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VIA ELECTRONIC FILING

August 22, 2018

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

Re: Utah Board of Water Resources, Docket No. EL18-56-000  
Lake Power Pipeline Project No. 12966-005

***Utah Board of Water Resources and Washington County  
Water Conservancy District's Request to Reinstate Procedural Schedule***

Dear Secretary Bose:

The purpose of this letter is to request the Federal Energy Regulatory Commission (“FERC” or “Commission”) staff to reinstate the procedural schedule in this case, which has been suspended since January 2018. The license applicant, Utah Board of Water Resources (“UBWR”), and proponent Washington County Water Conservancy District (“WCWCD”), believe that the benefits of obtaining clarity on the extent of Commission jurisdiction over the Lake Powell Pipeline Project, FERC Project No. 12966 (“Project”), are now outweighed by the uncertainty regarding the timing of Commission action on the jurisdictional question and the attendant delay of the Project. Hence, UBWR and WCWCD request that the Commission lift the suspension immediately and reestablish the appropriate procedures in order to allow the Commission and other federal permitting agencies to move forward expeditiously with the development of the Environmental Impact Statement (“EIS”).

On December 11, 2017, the Commission issued its Ready for Environmental Analysis Notice (“REA Notice”) indicating that the license application for the Project was accepted for filing and ready for environmental analysis. The REA Notice further solicited motions to intervene and protests, as well as comments, recommendations, terms and conditions, and prescriptions. The REA Notice also raised for the first time a question about the extent of FERC’s jurisdiction over the Project, stating that while the

Commission has jurisdiction over the electric generating equipment and Project transmission lines, “the Commission has not yet determined whether [the] water delivery pipelines will be included as part of the licensed hydro facilities.”

On December 27, 2017, UBWR and WCWCD filed a joint petition for declaratory order on the jurisdiction question, requesting the Commission to hold that the Commission’s licensing jurisdiction includes all of the Project facilities identified in the license application as the “Hydro System” and, in particular, the penstock alignments.<sup>1</sup> UBWR and WCWCD’s filing also included a motion for expedited action by February 15, 2018, and a request to suspend the procedural schedule in the meantime. UBWR and WCWCD noted that while they were reluctant to delay the proceeding, clarity on the jurisdictional question may be necessary to preserve participants’ statutory rights under sections 4(e) and 33 of the Federal Power Act (“FPA”).<sup>2</sup>

The Commission Secretary issued a notice suspending the procedural schedule as requested.<sup>3</sup> However, the Commission did not render its decision on the petition by February 15, and in fact has not rendered a decision to date, over seven months after UBWR and WCWCD filed the petition. UBWR and WCWCD strongly desire that the Commission rule favorably on their petition as soon as possible, and are not withdrawing the petition. However, because it is extremely important that the licensing of this critical infrastructure project for the State of Utah move forward expeditiously, UBWR and WCWCD desire to now have the procedural schedule reinstated.

The desire to reinstate the procedural schedule is underscored by the recognition that the Department of the Interior (“DOI”), which would have authority to submit section 4(e) mandatory conditions should the Commission hold that the penstock alignments would be part of the FERC-licensed Project, also has independent authority under its organic statutes to impose right-of-way conditions. Since filing the petition, UBWR and WCWCD have been informed that DOI may elect not to submit section 4(e) conditions, thus diminishing the benefit of obtaining clarity on the applicability of FPA section 4(e).

In conclusion, in order to timely move forward on this essential infrastructure project, UBWR and WCWCD request that Commission staff lift the current stay of the proceedings and reinstate the Integrated Licensing Process procedural schedule. In addition, UBWR and WCWCD urge staff to immediately convene a meeting of the federal agencies involved in the completion of the EIS for purposes of establishing a cooperative, coordinated and expeditious permitting review process.

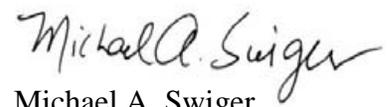
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<sup>1</sup> Utah Board of Water Resources and Washington County Water Conservancy District’s Petition for Declaratory Order on Jurisdiction, Motion for Expedited Action, and Motion for Suspension of Procedural Schedule, Docket Nos. EL18-56-000 et al. (filed Dec. 27, 2017).

<sup>2</sup> 16 U.S.C. §§ 797(e) and 823d(a) (2012).

<sup>3</sup> Notice Suspending Procedural Schedule, Docket Nos. EL18-56-000 et al. (issued Jan. 11, 2018).

Sincerely,

A handwritten signature in black ink that reads "Michael A. Swiger". The signature is written in a cursive style with a large, prominent initial "M".

Michael A. Swiger  
John H. Clements

Counsel for Utah Board of Water  
Resources and Washington County Water  
Conservancy District

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 for Project No. 12966 and Docket No. EL18-56.

Dated at Washington, D.C., this 22nd day of August, 2018.

/s/ Mealear Tauch

Mealear Tauch

Van Ness Feldman, LLP

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