

April 23, 2018

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

RE: Gregory B. Jarvis, Hinckley Reservoir Project, FERC No. P-3211
Comments to the New York Power Authority's (NYPA) Revised Proposed
Study Plan

Dear Secretary Bose:

This letter is in response to the New York Power Authority's (NYPA) Revised Study Plan for the relicensing of the Jarvis' Power Project at Hinckley Reservoir (Hinckley Lake) (P-3211). The Citizens for Hinckley met and have numerous comments on the Revised Proposed Study Plan as well as general comments on the overall relicensing in response to NYPA.

General Comments

The Citizens for Hinckley generally agree with the studies that NYPA has suggested to do in their Revised Proposed Study Plan but still firmly believe the other studies that have been proposed by the resource agencies, Citizens For Hinckley, the general public, and FERC need to be done to fully understand the situation and all of the negative impacts of power production has had at Hinckley Lake and the West Canada Creek. NYPA, the New York State Canal Corporation (NYSCC), and Brookfield Power should all be responsible for these studies in some way. Again, this is another reason why the West Canada Creek Project (P-2701) and the Jarvis Project need to be integrated as much as possible. Everything is connected in numerous ways and all three entities are tied to power production through the 2012 Operating Diagram. The Jarvis Project uses and manipulates water releases from Hinckley Lake, Brookfield Power's West Canada Creek Project is legally tied to the 2012 Operating Diagram and uses the outflows from Hinckley, and the NYSCC provides substantial headwater benefits to these entities for power production managing the lake in a way that benefits the power companies greatly, while disregarding the fisheries, environment, recreation, the local economy, as well as all other uses of the lake.

Due to the fact that the NYSCC is the provider of steady water releases for power production, they should be licensed under FERC. They provide a unit of power. According to the Federal Power Act (FPA) the complete unit of development must be licensed with a project. More specifically in section 3(11), 16 U.S.C. § 796(11) a project is defined as "a complete unit of development, consisting of all dams, powerhouses, impoundments, water rights, and lands which are used in connection

with such unit” (Hydropower Reform Coalition- hydroreform.org...2018). With the Jarvis Project at Hinckley, this would mean the dam, the entire lake, and the management of the water should be included in the license. NYPA has an agreement to use the water releases from Hinckley but it does not appear to be licensed under FERC, as there was a recent change from the 1920 Operating Diagram to the 2012 Operating Diagram without any issue by FERC. *(We believe the Jarvis Project may have violated its current license due to the agreement in the current license stating the 1920 Operating Diagram would be used.)* Also, under the FPA, any non-licensee who owns or controls rights necessary for project operation must become a co-licensee or must transfer those rights to the licensee. As is the case at the Great Sacandaga Lake, the Hudson River Black River Regulating District (HRBRRD) was required to be licensed under FERC because the E.J. West Project had an agreement to use lake waters released by the HRBRRD to produce power (Hydropower Reform Coalition- hydroreform.org...2018). As stated above, this is the same situation at Hinckley Lake, as the Jarvis Project uses lake waters based off of the NYSCC’s Operating Diagram to produce power. The West Canada Creek Project also has legal ties to the water releases at Hinckley based on the Operating Diagram. For all of these reasons, we fully believe the NYSCC should be brought under FERC license for their water management that is tied directly to power production.

It is quite evident that there are many problems, issues, and concerns amongst the resource agencies and stakeholders in regards to the management of Hinckley Lake for power production. One can simply look at the NYSCC’s Delta Lake, which was built for the same purpose as Hinckley Lake; yet, there are not nearly as many issues and concerns there with the management of the water level. The water level at Delta is managed as more of a river-of-flow unless more water is needed for the Canal summit in Rome, NY. In previous conversations with representatives of the NYSCC in regards to this, they have pointed directly to the fact that there are no hydropower plants connected to Delta to impact water levels like there are at Hinckley. It has been shown through data from various sources that the combination of the withdrawals for the Mohawk Valley Water Authority (MVWA) and the Canal are relatively small *compared* to what is released for power production. We expect FERC to fully protect those non-powered resources, but the issue is that the 2012 Operating Diagram and its predecessor, the 1920 Operating Diagram, were created to provide water for power production and the Jarvis Project utilizes this. Thus, all of the studies that have been proposed by all stakeholders, as well as FERC, should be completed by one of the entities tied to power production at Hinckley, or shared by all.

Comparing Projects at the Great Sacandaga Lake and Hinckley Lake

As we continue to research the Great Sacandaga Lake Project (P-12252), we see a near identical situation at Hinckley Lake. Both lakes are owned by the People of New York State and managed by state entities, the New York State Canal Corporation (NYSCC) at Hinckley and the Hudson River Black River Regulating District (HRBRRD) at the Great Sacandaga. As is the case at both lakes, power production came in along the way and agreements were made to supply water to the power companies as well. At the Great Sacandaga Lake, FERC ruled that the

entire lake including the HRBRD, its dam, and its operation of the lake levels/water releases, should be licensed because all of it is considered part of the project that includes the substantial headwater benefits it provides to Brookfield Power's E.J. West Project on the dam and to power companies below the dam. Since being licensed in 2002, the HRBRD receives consistent monetary compensation for the headwater benefits they provide to Brookfield's E.J. West Power Project and the other hydropower-producing dams down below the Great Sacandaga Lake. At Hinckley Lake, NYPA has the Jarvis Power Project at the dam in which they produce power based off of what is released according to the NYSCC. NYPA redirects the water released through their turbines to produce power. (NYPA is allowed to manipulate releases) The water is released down stream for Brookfield to produce power at their two West Canada Creek hydropower dams. The NYSCC has a "settlement" agreement with Brookfield Power in which if they deviate from the Operating Diagram and reduce the outflow, they must make up that water deviation at a later date or compensate Brookfield monetarily for the loss of water released. This is the most backwards agreement I have ever seen involving hydropower production and has negatively impacted the lake greatly during the ever-important spring, summer, and fall months. It is our understanding based on the Great Sacandaga Lake Project and other related projects that the NYSCC should be receiving regular monetary compensation for the headwater benefits they supply to NYPA's Jarvis Project, Brookfield's West Canada Creek Project, and possibly the other power projects that are on the West Canada Creek. Now, it does not make sense for the NYSCC to receive payments from NYPA as they are the same company now, but the NYSCC and NYPA should be receiving regular compensation for their headwater benefits provided to Brookfield Power, just as the situation at the Great Sacandaga Lake with the HRBRD.

NYPA's References to Other Reservoirs/Projects

NYPA has made reference in their Study Plan Proposals to other projects in an attempt to compare the relicensing of those projects to that of the Jarvis Project at Hinckley Lake. These projects have little to no similarities to the situation at Hinckley and the West Canada Creek. In the revised Proposed Study Plan, NYPA referenced the Fairfax County Water Authority's Occoquan River Project (P-10828). It should be pointed out that, this Fairfax County Water Authority Project is no longer licensed under FERC as they surrendered operations in 2009. The two reservoirs involved in this project were built strictly for municipal water supply for a very populated area. The Fairfax County Water Authority produced a small amount of hydropower to power their own facilities. They found it was not worth the cost of upkeep on these hydropower facilities to continue to produce power. There is no other connection to power production and the two reservoir operations. There are no headwater benefits tied to these two reservoirs either. So they surrendered power production operations under FERC. In the situation at Hinckley, the MVWA withdrawal of water is fairly small compared what is released for power production. While we do not agree with how the MVWA worked their way into having rights to more water, we are in no way looking to change the MVWA's legal right of having the lake be above 1195' elevation and the right to take up to 75cfs a

day. We believe a more equitable and respectful water management plan at Hinckley would actually benefit the MVWA and reduce worries that the lake will drop below the 1195' elevation mark. With that said, it is evident that the Fairfax County Water Authority Project has no similarity to the situation at Hinckley especially since it is no longer licensed under FERC.

Specific Comments on Proposed Study Plans

NYPA 2.2 Recreation & Public Access

The Citizens For Hinckley believes that this study needs to be more comprehensive and include all recreational areas of the lake during all seasons. Especially all boat launches and beaches, formal and informal areas. There is fairly substantial winter recreation on Hinckley, especially in regards to ice fishing and snowmobiling. NYPA does state they will include winter recreation in their survey when they complete the study during the summer months, but many people that come to recreate in the area in the winter months may not necessarily visit the area in the summer months. This will not give an accurate depiction of the winter recreational months. There is a nexus to all-recreational areas and all seasons in that Jarvis operations utilize the 2012 Operating Diagram and manipulates releases at times, thus it has an impact on the entire lake and all of the recreational opportunities and recreational businesses. But as stated previously, the NYSCC and Brookfield Power are both connected to the management of Hinckley for power generation. This study could quite possibly be one of the studies that all of the entities should be responsible for since all three are tied to the recreational problems faced at Hinckley.

Specific Comments on Section 3 of NYPA's Revised Study Plan

NYPA 3 Response to Comments Received and Other Information

NYPA responded to the general comments made on the comparison between Hinckley Lake and the Great Sacandaga Lake. NYPA states that this comparison is not subject for debate due to the NYSCC's Hinckley Dam and Reservoir facilities already being included in the unit of development. The Citizens for Hinckley see this as not being true as all of the units of hydropower development are currently *not* included as the water rights are not included. The water management should be under FERC license. As stated previously in this letter, the Great Sacandaga Lake Project and the situation at Hinckley Lake are very much similar. Like the HRBRD at the Great Sacandaga Lake Project, the NYSCC should be licensed under FERC due to the fact that they are a unit of hydropower development in that their water releases supply substantial headwater benefits to the Jarvis Project and the West Canada Creek Project directly below the Hinckley Dam.

At various times during these early stages of the re-licensing process, NYPA discusses the established non-hydro power uses of the waters at Hinckley, such as the MVWA's municipal water usage and the NYSCC usage of water for canal

operations. We are in no way expecting FERC to alter these established uses and expect FERC to protect them. But due to the fact that the 1920 and 2012 Operating Diagrams were created for the benefit of power production, and with the Jarvis Project benefiting from these releases, the NYSCC is providing substantial headwater benefits to the power plants at both projects. With that said, just like the HRBRD, the NYSCC should be licensed under FERC.

NYPA 3.1.2 Effects of Jarvis Peaking Operations On Water Level Fluctuations

As stated in our previous comment letter to FERC submitted in March, at times, recreational users and property owners do notice a quick and rapid drop in water over short periods of time in which boats, docks and other shoreline objects become stranded. It may not be every day, but occasionally it is noticed. Based on the data that NYPA supplied about their peaking process, it could be assumed that their peaking process was a contributor to this issue. In NYPA's response to this problem, they state that they looked at data and found they operated in a peaking mode less than ten times over a twelve year period during boating season. NYPA also suggested that the reasons for our issues might be due to inflow and the 2012 Operating Diagram. While we agree that there are other contributing factors, we also believe that peaking is still impactful on the entire lake, especially on the shorelines and shallow, flat lying areas. NYPA uses an example of a 1.5-inch draw down over a 4-hour period on June 3, 2008. They also continue to state that the most they draw down over a 4-hour period is 3 inches. As stated in my previous comments submitted to FERC in March, that vertical drawdown of a small amount equals to a much larger amount along the shoreline, due to the varying angles of the shoreline, quite possibly impacting fisheries and other environmental creatures, as well as personal property. A 1.5 vertical inch drop in water equals to a 3-inch up to an 8-inch drop, and sometimes even more, along a shoreline depending on the pitched angle in which that shoreline goes into the water. Also, as the lake level decreases, the worst the impact the vertical drop in water has on a shoreline due to the smaller surface area of the lake. It should also be noted that the 1920 Operating Diagram was in use until 2013 when the 2012 Operating Diagram began being used to manage water levels at Hinckley. The impacts of the peaking process may be different when peaking under the different Operating Diagrams. We do not deny NYPA's claim that the Operating Diagram and inflow are the major causes of water fluctuations but we question the impact of their peaking process, especially when the peaking process is combined with the demanded releases of the two Operating Diagrams.

We would like to request that NYPA release all of the historical data on their peaking process during their entire history of producing power at Hinckley so that FERC and the rest of the stakeholders can understand, more in depth, how often the Jarvis Project has produced power in peaking mode, the vertical drop in water each time, the CFS that are released throughout each 24 hour period of peaking, and examples of how a smaller vertical drop of 1-3 inches would have on the varying angels of shoreline and flat lying areas.

NYPA 3.3.1 Nexus to Project Operations

The Citizens For Hinckley supports the NYSDEC in their statement in which they confirm NYPA's Jarvis Project does indeed have a nexus to the other studies that NYPA continues to believe they do not have a nexus to. NYPA utilizes the 2012 Operating Diagram (and formally 1920 Operating Diagram) that uses waters from Hinckley Lake to produce power; they also manipulate releases through the peaking process. This gives NYPA a nexus to all of the studies that have been proposed. The issue that NYPA seems to be concerned with is that there are other contributing factors. NYPA has often referred to the other major contributing factor as being the 2012 Operating Diagram. The 2012 Operating Diagram ties the NYSCC and Brookfield Power into having to be apart of these studies as well. FERC needs to rule on who is responsible for which studies and to what extent. As all three entities have a nexus in some way to the studies that have been proposed.

NYPA responded to the Citizens for Hinckley's comments on the FERC's AIRs. This section is our response to NYPA on their comments back.

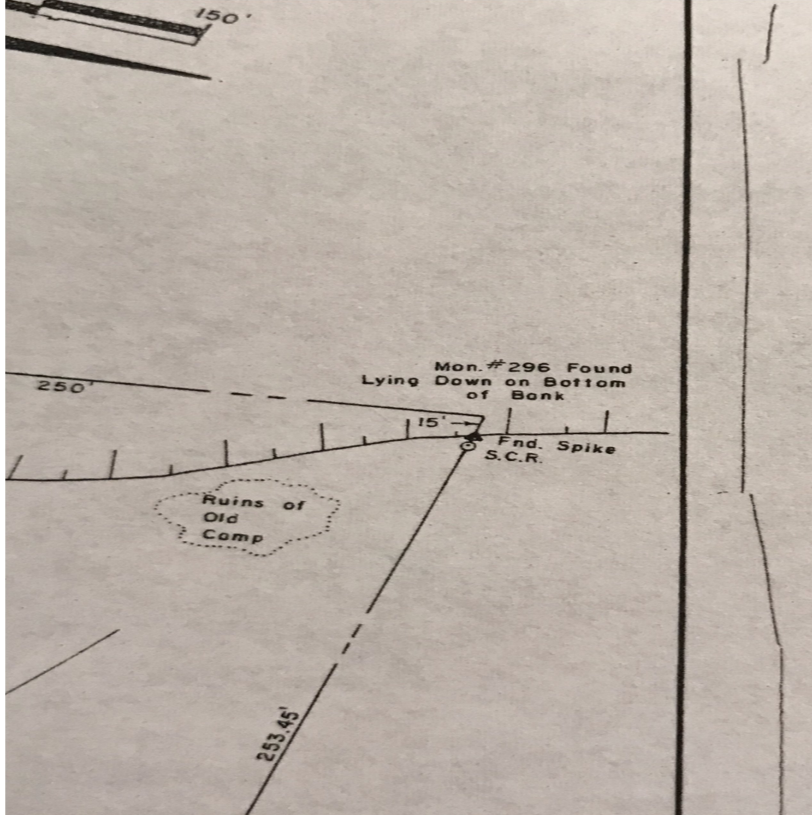
NYPA 3.4.1 FERC AIR No. 5: Geology and Soils

NYPA responded to the pictures that I included showing proof of dramatic erosion around the lake. NYPA has stated that there is "minimal to no shoreline erosion" occurring throughout the reservoir. This is 100% false and in fact demonstrates how decisions have been made on Hinckley by companies over the years without truly understanding what is going on there. Having personally grown up on the lake and having a family history in the area dating back to when the dam was first built, I, as well as my family, all of the members of the Citizens for Hinckley, and many others that have spent time at Hinckley can attest to the drastic erosion that has occurred, and continues to occur, along the shorelines of Hinckley Lake over its history. I used the pictures of the property lines from Zillow.com because they gave the best view of the property lines extending out into the lake. I compared the pictures to survey maps and other property maps that were available to me. The property lines in the pictures I submitted from Zillow.com were exactly the same as other maps, as well as official survey maps. The property lines in the pictures are very accurate.

Below is a picture (Figure #1) of a section of one of the survey maps that was from an official property survey from the mid 1990's. In this picture you will see that the surveyor found the state monument marker over the bank into the lake due to erosion. On the survey map, it says "Mon. #296 Found Lying on Bottom of Bank". "Mon. #296" is one of the many cement, stamped with metal, survey markers the state surveyors used to mark out the perimeter of the lake over 100 years ago. These were all placed a fairly decent distance from where the high water level would be. Many can still be found on land where they were originally placed in the ground, some can be found lying at the bottom of banks in the water, and a few cannot be found at all due to them falling into the lake and disappearing in the sand. With monument # 296, the monument fell approximately 30-40 feet down an all sand embankment into the water. This is just one of many examples of erosion.

There are many properties that have no state land buffer between it and the lake high water mark anymore. Some private properties along the lakeshore go directly into the lake due to the erosion over the years.

Figure #1: Portion of a survey done by Edward L. Beauchamp



There are many fairly high banks made up of soft sand along the shores of Hinckley. Anytime there are sandy shorelines and sandy banks along a lake or any body of water there is going to be fairly drastic erosion. That is definitely the case at Hinckley Lake. If anyone from NYPA, FERC, NYSCC or any other entity or agency would like to personally see the erosion in person, I, as well as others of our group would be more than happy to show them. We would have submitted pictures of examples of erosion but there is still snow and ice covering many of the areas. While we believe, if done correctly, the Bathymetric Survey will show that erosion has filled in the lake over the years; a study on the impacts of drastic water fluctuations on shoreline erosion still needs to be done. NYPA, NYSCC, and Brookfield all have an impact on it due to power production. One of or all of the entities needs to be responsible for a study on erosion.

NYP&A 3.4.2 FERC AIR No. 9: Terrestrial Resources

NYPA continues to state that there are no loons that use Hinckley as their main habitat. The loons that are seen at Hinckley are the same loons that are spotted consistently around the lake from early spring (from ice melt) to late fall when they

then fly south for the winter. The source from which I stated “4-6 loons are estimated to return to Hinckley on a consistent basis” comes from the people that live and spend extended amount of time at Hinckley. I question the reliability of the information that the Adirondack Communities and Conservation Program on a census that was given to NYPA. How was this information gathered? I can guarantee that many in our group, as well as other property owners, home owners, etc. that spend quality time at Hinckley would be a very reliable source to understand whether there are loons at Hinckley or not. I find it hard to believe that the same loons that are seen consistently on Hinckley each year, that spend the entire April-November months are only visiting from time to time as NYPA suggests. There is definitely a consistent loon population at Hinckley Lake. Loons are unique and we consider ourselves lucky to have them as our neighbors on the lake. Unfortunately, we have extreme concern that this will change for the worst if the current water management of the lake continues.

NYPA 3.4.3 FERC AIR No. 10: Land Use

It may have been a bit of a misunderstanding on our part due to the wording by FERC in their request for the number of private residences “within the Project boundary”. We assumed this meant that FERC would like to know and understand the varying types of properties along the shoreline of Hinckley. It should be known that due to erosion, some people do actually own private property into the lake now, which would be in the Project boundary.

A study should be done to understand the different types of properties and the number of properties along the shoreline of Hinckley Lake. But again, should Brookfield, NYSCC, or, NYPA perform the study or should all three share the responsibility? All three have an impact on the shoreline in regards to power production. The Citizens for Hinckley believe a study should be done on this so FERC can have a better understanding on the number of properties and the varying types of properties that surround the lake.

Conclusion

In conclusion, a more respectful water level management plan at Hinckley is needed to fully secure all the lake’s interests and needs. We believe the lake could be managed in more of a river-of-flow at times using target levels based on inflow, weather conditions, and what is needed downstream for the Canal, instead of the outdated Operating Diagram. To understand everything fully, all studies need to be completed. There is definitely a nexus between all three entities that are connected to power production and the studies that need to be done. For the many reasons we have discussed, the NYSCC’s management of the water needs to be brought under FERC license to protect and improve the public’s interest and to also protect Jarvis’s operation. We have already seen a change in management of the lake in 2013 due to a legal battle and it could happen again. If another legal battle was to come about and another change in water operation at Hinckley occurs, it could possibly impact the Jarvis Project, hypothetically, to a point in which water levels get drawn down so low on a regular basis that power production at Jarvis would not be possible at all anymore.

Thank you for your time and consideration in regards to our comments on the study plans as well as our comments on the overall relicensing of projects that directly impact Hinckley Lake. If there are any questions or if any further information is needed, please contact me at anytime.

Sincerely,

Blake Bellinger
Citizens for Hinckley
Bla19ke@yahoo.com

*** Please note that our official name is Citizens “for” Hinckley and not Citizens “of” Hinckley as I had previously submitted our group as. ***

Document Content(s)

NYPA Revised SP comments.DOCX.....1-9