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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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Sutton Hydroelectric Project : Project No.
: 12693-001-West Virginia
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PUBLIC SCOPING MEETING

Days Hotel Flatwoods
2000 Sutton Lane
Sutton, West Virginia
Tuesday, May 13, 2008

The public hearing, pursuant to notice, convened at 10
a.m. before a Staff Panel:

- TIMOTHY KONNERT, Office of Energy Projects
- MICHAEL SPENCER, Federal Energy Regulatory
Commission
- CAROLYN TEMPLETON, Federal Energy Regulatory
Commission
- KEN KEMP, Brookfield Power
- JIM GIBSON, Devine Tarbell and Associates

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SIGN-IN LIST

Keith Silliam, Brookfield
Tim Banta, Devine Tarbell and Associates
Tina Woodward, Devine Tarbell and Associates
Ken Halstead, Corps of Engineers, Huntington, WV
Amanda Dethman, Corps of Engineers, Planning
David K. Eskridge, Corps of Engineers, Sutton Dam
Kerry Bledsoe, WV DNR
Cindy Rank, West Virginia Highlands Conservancy
Bert Pierce, citizen
Bill Hopen, Delegate, Sutton
Gabriel Hopen, citizen

1 P R O C E E D I N G S

2 MR. KONNERT: All right, we're going to start the
3 meeting for this morning.

4 First of all, I'd like to welcome you to today's
5 Federal Energy Regulatory Commission Scoping Meeting, Public
6 Scoping Meeting for the licensing of the proposed Sutton
7 Hydro Project. I see some familiar faces from last night.
8 Hopefully this will go just as smoothly.

9 My name is Tim Konnert. I'm a fish biologist at
10 FERC, I'll also be the FERC project coordinator and aquatics
11 resource specialist for the licensing proceeding. I have
12 two other team members here with me today from FERC; Mice
13 Spencer, who is our civil engineer, and he'll be handling
14 the developmental resource issues. I also have Carolyn
15 Templeton, who will be our terrestrial, cultural, recreation
16 and land use specialist.

17 I'm going to give you a brief introduction today,
18 then I'm going to go over our licensing process for FERC;
19 and then some of the purposes behind our scoping. I'm going
20 to hand the floor over to Ken and Jim to give a little
21 background on the applicant, and also the project proposal.
22 Then I'm going to discuss some of our preliminary identified
23 issues, potential issues surrounding the licensing of this
24 project; and then discuss our study plan development phase
25 that's coming up, including study request criteria that we

1 have, and also some important dates involved with that.

2 Just to start off, we have a sign-in sheet in the
3 back of the room. Those that haven't signed in, if you
4 could sign in sometime before you leave today it would be
5 helpful. There's also a couple copies of our scoping
6 document that we issued in April for the project; there's
7 some useful information in that as well.

8 We have a court reporter here today who is going
9 to be recording the meeting, putting the transcript up on
10 line, to be put on the record; so any comments you make here
11 today will be put on the record. As such, if you could
12 please clearly state your name and affiliation whenever
13 making any comments, that will help the court reporter.

14 Along with comments made here today, we
15 encourage, if you have any written comments that you'd like
16 to file with us, you can do that either through the mail or
17 electronically, and there's instructions on how to do so on
18 page 12 of the scoping document.

19 Also in the scoping document in the back, we have
20 our mailing list for FERC, our FERC mailing list, and this
21 is a list of recipients that we are currently sending hard
22 copies to any of our issuances to. Please take note of that
23 list. If you're not on that list and you wish to receive
24 hard copies of our issuances, there are instructions on page
25 16 on how to be added to that list.

1 I just want to add also, if you don't want to get
2 hard copy filings but you want to just kind of keep up to
3 date on what's going on in terms of issuances and filings,
4 we also have an on-line service on our web site that allows
5 you to subscribe to a docket, and you will get an e-mail
6 notification telling you that something's been issued or
7 something's been filed regarding that project, and that
8 includes a link directly to the document itself. This is
9 called eSubscription service, and it's at our website at
10 www.FERC.gov under the Filings link. It's called
11 eSubscription, and all you need is the docket number for
12 this proceeding, which is also located on the scoping
13 document. And it is P-12693.

14 All right, to give a brief overview of our
15 licensing process, Sutton Hydro filed their Notice of Intent
16 and Preliminary Application Document with us in February of
17 this year. We then issued our scoping document in April,
18 and we had the scoping last night and this one this morning.
19 We're about to enter the study plan development phase of the
20 process in which stakeholders will have a chance to request
21 studies and also participate in the development of the study
22 plan that will be approved by the Commission. The applicant
23 will then go out, conduct the studies that have been
24 approved, and develop their license application.

25 Once they file their license application with the

1 Commission, the Commission issues are ready for
2 environmental analysis notice, and this is the time in which
3 we solicit interventions from agencies; also gives agencies
4 an opportunity to apply to be a cooperating agency. This is
5 something that was asked of us this morning regarding the
6 Corps' participation.

7 Cooperating agency status is where an agency
8 participates in the development of the environmental
9 document itself, and this is the time in which we solicit
10 any agencies who want to be party to that; this is the time
11 that they let us know.

12 Then we would develop our environmental document,
13 and soon after the Commission would issue a decision on the
14 license.

15 Now under the Federal Power Act, FERC has
16 responsibility to issue licenses for non-federal hydro
17 projects. Under the National Environmental Policy Act, it
18 requires the disclosure of environmental effects of our
19 licensing actions. In this case, the case of Sutton, the
20 Sutton project, we're looking currently at just issuing a
21 single environmental assessment document. That may change
22 based on the information we get from the studies.

23 Now the scoping document gave a brief description
24 of the project and also, as I said, preliminary list of
25 potential issues. This isn't meant to be an exhaustive or

1 final list; it's really a working document, and the main
2 purpose is for today, for last night's meeting and today to
3 be able to have that document so people can comment and add
4 to the list of any issues they see that are not there or any
5 issues that are there that they think are unnecessary.

6 At this time I'm going to hand the floor over to
7 Ken, and then Jim, and then I'll be back to talk a little
8 bit more.

9 MR. KEMP: Good morning, my name is Ken Kemp, I'm
10 a project manager for the Sutton project for Brookfield
11 Renewable Power. Brookfield Renewable Power owns Sutton
12 Hydroelectric, which is the name you see on the PAD. But
13 just to give you a general overview of who we are, what we
14 do so you'll know a little bit about us, our parent company
15 is Brookfield Asset Management, we're a publicly traded
16 company, so that when we do a public outreach we're required
17 to show this, regarding forward-looking statements for stock
18 trades, things of that nature.

19 Brookfield Asset Management is a very large
20 international corporation, about \$95 billion in assets owned
21 and under management, 10,000 employees. Our main business
22 is office and retail space, but what we're here to talk
23 about today is our second largest business, which is
24 renewable power plants. We own 162 of them worldwide, 161
25 of those are hydro plants.

1 Brookfield Renewable Power is owned by Brookfield
2 Asset Management. We focus solely on renewable power.
3 Right now, like I said, we have 161 hydro plants; we have
4 one huge wind farm in Canada, we have about \$13 billion in
5 assets and a thousand employees in North America and Brazil.

6 Here's just a quick summary of exactly where we
7 are. The big highlight is that we operate on 63 different
8 river systems at the present time. This is a breakdown of
9 the hydroelectric plants we currently own and operate. Like
10 I said, there's 161 plants, 100 of those are in the United
11 States. The fourth line is probably the most important to
12 you: We have four plants in the PJM and MISO markets; PJM
13 is the electric grid that serves this area. We have three
14 currently operating in that grid, one is Hawks Nest
15 Hydroelectric in Ansted, West Virginia; the Piney plant on
16 the Clarion River in Clarion, Pennsylvania; and Deep Creek
17 Plant in Deep Creek, Maryland.

18 Brookfield is committed to be a responsible owner
19 and developer of our projects. We like to work with the
20 community, we like to participate in the community.
21 Brookfield has owned hydroelectric plants for a hundred
22 years. Like I said before, we're very proud of the fact
23 that in a hundred years we have never sold a hydroelectric
24 plant; we don't flip them, if we come in we want to be a
25 part of the community, we want to operate that plant.

1 We have extremely high safety standards. Any
2 type of safety incident is investigated to the fullest
3 extent we can do, and we make changes based on every
4 incident, and we like to think of ourselves as environmental
5 responsible; anything that could impact the environment we
6 like to take extreme measures to make sure it doesn't impact
7 -- any of the impacts would be mitigated.

8 And right now I'll turn it over to Jim Gibson.
9 He is with Devine Tarbell and Associates, they're our lead
10 consultant for this project.

11 MR. GIBSON: Thanks, Ken.

12 Good morning. Like Ken said, I'm with Devine
13 Tarbell and Associates, we are out of both Charlotte, North
14 Carolina and out of New York for helping support this
15 project. Having had an opportunity to go to several
16 meetings like this, I think one of the most important
17 aspects of the meeting like this today is, since this is
18 going to be an original license, so the hydroelectric plant
19 does not currently exist, we have not had an opportunity to
20 work with the folks here in this room and other stakeholders
21 previously on this project.

22 So I think it's important today that you get to
23 know some of the folks that you'll be working with over the
24 next three to five years as this project is permitted,
25 licensed, and eventually constructed.

1 Like Ken said, Ken is the project manager for
2 Brookfield Renewable Power; we're going to see Ken on a
3 regular basis. Tim Banta, sitting toward the back there,
4 is with out office out of Charlotte, lead engineer, helping
5 design the project. And then Tina Woodward, sitting up
6 front here, helped put together the Pre Application Document
7 that everybody's had a chance to hopefully review by this
8 point.

9 So for those that were with us yesterday, either
10 at last night's meeting or the site visit yesterday, here's
11 a picture of the dam. A couple things I'd like to point
12 out here. This area here was that area that we stood in.
13 Last night I was talking about where the powerhouse would be
14 located. I think I was a little bit upstream here --
15 actually, the powerhouse would be in that area, right where
16 we stood. And as you can see in some of the drawings here,
17 the penstock comes out a little bit further, and then the
18 discharges are in this area.

19 Something else we should discuss briefly is there
20 was a lot of talk while I'm on site yesterday and a little
21 bit last night about the flows coming out of the plant, and
22 how the flows will be parallel to the dam or perpendicular
23 to the river there. I think there may have been a
24 perception that the flows would come kind of shooting out
25 like we were seeing yesterday, out of these gates. It

1 sounds like the flow coming out would be about 4 cubic feet
2 per second, and that would all be under the water there.
3 Like we talked last night, that the draft tube would be
4 submerged.

5 So the flows we saw yesterday or even the flows
6 you see in this picture, those would still be coming out.
7 What you'd have there is roughly a four foot per second
8 velocity coming out under water here.

9 If you have any more questions about that, I'd be
10 happy to talk about that after the presentation.

11 Previous slide, please.

12 A couple of areas here, for those that were out
13 on the site yesterday, this is our scenario; we met, and
14 then we were up here for a while, looking down at Sutton
15 Lake.

16 Next slide, please.

17 Just some general information about the project,
18 and the general vicinity. For those that were not out there
19 yesterday, to get to the plant or to get to the dam is
20 pretty easy from here; just go out of the hotel and head
21 towards Sutton, drive through the town of Sutton, and there
22 are signs that direct you to the dam.

23 The dam itself -- you see it right here, with
24 Sutton Lake, is about one mile upstream of the town, and
25 roughly 101 miles upstream of the confluence with the

1 Kanawha River. And where that's significant is, we talk
2 about, in the Pre Application Document, about the fisheries
3 and downstream flows. So essentially we're talking about
4 the Elk River here as it flows, and eventually down to the
5 Kanawha.

6 The lake itself, roughly 14 miles long with about
7 40 miles of shoreline.

8 Some basic information about the dam: Built in
9 1961, and the thing I'd like to highlight on this slide,
10 particularly in this first point here, is that it is owned
11 and operated by the Army Corps; it's operated for flood
12 control, water supply, recreation, conservation of fish and
13 wildlife, and pollution abatement.

14 We talked a little bit on site yesterday and we
15 had a little conversation last night about how the
16 operations may change. This will still be the primary
17 directive and mission of the dam. Still be flood control,
18 still provide recreation and water supply. The flows that
19 would come out of the dam will not change. I'm sure we may
20 talk about this a little bit later in questions and answers;
21 but what Brookfield would be doing is operating a
22 hydroelectric plant with the excess water that would be
23 coming from the dam.

24 So you would not see the impoundment fluctuation
25 change, you would not see the downstream flow exchange.

1 Brookfield benefits that this project was
2 licensed bask in 1986. When a license is issued by the
3 Federal Energy Regulatory Commission, you have two years to
4 start construction and then typically four years to complete
5 construction.

6 As you see here, a license was issued in 1986,
7 and by 1989 they terminated the license. And the reason why
8 they terminated the license, because they had not begun
9 construction at that point. So in the preparation of the
10 Pre Application Document, in preparation for the
11 consultation and the work that's going to be done over the
12 next three plus years, we had the opportunity to go back to
13 all this previous consultation, all the previous
14 documentation, and take a look at some of the interest of
15 the local communities, of the state, of the federal
16 agencies.

17 So we are kind of building upon the shoulders of
18 the work that was done leading up to 1986; a lot of that
19 work would have been done prior to '86, and the license was
20 issued then.

21 And then finally, as Tim mentioned, the Notice of
22 Intent and the Pre Application Document came out on February
23 6, 2008. Everyone should have a copy of that. If you don't
24 have a copy and would like a copy, we have a couple extra
25 electronic versions of that with us here today.

1 Next slide.

2 Some basic information about the powerhouse that
3 would be constructed. And if you haven't had a chance yet,
4 I would direct you to either of the two posters on the side
5 here, particularly this one over here will provide some
6 pretty decent layout.

7 A couple things I'd like to point out there, just
8 real briefly. As of right now, Brookfield has not
9 determined if there will be two or three turbines. What
10 they're looking at is a potential minimum flow turbine to
11 address the 75 CFS that will continue to be discharged from
12 the facility. So that's why over on this drawing you see
13 some dashed lines. The other thing worth noting here is you
14 see the penstock take a turn down, and then into the plant.
15 Just for clarification, we just drew the midline. There
16 were some comments about actually connecting the plant; and
17 yes, it goes right down through there.

18 But I would direct you to either of those two
19 poster boards; I think that provides some pretty good
20 information. From some of the views we were at yesterday
21 during the site visit, as well as it shows you some of the
22 conditions during winter conditions and summer conditions,
23 particularly the difference in the impoundment levels.

24 But in terms of what would be built there, first
25 of all an independent multiport intake structure. And the

1 reason why that would be done is to mirror what the Army
2 Corps currently has, in terms of being able to take water
3 from both the upper portions of the impoundment as well as
4 the lower portions. That way you're able to pull from
5 multiple levels there.

6 A single penstock through the dam -- you see that
7 over here as it goes through the dam. We talked last night
8 briefly, somewhat similar to what was done at the Bluestone
9 project in terms of, a question came up last night, have
10 there been examples of where you can core through a dam like
11 that. Ken brought up last night, the Bluestone example.

12 I think it's worth noting here that one of the
13 reasons why this can be done is because this is a concrete
14 gravity dam. If this was a timber crib dam or other types
15 of dams that exist out there, you could not do that. But in
16 this case, because it's a concrete gravity dam, it's more
17 conducive to that kind of construction.

18 The penstock will then lead to the powerhouse;
19 once again, right now we're looking at a difference of
20 either two or three turbines. Kind of like with the studies
21 and kind of like with the process we're going to be going
22 through over the next year to two years, there's going to be
23 more finalization of construction drawings and plans, and as
24 I said, just still kind of ironing to if it's better to put
25 two or three turbines in.

1 There will be a concrete powerhouse, and as we
2 discussed yesterday out on side, that will essentially be
3 below ground. So I think this shows it pretty well, that
4 you won't have a building up next to the dam, but you'll
5 have something underground there.

6 Then finally, the switchover to the transmission
7 line, and you can see the transmission line over here on
8 this board. The transmission line will run uphill and then
9 connect with an existing line at an interconnect point; and
10 like Ken said, through Allegheny Power, which is part of the
11 grid that the Pennsylvania, Jersey, Maryland -- PJM
12 Interconnect.

13 Next slide.

14 These next two slides are consistent with the
15 boards; they just don't have the pictures on them. And once
16 again, what you see here is, see a little bit of distance
17 here between the dam and where the proposed powerhouse would
18 be, you've got the penstock coming through -- once again,
19 you see these dashed lines here, because it's either two or
20 three turbines. I see the downstream fishing area, which
21 currently exists, and then you have the Elk River and Lake
22 Sutton there.

23 This once again is similar to the general plan
24 and section that's over here to the right. I think one
25 thing worth noting here is once again, this is the multiport

1 intake that would exist; and once again, the reason why
2 that's being done is Brookfield had the opportunity to look
3 back at that consultation that was done back in the
4 Eighties, and particularly with dissolved oxygen, and the
5 way the lake is managed.

6 Building something like this is much more
7 expensive than building a single intake, but that's being
8 done in order to account for some of those interests and
9 concerns that were discovered while reviewing what was done
10 in the Eighties.

11 Last slide here, you're going to hear a lot of
12 talk -- I know Tim talked a little bit about it over the
13 course of the next two months, four months, what's going to
14 be happening over the course of the remainder of the year.
15 And one of the primary activities, as we continue through
16 2008 is to define those studies to be done in order to
17 better understand the project and eventually develop a
18 license application that will be filed with the FERC.

19 I keep going back to the work that was done in
20 the Eighties. Once again, it's nice that all this exists,
21 that in the Eighties these were the areas of most interest
22 and these were the areas that studies were defined for.

23 So what Brookfield has done at this point is kind
24 of a springboard to these discussion, as we get into the
25 next couple months of looking at what studies are to be

1 performed. Brookfield, right off the bat, are taking a look
2 at those study areas. And as of now, they're looking to
3 propose a study concept similar to that that was proposed
4 back in the Eighties; and that is a very concentrated year
5 of studies -- so at this point the way that the calendar
6 year moves along, it will be probably 2009 that there be
7 this very concentrated study effort. After that study
8 effort is done and the license is issued, there will be more
9 monitoring and evaluations after the license is issued, and
10 then after construction.

11 One of the challenges with a nonexisting plant
12 versus say an existing plant is you typically do baseline
13 today over the course of the next year when the plant isn't
14 there, and then once the plant is built you do more studies.
15 So we don't have a plant currently to look at to collect
16 data on; the idea is to do the baseline studies and then
17 more evaluation post-construction.

18 So I'm sure we'll talk about that more either
19 today or talk about that more as we move into the next
20 couple months of the final studies.

21 That's my last slide, and afterwards if anybody
22 has any questions, I'll be happy to answer those. Thank
23 you.

24 MR. KONNERT: Thanks, Jim.

25 Hopefully you've all had a chance to look over

1 our scoping document at some point. As I mentioned before,
2 it has a list of our preliminary identified issues,
3 potential issues surrounding the project. I'm not going to
4 go over that bulleted list right now in this presentation;
5 but just to give you an overview, we identified issues
6 pertaining to aquatic, terrestrial, T&E species, recreation
7 and land use, cultural and developmental resources.

8 Now we're entering the stage, the study plan
9 development phase of the process, as we've mentioned; and
10 that means you're going to have the opportunity,
11 stakeholders are going to have the opportunity to request
12 studies for the applicant to do over the next year or two of
13 study seasons.

14 The Commission has developed study request
15 criteria for the study requests, and the purpose of these
16 are really to make sure that the goals of the study are
17 clearly defined. Also helps throughout development in terms
18 of the study plan games, makes discussions regarding the
19 requests much easier and smoother to go over.

20 I'll touch on the criteria here. They're pretty
21 straightforward. First is, identify the study goals and
22 objectives. Consider resource management goals; this is
23 geared more toward the agencies. Consider public interest,
24 consider existing information. One of the most important
25 ones is the next one, which is: Show the nexus to project

1 operations and effects.

2 When it gets the time to approve the study plan,
3 that's probably one of the biggest criteria that defines
4 whether it's going to be approved or not; so you have to
5 show there is actual connection between what we're looking
6 to study and what the effects, potential effects of the
7 proposed project might be.

8 The next is methodology and whether it's
9 consistent with accepted practices; and the last is
10 consideration of level of effort and cost, and why
11 alternative studies would not suffice, if Sutton Hydro
12 proposed to study. Looking at similar, collecting similar
13 type information you think your methodology is better,
14 that's where you would explain that.

15 Now something that I didn't mention before that I
16 should have, when talking about the scoping document. We do
17 have in the very back of it our process plan for this
18 licensing proceeding, and that lays out all of the
19 milestones from now until when the application is filed;
20 exactly when those dates fall, so you know when to expect
21 when you would -- if you want to participate.

22 I'm going to go over some of the important dates
23 dealing specifically with study plan development. Upcoming,
24 along with your comments on the Pre Application Document and
25 our Scoping Document, you will be asked to file any study

1 requests that you may have, and this will be due to the
2 Commission by June 5th, 2008. Sutton Hydro will then take
3 those requested studies and comments, and they will file a
4 proposed study plan on July 20th, 2008, after which they're
5 going to hold -- they're required to hold at least one study
6 plan meeting, more often than not we see applicants holding
7 multiple meetings; that just depends on the number of
8 studies that are going to be conducted, the number of issues
9 in terms of what needs to be hashed out to finalize a study
10 plan.

11 But the first study needs to take place by or on
12 August 19th. There's a 90-day period there to hold the
13 meetings and discuss the issues. Sutton Hydro will then
14 file their revised study plan on November 17th, and the
15 Commission will issue a study plan determination on December
16 17th, 2008.

17 All right, I'm going to open up the floor. If
18 anybody has any questions or comments or statements, feel
19 free to do so. I just asked, as I mentioned before, just
20 clearly state your name and affiliation so the court
21 reporter can apply your comments appropriately.

22 We're going try to use the microphone; I know we
23 can all hear each other, but it's so the court reporter can
24 hear us better.

25 MR. HOPEN: Hi, I'm Bill Hopen, and I'm a citizen

1 of Sutton. I have I guess three comments. First, briefly,
2 in this world with the North Pole ice cap leaving us in
3 maybe five or ten years and global warming upon us, I'm
4 very, very pleased that we're going to harvest the energy
5 that's passing through this dam and make electricity with no
6 carbon impact at all; and that's the first thing I wanted to
7 say. You know, bless you guys and your work, and I hope
8 the project goes through. That is the right thing to do.

9 The second concern I have, which I believe is
10 going to be addressed, is that the things that we have at
11 Sutton Dam such as ample opportunity for fishermen to fish
12 and good oxygenation of the water for the fish to grow, that
13 seems to be addressed, and I'm happy of that, that that's an
14 area of sensitivity as this project goes forward.

15 The third comment I have, I would like to look at
16 the economic activity that's going on in this project. I've
17 had neighbors that I've known over the decades I've lived
18 here who lost their lands to the Corps of Engineers project.
19 It was an eminent domain flood control project, and
20 nonetheless they lost beautiful, multi-hundred-acre farms on
21 the banks of the Elk for \$15 an acre. But that sacrifice
22 was decided to be made because, for the greater good of
23 flood control.

24 But you cannot look past the people who live
25 here, who have this land, and whose resource, some of it is

1 the forest, some of it is the farmland, some of it is the
2 water that falls upon this area and passes through. And I
3 don't know exactly how much -- I don't think any of you do,
4 the building of this project would be; let's say it's
5 somewhere a million and twenty million dollars, I don't
6 know, you know -- but that's a considerable amount of
7 economic activity.

8 When you consider the wealth, the value of the
9 energy that's going to be passing through, a little less
10 than 10 megawatts, I don't know what that's going to be
11 wholesale, but it could easily be a thousand bucks an hour,
12 24/7. And that adds up over the years.

13 So knowing, taking a look at this economic
14 activity that's going to take place in this land, I just
15 want to ask that the people of Braxton County and Webster
16 county, the surrounding area benefit in some way from that
17 economic activity, either in the management of the facility,
18 in the construction of the facility; and I would like to I
19 guess request if there is any sort of -- when it comes time
20 to build this thing, whether the contractor or the
21 engineering firms, the operating firms would have some sort
22 of -- I don't know, a mandate or a suggestion that a certain
23 amount of the project's wealth be distributed and offered to
24 construction workers or management people from West
25 Virginia; that it not be just something that comes in from

1 the outside and occurs here. And like so many of the
2 resources of this land, the wealth of all of that leaves the
3 area; we just get to watch it occur here. So I guess that's
4 my point.

5 MR. BLEDSOE: My name is Kerry Bledsoe. I'm
6 charged with hydropower coordination for the West Virginia
7 Division of Natural Resources. Our agency also operates
8 with a memorandum of understanding with the Department of
9 Environmental Protection, which is a regulatory agency that
10 has authority over 401 certification. And I have to make
11 something of a disclaimer statement.

12 Our official comments for our agency will be
13 provided in writing by the June 5th deadline, so my comments
14 today are not to be considered the official comments of the
15 Division of Natural Resources.

16 First of all, regarding the water quality issue -
17 - well, I'll just say this: We concur with all of the study
18 requests that have been proposed, and I'm going to go over
19 each one of those, except to say regarding water quality,
20 the issue of dissolved oxygen and temperature and how it
21 relates to the 401 certification. In order to obtain a 401
22 certification, there is an application process with the
23 Department of Environmental Protection that will need to be
24 made before we can process those issues.

25 As a general rule, there are two 401

1 certifications that will be required; one for the FERC
2 license, and one from the Corps of Engineers for the
3 placement of fill under the waters of the United States.
4 And if you want to try to do that at the same time, you'll
5 have to discuss that with DEP. There is, I believe, a
6 process whereby you can obtain certification for both of
7 those at one time, but it may be that you'll have to apply
8 for two separate applications for each of those processes.

9 In addition to the study requests that you have
10 already made proposals on and that we will comment on in our
11 letter, I would also like to make a recommendation that a
12 consideration be made for a flow study, an in-stream flow
13 study. I do appreciate the comments that were made earlier
14 about the amount of discharge and the velocity from the
15 plant, but at this time, not knowing any more than we do, I
16 believe that either a details one-dimensional or possibly a
17 two-dimensional study be conducted so that in the event that
18 there is impacts to the existing fishermen angler recreation
19 facilities, we would be in a much better position to know
20 how to mitigate for those impacts, and we could also
21 identify impacts to the aquatic resources downstream with a
22 study of that nature. Again, we'll provide more details in
23 our written comments regarding that.

24 I don't believe there was any mention about the
25 transmission line. We would like to see a development plan

1 that will evaluate and consider any adverse impacts to
2 wildlife habitat along the transmission line, and we would
3 also appreciate a plan that would address disposal of
4 dredged material, how it will be placed and where it will be
5 placed, and the fact that it would not adversely impact
6 wetlands or terrestrial habitat.

7 We would also like to see -- we have read in the
8 Pre Application Document about the run of the river
9 operational mode; we would also like to have more detail on
10 what that operation would actually entail, if there will be
11 variations in the lake level we would like to know that
12 under the current project.

13 And one other item, you know this license, if
14 issued, could be for as long as fifty years. And so in your
15 consideration for a low flow turbine, currently you report
16 75 CFS as the low flow from the dam; however, that was based
17 on a 7Q10 calculation, and there's an abundant amount of
18 information available today that the 7Q10 does not protect
19 aquatic life; it was really put into place for the purposes
20 of water quality permitting, it was never intended to
21 address aquatic life.

22 So I'm not saying that the DNR is going to
23 approach the Corps on that issue, but it's conceivable
24 within the life of this license we could request a higher
25 base flow. So if you're putting in a third turbine, it will

1 only operate at 75, we might want to have a discussion about
2 that in more detail.

3 Other than the studies that you've already
4 announced, I think that's all the comments I have. And
5 again, we will provide detailed written comments by the
6 deadline.

7 MR. KONNERT: All right, thank you.

8 MS. RANK: My name is Cindy Rank, I'm with the
9 West Virginia Highlands Conservancy, and I don't have quite
10 as elaborate a preparation as Bill Hopen or Kerry had. But
11 my questions go to what we talked about yesterday, and I
12 perhaps can add to it as we continue to discuss today.

13 I'm concerned about representative, similar
14 situations where a dam of this size or a facility of this
15 size is located as close in proximity to businesses and town
16 as this one will be to the timber yard and to the PSD and to
17 the B&B and to the Town of Sutton, so that we can see if
18 there's a similarity or we can draw any similarities about
19 impacts that we don't know about or haven't really
20 considered in the PAD.

21 I did have a chance to look at the website very
22 briefly, but I don't see any pictures of anything this small
23 or located very close to a town as close as this is. So I
24 would hope that in the process, you all can share with us
25 some situations that are similar in nature to this one, and

1 what might have been impacts.

2 I also continue to be confused, and Tim has tried
3 to explain it to me on several occasions, about the impact
4 on the fishing in terms of whether or not the discharge from
5 the facility comes out perpendicular, or a 45 degree angle,
6 which I think Bert Pierce suggested yesterday at our site
7 visit; how that impacts the fishery right there at the
8 higher space where I've seen people fishing, not necessarily
9 on downstream; whether or not the flow from the facility
10 will be turbulent enough to interrupt the fishing in that
11 area.

12 Others who are more familiar with the fishing and
13 fisheries would understand how better to put that question,
14 but I hope that will be discussed more as you get down the
15 line.

16 Also, I have a concern that similar to Kerry's, I
17 guess, about the transmission line. We don't have any
18 pictures of that or any location of homes. I know it goes
19 through the wildlife area, and certainly Kerry's concerns
20 should be addressed about the habitat; but also beyond that,
21 I think there are a few homes beyond that that might be
22 impacted, or property owners who should be alerted to the
23 fact that it's planned that the power line is to be widened
24 or at least presumably to be widened, depending upon your
25 discussions with PJM Wednesday, I think it was, someone

1 said. And I think those people should certainly be alerted
2 to the fact that this is going on, perhaps more specifically
3 than the generalized alerts that were sent out, or notices
4 that were sent out earlier.

5 Also, originally when someone was speaking
6 earlier -- and I'm sorry, I don't remember which of you had
7 said that -- you had mentioned that you anticipated doing
8 an EA only. And my understanding from the NEPA regulations
9 is that if it were a new facility it would normally be
10 expected to be an Environmental Impact Statement with very
11 few exceptions. Now I see Mike shaking his head No -- and I
12 didn't bring in my NEPA.

13 MR. KONNERT: I'll just say, the difference
14 between an Environmental Impact Statement and an
15 Environmental Assessment has to do with whether we foresee
16 there being a finding of significant impact. So if we think
17 that there is a likelihood that there's going to be no
18 significant impact, and that's when we do an EA, if it looks
19 like there's going to be significant impact -- and this is
20 without -- even with mitigation, there's going to be
21 significant impact, that's when we would do an EIS.

22 As I said before, a lot of this is based off of
23 what we found out from the studies, because that's really
24 going to define, what are the impacts going to be? We don't
25 know yet. So there is the chance that there would be an

1 EIS, but they would have to be showing that there would be,
2 most likelihood there would be a significant impact with the
3 mitigation measures.

4 Did I answer it the way you would, Mike?

5 MR. SPENCER: Sure.

6 MR. KONNERT: All right.

7 Do you have more questions?

8 MS. RANK: I disagree with that statement, that
9 you and Mike are saying; but I will put that in writing, as
10 well.

11 MR. KONNERT: Okay. Do you have any other --?

12 MS. RANK: No, I'm good.

13 MR. KONNERT: Any other questions?

14 MR. PIERCE: I'm Bert Pierce. I'm here as a
15 stakeholder. Using the public resource of the Elk River and
16 Sutton Dam for financial gains to the company, you're aware
17 that you have an obligation to provide -- and it's been
18 listed up there, the things you will look at -- it does say
19 "consider"; I didn't see "develop" recreational
20 improvements.

21 I'm sure the state will be looking for that, as
22 you use a project. What I'm concerned about is, what is
23 your track record? Do you have some examples of other
24 projects that you've put in since PRBA? Which was a federal
25 act, allowing development of hydropower at existing dams,

1 federal dams by municipalities and companies such as
2 yourself.

3 Other ones that you have put in, and what sort of
4 recreational enhancements, improvements, mitigation you have
5 done at these other states. Since you have some in the New
6 England area, I suspect you may have some that may involve
7 fish passageways across dams; that's not a concern here as
8 far as I'm aware. At least upstream passage isn't.
9 Downstream passage is, as far as fish, do move through the
10 dam into the river below.

11 I'd just like to see, for the public to address,
12 have you guys go through some of the projects that you have,
13 and sort of enhancements and mitigation you have done at
14 those places.

15 MR. KEMP: You're right, we do have a number of
16 them. What was referred to as the Class of '93, in 1993
17 there were -- I don't want to get the number wrong, but
18 there were a number of re-licensings that we did in New York
19 State. It was known as the Class of '93 because that's when
20 all the licenses expired. There was a large group of them.
21 Through our settlement agreements, through our settlement
22 negotiations, we've been doing recreational enhancements, as
23 far as I know, in every one of those sites.

24 It ranges from small trails to our School Street
25 site, which is a 40-plus megawatt facility. There's a

1 couple million dollars in recreational enhancements, because
2 it's a historic resource under the falls there. Our Piney
3 Plant in the PJM market is right now, the recreation plan is
4 under FERC review; the settlement agreement came late on
5 that one, but we're committed to a huge improvement and a
6 huge fund at the Piney Brook station to do recreational
7 enhancements. Different places don't even have any; it just
8 depends on what the local community wants, if they want the
9 enhancements in the impoundment, like we discussed last
10 night; if they want an impoundment there's different groups
11 that are going to be pulling different directions, but we
12 want to get everybody together and figure out what's best.
13 We're planning on that here, too.

14 In a public forum, we'd be more than happy to
15 bring out some of the photos and things like that and show
16 you exactly what's been done at some of the other
17 facilities.

18 MR. HOPEN: I have a short question, if you could
19 respond to that. Is there written into law, or is it just
20 the understanding that when you come into an area you should
21 give back to that area, perhaps improve it economically or
22 recreationally from where it is, or is it just to study what
23 kind of damage or impact might occur, and then you're going
24 to mitigate that or make up for it.

25 Is there an idea written into the development of

1 a resource that you should, as payment for accessing that
2 resource to the local community, improve the recreational
3 environment around your installation?

4 MR. KEMP: To be honest, as far as mitigation for
5 impacts that you have, that's a given that they will be,
6 they have to be mitigated; the FERC, DNR, everyone will make
7 sure that that happens.

8 As far as coming into the community and giving
9 back to the community, we want to be part of the community.
10 Is it a law? I don't know. Is it our company policy? Yes,
11 it is. We come into the community, we want to make it
12 better, we want to be part of the community. We don't want
13 to come in and just suck, as you were taking, take energy
14 and send it someplace else. We want to be part of the
15 community, we want to make it better.

16 The Mayor of Sutton was here last night, we
17 discussed it with him, exactly what they were looking at.
18 There will be a recreation plan, and everyone will have a
19 chance to comment on that and see what they'd like
20 developed. The fishermen will have different ideas, the
21 town itself is looking for a riverwalk, things like that.
22 All those will be incorporated as best we can into that
23 plan. But it is a company policy. We knew coming in there
24 will be enhancements to the community, that's a given.

25 MR. KONNERT: I'd also just like to add to that

1 real quickly, one of the big differences between this
2 project, projects at Corps dams and our regular projects, is
3 that through our licensing proceeding, the only thing under
4 our jurisdiction regarding this proposed project is the
5 actual project works. In most other projects the dam is
6 owned by the company that is running the project, and
7 therefore we include, they're in charge of the reservoir,
8 they're also in charge of some extent downstream of the dam.

9 In this case we're limited to the project works.
10 That doesn't mean that Sutton Hydro is not going to be able
11 to do recreation improvements and such. I just wanted to
12 clarify that under our jurisdiction, and what we can make
13 them do, we're a little bit more limited in this instance,
14 because this is actually a Corps facility that they're
15 using, and so our jurisdiction is a little bit more limited
16 there. I just wanted to clarify.

17 MR. HOPEN: That doesn't change our stance.

18 MR. KONNERT: Right, and I'm not speaking for
19 them regarding what will happen; I just wanted to --.

20 MS. RANK: Tim, you all talked a little bit
21 yesterday, but maybe you could explain again how the
22 operation will actually take place? I know the PAD talks
23 about someplace, a computerized operation of the dam. And
24 also some of these things are manual, or at least the
25 opportunity for manual, and then the coordination with the

1 Corps and the dam itself, how that will all take place.

2 MR. KEMP: Like we said before, the operation of
3 the way the water comes out of the dam, the amount of water
4 coming out of the dam is the same, and the releases are
5 under the jurisdiction of the Corps; they would be calling
6 us daily and saying "Tomorrow you're going to release this
7 much at this time, this much at that time" and that's how
8 the flows will be released. The Corps is still in charge of
9 how much water comes out of the dam.

10 As far as the operation of our plant, that's in
11 discussion with the Corps; what I'm hearing from them is,
12 there will be the capability of being remotely operated, but
13 it's going to be discussed with the Corps as to whether
14 there's someone there full time or how exactly that's going
15 to be done. If nothing else, there will at least be someone
16 from this area that will be here, available for on call if
17 anything happens at the plant, and they are to be there
18 within 20 minutes; that's a standard policy.

19 Do you have more to ask?

20 MS. RANK: No; that's still being worked out as
21 to the specifics, the details.

22 MR. KEMP: Yes. We're very early in stage right
23 now, and there's going to be a lot of discussions with the
24 Corps, because it's their dam and they have a mandate to
25 operate it; we can't change that. But they also have ideas

1 on how they want the plant run, and staffed; so we will be
2 working with them on that.

3 MS. RANK: Also, with the water plant so close
4 downstream, I know in West Virginia we have 98 standards
5 that are important for the water plant. I would hope that
6 in the studies that that's focused on a good bit, since the
7 withdrawal will be perhaps a little different; the whole
8 chemistry may change in the process.

9 MR. KEMP: We're actually working with the Corps
10 now, trying to figure out where the best levels are for us
11 to put our intakes and what the best mixing is. There's a
12 gentleman from the water plant last night, had a lot of
13 questions for us; and we started discussing with them
14 exactly what they're going to do, as well.

15 MS. DETHMAN: My name is Amanda Dethman, spelled
16 D-e-t-h-m-a-n. I'm with the U.S. Army Corps of Engineers in
17 Planning, and we would be involved obviously as a
18 landholder, reviewing the many effects of the environment on
19 our property.

20 I also represent, on a sidebar, our regulatory
21 office, which would be involved with Section 404 of the
22 Clean Water Act.

23 Two comments I have on the planning side of
24 things, in terms of studies that you guys have proposed; one
25 is that you coordinate your cultural resource studies with

1 our district archaeologist. We have a no-collection policy
2 on our property, so there are several issues that you'll
3 need to coordinate with him.

4 And the other is the possibility of doing a
5 limited phase one, hazardous, toxic and radioactive waste,
6 HTRW, literature review, just to do like a baseline lit
7 survey of the area.

8 MR. HOPEN: My name is Gabriel Hopen, I'm also a
9 resident of Sutton. I enjoy the river, I think it's
10 beautiful; however, I think it's a lot more beautiful
11 upstream than downstream.

12 I have a good feeling about what you guys are
13 doing; I think the water's going to stay clean, I think it's
14 going to have oxygen and all that. I'm wondering if
15 downstream pollution could somehow make you guys look bad
16 with this. Someone's going to blame somebody else for what
17 you're doing, you know; someone's going to blame you for
18 what someone else is doing. And perhaps it might be in
19 everybody's best interest, maybe you can help apply pressure
20 to clean up the river and discourage illegal pollution.
21 That's about it.

22 MR. KONNERT: Are there any other questions,
23 comments, statements?

24 Go ahead.

25 MR. HALSTEAD: I'm Ken Halstead, Hydropower

1 Coordinator for the Huntington District, Corps of Engineers.
2 I'd like to just mention something about water quality
3 that's been discussed here.

4 We have basically two different levels that we
5 can draw from for water quality purposes, mixing and
6 temperature and that sort of thing. I'm not in depth
7 knowledgeable enough to explain all those things, but we
8 have water quality folks who handle that process.

9 What Brookfield is looking at is the potential
10 for an intermediate level between our high level and low
11 level intakes; and if things work out, structural stability
12 and economics and all those things work out, they may be
13 able to provide an opening for an intermediate level, which
14 will even further improve the capability to address
15 downstream water quality.

16 I mentioned this to our water quality guy, and
17 his eyes lit up, it was like Christmas in February that he's
18 getting another facility to be able to help address
19 downstream water quality.

20 MS. RANK: Opening the dam itself?

21 MR. HALSTEAD: Not in the dam itself; it would be
22 in their intake. They would provide actually two, probably
23 about the same levels as our intakes, and then maybe a third
24 one in between, which would provide even greater flexibility
25 for water quality discharges.

1 MR. KONNERT: Any more comments?

2 All right. Well, if you think of any later on,
3 like I said, there's a period here to provide comments. You
4 can always provide comments no matter what, in terms of
5 dates for milestones; we always do consider them. But
6 upcoming milestone, again June 5th is when study requests
7 and comments on the PAD and scoping document will be due.

8 If there are no further comments, this meeting is
9 adjourned. Thank you very much.

10 (Whereupon, at 10:56 a.m., the meeting
11 concluded.)

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