

United States Congress

January 23, 2018

Honorable Kevin McIntyre
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

FERC Project No. 12966 – Lake Powell Pipeline Project – Petition for Declaratory Order, Docket – EL18-56-000

Dear Chairman McIntyre:

We are deeply concerned about Federal Energy Regulatory Commission's (FERC) recent handling of issues related to a critical infrastructure project, the Lake Powell Pipeline (LPP). This project is of vital importance to Southwest Utah, one of the fastest growing regions in the country, with a time-critical need for an additional water resource. As you know, the Notification of Intent for the LPP, a dual-purpose water supply and hydroelectric power generation project, was filed by the Utah Board of Water Resources (UBWR) with FERC in 2008. In the intervening decade, the State of Utah has invested over \$34 million preparing and submitting a comprehensive license application for certain parts of the LPP, as well as other permitting information necessary to meet agency requirements.

On December 11, 2017, FERC issued its Ready for Environmental Analysis Notice (REA Notice) in this proceeding. This action triggered a February 9, 2018 deadline for all participants to file their license condition recommendations and for Department of the Interior (DOI) agencies to file draft mandatory license terms and conditions under Federal Power Act (FPA) Section 4(e) for parts of the LPP that would occupy lands administered by DOI agencies.

The REA Notice stated that the LPP generating facilities are under FERC jurisdiction, but it also stated that FERC has not yet decided whether it has jurisdiction over the penstock components of the water supply pipeline, parts of which would occupy DOI administered lands under any alternative route.

This is inconsistent with multiple statements from the Commission since 2008. Prior to issuance of the REA Notice, FERC clearly indicated that the portions of the water pipeline that are also the penstocks for the generating facilities are subject to its jurisdiction. The Commission's consistent position on this matter until the REA Notice was issued is correct: the penstock portions of the water pipeline are fully integrated and necessary for the hydropower turbines to generate electricity. Reversing that position after proponents have conducted planning in reliance on it for the last ten years is legally and factually unjustified.

The ambiguity created by FERC's action in the REA Notice prejudices the interest of UBWR. UBWR has a right to a trial-type hearing under FPA Section 4(e) regarding DOI draft mandatory conditions for the FERC license. UBWR and other parties could expend substantial costs to litigate such matters, only to have FERC later determine the mandatory conditions do not apply due to an absence of FERC jurisdiction. On the other hand, given the ambiguity surrounding FERC jurisdiction, DOI agencies could decide not to submit draft conditions, which would make it unclear when or if UBWR would ever be able to exercise its Section 4(e) rights.

Enclosed you will find a December 27, 2017 UBWR-filed Petition for Declaratory Order, Docket – EL18-56-000, which we ask you review as soon as possible. The Petition asks FERC to find—consistent with its prior statements and past practice—that the penstocks are jurisdictional and to suspend the proceeding until the issue is resolved. On January 10, 2018, FERC issued public notice of the petition which established a comment deadline of February 12, but did not stay the proceeding. The February 9 deadline for submittal of responses to the REA Notice is looming.

FERC’s indecision at this late point in the process is without precedent and is distressing to the many stakeholders that have invested substantial time and resources into this project. In reviewing the enclosed, we ask that FERC honor basic principles of fairness and consider the troubling lack of regulatory certainty that has resulted UBWR’s request for a stay of proceedings, which we believe holds substantial merit.

Sincerely,



Orrin Hatch
U.S. Senator



Mike Lee
U.S. Senator



Rob Bishop
Member of Congress



Chris Stewart
Member of Congress



Mia Love
Member of Congress



John Curtis
Member of Congress

Enclosures: (1) UBWR Petition for Declaratory Order