



October 1, 2009

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
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Washington, DC 20426

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**Re: Toledo Bend Project, FERC Project No. 2305-020;
Request for Clarification or, Alternatively,
Extension of Time to File Soil Erosion Study Plan**

Dear Secretary Bose:

On August 6, 2009, the Federal Energy Regulatory Commission's (Commission or FERC) issued its study plan determination for the relicensing of the Toledo Bend Project, FERC Project No. 2305 (Project), for which the Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (collectively, Authorities) are co-licensees. In its determination, the Commission adopted a soil erosion study that would require the Authorities to survey the extent of shoreline erosion around the Project reservoir using a methodology generally accepted in the scientific community for identifying and recording areas of erosion, such as Global Positioning Satellites, aerial and/or satellite photography, observations via boat and/or helicopter, or walkover surveys.¹ The Commission's determination required the Authorities to file for Commission approval, within 60 days of the issuance of the study plan determination, a more detailed methodology that outlines the techniques the Authorities will employ to identify and prioritize areas of erosion around the Project reservoir.² The deadline for the Authorities to file the soil erosion methodology as required by the Commission's study plan determination is October 5, 2009.

Following the issuance of the Commission's study plan determination, however, the U.S. Forest Service (USFS) filed a notice of study dispute. Among several other issues, the USFS disputes the Commission's adoption of a soil erosion study that excludes certain elements of the soil erosion study requested by the USFS, including an investigation of the reasons for erosion

¹ Letter from Jeff C. Wright, FERC, to Melvin T. Swoboda, Toledo Bend Project Joint Operations at 11, Project No. 2305-020 (issued Aug. 6, 2009).

² See *id.*

along the reservoir and the use of a predictive spatial model using a methodology prescribed by the USFS to estimate erosion and soil loss, inclusive of ground-truthing for accuracy.³

Because the USFS has sought dispute resolution on the Commission-required soil erosion study, it is possible that, as a result of the dispute resolution process, any soil erosion study ultimately adopted by the Commission could be substantially different than the study required in the Commission's August 6 study plan determination. For this reason, the Authorities believe it would not be reasonable or efficient to develop the required soil erosion study plan by the current October 5 deadline. And while the Commission's regulations clearly require an applicant to begin implementing approved study plans that are not subject to dispute resolution,⁴ the regulations are silent as to whether an applicant's obligation to develop an entirely new study plan required by the Commission's study plan determination is automatically stayed in the event of a dispute resolution process.

Accordingly, the Authorities seek clarification that they need not file a soil erosion study plan by October 5, and that because this study is subject to dispute resolution, the written determination on this matter by the Director of the Office of Energy Projects, following dispute resolution,⁵ will address timing requirements for the filing of any soil erosion study ultimately required. Alternatively, the Authorities respectfully request that the Commission extend the time for the Authorities to submit a detailed methodology for the soil erosion survey, until 45 days after the Director of the Office of Energy Projects issues the written determination required by section 5.14(l) of the Commission's regulations. Although the Commission's study plan determination allowed the Authorities 60 days to file the soil erosion study, the Authorities are confident that they can develop the plan on a shorter timeframe, in an effort to expedite the relicensing study process.

Should there be any questions concerning this request, please contact the undersigned at the address or telephone number provided.

Respectfully submitted,



Charles R. Sensiba
Counsel for Toledo Bend Project Joint Operation

cc: Linda C. Brett, USFS
Jason Engle, USFS

³ See Letter from Linda C. Brett, USFS, to Kimberly D. Bose, FERC, at 4, Project No. 2305-020 (filed Aug. 26, 2009); see also Letter from Linda C. Brett, USFS, to Kimberly D. Bose, FERC, at 3-4, Project No. 2305-020 (filed Sept. 21, 2009).

⁴ See 18 C.F.R. § 5.13(d).

⁵ See *id.* § 5.14(l).