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PARTICIPANTS

ELIZABETH N. MOLLOY - FERC

EMILY J. CARTER - FERC

JEFF C. WRIGHT - FERC

SENECA NATION TRIBAL COUNCILORS

ROBERT ODAWI PORTER - President

BRADLEY G. JOHN - Treasurer

TODD L. GATES

DARLENE MILLER

LLONA LEROY

AL E. GEORGE

DARRYL M. JOHN

1           MR. PORTER: Thank you all. Nya:weh sgeno.  
2 Welcome. I'm thankful that you're well. I'm  
3 Robert Odawi Porter. I'm the president of the  
4 Seneca Nation Indians. I'd like to introduce our  
5 team who are here today.

6           This is our Treasurer, Brad John. Council  
7 members, Darlene Miller, Llona Leroy and Al George,  
8 who also serves as chairman for our licensing  
9 commission. On the left I have Darryl John,  
10 councilor; and Todd Gates, councilor.

11           I want to thank you for coming. And for  
12 purposes of the record, I guess if everybody  
13 introduced themselves right now, is that helpful?  
14 Why don't we do that.

15           MS. MOLLOY: Hi, I'm Liz Molloy, tribal  
16 liaison for FERC. I also work in the office of  
17 general counsel.

18           MR. WRIGHT: I am Jeff Wright. I'm the  
19 director of the office of energy projects of FERC  
20 that's responsible for the licensing, among other  
21 things, such as hydroelectric projects.

22           MS. CARTER: I'm Emily Carter. I'm in the  
23 division of hydropower licensing which is the  
24 office of energy power at FERC, and I'm an  
25 environmental biologist working on the technical

1 review team for the considering of licensing.

2 MR. PORTER: Thank you for coming.

3 And what I would like to do is hand it over  
4 to our treasurer, Brad John, who will open our  
5 meeting in the traditional fashion called  
6 Gano:nyo:k or Thanksgiving address.

7 MR. JOHN: Thank you.

8 (Seneca Nation Thanksgiving address.)

9 MR. PORTER: Welcome everyone. Today we  
10 have, thankfully, the opportunity to interact with  
11 representatives of the United States on behalf of  
12 the Nation. And what I'd like to do first is to  
13 share some background and history of our Nation for  
14 purposes of informing our consultation, and I think  
15 that in our case we would like to go back to the  
16 very beginning in terms of our relationship.

17 You know, I wanted to share with you that  
18 this is a form of government that has been in  
19 existence since 1848. The Seneca Nation  
20 Constitution was adopted in 1848. But before that  
21 we -- our governance itself, of course, was what  
22 was referred to as the Great Law in which it  
23 instilled the application for the other nations of  
24 our historic six nations of the Haudenosaunee,  
25 People of the Longhouse. That original

1 understanding of governance, you know, really  
2 informs even what we do today. You know, we're  
3 sitting here in our council chambers amongst our  
4 symbol of that organic original government for us.

5 The clan that you see in the stained glass  
6 behind us, that the clan served as a foundation for  
7 family and structure and even legal structure in  
8 terms of the way which through our laws and customs  
9 of governance as well as ceremony we interact with  
10 one another. That continues to the present day in  
11 terms of who we are as a people. It is just one of  
12 the many elements that is a reflection of I think a  
13 very extended historical tradition that forms us  
14 today. Our governing system by virtue of that  
15 foundation was often reflected by what I want to  
16 show you as a very small picture of treaty bells.  
17 And, George, if you can come get this and if you  
18 can share it with them.

19 This is an example of our original five  
20 nations confederacy treaty bell which reflects the  
21 relationship between our Nation, the Cayuga Nation,  
22 the Onondaga Nation, the United Nation and the  
23 Mohawk Nation, and it reflects a symbolic and a  
24 legal alliance of our nations that continue -- even  
25 though we have changed our technical form of

1 government, continues to the present day.

2           These treaty bells, as they're known, serve  
3 as a remembrance device, you know, no differently  
4 than a piece of paper in many ways, you know, in  
5 terms of who we are as a people but also as a  
6 people bound together by our laws and our legal  
7 structures. And what you'll see about that  
8 particular bell is that it evidences the Onondaga  
9 in the middle, sort of the fire keepers, as holding  
10 and reflecting a tree of peace that exist in our  
11 Nation, our confederacy of nations, and then other  
12 nations are aligned in alliance but then it's  
13 open-ended so that any nation, if it agrees to  
14 accept the terms of our peace, can sit under that  
15 tree and live together.

16           Formally only the Tuscaroras which joined  
17 our alliance in the 1720s actually adopted so we  
18 are now referred to in English as the six nations,  
19 but it is the reflection of an ancient agreement  
20 that goes back hundreds and hundreds of years  
21 preceding that, and I thought it would be good to  
22 show you. The real belt is much longer and bigger  
23 but, you know, this is just a nice replica of what  
24 we use today to reflect that.

25           Now, as you know, the relationship between

1       our two people began, you know, many hundreds of  
2       years ago as well and we have over that time period  
3       established protocols and guidelines for that  
4       relationship. One of them that I'd also like to  
5       show you is this belt which is called the Two Row  
6       Wampum Belt or Guswhenta. This is a belt that was  
7       actually entered into between -- as I said, between  
8       the Mohawks and the Dutch in the early 17th  
9       Century. And the content is fairly simple but  
10      important, that it's used to the present day, that  
11      we are two distinct people as reflected by these  
12      two purple lines of beads, and the purpose of which  
13      is to reflect that we are separate, you know, that  
14      we have our Nation and you have your Nation but to  
15      also reflect that we can live together.

16             The original story of this is that we are in  
17      our canoe you are in your ship, we can be in the  
18      same waters, so long as that we don't try to steer  
19      each other's vessel, get into each other's vessel,  
20      we can live together in peace. And then over the  
21      years, you know, it's fair to say that we have had  
22      an awful lot of your people in our vessel. You  
23      know, and so it's a matter now of where sometimes  
24      we have to push back a little bit in terms of  
25      trying to preserve our freedom.

1           But for us it is about our sovereignty, you  
2 know, it is about recognition of our Nation that we  
3 think started in these very early days of  
4 Kanien':keh:a, finding a way to live together in  
5 peace at a time when conflict could have easily  
6 been the hallmark of the entire relationship.

7           Now, one of the things that is historical  
8 that I want to refer to is a copy of Canandaigua  
9 Treaty of 1794 because the treaty relationship  
10 is also, in relation to the United States, a  
11 pivotal -- a pivotal and critical element of our  
12 legal relationship to the present. So, George, can  
13 you share copies with our guests.

14           And I want to take a few minutes to go over  
15 this because it is critically important in just  
16 about everything that we do as a Nation to this  
17 very day. Not really many nations have a treaty  
18 like this and in many ways it's unique, although  
19 there are almost 400 Indian treaties in the United  
20 States.

21           When this treaty was entered into in 1794 --  
22 you know, I'm going to ask you to sort of crawl  
23 back into the bowels of your early American  
24 History, but much is made of the American  
25 Revolution. And the American Revolution was a time

1 of great turmoil, of course for not just the  
2 American people but for our people, in terms of the  
3 conflict that was arising between the American and  
4 the British. And in years that followed that, you  
5 know, over periods of stabilization there was  
6 conflict, but these treaties of peace began to  
7 emerge between our people and the American people.  
8 And by 1794 the critical issue was whether our  
9 nations would be aligned with the native people of  
10 the west for purposes of mounting one sort of final  
11 effort to push back the American settlement into  
12 our land and into the lands of the west.

13 And for reasons that there are many our  
14 leadership made a decision to enter into peace with  
15 the United States, that we would not take up  
16 conflict against those to our west against the  
17 United States and that we work together for  
18 purposes of ensuring the protection and ensuring  
19 the safety of our homelands as well the American  
20 homelands. And so what it said about it is that  
21 when this treaty was entered into it doubled the  
22 size of the American military in terms of putting  
23 our warriors and our people to force with the  
24 American people and the American forces, and which  
25 it became very critical, with the rise of Britain

1 in the War of 1812, in those years of conflict that  
2 we were at peace. And it actually -- specifically  
3 for the first time, the fact that we had our own  
4 people on both sides of the conflict. Because some  
5 of our folks met with Joseph Brant, the Mohawk  
6 leader of Canada, after the American Revolutionary  
7 War. And they maintained their loyalty to the  
8 British and at that time we were in conflict. So,  
9 historically, and I think objectively, if not for  
10 this alliance, this could have been a very  
11 different history in terms of what was going on at  
12 the time, so you'll see that reflected in the  
13 Article I.

14 Article I reflects and I think agrees that  
15 we are in peace, peaceable relations, and that we  
16 negotiated that. It wasn't something we just  
17 offered up. It was agreed to and then was received  
18 because this was a six nations treaty, not just the  
19 Seneca Nation, that we have sections that define  
20 our land.

21 Seneca Nations' lands are defined in Article  
22 III. And it defines that the boundaries -- and  
23 this boundary, it's quite significant. It's most  
24 of Western New York in terms of what's described  
25 here.

1           And if you'll go down here to about the  
2 fifth line from the bottom where it says: And the  
3 United States acknowledges all the land within the  
4 aforementioned boundaries to be the property of the  
5 Seneca Nation; and the United States will never  
6 claim the same, nor disturb that Seneca Nation, nor  
7 any of the six nations or any of their friends  
8 residing thereon and united with them, in the free  
9 use and enjoyment thereof, but it shall remain  
10 theirs until they choose to sell the same to the  
11 people of the United States, who have the right to  
12 purchase. That is a very unique language and you  
13 do not see words like "free use" and "enjoyment" in  
14 any other treaty between the United States and the  
15 Indian nations.

16           And so it acknowledges our boundaries and it  
17 acknowledges a promise made to us by the United  
18 States that our land interests would not be  
19 interfered with and that our sovereignty would be  
20 attached in the language is really, you know,  
21 throughout the rest of the agreement. You'll see,  
22 you know, it's about peace and friendship. It's  
23 about finding ways to make sure that we can live  
24 together in peace.

25           And the most important thing at the time was

1 about our land. It was about our land-base that  
2 kept us together as people and it really, as we all  
3 know, is really the focal point of the comment, you  
4 know, by American entrepreneurs and Governmental  
5 officials to acquire our land.

6 And so we fought wars. We've entered into  
7 peace for it. This was our land for peace deal in  
8 a sense and what we retained would be ours forever  
9 and would not be interfered with. And this last  
10 part of the document, it shall remain ours until we  
11 choose to sell the same to the people of the United  
12 States, who have the right to purchase. If we ever  
13 decided to change our minds in terms of our land,  
14 United States would have that first claim in  
15 relation to the interest of power.

16 There is a long history between there and  
17 the present day and there are many episodes that  
18 have occurred in which it has been challenged. A  
19 real brief one is the city that you drove through  
20 the City of Salamanca. The City of Salamanca is  
21 almost entirely located in our Nation. And the  
22 lands that were entered -- that were leased in the  
23 19th Century continue to be leased today by the  
24 non-Indians who live there. It is, among other  
25 things, a fascinating part of history. It's also a

1 real challenge sometimes in terms of some of our  
2 relations, but we have lived with non-Indians in  
3 our Allegany territory of our Nation for quite a  
4 long time and it is a reflection of this lease  
5 agreement.

6 We have unfortunately not retained all of  
7 our land. You know, there have been a series of  
8 continued pressures and encroachments on us since  
9 1794.

10 And so today we have five territories in  
11 which we exercise Sovereign territory. There's the  
12 Allegany territory; the Cattaraugus territory, just  
13 north of here 35 miles; Buffalo Creek territory,  
14 City of Buffalo, nine acres; the Niagara Falls  
15 territory, 50 acres, and Niagara Falls; and Oil  
16 Spring territory which is 30 miles due east of  
17 here. Those are our five remaining sovereign  
18 territories.

19 The Nation today is there are around 8,000  
20 citizens of our Nation, three-fourth of them live  
21 in or around this territory, here in Western New  
22 York and Pennsylvania.

23 We have -- we have covered in many ways, and  
24 we'll talk about it, the Kinzua era and some of  
25 these damages that occurred to us, but I think what

1 reflects the most significant boundary about it is  
2 land loss; to me, is that it reflected really the  
3 beginning of what I refer to as our property era.  
4 You know, the loss of our land really crippled us,  
5 you know, as a society.

6           You know, as we all know, land among other  
7 things is wealth. You know, our mother earth in  
8 many ways is a source of wealth, it's a source of  
9 food, source of trade goods, source of security.  
10 With the loss of that land over 200 years ago, most  
11 of which occurred in 1797 in one major purchase of  
12 two million acres, we were put into an economic  
13 position of deprivation, a position that lasted for  
14 almost 200 years.

15           Now, we were very small, you know, as a  
16 governing body. As I mentioned, our Constitution  
17 had been in place since 1848 but the council in the  
18 early days would meet annually and, you know, it  
19 eventually evolved, quite a few days, you know --  
20 Now, I can't tell you, I don't know exactly when it  
21 became a monthly meeting, you know, but the  
22 governing activities of our Nation were limited.  
23 Administering the leases in the City of Salamanca,  
24 you know, taking care of the enrollment, if you  
25 will, the acknowledgment of our people and

1 distribution of annuities, you know, that came from  
2 those early treaties that served as a foundation  
3 for economic support at the time when we had no  
4 other money.

5           And so to think the modern parlance of our  
6 government we just didn't have a lot of governing  
7 activity, and as a result by the time that the  
8 process of external forces associated with building  
9 the Kinzua Dam and the reservoir came to us, we  
10 were really in no position to be alert of what was  
11 happening in Washington.

12           We've had allies over the years, such as the  
13 Quakers, friends who have often served as a beacon  
14 for us in our history to keep an eye on what's  
15 happening in the outside government. And we have  
16 had from time to time in our government an  
17 appointed ambassador to go out and find out what  
18 was happening in Washington and Albany in terms of  
19 what the government there was doing, but by no  
20 means was this any kind of effective/useful means  
21 to keep peace with activities as they were  
22 occurring in real time.

23           And what happened with the Kinzua process, a  
24 history that is very extensive and certainly a part  
25 of the historical record, is that we for many

1 decades really had no idea what was happening, you  
2 know, associated with this project. You know, this  
3 was driven by forces, you know, beyond us and, you  
4 know, it was not a matter of our being able to keep  
5 pace with what was happening. You know, we were  
6 unknowing of this.

7           And so when we did find out in the 1950s  
8 that there was this process -- actually I think it  
9 was sooner than that -- that there were efforts  
10 that started to be taken in terms of alerting our  
11 people and starting to impress the government. You  
12 can't take our land. This treaty says, you cannot  
13 take our land. We didn't write this. You know,  
14 this was written by English-speaking Americans and  
15 we understood the terms to be just what they say.  
16 And it served obviously as the foundation for the  
17 legal challenge that occurred between our Nation  
18 and the United States, of course, but at the time  
19 and of course with the history that existed we were  
20 in no position to stop it and we had no ability to  
21 defend ourselves against what was ultimately an  
22 argument pact, you know, taking of our valuable  
23 lands and our way of life and our people.

24           The history is one that -- I've got a copy  
25 of a short film, you know, one that I wanted to

1 share with you, if you've not seen it. I want to  
2 make it part of the record. You know, that covers  
3 actual footage of what happened at the time, called  
4 the Land of Our Ancestors. And it really covers a  
5 lot of the period before the dam was actually up  
6 and running but in which our lands were taken, our  
7 people were relocated, the homes that hundreds of  
8 our people had lived in were burned, that it was an  
9 unbelievable irony, given our treaty history, that  
10 this happened. But there was footage taken of it  
11 and I want you to see that, so I have that for  
12 purposes of your review so that you can understand  
13 the context on which this consultation takes place,  
14 that we are a people of history and we are ones who  
15 don't forget, and while it is not our single  
16 purpose it is an important one as it relates to why  
17 we're here today and what we're trying to do in the  
18 process.

19 So that's a fairly lengthy, you know, sort  
20 of summary introduction, but I wanted to share that  
21 with you as we begin and I certainly want to give  
22 you guys more things to say and others as well, so  
23 I want to turn it over to you as well for sort of  
24 introductory comments and thoughts on this meeting  
25 and continue this dialogue.

1           MR. WRIGHT: Thank you, President Porter.

2           I just wanted to say on behalf of myself,  
3 Liz and Emily, we're honored to be here for the  
4 consultation of the Seneca Nation. We've already  
5 introduced ourselves so you kind of know what our  
6 functions are.

7           I just want to say a couple things from our  
8 Tribal consultation policy. Our consultation does  
9 involve direct contact between agencies and tribes.  
10 We encourage that. And the commission, my  
11 commission endeavors the work with tribes to  
12 address the works of projects through this  
13 consultation.

14           I do note that the Administrative Procedures  
15 Act and the commission's ex parte rules place  
16 some limitations on the consultation in a contested  
17 case; and, if need be, Liz can speak to that.

18           I want to assure, though, that the concerns  
19 and interests are considered -- the Seneca Nation's  
20 concerns and interests will be considered in the  
21 commission's actions and in its decisions, and I  
22 want to note that Liz, as the commission's tribal  
23 liaison, provides a point of contact, a research  
24 for the Seneca Nation.

25           Just briefly I want to give you an idea of

1        what FERC is. FERC is an independent regulatory  
2        agency. It's a neutral, it's a quasi-judicial body  
3        that renders decisions on applications and resolve  
4        issues presented in those applications.

5                That said, it's led, commissioned -- led by  
6        five commissioners. They're on five-year staggered  
7        terms. They're nominated by the president of the  
8        U.S., confirmed by the U.S. senate and the  
9        president is allowed to name the chairman. The  
10       chairman currently is Jon Wellinghoff. He's from  
11       the State of Nevada. No more than three  
12       commissioners can be from any one political party.  
13       Presently we have three democrats, two republicans  
14       that are commissioners.

15               The commission votes on orders. The  
16       majority rules. Those decisions are not subject to  
17       review by the U.S. president or the U.S. congress.  
18       There is rehearing available in our quasi-judicial  
19       agency; and if satisfaction is not achieved through  
20       rehearing of one our orders, it is appealable to  
21       the United States Court of Appeals.

22               Now, speaking more towards my specific  
23       organization, that's the Office of Energy Projects,  
24       we're responsible for the siting of energy projects  
25       under our jurisdiction, that includes natural gas

1 pipelines, natural gas sewers that hide natural  
2 gas, and more pertinent here, non-federal  
3 hydroelectric projects. And speaking non-federal,  
4 these projects are not controlled by a U.S. energy  
5 and marketing arm, the Department of Energy.

6 We operate and we deal with hydroelectric  
7 projects in the auspices of the Federal Power Act  
8 of 1920 and we conduct a thorough review of the  
9 environmental issues under the National  
10 Environmental Policy Act. We work in conjunction  
11 with our colleagues in the office of general  
12 counsel, once we finish our technical review, in  
13 terms of crafting an order that's brought to the  
14 attention of the commissioners for their ultimate  
15 vote.

16 I believe you're probably well-versed in the  
17 procedures that we follow also probably in the ex  
18 parte processes; but I would say, if you did have  
19 any questions on the process or the ex parte legal  
20 side, Emily and Elizabeth here would be glad to  
21 answer any questions.

22 And that concludes my introduction, if you  
23 will, and I turn it back to you.

24 MR. PORTER: Great.

25 Some of the interesting dimensions to what

1 we're doing here is I realize and we're very  
2 mindful of the fact that the process by which our  
3 consultation occurs also at the same time against  
4 the backdrop of the Nation being an applicant for  
5 the license.

6           And the way I would propose that we consider  
7 is that for our Nation we don't have a crystal  
8 ball, we don't know whether we're going to get the  
9 license or not, but what we do know is that there  
10 will be a dam there and there will be a hydro  
11 facility there for many, many years to come, and so  
12 our Nation's interests are broader, you know, than  
13 the successful, you know, application of the  
14 license itself.

15           And there are many things associated with  
16 our ongoing relationship that are critical and  
17 which need to be highlighted for purposes of our  
18 record today and the proceedings to come because we  
19 have to acknowledge and are thankful for this  
20 opportunity to share this with you, protect our  
21 people, our lands, the waters, the animals, the  
22 fishes, the plants and everything associated with  
23 our existence here because we have said this many  
24 times -- more recently than I would have thought --  
25 we're not going anywhere.

1           You know, we have permanent vested interest  
2           in this region of the world and in our lands and  
3           waters because we don't -- unlike, you know, some  
4           American corporation, when times are tough, we  
5           don't just get up and move and go somewhere warmer  
6           and somewhere where labor is cheaper. You know, we  
7           are -- this is our home and everything we have to  
8           do here has to be rooted in that thinking that many  
9           generations from now our children, our  
10          grandchildren, our great children, what will they  
11          have associated with this project.

12           There is no question a degree of bitterness  
13          and anger associated with this process. We have  
14          many, many people, many of our elders, for whom  
15          this is still a very bitter hard reality of what  
16          happened in the taking of our lands and our homes  
17          for purposes of this dam and the construction. And  
18          it's interesting to me, and I'll be honest with you  
19          here, the degree to which a certain  
20          intergenerational anger occurs because I was only  
21          three years old when this happened.

22           And just a few days ago we had our annual  
23          commemoration of remember the removal process and  
24          the history is accounted. And it is quite a sad  
25          day. You know, it is quite an anger-abusive

1 history of what happened, and it is somewhat  
2 surprising, even for all of us who didn't live  
3 through it, that these feelings can be present but  
4 it is something that is also in the past. It is  
5 something that is rooted in the sense that we had  
6 no control over.

7 So we're here today, you know, in what I  
8 think our Nation and our council had approved in  
9 the last several years is an effort to try to make  
10 good on a period of history that wasn't good, and  
11 that's why we invite your agency and  
12 representatives of the United States in furtherance  
13 of our treaty relationship to work with us to  
14 ensure that in the future, you know, that the  
15 injuries are mitigated over time; if not sooner,  
16 rather, maybe later in the process.

17 We're familiar with the laws that govern,  
18 you know, your agency and the requirements you  
19 have, not just with consultation but procedures not  
20 in terms of consultation, and the like. And I  
21 guess in many ways this is not a legal proceeding,  
22 as far as what we're here to do today. You know,  
23 my colleagues who every once in a while will remind  
24 me because I'm a lawyer that, you know, that I can  
25 slip into lawyer talk a little too, you know,

1 easily, but, you know, it's about the bigger  
2 picture of what are we going to do moving forward  
3 in terms of this process of consultation.

4 We think that the treaty relationship that  
5 we have requires us to obviously consult with and  
6 also to protect us, that this is a protective  
7 relationship that is defined by this treaty. And  
8 when we think about our lands and waters, we think  
9 about how you can help us protect those lands and  
10 waters. And in many ways -- I just want to be fair  
11 about this -- this is a message that we shared with  
12 your federal colleagues, the Army Corps of  
13 Engineers, Forest Service, you know, Fish and  
14 Wildlife.

15 We have lived with this dam and reservoir  
16 for almost 50 years. Every day we are affected by  
17 it. You know, we are certainly affected by it when  
18 it rains and the waters ebb and flow. We have had  
19 floods. We have had, you know, distress associated  
20 with this and in many ways we view it as having to  
21 carry the burden of everything associated with this  
22 dam that the downstream from the dam population  
23 doesn't have to carry. We were a sacrificed area  
24 for purposes of American National Policy when this  
25 occurred. And because the reservoir is largely in

1       our territory, you know, acknowledging that there's  
2       a portion in Pennsylvania below our territory to  
3       the south, we have carried the great burden of  
4       this, in terms of our lifestyle and way of life.  
5       It affected us immediately.

6                But over the years we don't know, for  
7       example, what kind of sediments, contaminations  
8       have been flowing down our river into that  
9       reservoir, you know, for last 25 years. We don't  
10      have any idea. To my knowledge it has not been  
11      studied. What has been an impact in every  
12      conceivable way of the dam, the reservoir, on the  
13      fishes and the wildlife, the plant life and the  
14      population of living creatures that are part of our  
15      ecosystem, you know, that we hunt, we fish and we  
16      interact with on a daily basis, we don't know. We  
17      don't have answers to these questions.

18             It's somewhat infuriating, to be honest with  
19      you, that we have to debate and advocate the issues  
20      of the scope of the project, that it seems just  
21      unfathomable that we would have to query whether  
22      the project, the pump storage project is somehow  
23      related to our lands and waters. Of course, they  
24      are. Of course they are. You can't have the  
25      pumped storage facility without water and that

1 water largely backs up in our Nation and is used  
2 for the benefit of a private corporation to  
3 generate millions of dollars a year with a license  
4 granted to it by the United States for which we  
5 receive not a nickel. And so it's a multitude of  
6 injustices that have compounded in our view over  
7 the years that we've carried all these burdens, you  
8 know, we have in every conceivable way, and  
9 absolutely none of the economic benefits.

10 And I want the record to be clear, you know,  
11 it's certainly true that there are recreational  
12 benefits that our people, like others, have  
13 received, in terms of those who have boats and  
14 those who like to fish in deeper waters. But in  
15 the grand scheme of the benefits and burdens,  
16 that's a pittance in relation to what the  
17 beneficiary of the downstream flood control and  
18 water control in certain economic -- pure economic  
19 benefits. You know, we view that as significant  
20 problem.

21 The interesting thing, also, to make note  
22 of, and I just want to sort of draw this together,  
23 that the treaty relationship and the acknowledgment  
24 of our lands was critical during the process during  
25 which these lands were acquired -- excuse me --

1       these waters were acquired by the United States  
2       because what happened, after we retained the title  
3       to our land, the United States obtained the ability  
4       to create a reservoir. But the title to the land  
5       remains ours and I think that's a critically  
6       important point when it comes to needing to  
7       investigate and review what has been the impact of  
8       the dam and the reservoir on our Nation.

9               Some day there won't be a dam there, you  
10       know, I mean, I can only imagine when that would  
11       be, but the land, assuming we're still here, will  
12       be ours. And what's left behind, you know, is not,  
13       I don't believe, a purely theoretical question.  
14       You know, it's about the long-term impact. And I  
15       think these issues about finding out what has been  
16       an impact is directly tied to the scope of the  
17       project. And we have made this a legal question  
18       before your agency. I know that the current  
19       license holder is in opposition to that. And we  
20       don't believe that there is anything other than  
21       inertia that compels the agency to restrict the  
22       scope of the project to a very narrow focus.

23               And so if you want to tell us now that  
24       you're willing to let the scope of the project  
25       expand to include the entirety of our reservoir,

1 that would be great.

2 MS. MOLLOY: Because we are a judicatory  
3 body that is a question that is before the  
4 commission, and so we can say now, whatever hands  
5 it would be in, it is under consideration and it  
6 is -- it's a merit issue I think, so I respectfully  
7 am unable to sort of answer that.

8 And I know you have an awareness that we are  
9 an agency that is created by statutes with certain  
10 limitations we have, certain roles we have to do.  
11 And we try to be as transparent as possible and  
12 have everything on the record, which is why we urge  
13 any comments, continuing comments that you have  
14 regarding that issue or any other issues that you  
15 have be in our record so that we can have it before  
16 us, you know, as other people who may have concerns  
17 or someone will also file so that everyone is aware  
18 of what we're looking at when a decision's made.

19 MR. PORTER: I understand. I understand.

20 I think it's important because of this  
21 pending decision to make clear that again,  
22 regardless of whether the Nation is a successful  
23 license applicant or not, that we view the FERC,  
24 you know, and the United States, as a result of our  
25 treaty, as having a trusting responsibility and

1 being responsible for our Nation, for our people,  
2 for our land and for our water and everything  
3 associated with it. And we believe that your  
4 decision-making must be informed by that treaty and  
5 trust responsibility, that that's what we  
6 negotiated for early on, that we would view and  
7 disregard impact upon our Nation and the use of our  
8 land and water as a breach of trust, that it is an  
9 essential, but for the reality that for our land  
10 and water there would not be a functioning hydro  
11 facility, at least as we know it. And so I think  
12 it's important that we share this with you. That's  
13 how we view this dynamic, that it is a long-term  
14 relationship.

15 We have shared this very similarly with the  
16 other federal agencies, as I have mentioned. It's  
17 been difficult. You know, we were fortunate enough  
18 to meet with the assistant secretary of the Army,  
19 you know, who oversees the Corps of Engineers, and  
20 it was the first real dialogue we had with this  
21 agency since when they came and bulldozed our  
22 homes.

23 It was nonetheless an important meeting  
24 because we understand that the dam, the reservoir,  
25 are going to be there in the future and that we

1       need to have allies all over the United States  
2       because that's what -- that's what we negotiated  
3       for, you know, in 1794, that we would have that  
4       relationship.

5                Just because the treaty was violated when  
6       the dam was created and the land was taken, doesn't  
7       mean that it breaks the treaty. It means that it  
8       continues and, you know, in many ways all it means  
9       is that we have to continue the policy chain of our  
10      friendship because sometimes it does tarnish. And  
11      we're going to do our part and I understand you're  
12      here and, in my view, doing your part on behalf of  
13      the United States to keep that dialogue moving  
14      forward.

15              There have been a few things more recently  
16      and specifically, you know, in terms of this  
17      consultation that I just wanted to make note of, is  
18      that we have been sending you correspondence and we  
19      have been invoking this consultative right with an  
20      irregular degree of response on your part in our  
21      view, that we feel as though we need to be  
22      communicating better in terms of when we send  
23      letters and having responses. It's important, you  
24      know, just to make sure that someone is listening  
25      on the other end. And that is to say you being

1 here isn't a reflection on you not listening  
2 because you are. It's just that as we move forward  
3 we will work with you to sort of address the fact  
4 that we are obviously both an applicant but also an  
5 Indian Nation which your agency has a consultative  
6 role. And so I think that in terms of that  
7 dialogue, you know, we have our own liaisons from  
8 my office, you know, president's office of the  
9 Nation will be the one coordinating the  
10 consultative functions as the need arises, through  
11 correspondence or otherwise we can maintain a good  
12 level of interaction.

13 Our government which is somewhat large. We  
14 have 1,300 government employees. We have about  
15 5,000 employees who work in our gaming and other  
16 businesses. We actually are quite spread out in  
17 terms of our administrative function. And so  
18 while, you know, we do have one Nation, we do have  
19 a licensing commission and they kind of do their  
20 own thing. I mean, they're independently chartered  
21 by the council in many ways like your agency is  
22 independently chartered by congress to create this  
23 autonomy of dependence among a government structure  
24 so they have a job to do.

25 The council has also created Seneca Energy

1       LLC for purposes of receiving the license and  
2       operating the facility, you know, so it's more  
3       business-purpose oriented. And that's another part  
4       of our government that was created by council.

5               But the president's office has been and  
6       always will be, I suspect, the point in our terms  
7       of diplomatic relations with the United States, so  
8       I think through that process we can maintain this  
9       consultative role as it continues to evolve.

10              Am I missing anything? Excuse me one  
11       second.

12              (Seneca council confer off the record.)

13              MR. PORTER: Now, one of the things that, I  
14       guess, as we sort of work towards a close, in terms  
15       of this interaction is, what does the future hold?  
16       You know, one scenario is we can spend a lot of  
17       time thinking about, you know, that we're the  
18       licensee and with that will come the benefits and  
19       the burdens of being the licensee, and we have  
20       given a lot of thought to that and continue to work  
21       our plan for continuing to take control of the  
22       facility.

23              We also contemplated, what if we don't get  
24       it, you know, what happens then. We think that the  
25       new license that is issued must be expressed in

1 relation to the conditions imposed to insure the  
2 passion of our Nation's interest associated with  
3 the operation of the pumped storage project, the  
4 Seneca pumped storage project.

5 It is interesting enough that the original  
6 license define the entirety of the reservoir as  
7 sort of within the project scope but it's some  
8 other sort of FERC or administrative action that  
9 narrows it to something different. And I'm not  
10 sure yet. I know it's relevant to the legal  
11 process, in congruity of that.

12 But obviously going forward, you know, the  
13 very minimum that must occur is that the new  
14 licensee must carry forward the federal  
15 government's trust responsibility as the agent of  
16 the United States for purposes of insuring that we  
17 find our water and our land -- waters that we have  
18 a protection in place for purposes of our people  
19 for the generations and the years to come, that  
20 everything that we have talked about and we have  
21 put forward in the record with our study plan and  
22 the things that we think are important need to be  
23 made a part of that license. Because it isn't just  
24 a harvesting license to generate profits, you know,  
25 from our land and water, you know, it's a trust

1 responsibility, even outside of the Indian law  
2 context, you know, that that is a gift, really, a  
3 present from the United States to the licensee to  
4 generate power for the public interest and to do it  
5 in the way that doesn't hurt the public interest.

6 And I think that when you look at the legal  
7 requirements of what we're asking here, that is we  
8 don't believe it has happened before and it  
9 shouldn't have lasted 50 years, 45 years. It needs  
10 to happen now, that as we move forward, the  
11 conditioning -- the conditions of the licence need  
12 to maintain conditions that are protective of the  
13 Seneca Nation and our future.

14 The ability of the agency to influence the  
15 study plan process is terribly critical to that and  
16 so being able to in its preissuance phase of the  
17 licensing to know what we're dealing with, you  
18 know, to be able to assess with clarity, you know,  
19 maybe it's not as bad as we think it is. Maybe  
20 it's worse. We don't know.

21 It's never been studied. No agency of the  
22 federal government, much less FERC, have ever  
23 studied the full impact of this pump storage  
24 project, the dam and the reservoir, on our Nation.  
25 So if it doesn't happen now, will it ever happen?

1       Are we continuing to be part of a -- sort of a  
2       national sacrifice area for the benefit of others,  
3       you know, and living in total darkness about what  
4       is the full magnitude of this -- full impact of  
5       this facility on our Nation and our people.

6               And so that would be the second primary  
7       request, is that in this process, in these coming  
8       months, a couple years before the license  
9       application is due, that the scope of the project  
10      be defined in a way that the study plans can occur  
11      in as expansive and as comprehensive of a way as we  
12      believe necessary so that we can be informed by  
13      facts and realities and not suspicion and  
14      conjecture about what has happened to us, what is  
15      happening to us associated with this dam and the  
16      pump storage project.

17             Okay. Are there any -- would council like  
18      to add anything in terms of statements or any kind  
19      of response at this point?

20             I think then, with that, I want to thank you  
21      for coming, for hearing us, and that we would  
22      welcome and we'll be available for continued  
23      discussions, you know, in our role as treaty  
24      partners.

25             MR. WRIGHT: And I would like to say that

1       FERC, as you noted, we have a very open transparent  
2       process, and we'll say that we've worked on a lot  
3       of projects at the same time so we will endeavor to  
4       keep the channel of communication open for whenever  
5       you need to speak and communicate with the staff.

6               MR. PORTER:  Very good.  Thank you for  
7       coming.

8               (Proceedings concluded at 10:22 a.m.)

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