

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
February 23, 2024

OFFICE OF ENERGY PROJECTS

Project No. 2459-279 – West Virginia
and Pennsylvania
Lake Lynn Hydroelectric Project
Lake Lynn Generation, LLC

VIA FERC Service

Jody Smet
Lake Lynn Generation, LLC
7315 Wisconsin Avenue, Suite 1100W
Bethesda, Maryland 20814

Reference: Additional Information Request

Dear Ms. Smet:

On September 11, 2023, Lake Lynn Generation, LLC (Lake Lynn Generation) filed responses to Commission staff's additional information requests (AIRs) issued on July 26, 2023. Based on the responses to the AIRs and ongoing review of the associated filings,¹ as well as scoping comments, we need additional information on your relicense application for this project. Pursuant to section 4.32(g) of the Commission's regulations, please provide the additional information requested in the enclosed Schedule A within 45 days from the date of this letter. If the requested information causes any part of the application to be inaccurate, that part must be revised and refiled by the due date.

Within 5 days of receipt, provide a copy of this letter to all agencies you will consult in response to this additional information request. Then, when you file the requested information with the Commission, you must provide a complete copy of the information to each agency consulted under 18 C.F.R. section 16.8 of the Commission's regulations.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.aspx>. For assistance, please contact FERC Online Support at

¹ Responses to the AIRs included revisions to Exhibit E and Exhibit G of the license application.

FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2459-279.

Please contact Allan Creamer at (202) 502-8365, or via email at allan.creamer@ferc.gov, if you have any questions.

Sincerely,

Stephen Bowler, Chief
South Branch
Division of Hydropower Licensing

Attachment: Schedule A – Request for Additional Information

SCHEDULE A REQUEST FOR ADDITIONAL INFORMATION

Project Boundary Proposal

1. Section 3.2.1 of the revised Exhibit E filed on September 11, 2023, includes table 3.1, *Summary of Areas Proposed for Removal from the Lake Lynn Project Boundary*. The updated table 3.1 includes a new column labeled “Previous Project Purpose,” and the text in this column indicates whether the land was originally included in the project boundary as mitigation land. While this information is helpful, many of the cells in this column lack descriptions of the original project purpose(s) for each area.² Moreover, there are some areas that are proposed for removal (e.g., an undeveloped riparian polygon on the east side of Cheat Lake, south of Area E; and another undeveloped riparian polygon on the west side of Cheat Lake between Areas D and F) that were not labeled with an Area ID and are not included in table 3.1.³

To facilitate Commission staff’s review of the existing and proposed project boundary, please revise table 3.1 and the related map set to list and label all of the polygons of land proposed for removal, including the two unlabeled polygons identified above. The revised table 3.1 must include a detailed description of the original and current project purpose(s) for each polygon of land proposed for removal. The original project purpose(s) for each polygon may include: operation and maintenance; flowage; existing recreation and public access; shoreline control; protection and enhancement of environmental resources (e.g., water quality, botanical, fish and wildlife and their habitats, scenic (aesthetics), and recreation), and other values of the project.

2. The GIS layer for the proposed project boundary filed with the license application (November 30, 2022) does not correspond with the figures in the revised Exhibit E (September 11, 2023). For example, the November 30, 2022 filing excludes the

² The project purposes identified in Article 418 of the current license include: operation and maintenance; flowage; recreation; public access; protection of environmental resources; and shoreline control, including shoreline aesthetic values.

³ The unlabeled polygon for land south of Area E that is proposed for removal is visible on figure 3.3 of the revised Exhibit E. The other polygon is not featured in the figures in the revised Exhibit E. However, it can be viewed by comparing the existing and proposed project boundary data (i.e., geographic information system (GIS) layers) filed on November 30, 2022.

parking area at the Sunset Beach Marina, while figure 3.5 in the revised Exhibit E shows this parking area as inside the proposed project boundary (i.e., with three much smaller polygons making up Area H). Please file an updated proposed project boundary GIS data layer. Also, please file a separate layer of the polygons of land proposed for removal, including Areas A, B, C, D, E, F, G, H, and the two missing polygons described in item 1 above. Please ensure that the original project purpose and the reason for proposing removal (i.e., why it is no longer serving a project purpose) are included as fields in the attribute table of the separate layer showing just the polygons of land proposed for removal.

3. The geographic extent of the project recreation areas in relation to the nature viewing areas is not clear because the maps and GIS data provided with the license application and additional information responses do not identify the boundaries of the recreation areas. For example, it appears that Cheat Lake Park and the polygon labeled “40 Acres Morgan and Manning Run Embayments” overlap. To facilitate Commission staff’s review of the existing recreation facilities and the overall licensing proposal, please submit a separate layer of polygons showing the geographic extent of the project recreation areas.
4. Lake Lynn Generation mentioned during the scoping meetings that it proposes to retain two of the four nature viewing areas required by the current license in the project boundary and two would be removed. This proposal, however, appears to be inconsistent in the text⁴ and figure 2⁵ of the current license, and is not made clear in the GIS map layers filed. The nature viewing area polygons filed on September 11, 2023, appear to be inconsistent with those filed on November 30, 2022. Specifically, both datasets have three nature viewing areas in common.⁶ However, there is a different, fourth, nature viewing area identified in each

⁴ The current (1994) license for the project designated four nature viewing areas. These are: Cheat Haven Peninsula (140 acres); Area 12 (12 acres); Area 26 (25 acres); and Area 18 (40 acres between the Morgan and Manning Run embayments).

⁵ Figure 2 in the 1994 license for the project shows five polygons labeled as proposed recreation areas (West Penn Beach Peninsula; Area 18; Tower Run/Area 26; Cheat Haven; and Area 12), some of which are currently identified by Lake Lynn Generation as nature viewing areas.

⁶ Both the Nature Viewing Area GIS data layers filed on November 30, 2022, and on September 11, 2023, include polygons for the Tower Run (25 acres) and Cheat Haven Peninsula (140 acres) Nature Viewing Areas, as well as a nature viewing area across from Cheat Haven (12 acres).

dataset.⁷ To facilitate Commission staff's review of Lake Lynn Generation's proposed changes to the Lake Lynn Project boundary, please clarify if there are four or five nature viewing areas. If there are four nature viewing areas, please clarify the current purpose/designation of the other polygons shown on figure 2 of the 1994 license, and on the November 30, 2022, and September 11, 2023, GIS data layers. Also, please file a new GIS data layer clearly showing which nature viewing areas are proposed for removal from the project boundary and which nature viewing areas would remain in the project boundary. In addition, please include the acreage for each of the nature viewing areas in both the narrative response and the attribute table.

Aquatic Resources

5. On January 24, 2023, Commission staff requested information on the distribution of aquatic (and terrestrial) invasive species within the project boundary, including: (a) a description, and map depicting the location(s), of aquatic and terrestrial invasive species within the project area; and (b) a description of the presence of aquatic and terrestrial invasive species at the recreation sites, public access sites, and maintained areas throughout the project boundary. Staff also requested that Exhibit E of the license application be revised, as appropriate, to include this information. Section 4.5.1.10, *Invasive Species*, of the revised Exhibit E filed September 11, 2023, lists only the most common aquatic invasive species that occur in West Virginia, including hydrilla, zebra mussels, rusty crayfish, virile crayfish, and silver carp.

Section 4.7.1, *Botanical Resources – Affected Environment*, describes the riparian habitat within Cheat Lake and the 2015 biomonitoring report (Smith and Welsh, 2015)⁸ shows the areas of highest aquatic vegetation abundance as embayment

⁷ The GIS data layer filed on November 30, 2022, displays a polygon labeled “40 Acres Morgan and \n Manning Run Embayments” which overlaps with Cheat Lake Park and “Area B” proposed for removal (as shown in figure 3.1 of the revised Exhibit E) that was not included in the GIS data layer filed on September 11, 2023. Also, the GIS data layer filed on September 11, 2023, includes a 40-acre polygon labeled “Area 18 Nature Viewing Area” which is within “Area E” (shown in figure 3.3 of the revised Exhibit E) proposed for removal that was not included in the GIS data layer filed on November 30, 2022.

⁸ Smith, D. and S. Welsh. 2015. Biological Monitoring of Aquatic Communities of Cheat Lake, and Cheat River Downstream of the Lake Lynn Hydro Station, 2011 – 2015. Division of Forestry and Natural Resources West Virginia University.

habitats (e.g., Morgans and Rubles Runs). Figure 4.27 in the revised Exhibit E appears to depict the most recently filed GIS data for aquatic vegetation (November 30, 2022). The map title is “NWI⁹ Wetlands,” the figure label is “Wetlands in the Existing and Proposed Lake Lynn Project Boundary, and the legend includes wetland types, as well as the location and relative density of aquatic vegetation within Cheat Lake. However, the NWI database does not contain information about the relative density of aquatic vegetation, so the figure label and title are unclear, as it seems to include both NWI information and additional data collected by Lake Lynn Generation.

The attribute table of the aquatic vegetation GIS data layer collected by Lake Lynn Generation has wetland classification codes used in the U.S. Fish and Wildlife’s (FWS) NWI in a column labeled “Attribute”¹⁰ and common names of wetland types and relative densities of aquatic vegetation combined in a column labeled “Wetland_TY.” Therefore, the NWI data and aquatic vegetation data collected by Lake Lynn Generation appear to be combined in two columns in the GIS layer that was submitted. Please differentiate the NWI data from the data collected by Lake Lynn Generation by placing them in separate columns of the attribute table, with descriptive names for each attribute, so Commission staff and others can have a clear understanding of the data. Also, there is no differentiation between non-native, invasive species (e.g., hydrilla) and native plant species in the attribute table for the aquatic vegetation GIS data collected by Lake Lynn Generation. If possible, please add this information to the attribute table. Finally, to facilitate Commission staff’s review of potential effects associated with project operation and maintenance, as well as project-related recreation on native and non-native invasive aquatic and terrestrial vegetation, please also provide a description of any measures used to manage invasive species, including hydrilla, at the project.

Terrestrial Resources

6. In scoping comments, Katie Fallon, Executive Director of the Avian Conservation Center of Appalachia, states that the avian center partners with the Cheat Lake Animal Hospital to rehabilitate over 500 injured or displaced birds annually from throughout the region. Among these birds was an Arctic peregrine falcon that showed signs of electrocution, possibly through a collision with power lines. To facilitate Commission staff’s analysis of the effects of project operation and

⁹ “NWI” refers to the U.S. Fish and Wildlife’s National Wetlands Inventory (NWI).

¹⁰ “Attribute” is a general/default label for columns in an attribute table associated with a GIS data layer.

maintenance on avian species, please consult with the Avian Conservation Center of Appalachia, FWS, and the West Virginia Department of Natural Resources regarding project-specific information on: (1) observed interactions between birds or other wildlife and the project transmission facilities (e.g., use of transmission line poles for hunting perches or nesting sites, and/or electrocutions or collisions with the project power lines in the project boundary); and (2) other potential project-related effects to birds, other wildlife, and their habitats. Your response should include documentation of consultation with the consulted entities.

Threatened and Endangered Species

7. As described in the official list of threatened and endangered species for the Lake Lynn Project issued on August 21, 2023, the proposed threatened tri-colored bat may occur in the project boundary or be affected by the relicensing of the project. It has recently come to our attention that FWS is in the process of developing tricolored bat protection recommendations based on seasonal habitat use, which varies geographically. As the Commission's authorized non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act, please consult with the FWS to determine which seasonal habitat tricolored bat zones occur within the existing and proposed project boundaries.¹¹ As part of your response, you should file the documentation of consultation with the FWS.

Recreation and Land Use

8. The revised Exhibit E filed on September 11, 2023, contains a brief description of Lake Lynn's proposal to develop a Shoreline Management Plan (SMP) within 1 year of license issuance. In order for Commission staff to address the shoreline management issues raised during the scoping process for the project, and because there is no current SMP, please provide a detailed description of all elements of shoreline protection proposed for inclusion in the SMP, including: (a) a description of the proposed shoreline/land use classifications (e.g., project facilities, recreation, natural/undeveloped, commercial, etc.); (b) a description of the types of activities and facilities that would be permitted, and under what conditions, in each shoreline/land use type; and (c) a map, and GIS data, if

¹¹ Examples of tricolored bat seasonal habitat zones include the true hibernation zone, year-round active zone 1 where tricolored bats may be present on the forested landscape at any time of year but may enter short bouts of torpor in extended cold periods, and year-round active zone 2 where tricolored bats are likely active all year without extended torpor or hibernation.

available, showing any available existing, as well as the proposed, shoreline/land use classifications for each area within the project boundary, in accordance with the Standard Land Use Article of the license.¹² Additionally, please provide a detailed description of the proposed provisions, including timing, to remove the moratorium on private boat docks and piers on Cheat Lake. Finally, the revised Exhibit E described how shoreline classification data was collected in 2021.¹³ Please submit these spatially referenced shapefiles, along with the metadata.

Cultural Resources

9. In prior issuances,¹⁴ Commission staff requested the record of consultation with the West Virginia State Historic Preservation Office (West Virginia SHPO) and Pennsylvania State Historic Preservation Office (Pennsylvania SHPO) regarding concurrence on the Area of Potential Effects (APE), as well as the effects of the potential removal of lands from the project boundary on known historic properties. The response provided as part of the September 11, 2023, filing does not include documentation of concurrence on the APE, nor does it discuss potential effects of removing land from the project boundary on historic properties. Please follow up with the West Virginia and Pennsylvania SHPOs for concurrence letters on the APE and effects on historic resources within the APE.
10. Section 4.11.1.2, *Prior Cultural Resource Investigations*, of the revised Exhibit E, filed on September 11, 2023, mentions that the Pennsylvania SHPO identified a potential National Register-eligible above ground resource that may require surveying prior to developing final plans. However, no survey work is being proposed as part of the final license application. Please provide a description of this resource (please file as Privileged if appropriate), and any survey work proposed for it.

¹² As Lake Lynn Generation develops its resource plans, please consult with the Monongalia County Comprehensive Plan entitled, “The Future of Monongalia County: Creating Meaningful Connections.”

¹³ See also the “*Shoreline Classification and Aquatic Habitat Mapping*” sections of Lake Lynn Generation’s Study Plan Meeting notes and Revised Study Plan dated May 2020 in volume 2 of Lake Lynn Generation’s April 25, 2023, additional information response.

¹⁴ Commission staff’s November 3, 2022 letter at 10 (AIR #24); Staff’s January 24, 2023 letter at B-6 (AIRs # 17 and #19); and Staff’s July 23, 2023 letter at A-4 (AIRs #10 and #12).

11. Section 4.11.1.2, *Prior Cultural Resource Investigations*, of the revised Exhibit E filed on September 11, 2023, states that there are two known, potentially eligible, cultural resources within the Lake Lynn Project boundary: the former Baltimore & Ohio railroad right-of-way and the Lake Lynn Powerhouse. The letters included in the final license application to the West Virginia SHPO and the Pennsylvania SHPO list the cultural resources that were documented within the APE, but does not describe potential effects to the sites associated with the proposed project or measures to address such effects.¹⁵ For Commission staff to understand the potential effects to these known cultural resources, please:
(a) discuss how the proposed removal of the lands from the project boundary, and, thus, from federal protection, could affect these resources; and (b) describe any mitigation measures for such potential effects, if applicable. Also, please include any correspondence regarding mitigation measures received from the West Virginia SHPO and Pennsylvania SHPO.

Environmental Justice

12. In section 4.14, *Environmental Justice*, of the revised Exhibit E, filed on September 11, 2023, Lake Lynn Generation identifies environmental justice communities within 1 mile of the Lake Lynn Project. However, the analysis did not use the most recent American Community Survey 5-year estimate data. The most recent available 5-year estimate data is 2022 5-year estimate data. Further, EPA recommends implementing a community outreach strategy for identified environmental justice communities.¹⁶ Therefore, to facilitate Commission staff's review of environmental justice issues at the project, please describe Lake Lynn Generation's community outreach strategy, and use the 2022 5-year estimates to update section 2.11, *Environmental Justice*, of Exhibit E.

¹⁵ See TRC's letter dated October 26, 2020, in Appendix A of the final license application at pdf page 515.

¹⁶ See EPA's October 19, 2023, letter.