

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

_____)	
Utah Board of Water Resources)	
)	P-12966-001
Lake Powell Pipeline Project)	EL18-____-000
_____)	

**AMERICAN RIVERS’ ANSWER IN OPPOSITION TO
MOTION FOR EXPEDITED ACTION AND IN SUPPORT OF MOTION FOR
SUSPENSION OF PROCEDURAL SCHEDULE**

Pursuant to 18 C.F.R. § 385.213(a)(3), (d)(1)(i), American Rivers files this answer in opposition to the Utah Board of Water Resources’ and Washington County Water Conservancy District’s (collectively, “UBWR”) “Motion for Expedited Action” on its Petition for Declaratory Order on Jurisdiction, and in support of its “Motion for Suspension of Procedural Schedule.”¹

On December 11, 2017, the Federal Energy Regulatory Commission (“Commission”) issued a “Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions” (“NREA”). According to the NREA, the Commission has not yet determined whether the 89 miles of water delivery pipelines that connect the proposed power-generating facilities will be included as part of the licensed hydro facilities.²

¹ American Rivers understands that UBWR’s “Petition for Declaratory Order on Jurisdiction, Motion for Expedited Action, and Motion for Suspension of Procedural Schedule” has not yet been accepted for filing or posted on eLibrary. American Rivers files this answer to the “Motion for Expedited Action” portion of the UBWR’s pleading within 5-days of electronic service out of an abundance of caution. *See* 18 C.F.R. §385.213(d)(1)(i) (answers to any “motion to extend or shorten the time period shall be made within 5 days after the motion is filed, unless otherwise ordered.”).

² NREA, eLibrary 20171211-3022 (Dec. 11, 2017), pp. 2-3.

On December 27, 2017, UBWR petitioned the Commission “to issue a declaratory order stating that the Commission’s licensing jurisdiction under the Federal Power Act (‘FPA’) includes all of the [Lake Powell Pipeline] Project facilities identified in the license application as the ‘Hydro System,’ in particular, the penstock alignments.”³ It concurrently moved for “the Commission to suspend the licensing proceeding immediately, and act expeditiously by issuing a declaratory order finding that the penstock alignments are subject to its licensing jurisdiction by the Commission’s February 15, 2018 open meeting date.”⁴

Under the Commission’s rules of practice and procedure, participants have 30 days to file an answer to a pleading, other than a complaint or motion, unless otherwise ordered.⁵ This would place the deadline for answers to the Petition on January 26, 2018, or later if the Commission publishes notice of the Petition in the Federal Register. American Rivers intends to file an answer to the Petition by the deadline. UBWR’s request that the Commission issue a declaratory order at its February 15, 2018 open meeting date would not give the Commission time to consider answers to the Petition, or to require any further procedures it deemed appropriate to resolve jurisdictional questions regarding the water delivery pipelines.

UBWR’s definition of the Hydro System is not conclusive as to the Commission’s jurisdiction. As the Commission has previously explained, “[t]he mere fact that various facilities are proposed for licensing by an applicant is not sufficient reason to assume that all of such

³ UBWR, “Petition for Declaratory Order on Jurisdiction, Motion for Expedited Action, and Motion for Suspension of Procedural Schedule” (Dec. 27, 2017), p. 1.

⁴ *Id.* at 2.

⁵ 18 C.F.R. § 385.213(d)(2)(ii). If notice of a pleading is published in the Federal Register, participants have 30 days after such publication to answer, unless otherwise ordered. *Id.* at § 385.213(d)(2)(i). UBWR’s Petition does not appear in the federal register notices scheduled to be published by the Commission on January 2, 2018.

facilities are properly the subject of a license.”⁶ Rather, in determining whether facilities are part of a complete unit of improvement or development, the Commission must independently examine the relationship between the facilities in question and the already-identified jurisdictional components of the hydropower project.⁷ American Rivers notes that several participants have already questioned the Commission’s role in permitting the water conveyance facilities, and that additional information may be needed to resolve this issue.⁸

American Rivers supports UBWR’s Motion for Suspension of Procedural Schedule until the jurisdictional issue is resolved. The question of which federal agency will have primary regulatory authority over the various facilities is relevant to the Commission’s and Cooperating Agencies’ environmental analysis under the National Environmental Policy Act, and to the participants’ recommendations for license terms and conditions.

⁶ *Re California Dep’t of Water Res.*, 51 F.P.C. 529, 533 (Feb. 6, 1974).

⁷ *See Union Water Power Company; Kennebec Water Power Co.*, 68 FERC ¶ 61180, 61889 (Aug. 1, 1994).

⁸ *See* Western Resource Advocates, “Comments on the Preliminary Licensing Proposal for the Lake Powell Pipeline, Project No. P-12966-001,” eLibrary no. 20160301-5013 (Mar. 3, 2016), pp. 12-13 (FERC “has jurisdiction over the discrete hydropower components of the Lake Powell Pipeline, but not the Pipeline itself. In *Wyco Power & Water, Inc.*, 139 FERC ¶ 61,124 at pp. 4-5 (May 17, 2012 Order), FERC cites the Lake Powell Pipeline in rejecting Wyco’s arguments that FERC has jurisdiction over entire water supply pipeline projects”). *See also* Western Resource Advocates, “Comments and Proposal to Modify Draft Study Reports for the Lake Powell Pipeline – Hydroelectric Project No. P-12966,” eLibrary no. 20110506-5161 (May 6, 2011); Motion to Intervene by Save the Colorado, eLibrary no. 20160630-5103 (June 30, 2016); Lake Powell Pipeline Coalition’s Comments on the Preliminary Licensing Proposal and Draft Study Reports, eLibrary no. 20160229-5176 (Feb. 29, 2016), p. 40.

In conclusion, American Rivers requests that the Commission formally notice UBWR's Petition for Declaratory Order, deny UBWR's Motion for Expedited Action, and grant UBWR's Motion to Stay the Proceeding.

Dated: January 2, 2018

Respectfully submitted,



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DECLARATION OF SERVICE

**Utah Department of Water Resources, Division of Water Resources,
Lake Powell Pipeline Project (P-12966-001)**

I, Tiffany Poovaiah, declare that I today served the attached “American Rivers’ Answer in Opposition to Motion for Expedited Action and in Support of Motion for Suspension of Procedural Schedule” by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.



Dated: January 2, 2018

By: _____

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