a significant role in the administration of both funds, including responsibility for establishing cash flow schedules for expenditures, auditing and reporting, scheduling meetings, and conferring with technical advisors as appropriate.¹⁴

Despite the integral involvement of the ESC in both proposed license measures, Staff's recommended alternative does not include the ESC as a proposed license condition.¹⁵ The DEIS states that "because we do not recommend the HERF, we do not see the need for the ESC and, therefore, do not recommend adopting this measure."¹⁶

¹⁰ Section 4.1.1, Relicensing Settlement Agreement. *See also* NYPA Filing of CZMA Concurrence and Corresponding Comments on the Offer of Settlement, Project No. 2216-066 (filed Feb. 27, 2006) (New York State Department of State (DOS) concurrence letter, attached to NYPA's filing, requires DOS participation on the ESC).

¹¹ As discussed above, both the HIPs and the HERF are mandatory conditions of the water quality certificate issued by DEC.

¹² Section 4.1.2, Relicensing Settlement Agreement.

¹³ Section 4.1.3, Relicensing Settlement Agreement.

¹⁴ Section 4.1.1, Relicensing Settlement Agreement.

¹⁵ DEIS at 154.

¹⁶ *Id.* at 158.

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As acknowledged in the DEIS, however, the HERF will be a term of the new license because it is a mandatory condition included in DEC's water quality certificate. Further, the role of the ESC is not limited to the HERF; the ESC will be integral to the development and implementation of the proposed HIPS.¹⁷ Consequently, the ESC should be included in the new license given its central role in the operation of the HIPs and the HERF.

D. TECHNICAL CORRECTIONS

Attachment A includes a list of technical corrections identified by NYPA. NYPA requests that these revisions be reflected in the final EIS.

III. CONCLUSION

The DEIS provides a comprehensive analysis of Niagara Project operations and identifies the extensive settlement commitments NYPA will provide during the term of the new license. Together with the underlying relicensing studies, the DEIS provides a complete evidentiary record upon which the Commission can issue a new fifty (50) year license to NYPA consistent with NYPA's license application and Offer of Settlement.

While the DEIS generally supports NYPA's license proposal in all material aspects, there are three Staff recommendations that diverge from the settlement proffered by NYPA and its settlement partners. NYPA respectfully requests that the Commission not adopt these recommendations and issue a licensing order that: (1) includes the HERF and LAF as terms of the new license as required by the Clean Water Act; (2) includes the

¹⁷ For example, in Section 4.1.2 of the Relicensing Settlement Agreement which addresses the Habitat Improvement Projects Fund, there is a specific reference to the ESC and its role in providing "guidance with regard to the construction, operation, maintenance and monitoring of the HIPs."

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ESC as a term of the new license; and (3) does not expand the Project boundary to include the proposed HIPs.

WHEREFORE, for the reasons stated above, NYPA respectfully requests that the Commission incorporate the comments above into the final EIS and the licensing order for the Niagara Project.

Respectfully submitted,

William S. Helmer
Special Licensing Counsel
Legal Department
New York Power Authority
30 South Pearl Street
Albany, NY 12207-3425
Telephone: (518) 433-6724
Facsimile: (518) 433-6781

/s/ Jay Ryan
Jay Ryan
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
Suite 700
Washington, D.C. 20007-3877
Telephone: (202) 298-1800
Facsimile: (202) 338-2416

Counsel to the Power Authority
of the State of New York

DATE: September 19, 2006

APPENDIX A

TECHNICAL COMMENTS AND CLARIFICATIONS

Draft Environmental Impact Statement for Hydropower Relicensing
Niagara Power Project
FERC 2216

Executive Summary, Introduction, Proposed Action and Alternatives

- Pg xx - middle of page – replace "Fall" with "Falls."
- Pg 3 – insert "Project power is sold to the out-of-state customers at cost as well" at the end of the carry-over paragraph at the top of the page.
- Page 3 - paragraph 1, replace "New England Power Pool" with "Northeast Power Coordinating Council (NPPC)."
- Pg 5 – Buffalo Olmstead Parks Conservancy withdrew its comments and should be marked by an asterisk.
- Pg 14 – 2.3.1.1 last sentence 1st paragraph – insert "DEC" before the word "issued."

Geological Resources

- Pg 26 - "Erosion in both the upper and lower Niagara River is caused mostly by water level fluctuations ...". Instead of "water level fluctuations...", the sentence should say that erosion is primarily caused by "wind-generated and ship/boat-generated waves and river currents." Water level fluctuations can affect the degree that these forces have on erosion by exposing a wider band of shoreline.

Water Resources

- Pg 32 - "The purpose of the INCS is to increase the surface elevation of the upper Niagara River to facilitate the diversion of water to the Canadian and U.S. hydroelectric projects." The Treaty stipulated that remedial works should be constructed so that hydroelectric generation would not jeopardize the scenic beauty of the Falls. The INBC was built primarily to regulate streamflows to ensure that the scenic Falls flow Treaty requirement is met not to provide more head (the Power Entities already had 300 feet of head to work with).
- Pg 37 - The 3rd sentence should read "The tunnel crosses the Power Authority conduits near the corner of 40th Street and Royal Avenue in the City of Niagara Falls."
- Pg 41 - "Dissolved oxygen levels in Cayuga, Burnt Ship, Woods, Gun, and Spicer Creeks did not meet the instantaneous state standard of 4.0 mg/L for Class B and C waters at all times (URS and Gomez and Sullivan, 2005)". Suggest FERC reinsert PDEA at 3-34 explanation about possible causes of low DO values. "Dissolved oxygen levels in the reaches of U.S. tributaries that are affected by Niagara River water levels seem to be influenced by many factors. These factors include loadings from point and non-point sources, land use, abundance of aquatic plants or algae, the amount of turbulence (surface to air mixing), water temperature, and the organic sediment loading into the stream."
- Pg 47 - paragraph 3, replace "Lewiston" with "Lewiston."

Author: Staff
Subject: Response
Date: 11/29/2006 11:09:57 AM
We have corrected these errors.

Author: Staff
Subject: Response
Date: 11/29/2006 11:11:03 AM
We have made this clarification.

Author: Staff
Subject: Response
Date: 11/29/2006 11:16:42 AM
We have made these corrections and clarifications.

Aquatic Resources

- Pg 53 – paragraph 3, NYPA is unaware of the existence of an "Ergots Creek" as a tributary of the Niagara River.
- Pg 54 - paragraph 6, replace "Big Simile" with "Big Sixmile."
- Pg 55 - 1st and 2nd paragraphs, replace "Static et al" with "Stantec et al."
- Pg 61 - 2nd full paragraph, 2nd sentence. Power Authority shouldn't be all capital letters.
- Pg 66 - Suggest the EIS state that fish consumption advisory for Lewiston Reservoir is the same as the upper Niagara River.
- Pg 71 - paragraph 1, Strawberry Island erosion is caused mostly by Lake Erie effects, not Project water withdrawals.
- Pg 73 - paragraph, 3, The proposed Beaver Island wetland HIP is not experiencing erosion from water withdrawals. It is now a filled area adjacent to a low flow channel of the Niagara River.
- Pg 74 - Invasive Species HIP - EIS states that "Tift Marsh is located on the shores of Lake Erie in Buffalo, near what appears to be the extreme upstream end of the project-related effects". The upstream end of project effects do not extend into Lake Erie.
- Pg 75 - first sentence of the first full paragraph is confusing as written.
- Pg 78 – last bullet, the Power Authority's commitment is to provide funding for Cayuga Creek restoration, for work directed by the Town of Niagara, Niagara County, the City of Niagara Falls, a representative from NREC, and the TN.

Author: Staff
Subject: Response
Date: 11/29/2006 11:14:51 AM
We have made these corrections and clarifications.

Author: Staff
Subject: Response
Date: 12/4/2006 2:38:45 PM
We say that this "area of the river", not these islands specifically, are influenced by project withdrawals from the project. In other words, both Strawberry Island and Beaver Island are in the zone of influence of the project.

Author: Staff
Subject: Response
Date: 11/30/2006 7:39:37 AM
We have made these corrections and clarifications.

Terrestrial Resources

- Pg 87 - paragraph 3, replace "Affects on vegetation" with "Effects."
- Pg 89 - paragraph 1, replace "since they owned.." with "since they own."
- Pg 89 - 1st full paragraph. Beaver Island wetland loss was not an effect caused by project operations.
- Pg 89 - paragraph 4, Tift Marsh invasives were not caused by varying water levels contributed by the project. It is not influenced by the project. It is affected by Lake Erie and water levels within the marsh pools.
- Pg 91 - Insert space before the heading Vegetation Management. Delete the extra comma in the 4th paragraph, first line.

Cultural Resources

- Pg 98 – As part of the on-going effort to identify and protect Traditional Cultural Properties of the Nations that may be within the APE, the Power Authority has been working with the Indian Nations to obtain information on Traditional Cultural Properties. However, no properties have been identified to the Authority by the Nations to date.
- Pg 101 - paragraph 1, line 2, "limiting the investigation..." delete "?" after "noted that."
- Pg 102 - fourth line from the bottom – replace "included" with "include".
- Pg 103 - third line from the top – replace "planed" with "planned".

Recreation Resources

- Pg 108 – The Power Authority owns a portion of the Great Gorge Railroad ROW.
- Pg 109 and 114 - A portion of the Earl W. Bridges Artpark State Park is in the Project boundary.
- Pg 114 - paragraph 1, some of the trailheads are within the NYPA project boundary.
- Pg 117 - middle of page – replace "Train" with "Trail".
- Pg 118 - paragraph 2, replace "conducted to access" with "conducted to assess".

Land Management and Aesthetic Resources

- Pg 122 - first line of second full paragraph – replace "dominate" with "dominant."
- Pg 127 - 6th paragraph replace "Disscovery Center" with "Discovery Center."
- Pg 128 - third line of second full paragraph – replace "provided" with "provide."

Author: Staff
Subject: Response
Date: 11/29/2006 11:17:20 AM
 We have corrected this error.

Socioeconomic Resources 

- Pg 138 - Tuscarora paragraph – replace "12.8" with "21.8."

Author: Staff
Subject: Response
Date: 11/29/2006 11:18:31 AM
 We have corrected these errors.

Conclusions and Recommendations 

- Pg 149 - paragraph 2, Tifft is not located within the area affected by project-related fluctuations.
- Pg 152 - paragraph 3, replace "HIPs would included" with "HIP's would include"...

This page contains no comments

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 19th day of September 2006.

/s/ Jay Ryan _____
Jay Ryan
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, D.C. 20007-3877
(202) 298-1800

Comments delivered August 17, 2006
2:00 – 4:00 PM Session
Niagara Falls High School Amphitheater

Project No. 2216-066

I am Mary Cooke, Town Councilmember, Town of Grand Island.

The Town of Grand Island lies directly between the east and west channels of the Niagara River, in Erie County, New York. The population of the town in 2000 was 18,621. Several tributaries located in the town are affected by water levels and conditions in the Niagara River, including Woods, Gun, Spicer and Big Sixmile Creeks.

Erosion and sedimentation affect the Niagara River all around Grand Island, as well as the creeks that are tributary to it. The two longest continuous reaches of erosion in the upper Niagara River were identified at the north end of Grand Island, at Buckhorn Island, and on the east side of Grand Island, opposite Tonawanda Island. Private residences have also been affected, as homeowners must either dredge or move their docks in response to the erosion and sedimentation that have occurred. You have already heard about the amounts of money spent on projects to control and remediate erosion and sedimentation.

The shoreline of Grand Island has between 450 and 620 parcels impacted to different degrees by the 100-year flood plain. The regulation of waters for power production has most likely been a contributing factor to the inclusion of these lands into the hazard zone. Impacts on the community cannot be ignored as rates for coverage under the National Flood Insurance Program can be substantial and have been escalating.

The construction of transmission facilities from the Project has essentially cut the Grand Island community in half. The facilities cut a 128.7-acre swath through the town and lie within lands that would have sustained medium to high-density development as much of this land is within sewer districts. The corridor has not only taken up valuable land, but has also literally bisected properties, making them impossible to develop. The potential tax base loss cannot be dismissed, nor can the negative effects of this infrastructure be ignored as a handicap to development because of the negative effects of being adjacent to these facilities.

The DEIS mentions some of these issues in connection with Grand Island. NYPA has met with us but refuses to enter into negotiation with Grand Island. With our entire town bordering the Niagara River, it is impossible to imagine that Grand Island does not deserve attention from NYPA regarding these impacts.

Thank you.

Page: 152

Author: Staff
Subject: Response
Date: 12/14/2006 3:18:01 PM
We address the erosion issue and side agreements in our response to the Public Power Coalition. We note, however that invasive species work under one of the HIPs would occur at the downstream end of Grand Island at Buckhorn Marsh and that the Beaver Island HIP is very close to the upstream end of Grand Island.

ORIGINAL



2919 Delaware Avenue - Room 11 • Kenmore, New York 14217 • (716) 877-8804
Fax (716) 877-1261

Office of the Supervisor
RONALD H. MOLINE

This page contains no comments

P-2216

October 17, 2006
FILED
OFFICE OF THE
SECRETARY

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Secretary Salas:

Please be advised that the enclosed resolution was approved by the Tonawanda Town Board on Monday, September 25, 2006 in support of the communities comprising the Public Power Coalition. Your review and support of this resolution is important to the 270,000 residents and numerous industries and businesses in these communities affected by the Niagara Power Project. You will be receiving similar resolutions from the other PPC communities. If you have any questions, please feel free to contact my office.

Sincerely yours,

RONALD H. MOLINE, SUPERVISOR
TOWN OF TONAWANDA

RHM:ram

* Attachment / eLibrary



"A GOOD PLACE TO LIVE, WORK AND PLAY"



Author: Staff
Subject: Response
Date: 12/14/2006 1:41:52 PM
Please see our responses to the PPC, Housing Authority, and NYSEG and RG&E on similar issues.

T
Town of
Tombston

2006-124

2006-124

Town of Tombston
2006-124
James T. Scott
City Manager
Tom DiStasio
Town Clerk

**Motion is In Order to Support a Settlement Agreement
Between NYPA and the PPC/Communities Relative to
Relicensing Proceedings for the NY Power Authority's Power
Project**

Whereas, the Public Power Coalition (an alliance of five communities, the City of Tombston and North Tonawanda and the Towns of Amherst, Getzville and Tonawanda) has intervened in the Federal Energy Regulatory Commission's relicensing proceedings for the NY Power Authority's Niagara Power Project; and

Whereas, the Public Power Coalition communities are located on the Niagara River in its main tributaries within a 15-mile radius of the Niagara Power Project and represent 270,000 residents and major industrial and commercial energy users; and

Whereas, the Project has significant effects on the Public Power Coalition communities that are not addressed in the draft Environmental Impact Statement prepared by the New York Power Authority for the Niagara Power Project and include the following:

- Lack of low-cost power from NYPA, as required by the existing operating license, has previously harmed the industrial and residential base and back economies of the Public Power Coalition communities;
- Additional costs incurred for water treatment resulting from turbidity, on average, PPC communities spend \$1,500,000 per year for additional water treatment costs as a result of Niagara Power Project operations;
- Additional costs for erosion control, the cost of erosion control has been shown to be \$1,000 per foot of construction, of \$1.1 million per year of additional costs for PPC communities as a result of Niagara Power Project operations;
- The proposed settlement between the NYPA and municipal communities in Erie and Niagara counties, which do not include PPC communities, would cause additional social and economic damage to PPC.

Now, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Tombston hereby approves a settlement agreement between NYPA and the PPC communities that includes the following provisions:

- \$5 million per year for water treatment and erosion control, for the duration of the license;
- \$5 million per year for economic development, for the duration of the license;
- A one-time payment of \$20 million for major flood and erosion control projects PPC communities must undertake as a result of Niagara Power Project operations;
- 100% of low cost power per year to be used by residents, municipalities, and businesses, provided at the same rate as power given to "best customers" under the proposed settlement, for the duration of the license;
- These settlement funds will be divided by PPC communities according to population and other factors.

Resolution 2006-134



Meeting of September 25, 2006

AND BE IT FURTHER RESOLVED that the PFC committee call upon United States Senators Charles Schumer and Hillary Clinton, Representatives Louise Slaughter, Brian Higgins and Thomas Swartz, the members of the Western New York State Legislative Delegation to the Assembly and the PFC to urge the New York Power Authority to reach a settlement agreement with the PFC committee.

AND BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to all of the above-mentioned elected officials and to the New York Power Authority and Federal Energy Regulatory Commission.

AND BE IT FURTHER RESOLVED that members of the PFC committee be urged to visit www.PackTheCaucus.org to receive more details with the visit card and sign an e-statement of interest.

RESULT:	ADOPTED (UNANIMOUS)
MOVER:	Harold Miller, Chairman
SECONDER:	John DeSantis, Court Street, Deputy Supervisor
ATTEST:	MAURA CHAMBERLAIN, Clerk, Flynn, Chmara, Emminger
ABSENT:	John Bergman

I do hereby certify that I have compared the foregoing with the original minutes of the regular meeting of the Town Board held on the September 25, 2006 and that the foregoing is a true and correct copy of the Board and are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the said Town of Tarrytown, Erie County, New York, this _____ day of September, 2006.

[Signature]
Town Clerk, Town of Tarrytown, NY

This page contains no comments

New York Power Authority
100 West Street
Albany, NY 12207

518 433 6799
518 433 6751 (Fax)
chasea@nyopa.gov



Rick Chase
Executive Director
Hydropower Relicensing

October 23, 2006

The Honorable Magelie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: Niagara Power Project, FERC Project No. 2216-066;
Supplement to the Record to Address Comments on Draft Environmental
Impact Statement**

Dear Secretary Salas:

This letter provides clarifications and supplemental technical information relating to recent comments submitted to the Federal Energy Regulatory Commission ("Commission" or "FERC") by the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI"), and others. General discussions of these comments are presented separately below and technical supplements are provided as attachments to this letter.

United States Environmental Protection Agency

By letter dated August 23, 2006, the EPA submitted to the Commission comments on the Commission's draft Environmental Impact Statement ("DEIS") for the Niagara Power Project, FERC No. 2216 ("Project").

The EPA expressed concern that the DEIS has not fully examined the cumulative impacts of the Project. Specifically, the EPA's concern relates to water levels in the Chippewa-Grass Island Pool ("CGIP") and upriver once Ontario Power Generation's ("OPG") tunnel project is completed. The EPA states that OPG information indicates that "the Niagara Tunnel Project will divert another 500 cubic meters of water from the Niagara River to the Sir Adam Beck hydroelectric project when it is completed in 2009."

Regarding the EPA's concern, the Power Authority believes that water levels in the CGIP will not be affected by OPG's Niagara Tunnel Project. The International Niagara Board of Control ("INBC") has reached the same conclusion.¹ Water levels in the CGIP are strictly

¹ See International Niagara Board of Control, One Hundred Sixth Semi-Annual Progress Report to the International Joint Commission, Covering the Period September 22, 2005 through March 28, 2006, p. 4. Available at <http://www.ijc.org/en/boards/niagara/niagara106.pdf>.

This page contains no comments

regulated by the INBC, pursuant to the INBC's 1993 Directive. This Directive regulates daily minimum and maximum CGIP pool fluctuations, provides a contingency for extreme pool fluctuations, and limits the lowest and highest allowable pool elevation. Additionally, the Treaty between Canada and the United States of America Concerning the Diversion of the Niagara River ("1950 Treaty") dictates minimum flows over Niagara Falls and provides that all excess waters available for water diversion for power generation shall be divided equally between Canada and the United States. A January 19, 1965 agreement between the Power Authority of the State of New York ("Power Authority") and OPG provides a means for the two entities to share generation capacity in order to divert and use the maximum allowable combined share of water for power generation in accordance with the 1950 Treaty.

Pursuant to the 1993 INBC directive and the generation capacity sharing agreement, OPG and the Power Authority already divert all water available for power generation except for some flow during extreme weather events; consequently, future CGIP operations will not change as a result of OPG's Niagara Tunnel Project.

Simply put, OPG is constructing their tunnel in order to increase Canadian generating capacity. Once the new tunnel is in place, it will only affect the generation sharing agreement in the sense that it will allow more water to be diverted to OPG's facilities; in turn, less water will be diverted to the Power Authority's facilities (the Power Authority will still be able to divert its share of available water for power production). During future extreme weather events, the combined capacity of OPG and the Power Authority will be greater and therefore more water may be able to be captured for power generation during these relatively short events.

EPA also stated that the DEIS should discuss future impacts to the Niagara River's water quality, sediment movement, groundwater flow, erosion, and upriver water levels that may arise from the operation of both the Niagara Power Project and the new flow to the Sir Adam Beck facility. We believe this issue has previously been addressed during EPA's review of the International Joint Commission's 1999 *An Assessment of the Effects of the Ontario Hydro Redevelopment Project*.² EPA commented that the OPG's proposed Tunnel Project would not have significant adverse environmental impacts. This position is supported by the Power Authority's relicensing studies, which were conducted during the Alternative Licensing Process. These studies analyzed impacts associated with water level fluctuations in the CGIP, and these impacts are described in detail in the Commission's DEIS for the Project. Given that water levels in the CGIP will not change as a result of the new OPG tunnel, no future impacts beyond those cited in the DEIS are anticipated.

² See *An Assessment of the Effects of the Ontario Hydro Redevelopment Project, A Report by the International Joint Commission - April 30, 1999* (from section entitled U.S. Agency Consultations). Available at <http://www.ijc.org/rel/com/nag/air/mos.html>

United States Department of the Interior

By letter dated September 15, 2006, the DOI submitted to the Commission comments on the Commission's DEIS for the Project. The DOI raised specific technical questions regarding groundwater contamination and Falls Street Tunnel ("FST") improvements associated with the Niagara Falls Water Board Capital Improvement Fund. The bullet items presented below supplement the base of technical information related to the FST issue.

- DOI questioned whether the presence of BTEX (benzene, toluene, ethylbenzene and xylene) in groundwater in the vicinity of the Lewiston Reservoir is related to gasoline contamination. DOI surmised the BTEX compounds could possibly be naturally occurring and caused by petrolierous formations of the Lockport Group and suggested that additional studies would help evaluate the source of BTEX. The Power Authority, as part of its Niagara relicensing effort, conducted an extensive groundwater study to evaluate contamination issues. The groundwater study report concluded that all detected contamination (including BTEX contamination) in the area of the Lewiston Reservoir is attributable to sources other than Project operations.³ Furthermore, it was concluded that there is no direct evidence that Project operations affect the movement of contaminants in the vicinity of the Lewiston Reservoir. Therefore, the Power Authority does not believe additional studies are warranted to determine the source of these non-project related contaminants.
- DOI suggests that the FST improvement effort could cause groundwater levels "to rise by as much as 10 ft in the cross-over area if the grouting is successful and water does not find new pathways to the FST via fractures or man-made pathways in the bedrock."⁴ The Power Authority agrees that a rise in water levels is expected. However, based on previous evaluations conducted by the Power Authority the rise is estimated to be more on the order of 1 to 3 feet rather than 10 feet. As such, the resultant impact to hydraulic gradient in the "cross-over" area is predicted to be less pronounced than the assumed impact presented by the DOI.
- DOI questioned whether the balancing weirs in the conduit pump stations have been sealed and commented that the weirs were designed to provide a hydraulic connection between the water level in the external conduit drainage system (ECDS) and the water levels within the conduits. DOI is concerned that an increase in water level in the cross-over area could induce flow from the ECDS to the conduits and suggested that elevation relationships between the sumps should be investigated to assess this

³ See URS Corporation, Gomez and Sullivan Engineers, P.C., and E/Pro Engineering & Environmental Consulting, LLC, Determine to What Extent Project Operations Affect the Transport of Groundwater and Contaminants, August 2005, p. 7-5.

⁴ See URS Corporation, Calculation Sheet: Effect of FST Grouting on Hydraulic Head in the CDS at South Pump Station, January 11, 2005.

possibility. First, the Power Authority has not sealed the conduit pump station weirs and has no plans to do so since they are designed to minimize hydrostatic pressure on the conduit walls. Second, the Power Authority has already assessed the impact on weirs and subsequent groundwater discharge to the conduits which would result following a rise in groundwater level.⁵ Based on this assessment, the Power Authority found that under existing conditions, at the south pump station, flow does not occur from the ECDS to the power conduits. After the FST has been sealed, it is estimated that the 1 to 3 feet rise in head will cause groundwater to flow from the ECDS to the power conduits at the south pump station 60% of the time during the tourist season and approximately 40% of the time during non-tourist season. The net flow interchange between the ECDS and power conduits at the north pump station is expected to remain unchanged after the FST has been sealed.

- DOI expressed the potential beneficial effects of sealing the FST in the cross-over area (i.e., a reduction in the release of contaminants to the Niagara River and a reduction in the rate of offsite groundwater flow from hazardous waste sites). However, DOI then stated that “[t]hese potential benefits would be partially offset by the additional untreated discharge of ground-water contaminants that will continue to enter the ECDS from these sites and flow to the Forebay Canal.” Based on additional evaluations conducted by the Power Authority, it is estimated that FST sealing will have only a minimal effect on the infiltration of groundwater from the aquifer into the ECDS.⁶ Contrary to DOI’s assumption, the Power Authority estimates the change is likely to be a small decrease of flow (on the order of 10 percent). Therefore, contaminant loading to the forebay via groundwater flow in the ECDS would be expected to decrease slightly, not increase as suggested by DOI’s comment.

Socioeconomic Issues

Several commenters assert that the Commission should analyze the socioeconomic and cumulative impacts associated with the Power Authority’s potential sale of power and energy from the Niagara Power Project to entities other than those currently receiving it.⁷ The Power Authority believes such additional economic analysis is unnecessary because the net benefits associated with Project power remain unchanged; rather, the benefits merely would be transferred from one community to another. As the Commission noted in response to similar

⁵ See URS Corporation, Calculation Sheet: Effect of FST Sealing on Hydraulic Heads in the CDS at South Pump Station, January 11, 2005.

⁶ See URS Corporation, Memorandum: Qualitative Effect of Falls Street Tunnel Grouting on Groundwater Flow to the Conduit Drain System, June 17, 2005.

⁷ See, e.g., Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation at 7-14, Project No. 2216-066 (filed Sept. 18, 2006); Comments of Public Power Coalition at 36-38, Project No. 2216-066 (filed Sept. 19, 2006); Comments of Seneca Nation of Indians at 3-4, Project No. 2216-066 (filed Sept. 19, 2006).

issues raised in the recent relicensing of the St. Lawrence-FDR Power Project, “[t]he provision of low cost power would provide socioeconomic benefits to any entity receiving it, at the loss of the party now serviced by the allocations as they exist.”⁸

The Power Authority appreciates the efforts the Commission, EPA, DOI and other stakeholders regarding the relicensing process for the Niagara Power Project. If you have any questions regarding this matter, please contact me at (518) 453-6738.

Sincerely,



Rick Chase
Executive Director of Hydropower Relicensing

⁸ Final Environmental Impact Statement § 1.4, at 1-16, Project No. 2000-036 (issued Sept. 24, 2003).

This page contains no comments

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 23 day of October, 2006.


Sharon White
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007-3877
Telephone: (202) 298-1800
Facsimile: (202) 338-2416

This page contains no comments

This page contains no comments

- ①. Federally funded "SENECA NIAGARA PARK"
 - oldest National Park.
- ②. CLEAN THE RIVER
 - under EPA
 - Nuclear remedial project.
 - old "love canal"
- 3. BUILD A WICKED CLASS RESORT DESTINATIONAL under parks system.
- 4. BUILD A MONO RAIL ALONG THE RIVER FROM BFLD to LEWISTON
- ⑤. NO MOTOR BOATS ONLY ON THE RIVER, KAYAKS & CANOES!!

W-210



2006 AUG 22

1073

FILED
NIAGARA COUNTY LEGISLATURE
NIAGARA COUNTY COURTHOUSE
175 HAWLEY STREET
LOCKPORT, NY 14094-7341

FEDERAL ENERGY
REGULATORY COMMISSION

P-2216-066

RENAE KIMBLE
NIAGARA COUNTY
LEGISLATOR
2ND DISTRICT
3302 HYDE PARK BLVD.
NIAGARA FALLS, NY
14305
(716) 282-1618

Page: 163

Author: Staff
Subject: Response
Date: 11/29/2006 11:29:56 AM
We have corrected this.

Thank you for holding public comments on the Draft Environmental Impact Statement for the Renewal of the License for the Niagara Project No. 2216-066 located on the Niagara River in Niagara County, New York.

I am Renae Kimble, Niagara County Legislator, representing the Second Legislature District in the City of Niagara Falls, and am Vice President of the Niagara Improvement Association which filed an intervention to protest the approval and granting of the Niagara Project's application to the Federal Energy Regulatory Commission to relicense the project.

On Page 4 of the Draft Environmental Impact Statement Section 1.3.2 Interventions, the Niagara Improvement Association is listed as an intervenor. However, we would like a correction as we are intervenors in opposition to the license, which are supposed to be marked with an asterisk. There is no asterisk after the Niagara Improvement Association. Please make that correction on the Final Environmental Impact Statement.

I as the elected representative of the Second Legislative District in the County of Niagara where the Highland Avenue Community is located and the Niagara Improvement Association are representing the interests of the African American Community of the Highland Avenue area in this process.

To quote Robert D. Bullard, Ph.D., Director of the Environmental Justice Resource Center at Clark University in Atlanta, Georgia, "All communities are not created equal. If a community happens to be poor, black, or of color, it receives less protection than does an affluent white community. The environmental justice framework defines "environment" as where we live, work, play, worship, and go to school, as well as the physical and natural world. Environmental Justice is built on the principle that all Americans have a right to equal protection of our nation's environment, health, housing, transportation, employment and civil right laws and regulations environmental protection is a basic human right."¹

"Executive Order 12898, "Federal Actions to address Environmental Justice in Minority Populations and Low Income Population mandated federal government agencies to incorporate environmental justice into all of their works and programs."²

"In order to address these concerns, any policy, practice or directive that differentially affects or disadvantages whether intended or unintended, individuals, groups or communities based on color or race is considered Environmental Racism. Environmental Racism combines with public policies and industry practice to provide benefits for whites while shifting costs to people of color."³

There are clear links among race, poverty, land use, environmental risk and unequal protection with the NPA's application for relicensing with FERC."⁴

"Poverty impacts health because it determines how many resources poor people have and defines the amount of environmental risks they will be exposed to in their immediate environment."⁵

Today, I plan to tell the story of the African American community that sits in the shadows of the Niagara Power Authority.

The Niagara Power Authority is continuing to perpetuate a system of Environmental Racism, discrimination in its hiring and promotion practices, a system of political patronage and blatant arrogance with its dismissive attitude of the concerns raised by the African American Community when it states in this *Draft Environmental Impact Statement in the analysis of the demands made by the Niagara Improvement Association* when it states and I quote, "We do not believe there would be disproportionately high and adverse health or environmental effects on minorities, low-income populations or Indian Tribes from continuing to operate the Niagara Project. The Project produces a large amount of clear renewable and relatively low-cost electricity that helps reduce the need for fossil-fueled generation. The Project also directly employs over 300 people."

It goes on to say and I quote, "While we would agree that the availability of low cost power likely attracted industry to the Niagara Region, it is unclear to us how continuing to operate the project is connected to those industries and their associated jobs leaving the area."

Let me explain it then to you and show it to you. The Power Authority has failed to be good stewards in Niagara County. There has been a failure in accordance to the Power Authority Act to require their customers to reinvest in their facilities which has resulted in devastation in our community from Brownfields, unmarketable land and abandoned plant structures.

Some of the Power Authority customers which received low cost power allocations used the savings and profits made from receiving low cost power to reinvest in new facilities outside of Niagara County and outside of New York State. The exodus of these good living wage jobs created massive permanent job losses, vacant and abandoned plant structures and numerous Brownfields in the Highland Avenue community.

The result of this is unmarketable land in which no new business entity will come to our community to create new jobs due to the extraordinarily high cost of clean up of the land - the unmarketable Brownfields.

A picture speaks a thousand words, well just look at the pictures of the Highland Avenue area that has been decimated by job loss. Many former Authority customers.

SUBSTANCIAL EVIDENCE OF PROJECT RELATED ADVERSE IMPACTS

In accordance to the State of the Region Performance Indicators for the Buffalo-Niagara Region in the 21st Century, prepared by the Institute for Local Governance and Regional Growth, State University of New York at Buffalo, "Actual or perceived environmental damage at a vacant site poses a significant barrier to its redevelopment. Purchases of such sites - which are called Brownfields - maybe legally responsible for the clean-up of any discovered contaminants. Consequently, investors may choose to locate development projects in new "green" sites, often promoting urban sprawl. Thus, the presence of Brownfields not only weakens a community's employment and tax base, but also may contribute to further environmental problems.

The City of Niagara Falls, New York designated specific zones in 1988 to start up businesses by

Author: Staff
Subject: Response
Date: 12/11/2006 3:55:01 PM
We do not believe NYPA, from a hydro licensing standpoint, is responsible for the actions of the businesses that purchased project power. Those former customers who made a business decision to leave the area likely did so for a variety of reasons. It would seem reasonable that the availability of low-cost power has encouraged some businesses to stay in the area.

Rider moved off of Highland Avenue in the late 1970's and the early 1980's, hundreds of jobs were lost.

The Economic Development Zone which marketed providing business incentives designated to reduce basic operating costs - reduced Hydro costs, New York State Wage Tax Credits, New York Investment Tax Credits, 50% New Business Refundable Wage and Investment Tax Provision. A New York State grant and the City of Niagara Falls matching grant of \$53,000 each to fund the zone brought in tenants like Courts Library Services, Medical Biotics and Bickness Racing, these companies no longer exist.

It is apparent that companies located in Census Tract 202, the Highland Avenue area or the City of Niagara Falls Empire Zone that had power allocations from the New York Power Authority, have had to close their doors costing hundreds, even thousands of job losses since the late 1970's. Examples are the following: Carbide Graphite, 4861 Packard Road, not located in Census Tract 202, but located in the Empire Development Zone, lost 200 jobs. Globe Metallurgical, 3807 Highland Avenue, located in Census Tract 202, located in the Empire Development Zone, lost 80 jobs. SGL Carbon, 6200 Niagara Falls Boulevard, not located in Census Tract 202, located in the empire Development Zone, lost 150 jobs. Stratcor, 137 47th Street, not located in Census Tract 202, located in the Empire State Development Zone, lost 50 jobs. UCAR Carbon, 3625 Highland Avenue, located in Census Tract 202, located in the Empire State Development Zone, lost 30 jobs. Nabisco, 920 Rainbow Boulevard, was not in the Empire Zone at the time of its closing in December 2001. That property is now within the boundaries of the City's Empire Zone. 240 jobs were lost with the closing of Nabisco, which had an allocation of New York Power Authority hydropower. Counting Nabisco 750 jobs have been lost, without counting Nabisco, 510 jobs were lost when the above companies that closed were either within Census Tract 202, the Highland Avenue area which is in the heart of the African American community in the City of Niagara Falls or within the City of Niagara Falls' Empire Zone. ALL OF THESE COMPANIES HAD AN ALLOCATION OF NEW YORK POWER AUTHORITY HYDROPOWER.

Given the fact that the Highland Avenue community is located less than one mile from the New York State Power Authority's Niagara Power Project, given the fact that the City of Niagara Falls is located within only miles of the New York State Power Authority's Niagara Power Project, it is unconscionable that our residents and local businesses are paying some of the highest electricity rates in the country, and this area has lost hundreds, no thousands of jobs since the late 1970's.

According to Dr. Henry Louis Taylor, Jr., professor in the Department of Urban and Regional Planning and Director of the Center for Urban Studies at the State University of New York at Buffalo, he states that the Highland Avenue area or the African American community of the City of Niagara Falls deserves help from the Power Authority for its revitalization. Excerpts taken from an article entitled, "Highland Avenue deserves help from Power Authority", the Buffalo News, Friday, March 10, 2006.

"The activities of the new York Power Authority hurt the Niagara Falls Highland Avenue black community more than any other locality in this region. Located in the Authority's shadow, this community of 2,784 people historically was one of the most heavily industrialized neighborhoods in Niagara County."

"In 1957, federal law created the Power Authority with the primary intent of supporting the economic development of municipalities in Western New York. Many factories in Niagara County, which benefited from the authority's low-cost hydroelectric power, were located in or near the Highland Avenue community."

"The closing of these factories left about 15 Brownfield sites scattered throughout the 560-acre region. Niagara Falls will have to clean up and redevelop these sites before it can regenerate Highland Avenue."

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half the population lives below the poverty line, the median household income is only \$14,000 annually and only 22 percent of the homes are owner-occupied. The difficulties facing this neighborhood will worsen, unless the city implements a well-conceived and well-funded community development strategy.”

“Where will the money come from? Niagara Falls is a struggling city that has made downtown revitalization, tourism and casino resort development its top priorities.”

(See the City of Niagara Falls' Strategic Master Plan; the plan can be viewed at (www.niagarafallsusa.org/tocv7.htm).

THE PLAN TOTALLY FORGETS ABOUT THE REVITALIZATION OF THE HIGHLAND AVENUE COMMUNITY.

The Draft Environmental Impact Statement continues to state on Page 139 and I quote, “As we describe above, there are several measures proposed by the Power Authority in side agreements that could benefit local communities including the City of Niagara Falls where the Highland Avenue Community is located. It would be the City of Niagara Falls' decision whether to use some of these funds to address Niagara Improvement Association Concerns.

The City of Niagara Falls has a Strategic Master Plan that has made downtown revitalization its top priority. The Master Plan fails to include any discussion regarding the Revitalization of the Highland Avenue Community.

If the Power Authority can enter into an agreement to work out a settlement for \$279 million dollars for the Buffalo Waterfront 20 miles away; it can certainly set down with the leadership of the NIA and work out a settlement for revitalization for the Highland Avenue Community, which is less than one mile away.

Environmental Justice demands that there be partnerships with affected residents of the community and not a pass the buck mentality that the Power Authority continues to perpetuate with its dismissive attitude of its not our problem talk to the City.

NO!!!!!! Since NYPA is a major root cause of the predicament that our community finds itself in, we have decided to talk to you today, FERC officials, in hopes that you can talk to the NYPA about their obligation to be good stewards in the entire community, not just certain parts of the community.

African American people have a right to a clean, healthy, sustainable environment. We have a right to have our needs addressed by the NYS Power Authority and by FERC. This problem has not been adequately addressed by the City of Niagara Falls for the past 50 years. Why would it be addressed by the City of Niagara Falls now when our community is not even mentioned in the City's Master Strategic Plan.

As Dr. Henry Taylor stated in an Article to the Buffalo News on Friday, March 10, 2006 and I quote, “It is incumbent upon the Authority to do the right thing – set aside funds for the regeneration of Highland Avenue.” The Power Authority generates significant revenue in this region, and it should pay for the environmental by products spawned by its activities.”

The Authority possesses the resources to fund the revitalization of this struggling community situated in its shadow. Therefore, it should work out a settlement with the Highland Avenue community that is similar to the one Buffalo received for its waterfront.

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Author: Staff

Subject: Response

Date: 12/11/2006 3:55:53 PM

Please see our responses to the Housing Authority, Terry Yonker, and Eastern Niagara. Regarding the City of Niagara Falls' Master Plan, we assume the plan could be revised to include something for the Highland Avenue Community. That, however, is an issue for the City.

Secretary of the United States Department of Housing and Urban Development seeking assistance for the devastated Highland Avenue area community. Portions of the letter read as follows:

"The Faith Based and New Markets Initiatives developed by HUD for the revitalization of severely depressed inner city areas are revolutionary, insightful, and ignite hope for impoverished communities throughout the nation, but especially here in the City of Niagara Falls, where I represent the poorest district in the entire County of Niagara. My district has an African American infant mortality rate, which is as high, if not higher than the infant mortality rate in war torn Bosnia. African American babies are dying at a rate of 26.9 per 1,000 births, the national target for African Americans in 1997, was 11 baby deaths per 1,000 births. The National average was 13.7 deaths; Niagara County's figure is almost twice the national average."

"In my district, I have the city's oldest housing stock, streets so ravaged that one would think they were visiting a war zone area of the Middle East or in Chechnya. A review of the 1990 Census shows that Tract 202 (Highland Avenue Area), which is in the heart of the district, is the most distressed area of Niagara County. The statistics point to a median family income of \$9,706, with over 50% of all of the people who live in the Highland Avenue community below poverty level. This compares to a county wide median family income of \$33,900 and 10% of all persons residing in the county living below the poverty level."

"Mr. Secretary, all of these grim statistics indicate that we have a city in crisis. Niagara Falls, New York, is known as the Honeymoon Capital throughout the entire world. In the 1960's, our city once had a population over 100,000 people. Today, the population has declined to less than 58,000 people, due to a loss of business and industry..."

Now there are even questions regarding whether or not the New York State Power Authority's deal to the Niagara Coalition was a low-ball offer. A report by FMY Associates of Los Altos, California, which was issued in March 2004, recommended that the power coalition take \$4.4 billion in cash and power over 50 years. The coalition accepted a deal worth \$1.1 billion.

Ex-Director of the Niagara Power Coalition, Mark Zito was quoted in a Buffalo News article dated Tuesday, April 4, 2006, entitled, "Embattled Zito Defends Power Project Relicensing Deal".

"Zito said the figure was unrealistic and would have caused the Power Authority to raise the price of its electricity so much that local industry would have suffered a body blow."

"That is because the Power Authority agreed to sell some of the Power Project's output at market rates to raise the cash it agreed to pay the coalition members, as well as the \$279 million it later agreed to pay for Buffalo waterfront redevelopment."

"If I would have asked the Power Authority for \$5 billion, what would have happened to the price of electricity? It would have gone way up," Zito said. "If they had to pay that, it would have driven every industry out of Western New York, period."

"Since relicensing expenses are part of the cost of the Niagara Project, those costs eventually will be reflected by the rates, including those paid by Western New York businesses and industries," Power Authority spokesman Michael E. Salzman said."

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proportionate tax paying businesses annual revenues per year. (The Niagara Power Authority does not pay taxes.) And during the first 50 years of the Niagara Power Authority's license they have not reimbursed nor lowered any customer's rates. This means that the Niagara Power Authority made billions if not trillions of dollars in total annual revenues during the past 50 years. To use the argument that any increase in the Power Authority's settlements would raise rates is a misnomer due to the fact that the system is set up in such a way that the New York Power Authority makes more money producing power on the grid than raising the rates on its customers.

In the Buffalo News article, written, Saturday, April 1, 2006, entitled, "Power Deal Deception", New York Power Authority spokesman Michael E. Salzmann stated, "We have a long tradition of giving to Western New York communities as part of our responsible stewardship of the Niagara Power Project, dating back to the project's construction," Salzmann said. "This is all part of being a good neighbor, a role we take seriously."

How can the Power Authority justify being a good neighbor when it has ignored the needs and concerns of the Highland Avenue community, the community which has been most directly affected by job loss, Brownfields, lack of minority hiring, lack of economic development, and a lack of cultural initiatives.

The Power Authority proposed cultural initiatives. Page 4-88 of the Niagara Power Project FERC No. 2216 Preliminary Draft Environmental Assessment, proposes several cultural initiatives for the Native American, however, nothing is mentioned regarding cultural initiatives for the African American community which has a rich cultural heritage with the Underground Railroad, the starting of the Niagara Movement which led to the formation of the NAACP, the nation's oldest Civil Rights organization, which has been in existence for over 100 years, historic homes which house secret compartments which would house runaway slaves, seeking to escape slavery, all located in the Highland Avenue area.

This rich history is the foundation for cultural tourism initiatives in the African American community.

Section 4.1.72 Environmental Impacts discusses how in the Comprehensive Relicensing Settlement Agreement the Power Authority proposes to establish a Community Enhancement Fund and a TN fund for the benefit of the Host Communities. \$89,828,000 (NPV 2007) Community Enhancement Fund for the benefit of the Host Communities and a \$21,824,000 (NPV) TN fund. The HC Fund will be funded in the amount of \$5,000,000 million annually for the term of the New License after an initial payment of \$8,000,000. The TN Fund will be funded in the amount of \$1,000,000 million annually for the term of the New License after an initial payment of \$5,000,000.

There is no mention of the Highland Avenue Community which has been directly affected by employment, income (lack of minority hiring at the Authority), Brownfields, as well as a lack of other socioeconomic resources which has been discussed already.

As previously stated, African Americans have the highest unemployment rates, highest poverty levels, greatest concentration of Brownfields, loss of industries which were located in the Highland Avenue area, but the study fails to mention the effects of the Power Authority as it relates to the socioeconomic impact to the African American community.

In the Buffalo News article on Sunday, March 26, 2006 entitled, "Upstate and Appalachia: A study in Hard Times", State Attorney General Eliot Spitzer, who wants to be the governor stated, "If you drive from Schenectady to Niagara Falls, you'll see an economy that is devastated. It looks like Appalachia. This is not the New York we dream of."

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Author: Staff

Subject: Response

Date: 12/11/2006 3:56:40 PM

NYPA filed a settlement agreement it negotiated with the Tuscarora Nation that the parties do not intend to be included in a new license. However, we can assume that NYPA entered into this agreement because construction of the project directly affected 470 acres of Tuscarora Nation land.

According to the 2000 Census for Tract 202, the Highland Avenue area, which is less than one mile from the New York Power Authority, the poverty level is 50.11 percent and the unemployment is 15.10 percent.

Both of these rates exceeding Appalachia, with the unemployment rate almost triple that of Appalachia. The U.S. poverty rate is 12.5 percent.

This is not the Highland Avenue, African American community that we dream of, but it is the hard core reality. It is an area, which has been redlined by Banks. Mortgages are hard to come by for those who want to build a home in the area, especially when you look in someone's backyard and see Brownfields, dumping grounds, land covered with weeds several feet high and abandoned factories as the skyline.

For the NPA to ignore these grave environmental concerns reeks of benign neglect. The Highland Avenue community respectfully requests FERC to award the African American community with the following:

- Funding for Brownfield remediation
- 175 million dollars a year for the length of the license or until there is remediation and revitalization of the Highland Avenue area, whichever comes first.

A preliminary draft plan or concept for the revitalization of the Highland Avenue area have been devised by Professor Henry L. Taylor of the SUNY at Buffalo. The draft concept has been shared with officials from NYPA, who have ignored our request.

It is the desire of this community that since it is obvious that the Power Authority takes its role as a good neighbor and steward in words only, not in deeds. The facts speak for themselves, can the New York Power Authority be allowed to ignore its closest neighbor for another 50 years? We hope not. For these reasons we again are Stakeholders within this procedure and respectfully request all rights and privileges thereof. We reiterate our request to intervene. We also reiterate our opposition to the NPA receipt of its license for another 50 years. That is why we are making our request to you.

- Funding for African American Cultural Initiatives
- Affirmative Action Policy for the Niagara Project
- Job Commitment of at least 341 employers at the Niagara Project
- Job Commitment at the Niagara Project to the African American community (which includes a mentorship program and a job training facility which leads to actual employment)
- Job Commitment at the Niagara Project to the people who reside within the City of Niagara Falls

CONCLUSION

Wherefore, the Niagara Improvement Association (NIA) respectfully request that a member of the Niagara County Legislature and the FERC considers the African American community in its review of the Niagara Project's application for new license and specifically address how the Power Authority's proposal affect minorities. The Niagara Improvement Association (NIA) also requests that the FERC grant this community both Environmental and Economic Justice, and reject NYPA's request for license renewal and grant our request to intervene.

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Author: Staff
Subject: Response
Date: 12/11/2006 3:57:27 PM
Please see our response to the Housing Authority on this issue.

Respectfully submitted,



Renae Kimble

2nd District Niagara County Legislature

Vice President, Niagara Improvement Association

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FOOTNOTES:

1. Robert D. Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (San Francisco: Sierra Club Books 2005)
2. William J. Clinton, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, Exec. Order No. 12898," *Federal Register*, 59, No. 32, February 11, 1994.
3. Tavis Smiley, *The Covenant with Black America*, Chicago: Third World Press 2006): pg. 190
4. *Ibid.* pg. 190
5. *Ibid.* pg. 190

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p.2216

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**Comments by Tonawanda Town Supervisor
Ronald H. Moline**

Subject: Relicensing of Niagara Power Project
Federal Energy Regulatory Commission Public Meeting
On Draft Environmental Impact Statement

Date & Location: August 17, 2006
Niagara Falls High School; 2:00 PM

In addition to the comments and information provided in the pamphlet entitled "Impacts of the Niagara Power Project on the Public Power Coalition Communities," I would like to emphasize the following impacts on the Town of Tonawanda by the existence and relicensing of the Niagara Power Project:

A. Environmental Impacts

The western boundary of the Town of Tonawanda is the Niagara River, with approximately six miles of shore line. The Town of Tonawanda is, therefore, a community on the Niagara River that has experienced the same negative impacts as municipalities that have been involved in settlement discussions to date: water level and flow fluctuations; excessive sedimentation and turbidity; fluctuations in water temperatures and shoreline erosion. These factors have and will continue to affect water-dependent activities and facilities in the Town of Tonawanda.

B. Financial Impacts

The town's tertiary wastewater treatment plant was constructed in 1978 at a cost of approximately \$68 million, obviously a major commitment to preserving the water quality of the Niagara River to the benefit of downstream communities and the New York Power Authority. The treatment costs have risen dramatically over the last thirty years for the maintenance and replacement of equipment, chemicals needed in the treatment process and the costs of electricity. The total cost for environment protection of the Niagara River for the Town of Tonawanda in 2005 was \$6,362,769. The cost of electricity for the wastewater treatment plants and lift stations was \$1.7 million. The town also owns and operates a water treatment plant that has also experienced significant increases in electric power and chemical costs. The continuing cleanup of New York State's waters comes with an enormous price tag in both increased capital expenditures for rehabilitation of existing facilities as well as providing funding to meet new regulatory requirements promulgated by the federal and state

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Relicensing of Niagara Power Project
Page two

governments. The Town of Tonawanda should be compensated by NYPA for maintaining an asset, the Niagara River, from which NYPA derives such an immense financial benefit.

C. Economic Development Impacts

The costs of electric power for residents and businesses in the Town of Tonawanda are among the highest in the nation, even though we are within 15 miles of the Niagara Power Project's generating plant. Although several industries benefit from lower cost Replacement and Expansion power, the availability of low-cost power should give all of our businesses a competitive advantage in the global economy. In response to high utility rates and other costly mandates in New York State, many businesses seek other incentives that often remove properties from the tax rolls in our communities. We have also experienced the negative effects of the loss of a world class tourist destination in Niagara Falls, NY because of the environmental impact of the project. Due partly to the negative effects of the project, the population of Erie and Niagara counties has declined, contrary to the promises and projections made fifty years ago. We are greatly concerned about the loss of 1/3 of the manufacturing jobs in WNY over the last 15 years while we generate such a significant amount of electric power for commercial purposes. Without attaining the economic growth that was envisioned fifty years ago, our young people are leaving in search of hope and opportunity elsewhere. This pattern contributes to a vicious cycle: a loss of tourism and loss of jobs have resulted in lower incomes for the community, which in turn results in higher expenses and lower revenues for our local governments, which results in an out-migrating of the younger and more affluent working families, resulting in more job losses, and so on.

Considerations:

1. NYPA should provide a fair share of its generated power to PPC communities and residents to make up for failed promises and to stimulate the economy, thus reducing the pressures on higher property taxes.
2. NYPA should include the PPC communities in cash settlements based on our proximity to the Niagara River and the negative economic and environmental impacts we have discussed.

Author: Staff
Subject: Response
Date: 12/11/2006 3:58:08 PM
Please see our response to Public Power Coalition on similar issues.

Author: Staff
Subject: Response
Date: 12/11/2006 3:58:42 PM
Please see our response to NYSEG and RG&E on power allocation.

Author: Staff
Subject: Response
Date: 12/11/2006 3:59:12 PM
Please see our response to the Housing Authority, Terry Yonker, and Eastern Niagara regarding the side agreement payments to communities.

IMPACTS OF THE NIAGARA POWER PROJECT ON THE TOWN OF TONAWANDA

The New York Power Authority's Niagara Power Project has been operating for over four (4) decades now and plays an important role in our region.

Hydropower is considered to be friendly to our environment because it represents a clean and inexhaustible energy source

Still, hydroelectric projects can affect a river. In the case of the Niagara River the specific impacts in the Town of Tonawanda are as follows:

ENVIRONMENTAL

- Effect of Water Level and Flow Fluctuations on Aquatic and Terrestrial Habitat.

The Town of Tonawanda waterways (The Niagara River, Tonawanda Creek/NYS Barge Canal and Ellicott Creek) are affected by water level fluctuations in part attributed to the U.S./Canadian power generation activities.

Water level fluctuations affect erosion, sedimentation and drainage, which in turn affect aquatic and terrestrial habitat.

- Surface Water Quality of The Niagara River and its U.S. Tributaries.

Wastewater Treatment Plant discharges are regulated based upon concentration of pollutants, diffusion rates in the receiving stream and the receiving streams ability to accommodate the chemical and biological loadings. Withdrawing significant amounts of water downstream increases a stream's velocities. This practice extends discharge plumes, changes sedimentation rates, and alters downstream turbidity requiring the increase in chemicals and resulting in additional treatment costs.

- Water Temperatures of the Upper Niagara River and its U.S. Tributaries.

Increases and decreases of water temperatures in the Upper Niagara River, and the rates at which these temperature changes occur, also affect water and wastewater treatment processes. It complicates the control systems that maintain consistent process control and chemical dosaging under varying conditions. Water temperature also affects all aquatic life as well.

Author: Staff
Subject: Response
Date: 12/14/2006 1:45:16 PM
Please see our response to the PPC on this issue.

Author: Staff
Subject: Response
Date: 12/14/2006 1:45:40 PM
Please see our response to the PPC on this issue.

Author: Staff
Subject: Response
Date: 12/14/2006 1:46:00 PM
Please see our response to the PPC on this issue.

ECONOMIC IMPACTS

The Niagara River is classified a Class A-Special receiving stream. Therefore tertiary treatment is mandated at our Wastewater Treatment plant. The additional cost of this requirement is 23.55% of our operating budget or \$1,498,432.00 in FY 2005. The total cost for environmental protection for the Town of Tonawanda last year was \$6,362,769.00. The electrical cost alone for the Wastewater Treatment Plant and Lift Stations was \$1,689,886.00.

The continuing cleanup of New York State's waters comes with an enormous price tag in both increased capital expenditures for rehabilitation of existing facilities as well as providing funding for new regulatory requirements.

In 1978 the cost of building the Town's Tertiary Treatment Plant was 68 million dollars. The useful life of the plant structure itself is 50 years. However, the useful life of the process equipment was only 20 years. The Town of Tonawanda has already invested over 8 million dollars in new process equipment since completion of the new plant. Replacement costs for the entire facility today would be 280 million dollars.

Furthermore, new regulations are on the horizon. Watershed Management and Sanitary Sewer Overflow (SSO) Abatement. The Town of Tonawanda spent over one million dollars to prepare a mandated approvable SSO Engineering report submitted to the NYSDEC in 2005. The cost of compliance with this plan will exceed over 200 million dollars over the next 40 years.

The Town of Tonawanda also owns and operates a Water Treatment Plant. Recent increases in electrical costs have significantly affected both water and sewer rates.

It would seem only fair for the New York Power Authority to compensate the Town of Tonawanda in some fashion, for maintaining an asset, the Niagara River, from which it derives such an immense financial benefit.

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NY POWER AUTHORITY RELICENCING
IMPACT TO THE TOWN OF TONAWANDA

The NYPA is in the process of filing a Relicense Application for continued power generation operation at the NYPA Project in Lewiston, NY. Their current license expires on August 31, 2007. As part of the application process, Host and Local communities may have opportunity to provide input related to potential impact they may experience.

The Technical Support Department has reviewed the materials available and offer the following views related to potential impacts of the project:

- 1. 19,364 town parcels consisting of 8,009 acres with assessed valuations totaling \$2,078,797,394 are within 15 miles of the generating plant.
- 2. 23,202 town parcels consisting of 8,580 acres with assessed valuations totaling \$2,284,413,344 are within 30 miles of the generating plant.
- 3. Tonawanda Creek, Ellicott Creek and Two Mile Creek are tributary to Niagara River and are therefore subject to its dynamics in terms of erosion, sediment accumulation, maintainability and flooding.
- 4. Floodplain influences are as follows (Two Mile Creek is not in Floodplain). Flow capacity of the tributaries correlate to flood insurance rates, constructability and habitation of structures within the floodplain.

<i>Tributary</i>	<i># Parcels</i>	<i>Shoreline (miles)</i>	<i>Acres</i>	<i>Assessed Valuation</i>
Niagara River	51	6.01	515	\$340,205,105
Tonawanda Creek	64	1.95	303	\$13,228,000
Ellicott Creek	24	3.83	240	\$4,677,200

- 5. Storm water outfalls into these tributaries have been identified by the WNY Stormwater Coalition as follows: The drainage capacity and performance of these storm systems are impacted by the Niagara River dynamics.

<i>Tributary</i>	<i>Stream Classification</i>	<i># Outfalls</i>	<i>Diameter Range (inches)</i>
Niagara River	A - Special	7	6 - 96
Tonawanda Creek	C	12	6 - 24
Ellicott Creek	B	22	4 - 42
Two Mile Creek	B	12	4 - 94

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6. This department reviewed a request from the Town of Amherst in September 2005 to coordinate with them on instituting a Low Flow Frequency Analysis for Tonawanda and Ellicott creeks. We maintain that it would be in the town's best interest to continue supporting this effort.
7. Ground water and wetlands are influenced by stream dynamics which has an effect on building capacity, habitation and water quality.
8. Electric rate impacts for the Town of Tonawanda for 2005, provided separately to the Town Attorney, are as follows:
 - Total Usage: 30,708 KWH
 - Total Commodity Cost: \$2,140,601.08 (Erie County Co-op)
 - Total Distribution Cost: \$2,785,720.59 (National Grid)
 - Grand Total Cost : \$4,926,321.67
 - Average Unit Cost (Commodity): 0.07 per KWH
 - Average Unit Cost (Distribution): 0.09 per KWH
 - Average Unit Cost (Total): 0.16 per KWH
9. It is suggested that Water Resources provide data related to Water Treatment and Wastewater plant operations with respect to chemical control, turbidity, temperature and flow. Also, data should be reviewed related to actual flooding complaints within the tributary influences.
10. The town is reviewing the water quality, bank integrity and conditions of structures related to Two Mile Creek and anticipate potential remediation costs of \$1,000,000.
11. The town is beginning a \$475,000 restoration project at Aqua Lane Park and Small Boat Harbor to replace a failing retaining wall and rehabilitate the shoreline.

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2005 Electric Data	WATER PLANT	WASTEWATER PLANT	PUMP STATIONS
Total Usage(kwh):	5,362,428	13,699,338	2,435,252
Total Distribution Cost:(National Grid):	\$ 213,873.99	\$ 333,158.19	\$ 253,232.11
Total Commodity Cost:(Erie County Co-op):	\$ 372,057.82	\$ 929,949.81	\$ 174,661.27
Grand Total Cost:	\$ 585,931.81	\$ 1,263,108.00	\$ 427,893.38
Average Unit Cost (Distribution):	\$ 0.04	\$ 0.02	\$ 0.10
Average Unit Cost (Commodity):	\$ 0.07	\$ 0.07	\$ 0.07
Average Unit Cost (Total):	\$ 0.11	\$ 0.09	\$ 0.18

8- 1-06:10:49AM:Red. Brian Higgins

:716 892 3929 # 1 / 16

BRIAN HIGGINS
2774 DETROIT, NEW YORK

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
HIGHWAYS, TRUCKS AND PORTS
WATER RESOURCES AND ENVIRONMENT
COAST GUARD AND MARITIME
TRANSPORTATION

COMMITTEE ON
GOVERNMENT REFORM
ENERGY AND RESOURCES
NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS

July 31, 2006

Congress of the United States
House of Representatives
Washington, DC 20515-3227

WASHINGTON OFFICE
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(202) 225-0247 (FAX)

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P-2216

FILED
OFFICE OF THE
SECRETARY
AUG 22 P 3 48
FEDERAL ENERGY
REGULATORY COMMISSION

Hon. Frank S. McCullough, Jr.
Chairman
New York Power Authority
Mailroom - 10-B
123 Main Street
White Plains, NY 10601-3170

Re: Investment of Niagara Power Project Proceeds

Dear Chairman McCullough:

I read with great interest the *New York Power Authority Financial Reports for the Three Months Ended March 31, 2006*. Here are some of the most important data from that document:

- The Niagara and St. Lawrence power plants created \$40.4 million in extra revenue for NYPA in the first quarter of 2006 (page 4).
- The White Plains headquarters was 14% over budget. \$18.7 million was spent in the first quarter of 2006 while only \$16.4 was budgeted (page 5).
- "Higher net operating revenues at the hydro facilities (\$39.9) and the MSP market area (\$12.8) were substantially offset by negative variances at SENY (\$30.7) and Flynn (\$6.1)" (page 1)

As I stated on numerous occasions in correspondence with your predecessor, the Niagara Power Project was not created to subsidize waste, abuse and mismanagement at your various other facilities – it was built to support economic development and life quality in Western New York. In recognition of that, I write today to advocate that the Power Authority immediately establish a program through which any surplus, unbudgeted profits created at the Niagara Power Project be reinvested into economic development initiatives in Western New York.

I am pleased with the settlement achieved between the City of Buffalo, the County of Erie, Olmsted Parks Conservancy and NYPA relative to the relicensing of the power plant. Based on the laws and regulations which govern the Federal Energy Regulatory Commission's relicensing process, the host community and basin must be compensated for negative impacts of the hydropower plant. Given that compensation for negative impacts is the basis of any settlement under the FERC process, I am

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:710 852 3929 # 2/ 18

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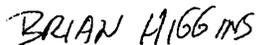
pleased that NYPA finally relented and that Buffalo and Erie County were awarded their fair compensation.

However, aside from the mitigation settlement, it is still the case that far too much of the economic benefit from the Niagara Power Plant, whether that benefit be in low cost electricity or cash, is exported from the host community, and sent to subsidize NYPA's waste, mismanagement and abuse elsewhere – contrary to the well understood intention of the federal, state and local lawmakers responsible for the creation of the project.

The FERC relicensing process was not set up to address that injustice, but that injustice must still be addressed. Again, that is why I write today to ask for an explanation of the new \$40 million in extra revenue generated at the plant and to advocate that the Power Authority immediately establish a program through which any surplus unbudgeted profits created at the Niagara Power Project be reinvested into economic development initiatives in Western New York, effective immediately.

Thank you very much for your consideration and I look forward to your swift reply.

Sincerely,



Brian Higgins
Member of Congress

Cc: The Honorable State and Federal Delegations from Western New York
Hon. George Pataki, Governor of New York
Hon. Eliot Spitzer, Attorney General of the State of New York
Hon. Joel Giambra, Erie County Executive
The Honorable Erie County Legislature
Hon. Byron Brown, Mayor of the City of Buffalo
The Honorable Common Council of the City of Buffalo
Mr. Jonathan Hollfield, Executive Director, Olmsted Parks Conservancy

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April 28, 2006

2. Financial Reports for the Three Months Ended March 31, 2006

Mr. Bellis presented an overview of the reports to the Trustees. In response to questions from Chairman Seymour, Mr. Bellis said that the new SENY tariff was in effect, but that the shortfalls stem from issues related to the economics of the Poletti and 500 MW plants, both of which are intended to produce profits. When prices and costs were forecast for 2006, last year's high fuel and market energy prices were still in effect. The Authority locked in a portion of its fuel costs. The plants' revenues are lower than expected and, with the cost structure higher, the profit margin is not being realized. Responding to additional questions from the Chairman, Mr. Bellis said that this situation should moderate somewhat over the course of the year and that the SENY customers are liable for up to \$30 million of this shortfall.

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NEW YORK POWER AUTHORITY
FINANCIAL REPORTS
FOR THE THREE MONTHS ENDED MARCH 31, 2006

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**Financial Reports
Table of Contents**



1	Financial Summary
2	Statement of Net Revenues
3	Statement of Net Revenues by Facility
4	Net Revenues-Variance from Budget
5	Operations & Maintenance
6	Statement of Net Assets
7	Summary of Net Generation
8	Capital Expenditures
9	Demand Side Management Financial Report
10	Operating Fund
11	Portfolio Performance and Financing Rates

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**NEW YORK POWER AUTHORITY
FINANCIAL REPORT
FOR THE THREE MONTHS ENDED MARCH 31, 2006**

(\$ in millions)

<u>Financial Summary</u>	<u>2006 YTD</u>		<u>March 2006</u>	
	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>	<u>Budget</u>
Net operating revenues	\$24.5	\$15.9	\$12.7	\$7.5
Net revenues (loss)	10.6	0.9	8.3	2.2
O&M (incl. administrative)	61.0	56.9	22.9	19.9
Generation (gwh's)	6,794	6,375	2,457	2,174
			<u>Prior</u>	<u>December</u>
			<u>Month</u>	<u>2005</u>
<u>Reserves</u>	\$225	\$233	\$233	

Net revenues through March 31, 2006 were \$10.6 which was \$9.7 higher than budgeted including higher net operating revenues (\$8.6) and higher non-operating income (\$1.1). Higher net operating revenues at the hydro facilities (\$39.9) and the MSP market area (\$12.8) were substantially offset by negative variances at SENY (\$30.7) and Flynn (\$6.1). The positive results at the hydro facilities were due to higher than expected water flows resulting in 12% higher production. The MSP market area showed better than anticipated operating results due to lower prices on ISO purchases. The negative variance at SENY was due primarily to lower than expected sales to the ISO. Net revenues at Flynn included lower customer revenues which were impacted by lower prices on Long Island in accordance with the terms of the LIPA agreement. Non-operating income included lower than anticipated costs on variable rate debt.

Net revenues for the month of March were \$8.3 which was \$6.1 higher than anticipated. This positive variance was attributable to higher net operating revenues (\$5.2) and higher non-operating income (\$0.9). Higher net operating revenues at the hydro facilities (\$14.7, 13% higher generation) were partially offset by lower net operating revenues in the SENY market area (\$9.2, primarily lower than anticipated sales to the ISO). Non-operating income included \$0.9 sale of excess emission allowances. Production for March (2,457 gwh) was 13% higher than anticipated (2,174 gwh) due to higher generation at the hydro facilities (212 gwh) and higher fossil production (71 gwh).

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**NYPA
Net Revenues
For The Three Months ended March 31, 2006
(\$ in 000'S)**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Budget</u>	<u>Variance Favorable/ (Unfavorable)</u>
Operating Revenues				
Customer	61,828,028	6480,161	6484,363	(\$14,202)
ISO-Energy	647,271	167,888	278,678	(112,990)
Ancillary Services	64,654	27,338	16,878	11,750
NTAC and Other	60,134	21,404	19,801	1,603
Total ISO	1,062,659	296,618	308,056	(99,437)
	2,921,044	688,780	778,418	(118,439)
Operating Expenses				
Purchased Power:				
Energy	158,783	42,552	40,674	(1,878)
Other	1,048,307	216,809	306,161	90,542
Ancillary Services	63,746	17,212	21,188	3,977
Fuel Consumed - Oil & Gas	620,949	144,468	178,278	51,810
Wharfing	302,119	60,493	62,119	1,626
Operations & Maintenance	296,964	60,873	66,679	(4,084)
Other expenses	137,514	48,228	48,567	(781)
Depreciation & Amortization	176,402	43,052	44,180	1,048
Allocation to Capital	(8,784)	(1,282)	(1,473)	(77)
	3,785,272	689,281	796,673	188,622
Net Operating Revenues	136,896	34,529	18,046	4,983
Interest Income and Realized Gains	63,783	16,428	15,724	(295)
Mark to Market Adjustment	(2,000)	(2,310)	(2,000)	(310)
Investment Income	61,793	13,110	13,724	(614)
Interest and Other Expenses	114,374	37,050	26,796	1,745
Net Revenues	65,318	16,688	973	9,714

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New York Power Authority
 Net Revenues by Facility
 For the Three Months ended March 31, 2006
 (\$ in 000's)

	Hedges/ B. Leases	B-G	BBNY	SCPP	Market Supply Power	Flynn	Transmission	Eliminations & Adjusts	Total
Operating Revenues									
Customer	\$ 100,208	\$ 2,875	\$ 248,524	\$ 2,236	\$ 78,868	\$ 34,428	\$ 20,623	\$ (40,780)	\$ 486,161
ISO-Gentry	13,825	17,730	108,824	11,957	12,283			(4,900)	157,889
Facility Services	23,381	1,840	2,088	329					27,358
NYAC and Other							21,404		21,404
Total ISO	37,214	18,420	109,892	12,206	12,283		21,404	(4,900)	206,618
	137,312	23,395	358,416	14,581	91,181	34,428	42,627	(45,580)	696,798
Operating Expenses									
Purchased Power:									
Barging			42,502						42,502
Other	18,280	15,887	142,598	424	80,883		11	(42,188)	215,895
Ancillary Services	4,985	77	10,180	9	1,941				17,272
Fuel Contract - Oil & Gas			109,288	7,108		28,092			144,488
Wholesale	2,833		85,211		2,398	72			90,485
Operation & Maintenance	24,250	8,789	10,454	2,844	415	1,919	14,548		48,809
Other expenses	4,776	747	2,804	28	14,828	205	2,707		45,328
Depreciation & Amortization	8,288	1,478	14,734	7,271	212	1,407	8,194		44,005
Allocation to Capital	(951)	(180)	(237)	(5)	(40)	(40)	(337)		(1,360)
	63,899	24,588	387,606	17,478	100,253	31,542	26,733	(78,815)	622,221
Net Operating Revenues	34,814	(1,288)	(28,190)	(2,874)	(8,882)	2,886	16,294	(38,733)	34,628
Investment and Other Income			1,772					11,358	13,130
Interest and Other Expenses	(3,852)	(2)	(8,023)	(186)	(20)	(1,017)	(5,093)	(4,080)	(27,652)
Net Revenues (Loss)	27,110	(1,290)	(34,441)	(3,040)	(8,900)	1,849	11,201	(31,455)	19,906
Budget	20,232	(2,259)	(5,748)	(881)	(20,821)	7,202	6,054	(14,488)	878
Variance	\$ 6,878	\$ 931	\$ (28,703)	\$ (2,159)	\$ 11,821	\$ (8,979)	\$ (5,253)	\$ (13,367)	\$ 19,028

* Reflects loss of \$62.1 million partially offset by \$25.1 million anticipated recovery from NYC Govt. customers based on starting plan elected for 2006 under LT Supplemental Energy Supply Agreement.

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NEW YORK POWER AUTHORITY
 VARIANCE FROM BUDGET
 MAJOR FACTORS
 For the Three Months Ended March 31, 2006
 (Millions)

		Better/(Worse) than budget	
Niagara/St. Lawrence	• Lower customer & ISO energy revenues (lower prices)	(\$10.7)	
	• Higher ancillary service revenues (primarily higher prices for regulation & reserves)	10.2	
	• Lower purchased power costs (lower volumes & prices)	42.3	
	• Higher Niagara site O&M (maintenance)	(1.0)	
	• Higher allocated administrative costs	(1.7)	
	• Other	1.3	
			40.4
Blenheim-Gilboa	• Higher ISO energy revenues (higher volumes)	10.6	
	• Higher purchased power costs (higher volumes)	(10.1)	
	• Other	0.3	
			1.0
SENY	• Lower revenues (primarily lower prices on sales to the ISO)	(71.1)	
	• Lower purchased power costs (lower prices)	27.8	
	• Lower fuel costs (lower generation & lower prices)	9.6	
	• Other	3.4	(30.3)
SCPP	• Lower ISO revenues (lower volumes & prices)	(16.5)	
	• Lower fuel costs (lower generation & lower prices)	13.9	
	• Other	0.3	(2.3)
Market Supply Power	• Lower revenues (primarily lower prices on sales to the ISO)	(7.8)	
	• Lower purchased power costs (lower prices & volumes)	19.0	
	• Other	1.6	12.8
Flynn	• Lower revenues (lower prices on Long Island)	(14.3)	
	• Lower fuel costs (lower prices)	6.3	
	• Other	(0.1)	(6.1)
Transmission	• Higher revenues	0.3	
	• Higher allocated administrative costs	(0.8)	
	• Other	(0.3)	(0.8)
Consolidating adjustments			(5.0)
Net Revenues			\$9.7

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**NYPA
Operations & Maintenance
For the Three Months Ended March 31, 2006**

	(\$'s in millions)	
	Actual	Budget
Power Generation		
Headquarters Support	33.5	31.5
Bianheim-Gilboa	3.8	3.6
Charles Poletti	3.5	3.8
500 MW	1.3	2.1
R.M. Flynn	1.1	1.2
SCPP	2.4	2.3
Small Hydrop	0.6	0.8
Niagara	9.9	9.0
St. Lawrence	<u>3.2</u>	<u>4.2</u>
	30.0	28.6
Transmission		
ECC/Headquarters	2.2	2.2
Transmission Facilities	<u>8.2</u>	<u>8.1</u>
	10.5	10.3
Corporate Support		
Executive Office	3.3	3.0
Business Services	7.1	5.1
HR & Corporate Support	5.7	5.9
Marketing & Econ. Devel.	1.9	1.8
Energy Services	<u>0.7</u>	<u>0.7</u>
	12.7	16.4
Research & Development & Other	1.8	1.5
Total	\$61.8	\$56.9

Through March, O&M expenses were \$4.1 million over budget.

Power Generation was over budget by \$1.4 million, or 5%. The Power Generation HQ overrun (\$2.0 million) reflected greater than anticipated work on recurring and non recurring O&M projects rather than capital, and earlier than planned contractors and consultants for Maximo related issues. Niagara spending was over budget by \$1.0 million primarily due to less than anticipated capital work (mainly the RM/NPP Upgrade) and some non-recurring tasks proceeding earlier than scheduled. Under spending at St. Lawrence resulted primarily from the delayed start of the 300 ton crane major maintenance. The 500 MW underrun was due to less than expected materials and waste disposal charges.

HQ Corporate Support expenses were collectively \$2.3 million over budget. The primary sources of the variance were early year overruns in IT contractor services, delays in capital IT initiatives, and to a lesser extent an overrun in energy risk management consultant support.

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**NEW YORK POWER AUTHORITY
COMPARATIVE STATEMENT OF NET ASSETS
(IN THOUSANDS)**

	MARCH 2006	DECEMBER 2005	NET CHANGE
ASSETS:			
Electric Plant In Service, Less Accumulated Depreciation	\$3,123,423	\$3,145,208	(21,786)
Construction Work In Progress	<u>125,689</u>	<u>121,217</u>	<u>4,282</u>
Net Utility Plant	\$3,249,092	\$3,266,425	(17,633)
Restricted Funds	78,106	79,258	(1,152)
Construction Funds	136,120	147,415	(12,295)
Investment in Decommissioning Trust Fund	884,410	881,346	13,073
Current Assets:			
Cash	72	72	-
Investments in Government Securities	546,557	572,457	(25,900)
Interest Receivable On Investments	12,755	12,099	656
Receivables-Customers	241,813	210,198	31,617
Materials & Supplies-Plant & General	66,296	63,392	1,834
-Fuel	34,417	28,442	7,975
Prepayments And Other	40,365	45,401	(5,036)
Notes Receivable-Nuclear Sale	284,562	297,349	7,233
Deferred Charges And Other Assets	<u>588,512</u>	<u>645,152</u>	<u>(46,600)</u>
TOTAL ASSETS	<u>\$6,131,894</u>	<u>\$6,178,894</u>	<u>(\$46,200)</u>
LIABILITIES AND OTHER CREDITS:			
Long-Term Debt - Bonds	\$1,809,327	\$1,935,378	(26,051)
Notes	168,148	161,836	(5,690)
Short-Term Notes Payable	207,650	218,241	(10,682)
Accounts Payable And Accrued Liabilities	616,498	603,026	13,473
Spent Nuclear Fuel Disposal	194,370	192,374	2,006
Decommissioning Of Nuclear Plants	864,418	881,346	13,073
Deferred Revenue	<u>378,229</u>	<u>418,155</u>	<u>(41,826)</u>
TOTAL LIABILITIES AND OTHER CREDITS	<u>4,334,857</u>	<u>4,396,389</u>	<u>(\$6,796)</u>
ACCUMULATED NET REVENUES-JANUARY 1	1,888,548	1,838,036	50,522
NET REVENUES	<u>10,089</u>	<u>88,513</u>	<u>(47,824)</u>
TOTAL LIABILITIES AND CAPITAL	<u>\$6,131,894</u>	<u>\$6,178,894</u>	<u>(\$46,200)</u>

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**NYP&A
SUMMARY OF NET GENERATION (MWH'S)
FOR THE THREE MONTHS ENDED MARCH 31, 2006**

Facility	Year-to-date March				Month of March 2006			
	Actual	Budget	Variance (Actual vs Budget)	% Variance from Budget	Actual	Budget	Variance (Actual vs Budget)	% Variance from Budget
 Niagara	<u>3,733,967</u>	<u>3,340,000</u>	<u>393,967</u>	<u>11.89%</u>	<u>1,257,523</u>	<u>1,170,000</u>	<u>127,523</u>	<u>10.96%</u>
 St. Lawrence	<u>1,622,927</u>	<u>1,440,000</u>	<u>182,927</u>	<u>12.70%</u>	<u>605,017</u>	<u>520,000</u>	<u>85,017</u>	<u>16.35%</u>
 Combined	<u>5,359,894</u>	<u>4,780,000</u>	<u>579,894</u>	<u>12.13%</u>	<u>1,902,540</u>	<u>1,690,000</u>	<u>212,540</u>	<u>12.58%</u>
 Pooled	<u>439,895</u>	<u>674,309</u>	<u>(234,414)</u>	<u>-34.77%</u>	<u>182,401</u>	<u>150,529</u>	<u>31,872</u>	<u>21.17%</u>
 500MW	<u>841,578</u>	<u>465,853</u>	<u>155,825</u>	<u>32.02%</u>	<u>235,059</u>	<u>179,893</u>	<u>55,386</u>	<u>30.81%</u>
 SCPP	<u>55,333</u>	<u>103,806</u>	<u>(48,273)</u>	<u>-46.59%</u>	<u>22,138</u>	<u>41,151</u>	<u>(19,015)</u>	<u>-46.21%</u>
 Blenheim-Gilboa	<u>(93,808)</u>	<u>(25,632)</u>	<u>(68,156)</u>	<u>265.70%</u>	<u>(19,330)</u>	<u>(10,772)</u>	<u>(8,558)</u>	<u>79.46%</u>
 Small Hydro	<u>63,508</u>	<u>35,908</u>	<u>27,601</u>	<u>76.87%</u>	<u>20,263</u>	<u>12,367</u>	<u>7,896</u>	<u>63.85%</u>
 R. M. Flynn	<u>327,567</u>	<u>320,521</u>	<u>7,046</u>	<u>2.20%</u>	<u>113,780</u>	<u>111,029</u>	<u>2,751</u>	<u>2.48%</u>
 Total	<u>6,733,958</u>	<u>6,374,705</u>	<u>419,253</u>	<u>6.58%</u>	<u>2,458,849</u>	<u>2,173,997</u>	<u>282,852</u>	<u>13.01%</u>

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**NYPA
Capital Expenditures
For the Three Months Ended March 31, 2006**

(\$'s in millions)

	<u>Actual</u>	<u>Budget</u>
New Generation	\$5.4	\$5.6
Energy Services	25.2	19.0
Existing Facilities	11.8	17.1
Transmission	2.8	5.7
Headquarters	3.8	3.1
General Plant and Minor Additions	<u>1.3</u>	<u>1.5</u>
	\$50.3	\$52.0

Capital expenditures through March 2006 (\$50.3 million) were 3.3% lower than the budget. Expenditures for Existing Facilities improvements were \$5.3 million under budget. The underrun was primarily the result of less than anticipated work on the Niagara Upgrade and St. Lawrence Life Extension projects. Contributing to this underrun was a decreased usage of consultants for the Niagara Relicensing project and delays related to the New License and comprehensive settlement agreement for St. Lawrence. The temporary underrun in Transmission of \$2.9 million will diminish as work proceeds on the Static Var Compensator and Tri Lake Transmission project. Energy Services was \$6.2 million over budget primarily due to accelerated construction activity for the NYC governmental customers under the Long Term Agreement Programs.

Under the Expenditure Authorization Procedure, the President authorized new expenditures on budgeted capital projects of \$ 1.8 million during the month as follows:

IT Infrastructure	\$0.8
Niagara LAN upgrade	\$1.0

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**Demand Side Management
Cost Summary (Receipts to Date)
March 31, 2006
(\$ in 000's)**

(A) DSM Projects

Authorized	Program	Fund	(A) Projects in-Progress	(B) Completed Projects	(C) Cumulative Cost	(D) Receipts to Date	(E) Net Investment (C-D)
13,200	Distributed Generation	ES-DGN	1,890		1,890		1,890
183,000	Electrotechnologies LTEPA	ES-EFN	7,348	72,812	81,298	44,408	38,768
453,000	NYP& Energy Services Program	ES-ESN	32,808	47,890	120,798	37,788	83,010
500,000	SENY Govt Dual Energy Serv	ES-GSN	14,858	10,073	28,931	1,382	23,639
28,000	Landfill Gasess Program	ES-LFN	803		803		803
190,000	SENY HRLP LTEPA	ES-LTN	4,038	87,377	91,413	57,316	34,087
1,200	MUNI Vehicle Program	ES-MVN	0	372	372	99	273
140,000	Non-Elect End Use LTEPA	ES-NEN	16,683	68,143	72,826	23,545	60,281
75,000	Public Housing LTEPA	ES-PHN	0	70,825	70,825	60,258	10,569
35,000	Peak Load Mgmt	ES-PLN	1,274	185	1,459		1,439
Completed Programs							
5,000	Cost Conversion LTEPA	ES-CCH	0	6,000	6,000	873	4,327
5,000	County & Munis	ES-CMN	0	1,798	1,798		33
14,800	Industrial	ES-IPN	(0)	6,876	6,876	6,321	546
51,000	LJ HELP	ES-LIN	0	48,815	48,815	47,825	790
15,000	SENY New Constr	ES-NCN	0	3,372	3,372	2,494	878
40,000	Public Schools	ES-PSN	0	39,841	39,841	38,143	1,698
\$130,000	SENY HELP	ES-SEN	\$0	\$133,983	\$133,983	\$133,983	\$0
60,000	Statewide	ES-SWN	0	57,870	57,870	67,820	0
4,086	Other		0	746	746	687	59
7,250	Wellness		0	6,131	6,131	5,045	1,086
\$1,854,435			878,794	982,740	877,634	3516,463	\$237,081

(B) POGR Funding

LOANS

Authorized	Program	Loans Issued	Payments	Outstanding Balance
\$ 16,380	Colleges & Universities	\$ 16,380	\$ 15,854 (1)	726

GRANTS

Authorized	Program	Issued
8,105	Cost Conversion Pilot	8,105
4,858	Hybrid Bus Program	4,858
683	Solar Grants	683
3,000	HYBERDA	3,000
18,876 (1)	Energy Services Programs	13,833
31,842 (1)	POGR Grants	19,348
3		43,507

(C) GARP Funding

Authorized	Program	Issued
182,047 (2)	Cost Conversion	118,899

(D) Special L.I. Fund

Authorized	Program	Issued
38,828 (2)	Climate Controls (NYC DOE)	34,346

(E) NYC Homeless Aids Funding

Authorized	Program	Issued
12,842 (2)	NYCHA Hot Water Heaters	2,614

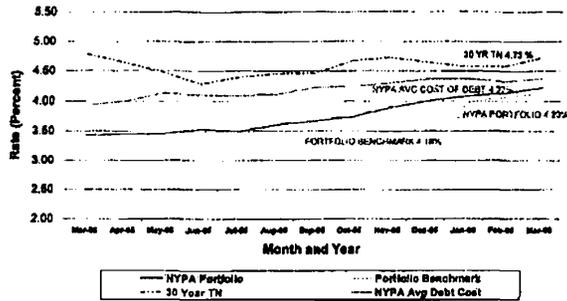
(1) Funds recovered via loan repayments are available and assigned to be used as grants in the Energy Services Program and for POGR Grant Program.

(2) Authorized funds reflect both principal received and the interest earned on each principal.

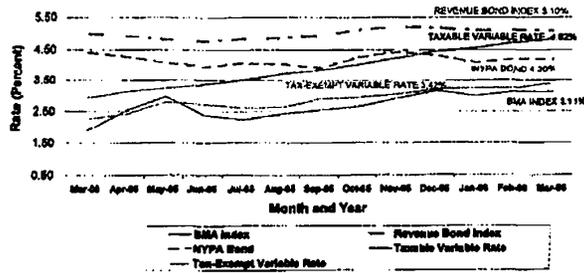
8-1-08:10:49AM:Rep. Brian Higgins 1718 852 3920 # 16 / 10

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Portfolio Performance



Financing Rates



121 Main Street
White Plains, NY 10601-3170
914 297-2501
914 981-2804 Fax
timothy.carey@nyopa.gov



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SECRETARY

AUG 22 P 3 48
FEDERAL ENERGY
REGULATORY COMMISSION

August 10, 2006



Timothy E. Carey
President and
Chief Executive Officer

The Honorable Brian Higgins
Member of Congress
Larkin Building, Suite 601
726 Exchange Street
Buffalo, NY 14210

Dear Congressman Higgins:

Chairman McCullough has asked me to respond to your letter of July 31st advocating that Niagara Power Project revenues be used exclusively in Western New York.

The Power Authority, as you know, was created by state law (Chapter 772 of the Laws of 1931). Among the duties of the Authority established by state law was the development and operation of the St. Lawrence and Niagara power projects. The law states that development of those projects "shall be considered primarily as for the benefit of the people of the state as a whole." In the 75-year history of the New York Power Authority, the State Legislature has made various amendments to the original law, yet none of those revisions has changed the basic statewide responsibilities of the Authority, as envisioned by former Governor Franklin Delano Roosevelt, who said in his first inaugural address that the waterpower resources of this State "belong to all of the people."

As a Member of the New York State Assembly, you clearly recognized NYPA's statewide obligations as you voted on at least three separate occasions to authorize NYPA to contribute funds to the state treasury in support of the Power for Jobs program. In 2000, you voted in favor of legislation authorizing NYPA to contribute up to \$125 million to the state treasury to pay 50% of the costs of the Power for Jobs program. In 2002, you voted for legislation authorizing NYPA to contribute to the state treasury to pay 100% of the program's costs. In 2004, you voted to approve legislation authoring an increase in NYPA's total Power for Jobs contributions to the state treasury from \$125 million to \$275 million. Since that time, the legislation has further increased the contribution level to \$394 million.

While NYPA may have a wide range of statewide responsibilities, it does provide an impressive array of benefits to Western New York, including:

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P-2216

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- Low-cost hydroelectric power from the Niagara Power Project that saves Western New York industries an estimated \$193 million annually and helps to protect 43,000 jobs on the Niagara Frontier.
- NYPA's \$8.5 million Niagara Economic Development Fund, which provides low-interest loans to businesses locating or expanding in Niagara County.
- Investment of \$300 million to replace the 13 turbine-generators at the Robert Moses Niagara Power Plant and \$20 million for a major maintenance overhaul of the project's Lewiston Pump-Generating Plant -- in order to sustain reliable, efficient generation of low-cost, emission-free, renewable electricity from the project.
- Low-cost Niagara Project power sold to three upstate utilities—National Grid, New York State Electric & Gas and Rochester Gas and Electric—for resale to their residential customers without markup, saving Erie and Niagara county residential electricity customers an estimated \$17.8 million a year.
- Niagara Project power supplied to seventeen Western New York municipal electric systems and a rural electric cooperatives in Allegany, Cattaraugus, Chautauque, Erie, Genesee, Orleans, Steuben and Wyoming counties. Community-owned electric systems in New York State save an estimated \$185 million a year as a result of the Niagara power supplied under federal "preference" power requirements.
- NYPA financing of \$64.7 million in energy-saving projects at more than 100 schools and other public facilities in Erie and Niagara counties, including the Buffalo City Schools, the University at Buffalo and Buffalo State College. Overall, the projects save \$2.9 million a year by reducing the energy bills of these taxpayer-supported buildings.
- NYPA's removal of coal-burning furnaces from seven schools in Buffalo, replacing them with \$6.77 million in cleaner fueled boilers.
- Installation and financing of \$592,630 in energy-efficient refrigerators for 1,617 public housing apartments in Buffalo.
- Installation of various clean energy technology projects in Western New York, including solar panels on the roof of the Buffalo Museum of Science and high-efficiency microturbines at the Town of Lewiston Wastewater Treatment Plant fueled by anaerobic digester gas produced in the sewage treatment process.
- Millions of dollars provided annually to support tourism and recreational resources on the Niagara Frontier, including improved public access to Niagara Falls and the Niagara River Rapids by supporting expansion and enhancement of Niagara Reservation State Park along with a contribution of \$5 million to renovate the park's observation tower; development of two Lewiston facilities: Reservoir State Park and Artpark, which receive \$7 million a year from NYPA for operations and maintenance costs; \$1.2 million to renovate what is now called the Niagara Gorge Discovery Center founding and sponsoring the Historic Lewiston Jazz Festival, which annually attracts more than 30,000 participants.
- The Niagara Project's admission-free visitors center, the Power Vista, which has played host to more than 6 million visitors from the United States and

abroad since it opened in 1963. A \$2.3 million renovation at the Power Vista was completed in 2001 and NYPA improved public access to the lower Niagara River by constructing a \$1.2 million fishing platform at the base of the project's main generating facility.

As you are well aware, these and other NYPA contributions to Western New York were recently complemented by the significant set of additional benefits provided as part of the Niagara Power Project relicensing settlements.

The ongoing contributions of NYPA to benefit of the people of Western New York deserve to be recognized in your assessment of the Authority. Unfortunately, your July 31st letter instead makes baseless and reckless accusations about the management and operation of the Authority. Your mistaken interpretation of the March 31, 2006 financial report ignores the fact that the report offers a "snapshot" view of Authority finances. We continually monitor and work to correct budget variances throughout the year. While headquarters was running \$2.3 million over budget as of March 31, 2006, by the end of the second quarter on June 30th, the variance was reduced to \$800,000 (\$36.8 million actual vs. \$36.0 budget) or 2% over budget. We strive, of course, for such expenditures to be on or below budget for the year.

NYPA operates an entire system of plants and participates in several market areas across the state. Certain factors affecting one market segment positively will have a tendency to affect other segments negatively, as it did in this case with the SENY customers. Overall, these tend to cancel each other out and NYPA's net revenues remain relatively stable. In the instance you observed, warm temperatures in January, which created an early snow melt and allowed for more generation at the hydropower projects, also caused a decline in market prices across the state. The revenues that were anticipated at NYPA's downstate fossil-fueled power plants were not realized, leading to that market segment's under-run of its budget.

With regard to your urging NYPA to immediately establish a program dedicating Niagara Project revenues for use in Western New York, please be advised that creation of such program would require a change in state law to authorize NYPA to use revenues in that manner.

Any such legislation would need to meet requirement of law relating to the obligations to Authority bondholders. In subdivision 1 of Section 1011 of the Public Authorities Law the State has solemnly pledged to and agreed with the bondholders and those parties who have entered into power sales contracts with the Authority that it would not limit or alter the rights vested in the Authority. The Authority, as expressly authorized by Section 1011, has included this pledge of the State in the bonds issued for its existing and planned generating and transmission facilities. Legislation inconsistent with these provisions would abrogate the State's covenant and would thereby violate the prohibition of Article 1, Section 10, Clause 1, of the United States Constitution against the impairment of contracts. Such legislative action has specifically been held invalid by the Court of Appeals in Patterson v. Carey, 41 N.Y. 2d 714 (1977).

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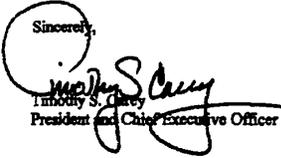
In accordance with terms and conditions of NYPA's bond covenant, all revenues must be deposited into NYPA's Operating Fund. Payments made from this Fund follow an order of priority whereby these amounts are made available:

1. to meet operating expenses, working capital and other necessary reserves;
2. to meet senior debt obligations;
3. to meet subordinate debt obligations;
4. to meet capital requirements, and
5. for any other lawful corporate purpose.

If a new law were to be enacted to establish a program dedicating Niagara Project revenues to Western New York, it would by definition fall into the fifth category on the list.

I hope this provides a thorough response to your correspondence. If you have any questions, please feel free to contact me.

Sincerely,


Timothy S. Carey
President and Chief Executive Officer

CC: The Honorable State and Federal Delegations from Western New York
Hon. George Pataki, Governor of New York
Hon. Eliot Spitzer, Attorney General of the State of New York
Hon. Joel Gianbra, Erie County Executive
The Honorable Erie County Legislature
Hon. Byron Brown, Mayor of the City of Buffalo
The Honorable Common Council of the City of Buffalo
Mr. Jonathan Hollifield, Executive Director, Olmsted Parks Conservancy
The Buffalo News

City of North Tonawanda

ORIGINAL



Office of the Mayor
Lawrence V. Soos

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SECRETARY

Jeffrey N. Mis, Esq.
Administrative Assistant

November 3, 2006

2006 NOV 13 P 3:03

Ms. Magalie R. Salas
Federal Energy Regulatory Commission
8 First Street, N.E.
Washington, D.C. 20426

FEDERAL ENERGY
REGULATORY COMMISSION

P-2216

Public Power Coalition (PPC) Resolution

Dear Ms. Salas:

I would please find for your information a certified copy of a resolution pertaining to the Federal Energy Regulatory Commission's Relicensing Proceedings for the New York State Power Project. This resolution was passed by all the municipalities in the PPC alliance requesting monetary compensation and low-cost power for the impacted communities.

I thank you for your attention to this matter. Should you wish to discuss this issue with me further, please don't hesitate to contact my office.

Sincerely,

Lawrence V. Soos

Lawrence V. Soos
Mayor
Encl.

This page contains no comments

City of North Tonawanda

OFFICE OF THE CITY CLERK
CITY HALL
216 WYNE AVENUE
NORTH TONAWANDA, N.Y. 14120
(716) 695-8555 FAX (716) 695-8557

THOMAS M. JACCARINO
CITY CLERK

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SECRETARY
2006 NOV 13 P 3:03
NORTH TONAWANDA

October 23, 2006

To Whom It May Concern:

Please be advised that at a regular session of the North Tonawanda Common Council held on the 4th day of October 2006 the following resolution was passed:

MOVED by Alderman Sommer **SECONDED** by Alderman Brick
WHEREAS, The Public Power Coalition is an alliance of five communities – the cities of North Tonawanda, Tonawanda and the towns of Tonawanda, Amherst and Grand Island- that have intervened in the Federal Energy Regulatory Commission's relicensing proceedings for the New York Power Authority's Niagara Power Project; and

WHEREAS, The PPC communities are located on the Niagara River or it's main tributaries within a 15 mlie radius of the Niagara Power Project and represents 270,000 residents and major industrial and commercial employers; and

WHEREAS, the Project has had significant effects on the PPC communities that are not addressed in the Draft Environmental Impact Statement prepared by NYPA for the Niagara Power Project and including the following:

- * Lack of low-cost power from NYPA, as required by the existing operating license; this has grievously harmed the industrial and residential tax-base and local economies of PPC communities.
- * Additional costs required for water treatment resulting from turbidity; on average, the PPC communities spend \$1,150,000 per year in additional water treatment costs as a result of Niagara Power Project operations.
- * Additional costs for erosion control; the cost of erosion control has been shown to be \$1,000 per foot of waterfront, or \$11.5 million per year in additional costs for PPC communities as a result of the Niagara Power Project.
- * The proposed settlement between NYPA and earmarked communities in Erie and Niagara counties, which do not include PPC communities, would cause additional social and economic damage to PPC communities.

NOW, THEREFORE, BE IT RESOLVED THAT I, Lawrence Soos as Mayor and members of the Common Council of North Tonawanda support a settlement agreement between NYPA and the PPC communities that include the following provisions:

- * \$5 million per year for water treatment & erosion control, for the length of the license.
- * \$5 million per year for economic development, for the duration of the license.

Page: 200

Author: Staff
Subject: Response
Date: 12/14/2006 1:47:15 PM
Please see our responses to the Housing Authority, and Public Power Coalition on similar issues.

Author: Staff
Subject: Response
Date: 12/11/2006 4:03:35 PM
Please see our response to NYSEG and RG&E on power allocation.

- * A one-time payment of \$50 million for major flood and erosion control projects PPC Communities must undertake as a result of Niagara Power Project operations.
- * 30MW of low-cost power per year (to be used by residents, municipalities, and Businesses), provided at the same rate as power given to "host communities" under the proposed settlement, for the duration of the license.
- * These settlement funds will be divided by PPC communities according to population and other factors.

AND BE IT FURTHER RESOLVED that the PPC communities call upon: United States Senators Charles Schumer and Hillary Clinton; Representatives Louise Slaughter, Brian Higgins and Thomas Reynolds; the members of the Western New York State legislative delegation to the Assembly and Senate; and Governor George E. Pataki to intervene on behalf of the PPC communities with both NYPA and FERC to urge the New York Power Authority to reach a settlement agreement with the PPC communities;

AND BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to all of the above mentioned elected officials and the New York Power Authority and Federal Energy Regulatory Commission;

AND BE IT FURTHER RESOLVED that residents of the PPC communities are urged to visit www.PublicPowerCoalition.org to become more familiar with this vital issue and to support an equitable settlement.

Ayes: Brick, Rizzo, Donovan, Sommer (4)
Nays: None (0)
Abstained: Schwandt (1)

CARRIED.

Very truly yours,



Thomas M. Jaccarino
City Clerk



p-2016

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PUBLIC HEARING
FEDERAL ENERGY REGULATORY COMMISSION
DRAFT ENVIRONMENTAL IMPACT STATEMENT
NIAGARA POWER PROJECT RELICENSING
AUGUST 17, 2006

Thank you for the opportunity to speak here today. I am Linus Ormsby, director of communications and public relations at Niagara University, and I am here to speak on its behalf.

Niagara University, the Niagara Power Project's closest neighbor, has been an active participant and stakeholder throughout the relicensing process. In May, we jointly announced with the Power Authority that we have reached a favorable agreement on relicensing the project, and are aware of the other agreements that have been reached.

The university has reviewed the draft Environmental Impact Statement. At this point, it is our view that the agreements that have been reached provide important and lasting benefits to the community, and that the relicensing should move forward to approval. We hope that this will happen in a timely manner so that the agreed-upon benefits can begin to flow to the community as soon as possible.

Thank you.

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REGULATORY COMMISSION

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FEDERAL ENERGY
REGULATORY COMMISSION

My name is Edward Rutkowski, NYS OPRHP Assistant Deputy Commissioner for the Western District. I offer this statement on behalf of the New York State Office of Parks, Recreation and Historic Preservation. The purpose of these comments is to express our general support for the Commission's Draft Environmental Impact Statement.

We thank both the Commission and the Power Authority for the opportunity to participate in this process and support both the settlement agreements and this Draft Environmental Impact Statement. OPRHP has reviewed the DEIS on the above referenced project. We find the document to be of sufficient detail and satisfactory with respect to its format and content.

Our comments are as follows:

- The project includes several habitat improvement projects (HIP). It also references the establishment of a fish and wildlife habitat enhancement and restoration fund (HERF). This fund is to be administered by an ecological standing committee. OPRHP is very supportive of both HIP and HERF. We are very interested in participating in the HERF process, as we have continual natural resource stewardship needs within our facilities located in the project area.

- We would like to point out that the DEIS identifies the Strawberry Island HIP as under the ownership and management of the New York DEC. Strawberry Island is owned and managed by the NYS OPRHP. Similarly, please include acknowledgment of OPRHP in the Strawberry Island protection effort (page 70 of the DEIS).

- The Beaver Island wetland restoration project is fully supported by our agency. There is a need for OPRHP and DEC to work closely together on final plans and implementation of this project. This is especially true in controls related to invasive species management.

- We note on page 114 of the DEIS that a recreation plan is to be developed and implemented by the Power Authority. We look forward to participating in that effort, as the plan and implementation are important to the continuation of safe and clean recreation, as well as satisfactory and responsible stewardship of our natural and cultural resources.

The Power Authority and the Office of Parks have had a long history of collaboration in the Niagara region. The settlement provided to State Parks, filed with the Commission, and as recognized by the DEIS, will provide important enhancements to the state park facilities in both Niagara and Erie Counties for the benefit of the millions of visitors and local residents who will use our facilities for decades to come.

We urge FERC to proceed to issue a new license.

Author: Staff
Subject: Response
Date: 12/14/2006 1:48:09 PM
As the ESC is described in the settlement, New York DEC is the only state resource agency represented on the committee.

Author: Staff
Subject: Response
Date: 11/29/2006 2:25:25 PM
We have corrected this error.

Author: Staff
Subject: Response
Date: 11/29/2006 2:26:26 PM
We will recommend that OPRHP is among the consulted parties.

Author: Staff
Subject: Response
Date: 12/5/2006 8:36:09 AM
Comment noted. OPRHP would be consulted in the preparation of this plan.

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2006 AUG 22 P 4:37
FEDERAL ENERGY
REGULATORY COMMISSION

NEW YORK POWER AUTHORITY
NIAGAR PROJECT NO. 2216-066
DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS)

COMMENTS OF THE PUBLIC POWER ASSOCIATION OF NEW JERSEY (PPANJ)
BARGAINING AGENT FOR THE STATE OF NEW JERSEY
ON BEHALF OF THE NEIGHBORING STATES OF
VERMONT, CONNECTICUT, RHODE ISLAND, PENNSYLVANIA, OHIO, AND
MASSACHUSETTS

SUBMITTED BY
JAMES A. JABLONSKI
EXECUTIVE DIRECTOR, PPANJ

Niagara Falls High School Auditorium
Niagara Falls, NY
August 17, 2006


James A. Jablonski, Executive Director
August 17, 2006

This page contains no comments

The Public Power Association of New Jersey (PPANJ), on behalf of neighboring state customers of the Niagara Project, is pleased to comment in support of the draft Environmental Impact Statement. The PPANJ serves as bargaining agent for the State of New Jersey regarding the allocation of Niagara Project power and energy to the Garden State. The PPANJ was designated as bargaining agent for New Jersey by executive order of the Governor.

We have participated in the relicensing process since its inception and have attended most of the meetings held here at Niagara Falls. I have served as chair of the neighboring state customers group throughout the relicensing process. The States are Connecticut, Vermont, Pennsylvania, Rhode Island, Ohio, Massachusetts, and New Jersey. Together with the staff of the Authority, we negotiated a settlement agreement that has been made part of the pending license application.

As long-standing ratepayers, we support the draft EIS. Upon final approval of the draft, the entire settlement package, and issuance of a new license to the Authority, our bill payments will help support the implementation of the EIS. We respectfully request that the Commission approve the EIS and that the relicensing process continue on schedule so that a new license may be issued on or about August 31, 2007.

We applaud the Authority for its efforts in the relicensing process. We greatly appreciate the consideration they have given to New Jersey and all neighboring states. We look forward to the completion of this process and the continuation of our long and valued relationship with the Authority.

Comments of Public Power Coalition submitted at 8/17/06 public meeting

P-2216

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SECRETARY
2006 AUG 22 P 3:42
FEDERAL ENERGY
REGULATORY COMMISSION

Author: Staff
Subject: Response
Date: 11/29/2006 2:28:38 PM
We have corrected this.

III. Specific Community Impacts

1. City of North Tonawanda

The City of North Tonawanda, population 33,362 (2000), is surrounded on three sides by the Niagara River, Tonawanda Creek/NYS Barge Canal, Bull Creek, and Sawyer Creek. These water bodies are demonstrably affected by water level fluctuations caused by NYPA's power generation activities. As previously discussed, water level fluctuations affect erosion and water temperature, which in turn impact aquatic and terrestrial habitat. Project operation has increased the cost of operation of the City of North Tonawanda's Wastewater Treatment plant. Wastewater discharges are regulated based upon concentration of sedimentation. NYPA's operation of the Project means that the stream cannot accommodate the same level of chemical and biological loading from North Tonawanda's plant, so the city must use additional additives, which increases the cost of treatment. The impacts associated with NYPA project operation on water velocity, temperature, and turbidity has led to increased operational costs for the Wastewater and Water Treatment Plants. Likewise, increases and decreases of water temperature in the Upper Niagara River caused by Project operation also increases the cost of the City's water treatment facilities.

The City of North Tonawanda, like other PPC members, has spent significant amounts mitigating NYPA impacts. In the past three years alone, the City has spent more than \$1 million dollars for sedimentation removal and shoreline remediation projects, including:

- | | |
|---|-------------|
| 1. Construction of barrier islands at Gratwick Riverside Park | \$500,000 |
| 2. Shoreline protection project for Gratwick Riverside Park (2004) | \$250,000 |
| 3. Sedimentation removal at main water intake (2005) | \$120,000 |
| 4. Sedimentation removal at the confluence of Ellicott and Tonawanda Creeks | \$94,000 |
| 5. Fisherman's Park erosion repair (will spend) | \$100,000 |
| 6. Future cost to protect Gateway Point (will spend) | \$3,000,000 |

In the 1970's North Tonawanda upgraded the Waste Water Treatment Plant (WWTP) to meet the criteria for the best use of the Niagara River. Included in best use requirements, New York Power Authority's (NYPA) use of water established the standards that North Tonawanda's WWTP was designed and permitted for. The SPEDS permit reflected the best use policy, including NYPA's withdrawal of the Niagara River water which in turn drove process chemical costs beyond those if NYPA did not exist. It is the City's position that partial costs of design, construction, and operation are attributed to NYPA activities down river. Those activities are reported and covered under the Niagara River Pollution Control Board's reports and those of the International Joint Commission (IJC).

The P.P.C. is opposed to the relicensing of NYPA. but we have no asterick by our name

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It is the City's position that the following apportioned costs are directly attributed to NYPA's activities:

1. North Tonawanda WWTP construction costs debt service on \$3 million of \$10 million bonded indebtedness is calculated at \$0.7 million for a total of \$3.7 million.
2. Operational costs increases, that include energy and chemical usage costs of the North Tonawanda WWTP, are estimated to be 10 percent of the annual cost of \$800,000 that equates to \$80,000 annually over the past 24 years, equaling a total of \$1.92 million.
3. Personnel cost at the North Tonawanda WWTP based upon advanced treatment technology required are estimated to be 3 persons at an average annual salary with benefits costs \$ 35,000 per annum per person equaling \$2.52 million in the past 24 years.
4. Over the duration of the NYPA licensing agreement, the City of North Tonawanda has lost its industrial base, has been unable to retain existing industry, or entice new industry due to the lack of a low cost power allocation, and the benefits derived from it. As a result, the tax burden has shifted dramatically from industrial to commercial and residential. The loss of industry has caused a loss in population that was projected in the 1970's to be 55,000 by this time, and has resulted in a reduction in population to 33,000 presently. The loss of industry has changed the City from an urban center to a primarily suburban center. The population now works outside the city, leading to increased costs in personal transportation, transportation infrastructure, increased demand on natural resources, and increased pollution. Approximately 10,000 vehicles per day leave the city to find work elsewhere at an additional cost of approximately \$20 per week. This equates to personal costs to residents of the City of over \$10 million annually.

In contrast to the four other PPC members, the City of North Tonawanda is located in Niagara County, where the Niagara Project is sited. NYPA is a tax exempt entity that occupies vast lands in Niagara County. The NYPA project purchases an estimated \$56 million worth of goods and services, most of which occur in Niagara County. The absence of sales tax revenue is significant and is not offset by reduced electric rates or replacement power. Also, because NYPA sells electricity at reduced rates to private industry, they in turn pay reduced sales tax amounts on energy. All of this results in artificially reduced sales tax revenues to the City. Loss of this revenue has the effect of shifting the burden of municipal services towards taxable landowners within the City.

Niagara County also provides many services not enjoyed or available to North Tonawanda residents. North Tonawanda has to maintain infrastructure such as fire, police, garbage, and water that are not reflected in the benefit included to Niagara County.

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Subj: **Tomorrow's EIS Meeting**
Date: 8/16/2006 6:08:30 PM Eastern Standard Time
From: carolyn.elefant@gmail.com
Reply-to: celefant@hemplinglaw.com
To: mayor@ci.tonawanda.ny.us, mrisman@hodgsonruss.com, dspitzer@hodgsonruss.com, dcavarello@tonawanda.ny.us, mcpoke@grand-island.ny.us, sooscafe@aol.com, smohan@amherst.ny.com, pgodfrey@hodgsonruss.com, pmcmahon@grand-island.ny.us, s.mohan@amherst.ny.com

Gentlemen:

I assume that some or all of you will be attending tomorrow's public hearing on the FERC DEIS. As I understand, you will not have much time to comment - assume 3 minutes, though you may have as much as 5 minutes. Thus, we will leave the detailed analysis to the formal, written comments.

I am sure that there are political points that you will want to make, particularly if the press is present. These would address issues like NYPA's mismanagement, its use of the Niagara Power Project to fund projects all over the state and outside of Western NY and the fact that it earned \$40 million in profits in the first quarter of the year alone.

For issues related to the FERC process, here are three talking points (in addition to the above comments) that you should hit:

1. THE DEIS IGNORES IMPACTS TO THE 5 PPC COMMUNITIES, WHICH ARE ALL WITHIN A FIFTEEN MILE OR LESS RADIUS FROM THE PROJECT AND ARE LOCATED DIRECTLY ON THE NIAGARA RIVER.

The DEIS notes many settlement agreements with multiple parties - except the PPC communities. Yet the PPC communities are DIRECTLY impacted by project operation, through erosion, sedimentation and diminished water quality. The PPC communities have picked up the tab for these adverse impacts and will be expected to do so going forward. Yet there is no sufficient mitigation offered in the DEIS nor is there compensation to the PPC communities for ongoing environmental impacts.

PPC communities will also be disparately impacted by so much money and power going to other communities. Other communities will be able to improve and revitalize, while PPC communities will not. As other communities improve themselves with project money, they will attract a larger share of tourism and industry than PPC. Already, rates for PPC are some of the highest in New York and PPC communities have lost industry that has left when power contracts expired. These adverse economic benefits are not addressed by FERC and they are further exacerbated by impact of all other surrounding communities getting millions of dollars, except PPC. The DEIS also overlooks the disparate impacts created by giving so much money to neighboring communities.

2. MITIGATION FOR ADMITTED ENVIRONMENTAL IMPACTS ON PPC COMMUNITIES (related)

The DEIS admits in several places that project operation has probably caused erosion. The erosion impacts all of the PPC communities, which have collectively invested millions of dollars in infrastructure shoreline projects to combat erosion. In fact, part of the reason that erosion is not any worse is because of efforts by the communities to ward off erosion. There are also impacts on water quality and sedimentation that affect the PPC Communities.

3. NO 50 YEAR LICENSE

NYPA has asked for but does not deserve a 50 year license. Thirty year licenses are the norm for relicensing; fifty year licenses are issued only in cases where a new project is being constructed or where extensive mitigation is being offered. In this case, NYPA is not proposing an action that would justify more than a 30 year license. NYPA is not proposing to change project operation or upgrade the project, which means that for the next 50 years, the communities will be stuck with the same project, even if there are opportunities, through new technology, to make changes that would increase project output. And NYPA claims that there are no adverse impacts, so it cannot argue that it is providing extensive mitigation. In addition, the value of all of the settlement packages constitutes only a small portion of NYPA's overall revenues.

PPC opposes issuance of a 50 year license.

Thursday, August 17, 2006 America Online: SOOS CAFE

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Power Authority revenues increase

Higgins wants money used locally

By DOUGLAS TURNER
News Washington Bureau Chief
8/1/2006

WASHINGTON - The state's Lewiston and St. Lawrence hydroelectric dams earned \$40 million in new, unanticipated revenue in the first three months of this year and Rep. Brian Higgins wants the Power Authority to set up a special fund to send such money to help localities.

At the same time, the Buffalo Democrat said total expenses at the authority's White Plains headquarters went 14 percent over budget.

Part of this, according to authority records Higgins released on Monday, was the result of \$3.8 million in capital expenditures at the agency's offices. The agency had budgeted \$3.1 million for long-term capital spending there.

Headquarters operating expenses for three months were \$18.7 million - or \$2.3 million over budget. The report attributed this to cost overruns by technology contractors, and consultants.

"The Niagara Power Project was not created to subsidize waste, abuse and mismanagement at your various other facilities - it was built to support economic development and life quality in Western New York," Higgins said in a letter to the authority's new chairman, Frank S. McCullough Jr.

Higgins said that any surplus, unbudgeted money from the Niagara project should be reinvested into economic development initiatives in Western New York.

The authority should set up a separate fund for this at once, Higgins said.

The congressman led a campaign to increase the settlement between the authority and the localities that host the Niagara project, which resulted in \$280 million being awarded for renewal of downtown and waterfront property in Buffalo and Erie County.

The authority is seeking from the Federal Energy Regulatory Commission a renewal of its 50-year license to operate the hydro facility on the Niagara River. Settlements with Erie and Niagara counties were needed to get their cooperation for a renewal of the FERC license.

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Prospects 2006

DMing



Preserving America's Heritage

November 20, 2006

Magalie Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: Niagara Power Plant (FERC Project No. 2216)
New York

Dear Secretary Salas:

We have completed review of the draft Programmatic Agreement (PA) for the referenced undertaking and the accompanying background documentation, including the Draft Environmental Impact Statement (DEIS), that was submitted by the Federal Energy Regulatory Commission. Our comments are provided in the enclosed review. In order to prepare our comments, we reviewed the background documentation as well as the comments that were provided by the Seneca Nation of Indians on the documents, by letters of August 21, 2006 and September 19, 2006 to the Commission.

The draft PA calls for the license applicant, the New York Power Authority (NYPA), to develop a Historic Properties Management Plan (HPMP) within one year of the issuance of the project license. To facilitate the comprehensive development of the HPMP and to support NYPA's adoption of a thorough and effective approach to the management of historic properties, we recommend that the Commission continue consultation with the Seneca Nation of Indians to address their concerns. Consultation would be most effectively conducted by convening an on-site meeting among the Commission and the other consulting parties, including the ACHP. Accordingly, we recommend that the Commission schedule a meeting before the beginning of 2007 and use the comments provided by the Seneca Nation of Indians as the primary basis for the meeting agenda. We are available to meet anytime during December 2006, except December 14 and 22. Should convening an on-site meeting pose challenges, the Commission should explore scheduling a teleconference among all of the consulting parties.

Should you have any questions about the enclosed review or require our assistance in preparing for the

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proposed meeting, please contact Laura Henley Dean, PhD at 202-606-8527 or by e-mail at ldean@echp.gov.

Sincerely,



Charlene Dwin Vaughn
Assistant Director
Office of Federal Agency Programs

Enclosure

**Niagara Power Plant (FERC Project No. 2216) – Issuance of a New License
New York Power Authority
New York**

**Review of the draft Programmatic Agreement (PA) and Draft Environmental Impact Statement (DEIS)
Submitted by the Advisory Council on Historic Preservation
November 20, 2006**

- Please describe the relationship between the so-called “investigation area” and the area of potential effect (APE). None of the documents that we have reviewed clearly shows the geographic relationship between these two constructs. Without this clarification, it is not possible to discern what portion of the APE has been surveyed.
- By definition the investigation area includes lands that could be impacted by water fluctuations and project features. There are some properties located within the investigation area that are “miles from the project boundary.” Are these properties in the APE?
- Not all consulting parties agree with the scope of the APE. Accordingly, what specific direct, indirect and cumulative effects did the Commission consider when establishing the scope of the APE other than fluctuations in the water level?
- The term “historic property” refers to any building, structure, site or object that is listed in or eligible for listing in the National Register of Historic Places. Is the Lower Landing Archaeological District a historic property?
- We note a reference to the Native American Graves Protection and Repatriation Act (NAGPRA). Are there Federal or tribal lands that may be affected by the project and are therefore included in the APE?
- According to the DEIS members of the Seneca Nation, the Tonawanda Seneca Nation and the Tuscaora Nation have been consulted to provide information on traditional cultural properties (TCPs) within the investigation area. In accordance with 36 CFR § 800.2(c)(2)(ii)(D), an Indian tribe that attaches religious and cultural significance to historic properties in the APE must participate in consultation. A TCP, however, is only one type of historic property that might be of religious and cultural significance to an Indian tribe. For example, an eligible archeological site containing human remains, may not meet the standards to be designated a TCP, but is often the type of property deemed by a tribe to be of religious and cultural significance. Accordingly, the New York Power Authority (NYPA) should consult with the Seneca Nation, Tonawanda Seneca Nation and the Tuscaora Nation to determine if any properties of religious and cultural significance, including but not limited to TCPs, may be affected by the undertaking.
- Based on the foregoing, the proposed development of a TCP management plan maybe too limited if it is meant only to address TCPs and not all properties to which the Seneca Nation, Tonawanda Seneca Nation and the Tuscaora Nation may attach religious and cultural significance. Please explain how the TCP plan will be coordinated with the HPMP.
- It is not clear how Indian tribes have been involved in the identification and evaluation of historic properties. Since it is likely that identification will continue post-licensing then the proposed Historic Properties Management Plan (HPMP) should provide for and emphasize the importance of involving the Seneca Nation, Tonawanda Seneca Nation and the Tuscaora Nation in that effort. Specifically, Indian tribes should be consulted in planning for and designing approaches to archeological survey and testing. In addition, the ACHP’s regulations acknowledge the special expertise of Indian tribes in assessing the eligibility of historic properties that may be of religious and cultural significance to them.
- Has the project applicant considered the eligibility of the Niagara escarpment? If this property is

Author: Staff
Subject: Response
Date: 12/14/2006 1:49:45 PM
The investigation area was established as the area to begin surveying for historic resources. The investigation area was designed to encompass a broad geographic area in order to identify archaeological and historic properties within the Niagara Project area. The information learned from surveying the investigation area assisted in defining the APE. The APE is spatially located within the investigation area. The EIS has been revised to clarify this.

Author: Staff
Subject: Response
Date: 12/4/2006 7:47:22 AM
As stated in section 3.3.5 of the EIS and in the PA the APE for the Niagara Project is: (a) lands enclosed by the project boundary; and (b) lands or properties outside the project boundary, but within the external boundaries of the United States, where project operation, recreational development, habitat improvement projects, or other project-related development or use may cause changes in the character or use of historic properties, if any historic properties exist. Thus, by definition, any historic properties that are affected by the project are within the APE, regardless of where the historic properties are located.

Author: Staff
Subject: Response
Date: 12/14/2006 1:50:46 PM
In addition to fluctuations in water levels, the Power Authority’s proposed measures and staff recommendations were analyzed for their effects on historic properties. This includes items in the four separate agreements in the offer of settlement, including rehabilitation of recreation facilities, construction of habitat improvement projects, and removal of lands from the project boundary. Buildings and structures that are located within the investigation area were assessed to determine if they are affected by the presence or operation of the project. If the buildings and structures were not affected by the presence or operation of the project then they are not within the APE. See the Executive Summary and section 5, Conclusions and Recommendations of the DEIS.

Author: Staff
Subject: Response
Date: 12/4/2006 7:48:36 AM
The Lower Landing Archaeological District (Colonial Niagara Historic District) was listed in the National Register of Historic Places as an historic district in 1998. The 33.7 acre Historic District is located within the Earl W. Brydges Artpark State Park and is managed by New York OPRHP. A portion of the State Park is located within the project boundary. Based on the information we have, the Historic District is not located within the project boundary. The Historic District is located approximately 1 to 1 ½ miles down river from the project’s powerhouse and we conclude that it is not affected by the presence or operation of the project. Thus, the Historic District would not be located with the APE.

Author: Staff
Subject: Response
Date: 12/4/2006 7:49:11 AM
Section 1.1 of the EIS explains that no federal lands are affected by the project. Lands of the Tuscarora Nation reservation about a portion of the Lewiston Reservoir. If there are historic properties located within the reservation that are affected by operation of the project, then by definition, those historic properties would be within the APE. See the above responses to questions 1, 2 and 3. The reference the Advisory Council on Historic Preservation refers to is a task that would be included in the HPMP. This task is also included in the standard PA that the Advisory Council assisted in developing.

Author: Staff
Subject: Response
Date: 12/4/2006 7:50:51 AM
As explained in section 3.3.5.1 of the EIS there is an on-going effort to identify and protect traditional cultural properties. Members of the Seneca Nation of Indians, Tonawanda Seneca Nation, and the Tuscarora Nation have been invited and encouraged by the Power Authority to participate in this process. We recommend that the HPMP address the identification and management of traditional cultural properties, including consulting with the Nations in this endeavor. This is also a stipulation in the PA.

Author: Staff
Subject: Response
Date: 12/11/2006 3:06:15 PM
See response No. 6, above. It is not the intent to limit the extent of items or tasks to be addressed in the traditional cultural plan. What items or tasks that would be addressed in the plan will become evident as consultation with the Nations continue. Examples of items that could be addressed in the plan are areas or sites that could be significant but that might not meet the criteria to be listed as a traditional cultural property in the National Register of Historic Places are the identification of traditional fishing piers. In

Niagara Power Plant (FERC Project No. 2216) – Issuance of a New License
New York Power Authority
New York

Review of the draft Programmatic Agreement (PA) and Draft Environmental Impact Statement (DEIS)
Submitted by the Advisory Council on Historic Preservation
November 20, 2006

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- Has the project applicant considered the eligibility of the Niagara escarpment? If this property is

section 3.3.7.2 of the EIS we recommend that customary use of project lands be addressed in the land use plan that staff recommends be developed for the project. As stated in sections 3.3.5.2 and 5.1.6 of the EIS the traditional cultural property plan will be included as part of the HPMP. This is also a stipulation in the PA.

Author: Staff
Subject: Response
Date: 12/4/2006 7:52:13 AM
See responses to the Seneca Nation of Indians Nos. 2, 5 and 8 and the SHPO No. 13.

considered eligible for listing in the National Register of Historic Places how might it be affected by the project?

- It is not clear how the oral history collected by the Tuscarora Nation will factor into the identification, evaluation and treatment of historic properties, and the development and implementation of the historic properties management plan, particularly when the effort has been described in the DEIS as collecting several hundred pages of "anecdotal interview data." When described in this fashion, it suggests that the information is superfluous to further studies and actions. If this information is considered historical background documentation, please explain how the data will be formalized for future use.
- The DEIS states that the Phase I A survey "could be expanded to include the reservoir." If the operation of the reservoir could affect historic properties during the term of the new license, then we recommend that measures be taken to expand the identification survey to include the Lewiston Reservoir.
- The DEIS notes that there was considerable disturbance with the construction of the project and at the existing recreation site slated for improvement. How has this disturbance been documented?
- The Commission must approve the removal of a 98.2 acre parcel out of the project boundary. According to the project documentation, the Commission has determined that New York State law provides sufficient consideration of effects to historic properties. However, given the duration of the new license we recommend that the Commission develop additional measures for protection of historic properties in the event the state law changes over the term of the license.

Author: Staff
Subject: Response
Date: 12/14/2006 1:53:45 PM

The Niagara escarpment, most famous for the cliffs over which the Niagara River forms Niagara Falls, is included within the Niagara Reservation National Historic Landmark. The Niagara Reservation established in 1885 to reclaim the natural setting of the Falls from exploitation, was the first State park created under the power of eminent domain. Renowned landscape architect, Frederick Law Olmsted, designed the landscape plan for the reservation, which he also helped establish. The New York OPRHP is in the midst of undertaking various projects that will help return the Reservation to its historic appearance. According to the U.S National Park Service, the Reservation's vast surroundings have been compromised by intensive commercial development on the Canadian side of the Falls, impacting its visual setting; however, the Niagara Reservation itself is not in imminent danger of losing its integrity (<<http://tps.cr.nps.gov/nhl/detail.cfm?ResourceId=399&ResourceType=Site>>, accessed November 24, 2006). Section 3.3.5.1 of the EIS states that the Niagara Reservation is a National Historic Landmark. It was designed as a National Historic Landmark May 23, 1963.

The project is located in an international waterway and is subject to the jurisdiction of the International Joint Commission (IJC) pursuant to the 1909 Boundary Waters Treaty between the United States and Canada. In addition, the project operates in accordance with the 1950 Niagara River Water Diversion Treaty between the United States and Canada. Section 3.3.7.2 of the EIS explains that the 1950 Treaty requires that a minimum of 100,000 cfs flow over the Falls during daylight hours during the tourist season, and that a minimum of 50,000 cfs flow over the Falls at all other times. The 1950 Treaty provides that, except for certain designated portions of the outflow from Lake Erie, the remaining flow is divided between the United States and Canada and could be used for power generation purposes. Thus, the Power Authority does not control the amount of flow over Niagara Falls. However, the effects of controlling flows on the aesthetic quality of the Falls were considered by the IJC.

In addition, section 3.3.6.2 of the EIS explains that several recreation facilities, including some within the Niagara Reservation, operated by New York OPRHP were identified as being in need of rehabilitation. While these facilities provide access to Niagara Falls and the Niagara River Gorge, they are not affected by the presence and or operation of the project because the project does not affect access to or use of the facilities. However, the Parks and Recreation Fund Enhancements proposed by the Power Authority would provide funds for rehabilitating these facilities. In addition, the New York State legislature recently enacted Greenway legislation requires the Greenway Commission to inventory the existing parks and other lands, identify lands that can contribute to the Greenway, and recommend how to link the Greenway to interior communities. The Power Authority's proposal would assist in funding the recommendations of the Greenway Committee, which could include rehabilitating New York OPRHP's recreation facilities.

Author: Staff
Subject: Response
Date: 12/14/2006 1:54:15 PM

See our response Interior on this issue. The objectives of the oral history report were to collect from Tuscarora elders their recollections of life experiences within the Tuscarora community before and after construction of the project. The effort captured qualitative, subjective information of personal history that might not otherwise be obtained in the other relicensing studies undertaken in this proceeding.

Author: Staff
Subject: Response
Date: 12/4/2006 7:55:31 AM

In sections 3.3.5.2 and 5.1.6 of the EIS we recommend that a literature search and sensitivity study for the Lewiston Reservoir be conducted and that the Tuscarora Nation be given the opportunity to participate in the creation of the study. This is also a stipulation in the PA.

Author: Staff
Subject: Response
Date: 12/11/2006 3:10:34 PM

The project was constructed almost 50 years ago. The construction activities are documented by the Power Authority in its report "Describe the Effects of Project Construction on the Surrounding Environment". The report is available on the Power Authority's web site (<http://niagara.nupa.gov>). It is the intent of the EIS to analyze current and potential effects on environmental and cultural resources that would result from the issuance of a new license to continue operating the project. The recommended alternative includes, among other things, rehabilitating recreation sites located within the project boundary (which includes the APE). Thus, we recommend in the EIS and it is stipulated in the PA that appropriate measures be taken to protect cultural resources prior to beginning any construction activities.

Author: Staff

Comments from page 213 continued on next page

considered eligible for listing in the National Register of Historic Places how might it be affected by the project? 

- It is not clear how the oral history collected by the Tuscarora Nation will factor into the identification, evaluation and treatment of historic properties, and the development and implementation of the historic properties management plan, particularly when the effort has been described in the DEIS as collecting several hundred pages of "*anecdotal interview data*." When described in this fashion, it suggests that the information is superfluous to further studies and actions. If this information is considered historical background documentation, please explain how the data will be formalized for future use. 
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Subject: Response

Date: 12/14/2006 1:55:52 PM

 This 98.2 acre parcel is referred to as Area 6 in the EIS. As explained in section 5.1.5 of the EIS we recommend that Area 6 remain in the project boundary to allow the Commission to ensure continued public access and maintenance of facilities during a new license term. If, in the future, the licensee makes a request to remove any parcel from the project boundary it would be considered an undertaking.