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a Wisconsin Service Corporation

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December 2, 2010

Brian Christianson, Chair  
Rock Koshkonong Lake District  
374 E. Samuelsen Drive  
Edgerton, WI 53534

Re: Rock-Koshkonong Lake District  
Indianford Dam Hydropower Feasibility

Dear Brian:

After our recent lunch discussion, I got a call from Rob Montgomery to discuss the District's interest in assessing the feasibility of re-establishing the Indianford Dam's hydro power generation capacity. Rob and I discussed the legal authorization and financial investments that would be needed to put the dam into service as an electrical generator.

Generally, hydro power production would require that the District obtain an exemption from Federal Power Act license requirements as a small hydro power facility. I am sending along a memo prepared by Mary Beth Peranteau that discusses the procedure for obtaining a license exemption from the Federal Energy Regulatory Commission (FERC). In preparing the enclosed memo, Mary Beth reviewed FERC's records of its proceedings on the exemption application filed by Tom Reiss' Indianford Water Power Company, Inc., (IWPC) in 2000. The IWPC application proposed to install two refurbished, vertical-shaft turbines (each with rated capacity of 335 horsepower) at the dam, designed to operate in "run-of-the-river" mode.

Despite the level of detail set forth in the memo, the exemption application process is fairly straightforward. As discussed below, the most consequential part of the process (and the most determinative of the length of time from submission of the application to receipt of the exemption) relates to the conditions sought by resource agencies in connection with the exemption application.

The FERC license exemption procedure requires an application that describes the dam and its proposed operation, along with extensive supporting studies addressing hydrology, the affected environment and other subjects. The review procedure includes mandatory consultation with state and federal resource agencies (including WDNR, the U.S. Fish and Wildlife Service (USFWS), the U.S. EPA and other agencies) and a public comment process. Mary Beth's memo includes a chart that shows some of the information an exemption applicant is required to submit and the comments submitted by the WDNR and the USFWS in response to IWPC's 2000 filing. Copies of those agencies' consultation comments are enclosed with this letter.

The two resource agencies would play a major role in FERC's exemption decision and the conditions of an exemption. In particular, federal law gives state resource agencies (like WDNR) considerable leverage in exemption proceedings by requiring their "certification" that a proposed federal hydropower facility meets state "water quality standards." In Wisconsin, this means that WDNR reviews these applications using the water quality standards incorporated into Chapters NR 102 and 104.

WDNR's 2001 comment letter on IWPC's "initial consultation package" was submitted over the signature of Susan Josheff (currently WDNR's Lower Rock River Basin Supervisor) on behalf of Pam Biersach, who was identified as WDNR's "South Central Region Habitat Expert." In that letter, WDNR reported (among other points) that the agency would require: (1) installation of a fish passage, (2) compliance with the state water level order governing the dam, (3) continuation of WDNR's jurisdiction under Chapters 30 and 31, Wis. Stats., and (4) completion of an "incremental flow release/stage analysis" and other studies.

The USFWS service comments in the IWPC filing also expressed concern about the protection of aquatic and wetland habitat from water level fluctuations due to hydro power operations. That agency recommended: (1) a narrower range of water level fluctuation than IWPC proposed and (2) incorporation of emergency or planned plant shut-downs capacity, (3) reserved its authority to require a fish passage and (4) identified additional studies necessary to evaluate the project on fish and wildlife resources.

We have not attempted to determine the extent to which studies completed during the water level proceedings or the current Lake Koshkonong Comprehensive or PAS Project would support an exemption request or address the concerns raised in WDNR's or USFWS's comments in response to the IWPC application. Before the District devotes substantial additional resources to this effort, Rob and I agree that a preliminary estimate of its economic feasibility is warranted. Rob has agreed to undertake a first look investigation of the availability and cost to purchase and install used turbines and the other necessary equipment to restore hydro power at Indianford Dam. He will also put together a rough estimate the probable annual generating capacity (considering the equipment, elevation and

flow data) and the probable market value of the power. We both agree that this is a necessary next step to assess the overall feasibility of restoring hydro power to the dam.

In order to assist in that effort, I am enclosing a March 29, 1999, memorandum from Alliant Utilities' Overhead Operations Manager to Jerry Richardson. In 2000, Rock County granted IWPC an exclusive option to restore hydro power at Indianford Dam, giving IWPC the required site control needed for it seek the FERC exemption. That Option also incorporated the text of a proposed long-term Lease Agreement, which would have taken effect if IWPC had actually obtained hydropower approval from FERC. The District was deeply involved in these negotiations because they occurred after Rock County had agreed to transfer ownership of the dam to RKLD, although that transaction had not yet occurred.

Then-RKLD Chairman Jim Folk and I conducted these negotiations with IWPC owner Tom Reiss. Reiss' original position was that IWPC's work to restore hydropower and maintain the dam would constitute its "rent" for the long term (50 year) lease. The District wanted to make sure it was obtaining fair compensation for its grant to IWPC of exclusive rights to the dam's hydropower. Mr. Reiss probably had better information about his anticipated costs and revenue streams. But the Alliant Memo was about all the District had to estimate the value of the lease. As you will see, that memo estimated that a 500 kW generator would produce gross revenues of approximately \$340 per weekday and \$193 per weekend day, based on then-effective Alliant parallel generation rates. If you assume that there are about 120 weekend days and holidays and 245 week days in a year, the rough 2000 annual hydropower gross revenue guesstimate would be \$106,460 (120 weekend and holidays @ \$193 = \$23,160, plus 245 weekdays @ \$340 = \$83,300).

Based on the current tariff on file with the Public Service Commission (see tariff sheet dated 03-23-07, enclosed), Alliant's parallel generation rates have more than doubled in the past two decades. Accepting all of the assumptions in the Alliant Memo (and those assumptions may skew the result considerably),<sup>1</sup> the Indianford Dam may have the potential to produce gross annual revenues of as much as \$200,000, and possibly more.

Based in part on the Alliant revenue estimate, the District negotiated lease terms that provided for annual rent based on actual hydropower revenue. These payments were a matter of considerable negotiation, and IWPC only grudgingly agreed to any rental payments beyond its obligation to operate the dam in compliance with the water level order. After lengthy discussions, we agreed to final lease terms that required annual

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<sup>1</sup> For example, the Alliant Memo assumed actual generation at 24 hours a day/7 days a week, although actual water levels and the run-of-river operating regime might not support that assumption. It also calculated "on-peak" generation as 24 hours of each weekday instead of 14 hours, as the tariff stipulates, and did not take into consideration the customer charge. On the other hand, Alliant's current tariff includes other potentially applicable rates for customer-based renewable generation that are higher than the parallel generation rate (see enclosed rate sheet for "Advanced Renewable Distributed Generation").

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payments to the dam owner (the District) based on IWPC's annual gross revenue from hydropower production. The payments were to be based on the dam operator's gross revenue from hydropower production, exceeding \$100,000 annually. The Lease would have provided the District with 10% of gross annual revenue between \$100,000 and \$250,000 and 25% of gross revenues exceeding \$250,000 (with cost of living adjustment applied to the gross revenue set points).

Enclosed are copies of the IWPC Option and Lease Agreements for your reference. Although it was negotiated chiefly by the District and IWPC, the Lease was executed by Rock County as Lessor in 2002. The District assumed the responsibilities as Lessor under the 2002 Dam Transfer Agreement with Rock County. These obligations have since expired and IWPC has no further interest in the Indianford Dam. I expect that the expense and delay of the license exemption process, resource agency concerns and IWPC's projected net revenues may all have contributed to Mr. Reiss' decision to abandon his bid to adapt the dam to produce hydro power.

A lot of water has gone over the dam since the IWPC application was filed, including the water level order litigation, the PAS project work, policy attention on climate change and clean energy and the change in partisan control of the Wisconsin government. All of these could affect how WDNR (or a successor agency) would respond to an exemption request filed in 2011. In addition, the economic feasibility of the project is substantially affected by the current market price for wholesale renewable energy. Public policies to encourage "green energy" could add economic incentives to the restoration of hydro power and could markedly change the economic feasibility over time. After Rob completes his initial feasibility analysis, you and the other District commissioners will probably want to consider what further steps are warranted to pursue hydro power.

Meanwhile, please feel free to contact me if you want to discuss my letter or the enclosures.

Very truly yours,

WHEELER, VAN SICKLE & ANDERSON, S.C.



William P. O'Connor

/wpo  
Enclosures

cc: Rob Montgomery, MA-RS