

November 8, 2024

VIA Electronic Filing

Ms. Debbie-Anne Reese, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Subject: Response to Agency Comments on the Environmental Assessment  
Cornell Hydroelectric Project (FERC Project No. 2639-028)**

Dear Secretary Reese:

On September 10, 2024, the Federal Energy Regulatory Commission (FERC or Commission) issued the draft Environmental Assessment (EA) for the Cornell Hydroelectric Project (P-2639). The Wisconsin Department of Natural Resources (WDNR) and River Alliance of Wisconsin (RAW) subsequently provided comments<sup>1,2</sup> on the EA via letters dated October 24, 2024. WDNR also provided comments regarding anticipated license conditions.

The Environmental Protection Agency (EPA) provided comments on the EA on October 30, 2024, or five days beyond the deadline established by the Commission. Should the Commission address the WDNR's comments including anticipated license conditions, or the EPA's untimely comments, NSPW respectfully requests the Commission review and consider the enclosed information when addressing WDNR, RAW, and EPA comments on the draft EA and the WDNR's comments regarding anticipated license conditions.

**WDNR EA Comment 1:**

*With the systematic peaking operations of 6 hydroelectric dams on the Chippewa River, a balance between energy production and protection of natural resources needs to be collaborative and holistic. In their Final License Application (FLA), Northern States Power Company (NSPW) proposed to evaluate the operational impacts of the Cornell project concurrent with the study of operational changes of other hydroelectric projects on the Chippewa River beginning no later than 2028. The Department will be working with NSPW to evaluate dam operations to fish, water quality, recreation, etc. The Department and NSPW will be engaging the Lower Chippewa Settlement Agreement Implementation Team (IT) to establish appropriate studies and timelines to develop and implement studies. The studies will be valuable in the review of the upcoming relicensing for the Dells, Chippewa Falls, Jim Falls, Wisconsin, and Holcombe, and associated license amendments for Cornell.*

**NSPW Information:**

The Cornell license was amended as part of the 2001 Lower Chippewa River Settlement Agreement such that the reservoir is operated between elevation 1001.5 and 1002.0 feet MSL (0.5 feet range) annually from April 1 through June 7. During other times of the year, the reservoir is allowed to fluctuate between 1.0 - 2.0 feet. The three main operating units (#1- #3) in the powerhouse are unique insofar as they are either online at 100% or offline. With the limited ability to regulate discharge from the powerhouse, a reservoir fluctuation of 0.5 feet is considered to be the maximum fluctuation that can reasonably be achieved with the existing units and a 985-acre reservoir. Therefore, the 0.5-foot operations that currently occur from April 1 through June 7 are comparable, if not the same as, the operations that could be achieved if the facility were required to operate as a run-of-river (ROR) facility during that same time

---

<sup>1</sup>[Accession #20241024-5019.](#)

<sup>2</sup>[Accession #20241024-5142.](#)

period. However, this run-of-river type operation during the springtime period is only feasible because flows are typically higher in the spring. Operating in a ROR mode outside the spring runoff period would be impractical as the units would continually need to cycle on and off to maintain the reservoir elevation. The only other option would be to defer generation and regulate the pond via a spillway gate.

**WDNR EA Comment 2:**

*The Department issued the State Water Quality Certification (WQC) to NSPW on July 29, 2024. The WQC was published in the local newspaper on August 8<sup>th</sup>, 2024 as part of the 30-day public notice requirement. We request an update to the EA to reflect the issuance of the WQC.*

**NSPW Information:**

NSPW petitioned the WDNR for an administrative contested case hearing regarding certain provisions of the WQC on August 28, 2024. The WDNR granted our request via letter dated September 17, 2024.<sup>3</sup> As such, the administrative challenge to certain provisions of the WQC remains pending.

**WDNR EA Comment 3:**

*FERC staff determined an annual cost of \$787,133 to install trash racks with 1-inch clear bar spacing and maintain average normal intake velocities immediately upstream of the trash rack of no more than 2.0 fps, and capital costs of \$41,946,905.*

- a. We recommend FERC review the financial information submitted by NSPW for accuracy, as the amounts identified in the EA are much higher than discussed with the resource agencies.*
- b. If these costs are accurate, please provide additional information regarding how the numbers were generated, including what the detailed costs and assumptions are associated with the calculations.*

**NSPW Information:**

NSPW provided a capital cost of \$6.5M in 2022 dollars for 2 to 3-inch clear spaced trash racks.<sup>4</sup> The estimate did not account for annual O&M costs, lost generation during the estimated 125-day construction period, or the cost to reduce the average normal intake velocities immediately upstream of the trash rack to no more than 2.0 feet per second (fps). The capital cost estimate provided by NSPW, as adjusted for 2024 dollars, correctly appears in the table found in Appendix G of the EA as line item 10.

NSPW also agrees with the capital cost estimate in line item 9 of Appendix G of the EA for the <2.0 fps trash rack enhancement. NSPW arrived at a similar capital cost estimate by using a combination of the updated capital cost estimate provided by NSPW of \$6.3M adjusted for 2024 dollars for the 2 to 3-inch clear spaced trash racks and the ratio of Cornell capital costs between the clear spaced trash rack improvement (\$1,207,000) and the angled bar rack system improvement (\$6,894,000) contained in Appendix E-21 of the FLA.

**WDNR EA Comment 4:**

*Throughout the EA, FERC staff stated that the Department did not make any specific requirements for changes to dam operations, water levels, and minimum flows. As part of the Cornell relicensing process, the Department did request studies to evaluate impacts associated with operations and flows. NSPW did not complete the studies stating that the Cornell operations are subject to the terms of the Lower Chippewa River Settlement Agreement (Agreement) and are not subject to review and modification as part of the Cornell licensing process. Specifically, the Department is party to the Agreement, which prohibits the Department from recommending or requiring any changes to the operations of the Cornell hydroelectric dam. We request modification to the EA to reflect the Department's obligations to comply with the Agreement, thus the limitations to suggest or recommend any changes to dam operations, water levels, and flows. (Per Section 2.3.2 of the Agreement: "The stakeholders agree not to propose, mandate,*

---

<sup>3</sup> [Accession #20241009-5205](#).

<sup>4</sup> [Accession #20230103-5496](#).

*support or otherwise communicate to the FERC any license conditions other than those provided for herein, or to oppose the FERC license articles which incorporate the provisions described in this settlement,”.....).*

**NSPW Information:**

NSPW discovered several instances where FERC staff indicated the WDNR and other signatories to the Agreement requested changes to Project operations.<sup>5</sup> Irrespective of the language contained in the Agreement the WDNR and other stakeholders still recommended changes to the project operations. As such, we do not believe WDNR’s claim about withholding any operation requests is accurate.

In addition, NSPW is not proposing changes to Project operations. Studies to evaluate the effects of changes in Project operation are therefore unnecessary because previous study information was available to assess the effects of continued operation as stated by FERC staff on page 34 of the EA.

**WDNR License Condition Comment 1:**

*FERC staff used information from the Agreement as part of the development of the EA. We recommend that FERC not only reference the Agreement, but also review and cite the 1997 study that lead to the summary information in the Agreement. The February 1997 Instream Flow Study of the Free-Flowing Reach Downstream from the Cornell Hydroelectric Project was part of the licensing process for the Holcombe project and included a variety of optional flow regimes between Cornell and Holcombe.*

**NSPW Response:**

NSPW does not support the need to re-analyze the environmental effects associated with the current operation of the Project during this relicensing proceeding because NSPW has not proposed any change to Project operations. The February 1997 Instream Flow Study was properly reviewed and referenced in the analysis of the environmental effects associated with changing to the current operation in the EA issued by the Commission on July 24, 2002.<sup>6</sup> The review also appropriately included a developmental analysis of the costs when Article 13 of the license was amended to include the current operation. The Settlement Agreement and the application to amend Article 13 of the Cornell license are already part of the FERC record as [Accession #20010205-0320](#). In the amendment application, NSPW references the 1997 Instream Flow Study report filed with the Commission on February 20, 1997 and states it was completed for the Holcombe Project. The 1997 report for Holcombe is accessible as [Accession #19970226-0104](#).

**WDNR License Condition Comment 2:**

*The FLA included intentions and commitment to survey and manage aquatic invasive species. While we understand that FERC may not feel this is necessary, NSPW did include it in their FLA. Therefore, we request that the original provisions for invasive species be included in the new license.*

**NSPW Response:**

Section 6.4.1.2 of Exhibit E of the FLA, includes the following language:

To mitigate the spread of invasive species, the Licensee will develop a rapid response invasive species monitoring plan to monitor for the introduction of new “rapid response” invasive species and limit the dispersal of established species. Within one year of license issuance, the Licensee proposes to develop a plan in consultation with the WDNR prior to filing the plan with the FERC for approval. It is estimated that the plan development incorporating both aquatic and terrestrial invasive species will cost \$35,000 and the cost of biennial surveys will cost \$35,000 per survey.

NSPW’s plan does not propose to “manage” invasive species as stated by the WDNR. Rather, the plan is to

---

<sup>5</sup> See Pages 17 and G-1 of the EA.

<sup>6</sup> [Accession #20020724-3052](#).

monitor for “rapid response” invasive species with the intent of early identification, notifying the WDNR, and allowing the agency to implement control measures. The WDNR has previously requested that licensees not attempt to control “rapid response” invasive species and has in fact assumed that responsibility.

The proposal to mitigate the spread of invasive species was predicated on the assumption that the operation and maintenance of the Project was significantly contributing to the spread of invasive species. However, Commission staff, WDNR, and the Environmental Protection Agency (EPA) did not bring forth any information that the limited recreation use provided by the Licensee is causing or has caused the spread of invasive species. The greatest potential for the spread of invasive species is at Mill Yard Park, Brunet State Park, and the City Boat Landing, which are the sites with the heaviest use and are not FERC-approved sites under the control of NSPW. At this point there is only a potential for this to occur—the need for monitoring (and management) is speculative. Absent any additional information not previously provided in the record regarding invasive species at the Project, NSPW should be spared the additional cost of monitoring.

Should additional information be brought forward demonstrating a need for invasive species monitoring, by either the WDNR or EPA, biennial monitoring for “rapid response” invasive species should be limited to the recreation sites that are under the control of NSPW and the FERC-approved sites and their interface with immediately adjacent land and water. There would still be no demonstrated need to survey for invasive species on a point intercept pattern throughout the reservoir, and as a meander pattern through Project lands, like that which was completed as part of the relicensing study.

**WDNR License Condition Comment 3:**

*The EA identifies various protection and mitigations for federally listed species. We request that FERC also provide requirements to follow state endangered species requirements over the term of the license.*

**NSPW Response:**

NSPW did not propose any measures for the protection of state-designated threatened or endangered species, as listed in the FLA, because construction and maintenance activities proposed within the FLA are not likely to have an adverse effect upon them. This was further confirmed in the analysis included in the EA. NSPW anticipates that any future construction or maintenance activities that do not conform to the new license requirements will require approval from the Commission, as either a permanent or temporary amendment, and will require consultation with the resource agencies, including the WDNR. This would include securing any necessary local, state and federal permits. Therefore, there is no need to include requirements to follow state endangered species requirements over the term of the license.

**WDNR License Condition Comment 4:**

*Various specific conditions are identified for bats and eagles. We recommend that FERC recognize that over the term of the license, requirements for various species may change. We recommend a listed species management plan that is adaptable to changes in state and federally listed species requirements.*

**NSPW Response:**

Please see information provided for WDNR proposed license condition Comment 3.

**WDNR License Condition Comment 5:**

*FERC staff recommend a reservoir drawdown and refill plan that includes measures to protect mussels during drawdowns associated with emergencies and project maintenance activities. We recommend that FERC expand the plan requirements to include stranded organism rescue protocols and public safety and communications as part of a drawdown plan. Specific drawdown features such as timing, duration, frequency, etc. should be discussed on a case-by-case basis.*

**NSPW Response:**

Comment noted.

**WDNR License Condition Comment 6:**

*The Department is the lead state agency for management of the state's public waters. We request that all the management plans require NSPW to consult with the Department as part of the development and implementation of the plans.*

**NSPW Response:**

It is standard practice for the state resource agency (i.e., WDNR) to be involved in the development of plans that may affect natural resources. However, NSPW is concerned having the WDNR involved in plan implementation, for if it is not properly worded in the license, it could result in greater authority for them to modify or develop a plan beyond what is authorized in the license.

**WDNR License Condition Comment 7:**

*Additionally, in 2016 the Department initiated a statewide large river biological assessment project. This project includes field evaluations and data analysis. The information collected will be used to develop resource management recommendations for the Chippewa River. The report is expected to be completed in late 2024 or early 2025. We anticipate this report will be a valuable tool to determine potential resource enhancement, protection, and restoration strategies to manage the Chippewa River.*

**NSPW Response:**

NSPW is unable to comment on the biological assessment as it has not been provided with a copy of the report. NSPW has made its concerns known about the results accuracy and improper methodology of the biological assessment for the area downstream of Cornell. Initial comments on the results and methodology were filed with the Commission as part of NSPW's response #6 to License Recommendations filed with the Commission on October 27, 2023—as [Accession #20231027-5155](#). Before results of the assessment can be utilized as a tool for resource management activities on the Chippewa River, NSPW's previously mentioned concerns must first be addressed.

**RAW EA Comment 1:**

*We request an update to the EA to reflect the issuance of the WQC.*

**NSPW Information:**

Please see information provided for WDNR EA Comment 2.

**RAW EA Comment 2:**

*Specifically, we agree that the inclusion of aquatic invasive species surveys and management is important to the long-term health of this system. NSPW included this provision in their final license application, and we request that AIS surveys and management be included in the new license.*

**NSPW Information:**

Please see information provided in response to WDNR License Condition Comment 2.

**RAW EA Comment 3:**

*We further agree with the recommendation regarding reservoir drawdowns that incorporates considerations for native mussels. Minimally the inclusion of a stranded organism rescue protocol and consultations with WDNR to ensure appropriate drawdown timing, duration, and frequency should be a requirement of the new license to ensure the longevity of arguably the most vulnerable river species.*

**NSPW Information:**

No new information is being provided by NSPW.

**RAW EA Comment 4:**

*Climate forecasts indicate that Wisconsin will become warmer and wetter in the coming decades, and we are already experiencing more frequent, intense storm events; in issuing any hydro license that spans multiple decades, resource agencies need to think beyond a snapshot in time of the license renewal and*

*consider the long-term implications of any impacts and how to respond to them as necessary. As such, RAW advocates for resource planning at the basin scale and adaptive management in order to address issues as they emerge. In the spirit of collaboration and the long-term protection of the water resource, we support cooperation between the parties to develop a management approach that holistically evaluates this complex system as we think beyond the end of the settlement agreement in 2033.*

**NSPW Information:**

Adaptive management should not be included in license conditions except where criteria are established at the time of license issuance and there are clear actions that must be taken in the event such criteria are met. Current information regarding climate change is insufficient to either establish criteria or to set specific actions that must occur when the criteria are met. As a result, adaptive management for the purposes of addressing climate change is not appropriate for the new license.

**EPA EA Recommendation 1:**

*Provide an explanation, in plain language, regarding the reserve and reference margin, what those forecasts mean for regional needs, and how the proposed re-licensing will affect the forecasted numbers. This information will provide the reviewer with a better understanding of regional and national electricity needs.*

**NSPW Information:**

No new information is being provided by NSPW.

**EPA EA Recommendation 2:**

*Explain how the notices of intervention and the two motions to intervene were resolved and whether the alternatives and/or analysis in the Draft EA were modified as a result.*

**NSPW Information:**

The WDNR's notice of intervention, filed on August 16, 2023, was not filed in opposition to the Project, but rather to inform the Commission it would file its license terms, conditions and recommendations separately. The United States Department of the Interior (DOI), on behalf of the United States Fish and Wildlife Service and National Park Service, filed a notice of intervention on August 29, 2023. The DOI's notice did not include any comments, was not filed in opposition of the Project, and included a request that it be added to the service list. The WDNR's and DOI's documents can be accessed via [Accession #20230816-5123](#) and [#20230829-5122](#), respectively. The River Alliance of Wisconsin (RAW) filed a motion to intervene on August 30, 2023. Their motion was not filed in opposition of the Project but did include comments. Their motion can be accessed via [Accession #202330830-5094](#).

**EPA EA Recommendation 3:**

*Discuss whether re-license provisions include a timeframe for developing or modifying existing plans and completing enhancements (e.g., enhancements to the east side tailwater fishing access shoreline trail). If timeframes are not specifically mentioned in re-license provisions (e.g., within one year of the re-license being issued), explain how the timeframes to produce plans/enhancements are developed.*

**NSPW Information:**

No new information is being provided by NSPW.

**EPA EA Recommendation 4:**

*Explain whether draft plans and/or modifications to existing plans will be coordinated with resource agencies. For example, developing a lark (sic) sturgeon stranding plan would likely benefit from input from WDNR and USFWS. Clarify whether coordination with relevant resource agencies will be required when the Applicant develops and/or modifies plans as terms of a re-license. Explain whether the Applicant will be required to include comments from relevant resource agencies based on expertise and best professional judgement.*

**NSPW Information:**

No new information is being provided by NSPW.

**EPA EA Recommendation 5:**

*Explain the rationale behind this proposal (e.g., what is the basis for this proposal, how was the amount determined, does WDNR agree with the proposal, etc.). Clarify whether this proposal is for mitigation of past impacts to lake sturgeon caused by Project operation.*

**NSPW Information:**

NSPW's proposal dates back to its February 28, 2022, filing with the Commission ([Accession #20220228-5409](#)), which documents its meeting with WDNR regarding lake sturgeon mortality mitigation. In the filing, NSPW states it has no record of lake sturgeon injured or killed at the Project as a direct result from entrainment and that it was developing a proposal to mitigate for lake sturgeon mortality. On May 18, 2022, NSPW submitted its sturgeon mitigation proposal to the WDNR via e-mail and offered to create a fund of \$340,000 (20% of the probable cost estimate<sup>7</sup> from the Kleinschmidt 2016 report for narrowly spaced bars adjusted for 2022 dollars). The purpose of the proposed fund was to mitigate theoretical lake sturgeon mortality that could occur in the future as there is no data to support that entrainment mortality for lake sturgeon has occurred in the past.

As part of NSPW's good-faith negotiations regarding fish protection, the WDNR, FWS, and RAW were afforded numerous opportunities to provide data demonstrating actual (not theoretical or speculative) adverse impacts to lake sturgeon and other fish due to the operation of the Project. No such data was provided to support their speculative claims. The WDNR, FWS, and RAW were also provided numerous opportunities to specify protection, mitigation, or enhancement measures that have a nexus to the Project, for which the \$340,000 could be utilized. Again, we received no comments. For the reasons stated above, the proposal by NSPW for the \$340,000 that was contingent upon data being uncovered after the license application was filed (if deemed necessary by FERC to mitigate for entrainment-related effects to this species and if in the public interest), cannot be considered a recommendation under Section 10(j) of the Federal Power Act— as it was not recommended (or even acknowledged) by the FWS or other State fish and wildlife agencies (WDNR).

**EPA EA Recommendation 6:**

*Assuming the proposal was made to mitigate a previous impact, explain why issuing a re-license to operate in the same manner would not likely result in a similar impact(s) during the term of the re-license. If the same or similar impact to lake sturgeon occurs during the term of the re-license, explain the rationale for determining whether the Applicant will need to pay for mitigation at a future date.*

**NSPW Information:**

As stated above, no information, other than speculation has been provided establishing a nexus between lake sturgeon entrainment mortality and the current operation of the Project. This is further evidenced in several filings demonstrating NSPW's good faith negotiations with the WDNR beginning shortly after the filing of the FLA and ending January 1, 2023. Please refer to [Accession #'s 20220228-5409](#), [#20220429-5642](#), [#20220701-5431](#), [#20220906-5152](#), [#20221031-5364](#), and [#20230103-5496](#).

**EPA EA Recommendation 7:**

*Explain why FERC, rather than WDNR, decided to remove the Applicant's proposal to provide the sum to WDNR, thereby indicating mitigation is not required.*

---

<sup>7</sup> In late 2022, the WDNR requested and updated cost estimate for updated cost estimate for the installation of 2 to 3-inch clear spaced racks. The updated cost estimate of \$6.5M in 2022 dollars that was provided to the WDNR on December 14, 2022 and was filed with the Commission as part of an update report dated January 3, 2023— [Accession #20230103-5496](#).

**NSPW Information:**

Please see information provided for EPA Recommendations 6 and 7.

**EPA EA Recommendation 8:**

*The Draft EA stated, "... because the nexus between the as-yet unidentified and uncertain measures and project effects or purposes cannot be established, staff is unable to evaluate whether the funding would ultimately provide any project-related benefits." Coordinating with WDNR may provide the specific protection, mitigation, and enhancement measures that would benefit lake sturgeon from the Applicant's proposal. Include the results of coordination with WDNR regarding the Applicant's proposal, specific mitigation and enhancement measures that would be carried out to mitigate a previous impact, and WDNR's conclusions regarding FERC's determination that the amount need not be paid to WDNR. Without consultation with WDNR to determine specific mitigation and enhancement measures, the analysis would be incomplete if a re-license is issued based on the Draft EA.*

**NSPW Information:**

Please see information provided for EPA Recommendations 6 and 7.

**EPA EA Recommendation 9:**

*Coordinate with the relevant resource agencies to discuss specific recommendations, methods, concerns, etc. Gathering this information would provide FERC with a better understanding for the resource agencies concerns/requests before concluding these measures are not justified as re-license provisions.*

**NSPW Information:**

FWS 10(j) recommendations are "boiler plate recommendations." Please refer to [Accession #20240410-5186](#).

**EPA EA Recommendation 10:**

*Acknowledging the devastating impact caused by non-native invasive species, EPA recommends FERC include a provision to develop an invasive species rapid response monitoring program in consultation with WDNR.*

**NSPW Information:**

NSPW conducted studies during relicensing to inventory invasive species within the current Project boundary. The studies did not identify any clear nexus between the operation of the Project and the spread of invasive species. Therefore, there is no information to support EPA's claim the Project is experiencing a "devastating impact caused by non-native invasive species."

**EPA EA Recommendation 11:**

*Address the need for defined parking at the recreational facilities and which entity (e.g., the Applicant, City, etc.) will agree to install gravel parking. Reducing erosion wherever possible is particularly important as precipitation events in the Midwest exhibit increased intensity and frequency, increasing possibility of erosion.*

**NSPW Information:**

No new information is being provided by NSPW.

**EPA EA Recommendation 12:**

*Confirm: (1) the number of wetland acres to be "removed" from the project boundary; and (2) "land removal from project boundary" means a transfer of ownership to the Brunet Island State Park.*

**NSPW Information:**

Table 9.4.1-1 in the FLA lists 142.3 acres of wetland proposed for removal from the project boundary, the majority of which are not owned by NSPW. NSPW is proposing to remove these wetlands, as well as certain uplands, from the project boundary, regardless of ownership, as they are not necessary for project operations. No transfer of fee title ownership of NSPW lands is being proposed.



**EPA EA Recommendation 13:**

*Analyze impacts to state-listed species, if any.*

**NSPW Information:**

No new information is being provided by NSPW.

**EPA EA Recommendation 14:**

*Explain why the Preferred Alternative includes revised seasonal restrictions to remove trees if the Applicant is not proposing to modify Project operations. The Draft EA should analyze the impact of removing trees in the project area and explain the conditions when tree removal might be necessary.*

**NSPW Information:**

Examples of Project activities which could impact NLEB roosting habitat include:

- tree removal to improve or maintain recreation facilities,
- removal of hazard trees from recreational areas,
- removal of trees from Project structures (e.g., embankments) for dam safety maintenance purposes, and
- trimming of trees within road or utility rights-of-way.

**EPA EA Recommendation 15:**

*EPA encourages the Applicant to commit to incorporating applicable mitigation measures from the enclosed Construction Emission Reduction Checklist into the project, wherever possible.*

**NSPW Information:**

NSPW does not understand why this recommendation for the Applicant is included in the EPA's "Recommendations for the final EIS [sic]." Since there are few recreation site enhancements recommended for inclusion in the new license, any diesel emissions associated with improvements at said sites would be de minimis. Therefore, the EPA does not provide a compelling argument for incorporating their recommended mitigation measures in the new license.

Should you have any questions regarding this material, please contact Matthew Miller at 715-737-1353 or [matthew.j.miller@xcelenergy.com](mailto:matthew.j.miller@xcelenergy.com).

Sincerely,

Scott Crotty  
Senior Hydro Operations Manager

CC: Cheryl Laatsch, WDNR  
Alyssa Wethy, NPS  
Allison Werner, RAW  
Krystle McClain, EPA