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January 15, 2003

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Clearwater Creek Hydroelectric Project, FERC Project No. 11495 -000

Dear Secretary Salas:

Enclosed for filing in the above referenced proceeding is American Whitewater's MOTION FOR DISMISSAL OF LICENSE APPLICATION. Also enclosed is the Certificate of Service for the above referenced matter. Copies of this filing have been served on all parties of record to this proceeding.

Thank you for your assistance. Please contact me if you have any questions or need additional information.

Sincerely,

John T. Gangemi
Conservation Director

cc: Jeff Shalfant, Whatcom County Shoreline Administrator
Timothy Looney, FERC
Richard Bowers, American Whitewater

than January 10, 2003.³ In its response, Nooksack River Hydro was to provide the following information:

- 1) Estimated timeframe for completion of processing.
- 2) A copy of any correspondence Nooksack River Hydro had with Whatcom County and any response from the county.
- 3) A list of any impediments you foresee to completing processing of your shoreline permit application.
- 4) Your plan for overcoming any impediments (identified in number 3) to completing processing of your shoreline permit application.

On Monday, January 13, 2003, American Whitewater contacted Timothy Looney, FERC Project Manager for the Clearwater and Warm Creek projects, and learned that the Commission has received no response to date from the applicant regarding this permit or the above listed information. **Further, on Friday, January 10th, at 2:06 p.m. PST (5:06 EST), American Whitewater contacted Jeff Shalfant⁴, Whatcom County Shoreline Administrator, who stated that he has never been contacted by Nooksack River Hydro or Balaton Power regarding a possible shoreline permit for this project.** Clearly, the applicant has made no attempt to contact Whatcom County to let alone request a shoreline permit. The applicant is acting in bad faith under the terms of their license application. As such, their applications should be terminated.

II. Common Issues of Fact for each Application

Balaton Power Inc., which owns all of the issued and outstanding securities of Warm Creek Hydro, Inc., and Nooksack River Hydro, Inc.,⁵ appears to be in dire economic health. Project concerns were discussed directly with the Commission on December 10, 2001 in the Hydro Licensing Status Workshop held in Washington DC. At that time, Commissioner Brownell asked, "what it is that motivates you (the applicant) to keep going" (in a project this complex). The company's own concern over "inadequate cash to maintain operations" and the possibility that they "may have to suspend or cease operations" was listed in their 2001 Annual Report. The company's lack of activity on all of these projects, and especially their failure to make a simple phone call to move forward on the Clearwater Shoreline Permit (pending since 1992), indicates that they do not have the resources needed to pursue the requirements of these licenses, let alone complete the projects.

Balaton's economic situation was also a major issue of concern during the recent November 8, 2002 Hydro Licensing Status Workshop also held in Washington, DC. In the transcripts for this meeting, the discussion revolved around Balaton Power's "restructuring," "downsizing," and that it was in the midst of laying off staff (including

³ The Commission's original request for an update on the shoreline permit was dated October 11, 2002.

⁴ Both Timothy Looney and Jeff Shalfant were contacted by phone by Rich Bowers, for American Whitewater.

⁵ According to the transcript of the November 8, 2002 Hydro Licensing Status Workshop, Dept. of Ecology stated that it was their understanding that Balaton Power "actually now owns the interest in all those small projects proposed up in Northwestern Washington."

the Clearwater project manager).⁶ It was recommended in this meeting that the Commission “gets some sort of definitive statement from the applicant as to whether they are in a position to continue pursuing these projects.”⁷

Commission staff responded that they would need to revisit that (position to pursue projects) at the first of the year with the applicants for all of these projects. It was also stated that if “they (the applicants) can’t work through it, if they don’t have the means, then we’ll be in a position to maybe recommend to the Commission that we dismiss these applications.”⁸

Based on a FERRIS docket review, and to the best of our knowledge, the Commission has had no communications with the applicant on any of these projects since the December meeting. Prior to this meeting, the only communication from the applicants (Balaton Power Inc.) throughout the final months of last year were responses to comments (Anderson Creek and Irene Creek) and requests for extensions on the Commission’s deadlines. To date the applicants have failed to meet all new deadlines established by the Commission.⁹ Each of the Commission’s communications regarding overdue updates or missed deadlines have acted as a notice of deficiency to Balaton Power Inc., and have provided an adequate opportunity to correct.

Allowing these license applications to perpetuate in the absence of compliance with regulatory procedures, coupled with the financial uncertainty, begins to border on site banking. The procedural requirements for preliminary permits and license applications are specifically designed to avoid site banking. These proposed hydropower projects must be required to comply with the regulatory procedures or forfeit their license applications.

It is American Whitewater’s fear that, not having the resources to pursue even the requirements of this license, the applicants will not have the resources necessary to pay for the recommended mitigation and enhancement measures -- let alone future

⁶ These issues, restructuring, downsizing, the loss of key knowledgeable personnel, and the fact that project records are recurrently in storage, were substantiated in the November 12, 2002 letter from Nooksack River Hydro requesting a 60 day extension for an update on the Clearwater Creek shoreline project. This is the last documented correspondence from Balaton Power Inc. or any of its affiliated companies.

⁷ November 8, 2002 Hydro Licensing Status Workshop Transcript, p. 107, 15 - 19

⁸ Transcript p. 108, 13 - 22

⁹ In its October 16, 2002 letter, Warm Creek Hydro Inc. (Warm Creek) stated that it lacked the resources to provide an update on its water quality certification. By letter dated November 6, 2002, the Commission granted an extension until December 18, 2002. On October 3, 2002 the Commission requested that Cascade River Hydro Inc. (Irene Creek) provide a status report on their effort to obtain a Shoreline Permit within 30 days. On December 2, 2002 the Commission requested that Skykomish River Hydro Inc., c/o Balaton Power Inc., (Martin Creek) file its request for Section 401 water quality certification with the Dept. of Ecology by January 1, 2003. To date there has been no documented response to any of these three deadlines. On October 11, 2002, in a response to the Commission’s information request, Skagit River Hydro Inc. (Rocky Creek) explained that access to the site, necessary to obtain a Shoreline Permit Application, was restricted. “The next step for SRH, once it receives the anticipated written request, will be to provide the County with the formal authorization to transfer the existing application material to a new Shoreline Permit.” No next step has been forthcoming so far. All of these projects are now under Balaton Power Inc.

environmental and recreational responsibilities that will occur should the licenses be granted. Far better to dismiss the applications now, before construction begins which will damage the resource and place an even greater financial and workload burden on the applicant and other interested parties and agencies.

Finally, poor fiscal health is not a deficiency that Balaton Power can readily fix. Each of these projects are well into the application process (over 10 years for Clearwater and Warm Creek), and the applicant cannot hold onto these applications in the hope that this fiscal health will improve in the future. Based on the record, it would appear that the applicant cannot correct the numerous deficiencies facing each of these projects, and therefore the Commission cannot approve the licenses.

III. Conclusion

For all of the foregoing reasons, American Whitewater respectfully requests that staff move forward on their December determination and recommend that the Commission dismiss the Clearwater Creek and other applications held by Nooksack River Hydro Inc., Warm Creek Hydro Inc., and other companies held by Balaton Power Inc.

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Dated: January 15, 2003

Respectfully Submitted,

John T. Gangemi
Conservation Director
American Whitewater

Thomas O'Keefe
Regional Coordinator
American Whitewater

UNITEDSTATESOFAMERICA
FEDERALENERGYREGULATORYCOMMISSION

NooksackRiverHydroInc.) FERCProjectNo.11495 -000
)
ClearwaterCreekHydroelectricProject)

CERTIFICATEOFSERVICE

IherebycertifythatIhavethisdayservedtheforegoingdocumentuponeach
persondesignatedontheofficialservicelistcompiledbytheSecretaryinthisproceeding.

Datedthis 15thdayofJanuary,2003.

CarlaMiner
ConservationAssistant

ServiceListforP -11495

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