New York Chapter of Backcountry Hunters & Anglers

*“The sportsmen’s voice for our wild public lands, waters and wildlife”*

www.backcountryhunters.org

April 11, 2021

***Online submission***

Ms. Kimberly Bose, Secretary

Federal Energy Regulatory Commission

888 First Street NE

Washington DC 20426

**RE: COMMENTS**

**Docket # P-15056 – Ashokan Pumped Storage Project**

Dear Secretary Bose:

On behalf of the New York Chapter of Backcountry Hunters & Anglers (“NY BHA”), a dedicated group of conservation-minded hunters and anglers in the Catskills region and more broadly, the State of New York, we write with respect to the Preliminary Permit application submitted to the Commission by Premium Energy Holdings (“PEH”) for the Ashokan Pumped Storage Project (P-15056) (the “Project”). In particular, NY BHA intends to convey our concerns about the potential negative impacts that the Project will have on the Ashoken Reservoir and Esopus Creek watersheds, as well as other sensitive Catskills resources important to the hunting and angling community in this geographic area.

NY BHA is focused on advancing proven approaches to conserving wild places and rich outdoor heritage. We strive to shine a positive light on American wildlife and land conservation. New York has a strong history of conservation, as well as some of the best hunting and fishing in North America. NY BHA aims to carry on that legacy by providing bold, science-driven conservation leadership led by hunters and anglers, and to benefit residents of New York and beyond. To ensure high-quality wildlife habitat, we stand for proper, sustainable management and protection of the lands and waters that give New Yorkers the opportunity to peacefully cast a fly to sipping trout or slip through the November deer woods.

As a nonprofit organization with approximately 1,000 members in New York State, many of which who reside in the Catskill Mountains, NY BHA has numerous concerns regarding the potential negative impacts from the Project. The Ashokan Reservoir and Esopus Creek watershed are noted cold water fisheries important to the angling community. Additionally, the surrounding lands are pristine habitat for flora and fauna (including deer, bear, turkey and other game species) that act as a key piece of the fishery ecosystem. These resources are important to the hunting and angling community and thus, NY BHA has a special interest in their preservation.

**Catskill Park**

The Project lies within the “blue line” of the Catskill region of New York. Catskill Park lies within this blue line, which are protected lands designated as “forever wild” under the New York State Constitution. Before the turn of the last century, New York State wisely set aside certain areas of state forest land from industrial and large-scale commercial development as part of the state constitution. NYS Const. Art. XIV.

The PEH project would require a taking under eminent domain. Assuming its permit application were granted, a threshold issue PEH will face is whether such a taking is legally possible. In a case involving a FERC certificate issued under the Natural Gas Act (“NGA”), the Third Circuit Court of Appeals held that under the Eleventh Amendment a state’s sovereign immunity prevents a private party from forcing the state into court to enforce a condemnation order to seize state land. *In re PennEast Pipeline Co.*, 938 F.3d 96 (3d Cir. 2019). The Supreme Court has granted certiorari and will hear arguments this month. Even if the Court overturns the Third Circuit, this can only resolve the threshold issue of whether the courts will even hear the case and not whether the pipeline owner will prevail. The proposed “taking” by PEH would be much more extensive than simply providing a right of way for a pipeline across state land at issue in *PennEast*. More significantly, PEH would need to condemn land protected under a state constitution which may raise a host of constitutional issues.

**Project Impacts**

The trout streams of the Catskills are revered among fishermen across the nation as the birthplace of American Fly Fishing. Further, the Esopus watershed has been established as a historical and recreational treasure of the Catskills that continues to attract thousands of anglers, hikers, birders and hunters every year, benefitting local businesses of all types. As an angling and hunting organization, NY BHA is very concerned with the health of the trout that inhabit the Esopus Creek. Water quality is the single most important element for a healthy trout population. Trout require very clean, cold, well-oxygenated water, and their current population in the Esopus indicates a high quality stream for all forms life in the ecosystem. By the same token, trout are very sensitive to habitat degradation. As it is, every year the ecosystem of the Esopus is stressed with problems of maintaining cold temperatures and adequate water levels during the hot summer months and the negative impacts from a project of this size clearly threatens to significantly alter this precious habitat.

Construction of the facility is incompatible with largely undisturbed forest preserve provided by the Catskills Park. Based on PEH’s First Amended Permit, any of the three proposals would require the delivery of many thousands of tons of concrete and steel through the Park to construct the impoundment dams, tunnels and halls for turbines and transformers. More than 100 million cubic feet of rock and soil will need to be excavated and transported out of the park. With the exception of the construction of New York City’s water reservoirs, no construction on this scale has occurred within the Catskills.

The operation phase of the Project would have a significant impact on protected waterways. The PEH facility will continuously degrade the aquatic ecosystem of the Esopus Creek, which is a “natural waterway” that was impounded to create the Ashokan. Operating the PEH facility will also change groundwater flows, eliminating at least one tributary to the Esopus. We expect numerous species a flora and fauna may be negatively impacted by operation of the PEH facility, including without limitation, the trout.

Operating the PEH facility will also endanger the water supply for millions. The Ashokan is the largest reservoir in the NYC water supply system. By maintaining an undisturbed watershed around its reservoirs, New York City has created a high quality water supply for its residents. Even so, silt has been an issue for the Ashokan resulting in turbid discharges into the Esopus Creek. For over 100 years, the West Basin has served as a settling pond for water entering the reservoir; silt drops from suspension before flowing over a weir into the East Basin where the City’s intake port is located. A study of water years from 2010 to 2012 found between 30,000 and 600,000 tons of silt flowed into the West Basin annually. Even assuming the average year’s silt load is 100,000 tons per year, after 100 years of operation there are 10 million tons of silt resting on the bottom of the West Basin. PEH estimates it will pump 15,800 acre-ft of water into and out from the West Basin on a daily basis. Disturbance of the West Basin will no doubt re-suspend accumulated silt, impacting the ability of the West Basin to absorb incoming silt and consequently, potentially causing higher temperatures and turbidity with the releases into the Esopus Creek.

Based upon the application materials provided, NY BHA identifies potential negative impacts to the following: water quality; fish, insect, wildlife and habitat; numerous intermittent streams and wetlands; and historical and recreational preservation.

**Conclusion**

NY BHA, by this letter, presents some significant issues that concern our members regarding this Project. Due to the numerous foreseeable negative impacts mentioned above, the continued preservation of one of the most unique cultural and recreational resources in the Catskills is in serious jeopardy. Any negative impacts to the trout habitat and/or the diverse ecosystems on the Ashoken and Esopus watershed will have far-reaching effects for fishing and hunting, and the many aspects of the local economy related to it, in this portion of the Catskills.

NY BHA recognizes the need for energy storage alternatives. Adequate capacity to store energy generated by renewable, but intermitted, sources makes alternative energy more economically viable. However, such development can, and must, be undertaken in a thoughtful, responsible manner that does not jeopardize the tremendous natural resources that make the this portion of the Catskills so special, unique, and environmentally and economically important. A project on the scale proposed by PEH is incompatible with the Catskill region and any proposed development which cannot be undertaken without such negative impacts, should not be allowed to proceed. Thus, we respectfully request that FERC deny the pending Permit application and this proposed Project.

Thank you for your considerations.

Very truly yours,



John L. Barone

NY BHA Board Member