

February 29, 2024

Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

RE: City of Ely, Nevada, and Nevada Northern Railway Foundation Comments in Rebuttal and Request to Reject Final License Application or, Alternatively, That Applicant Be Directed To Perform Three Additional Study Requests Initially Sought By ELY/NNR In Their April 28, 2023, Comments, Additional Information Requests, and Additional Study Requests—(P-14851-003)

Dear Ms. Reese:

The City of Ely, Nevada, (City or Ely) and Nevada Northern Railway Foundation (NNR, Railway or Foundation) (together, ELY/NNR), pursuant to 18 C.F.R. § 4.32(e)(2) of the regulations of the Federal Energy Regulatory Commission (FERC or Commission), respectfully submit these Comments and requests for relief regarding the Final License Application (FLA) for the White Pine Pumped Storage Project (P-14851) (Project) that White Pine Waterpower, LLC (Applicant or WPW) tendered February 27, 2023, in this matter.

For the reasons set forth below, ELY/NNR request that the Commission find that the FLA is patently deficient and reject it with prejudice.

In the alternative, ELY/NNR respectfully request, pursuant to 18 C.F.R. § 4.32 (b)(7) of the Commission's regulations, that Applicant be directed to perform the three additional study requests (Additional ELY/NNR Studies) that ELY/NNR initially sought in their April 28, 2023, Comments, Additional Information Requests, and Additional Study Requests submission.¹ As explained in that filing and further below, the Additional ELY/NNR Studies are required for a comprehensive and thorough review of Applicant's Project, which continues to have material gaps in necessary information. In connection with this alternative request for relief, ELY/NNR submit these further comments rebutting various arguments raised by Applicant principally in (i) the WPW Response filed August 9, 2023,² and (ii) the WPW Response to City of Ely and Nevada Northern Railway Letter filed October 31, 2023,³ in this docket.

In support hereof, ELY/NNR state as follows:

¹ Document Accession #: 20230501-5051 (ELY/NNR FLA Initial Submission). See **Appendix A** hereto for a list of submissions and Commission issuances in this docket that are referred to and cited frequently throughout this filing in abbreviated form.

² Document Accession #: 20230809-5153 (WPW 9August2023 Response).

³ Document Accession #: 20231031-5020 (WPW 31October2023 Response).

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I. **COMMENTS IN REBUTTAL AND REQUEST FOR REJECTION OF THE FLA WITH PREJUDICE OR, ALTERNATIVELY, THAT THE COMMISSION DIRECT APPLICANT TO PERFORM THE ADDITIONAL ELY/NNR STUDIES**

A. **The Commission Should Reject The FLA With Prejudice.**

1. **Introduction.**

ELY/NNR's many concerns in this docket chiefly arise from Applicant's proposal to construct and insert their massive infrastructure Project between and in the line of sight of the right-of-way (ROW) of two of the Railway's tracks. Because of the Project's intended location, construction of the Project facilities would additionally impact the Railway's Mainline restoration project under the \$10,168,421 grant that that was awarded by Southern Nevada Public Lands Management (SNPLMA Grant or Grant). That Grant is also funding a multi-use recreation trail to be located within the railroad ROW between Ely and McGill that will connect to existing trails on Bureau of Land Management (BLM)-administered public land (Multi-use Recreation Trail). ELY/NNR and SNPLMA expect the recreational enhancements under the Grant to the City, Foundation, and area local communities will be significant.

Ely is a small, rural incorporated city that is the county seat of White Pine County. Ely is one of the most remote cities in the contiguous United States. NNR, a National Historic Landmark, has been operating tourist trains in this remote location for approximately the past thirty-five years. During that time, NNR has attracted visitors from around the world and across the country. Roughly 600,000 tourists have visited the railroad and more than 360,000 have taken a ride on the Foundation's National Historic Landmark Railway. The economic impact of tourism attributed to the railroad in White Pine County is estimated to be \$111,100,000.

Ely, with a population of approximately 4,000, has limited resources. NNR, a non-profit museum, also has limited resources. Neither wishes to expend those valuable resources in contesting Applicant's Project. Regrettably, multiple problems and concerns with WPW's FLA compel action.

WPW is engaged in a regulatory version of "whack-a-mole." That is, Applicant is relentlessly advancing a flawed FLA submission by filling-in gaps of missing, essential information needed for review of its Project. Most if not all of that important Project information, such as WPW's short-term construction plans and fundamental, foundational water and geophysical studies, should properly have been included in Applicant's original FLA submission.

As of this date, those studies are not complete and may not even have been commenced. The Commission cannot lose sight of the fact that the southwestern United States is in the worst drought since the year 800 CE.⁴ This striking irony goes to core objections of ELY/NNR: **how can WPW's license request proceed without sufficient proof that the water needed for the Project is even available, or**

⁴ Williams, A.P., Cook, B.I. & Smerdon, J.E. Rapid intensification of the emerging southwestern North American megadrought in 2020–2021. *Nat. Clim. Chang.* 12, 232–234 (2022). <https://doi.org/10.1038/s41558-022-01290-z>

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without demonstrating that the proposed geologic structure at the contemplated Project location can support the Project facilities?

WPW's flawed FLA has profound implications for ELY/NNR. First, ELY/NNR are confronted with the significant economic cost of funding advocacy efforts to protect the interests of the City and the Railway respecting a highly flawed FERC license application. Second, the burden on human resources is enormous. Ely's city leaders have other "day job" responsibilities; the mayor and city council members would prefer to spend their time on matters other than an energy project that, as shown in this filing, should have been better prepared before Applicant sought formal review with FERC. The Foundation's leadership, who literally have a railroad to run, also share this sentiment. Third, and particularly troubling, the myriad risks and looming threats of WPW's Project to Ely and other White Pine County communities appear to dwarf any of the few claimed benefits WPW's plans might have for the local region. This reinforces the impression that WPW's ambitious Project is an opportunity largely calculated to benefit outside corporate interests that will come about at the cost of the local area and residents with little real regard for their welfare.

2. Legal standard.

The Commission's regulations provide that a license application "will be rejected . . . [as] patently deficient" if it "patently fails to substantially comply" with the Commission's licensing filing requirements.⁵ A "patently deficient" application is one that "fails in any material respect either to comply with the Commission's substantive requirements or to supply the required information necessary to consider the application on its merits." *Application for License, Permit, and Exemption From Licensing for Water Power Projects*, 50 Fed. Reg. 11658, 11675 (1985). The Commission has held that an applicant's failure to conduct a reasonable study requested by a consulting agency, or a failure to comply in some other respect with the Commission's licensing regulations, can be a deficiency or patent deficiency depending on the nature of the failure or omission. *Natural Energy Resources Company*, 48 F.E.R.C. ¶ 61,032, at 61,149, 1989 FERC LEXIS 1715, at *7 (1989).⁶

In *The Electric Plant Board of the City of Paducah, Kentucky*, 122 F.E.R.C. ¶ 61,149 (2008) (*Paducah*), the Commission explained that each exhibit to be filed as part of an application is expected to include information that the regulations "spell out in detail." Without that information, the Commission "and **other agencies and stakeholders** . . . cannot obtain the full understanding of the project and its effects needed to decide whether, and under what conditions, to issue a license." *Id.*, 122 F.E.R.C. at P 11 (emphasis added). The Commission in *Paducah* determined the application was patently deficient because of the applicant's failure to:

- Include required exhibits/required information on a timely basis

⁵ 18 C.F.R. § 4.32(e)(2)(ii).

⁶ Even in circumstances in which an application is not summarily rejected and the Commission affords extra time to complete the application, the additional time allowed is not open-ended. See, e.g., *PVP 77 LLC*, 180 F.E.R.C. ¶ 61,007 at P 15 (2022) (additional time to provide missing information "not to exceed 90 days").

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- Comply with the consultation process required by the regulations

The Commission described the consultation process as “a cornerstone of our licensing process, that gives state and federal resource agencies, Indian tribes, and other stakeholders, the opportunity to become informed about a proposed project and to develop proposed license terms, conditions, and recommendations.”⁷ The Commission relied extensively on its previous order in *Ashuelot Hydro Partners, Ltd.*, 36 F.E.R.C. ¶ 61,250 (1986) (*Ashuelot*), where the Commission explained that:

[t]he requirement of our consultation process is not, as [the applicant] seems to believe, merely intended as a procedural courtesy to agencies which can be side-stepped at the option of an applicant. The requirement ensures that agencies have a full opportunity to effectively comment on proposals and that applications filed with the Commission reflect any alterations in design and/or operation that may arise as a result of the agency consultation and review process. This in turn ensures that we can process applications with a minimum of delay and procedural problems.⁸

In *Ashuelot*, the Commission characterized the applicant’s failure to provide requested studies “in a timely manner” as a “fundamental omission” leading directly to the Commission’s “correct[] . . . finding” that the “application was patently deficient.”⁹

The Commission’s reasoning in *Paducah* and *Ashuelot* apply with equal force to WPW’s Project FLA in this docket. WPW has materially failed to satisfy the requirements for review of its license application. WPW has failed to provide timely exhibits and other information required under the Commission’s regulations involving its FLA. The absence of this crucial data persists, leaving the FLA incomplete in critical areas. Throughout, Applicant has “side-stepped” its obligation to have meaningful consultations with ELY/NNR and other stakeholders regarding various Project issues that directly impact them. Applicant’s avoidance, moreover, has compromised stakeholders’ ability to examine and comment fully on the FLA as the Commission’s regulations and precedent require.

The FLA omissions are hardly trivial. Applicant’s FLA is remarkable for the extraordinary number of deficiencies and further information requests (AIRs) the Application triggered under the Commission’s April 28, 2023, Deficiency Letter¹⁰ – 15 deficiencies and 103 AIRs. Notwithstanding Applicant’s multiple submissions intending to repair the many deficiencies and gaps in necessary information, WPW’s application nonetheless remains incomplete in material respects and remains fundamentally flawed.

In effect, WPW has “put the cart before the horse” and unreasonably expects reviewing agencies and stakeholders, such as ELY/NNR, with their limited resources, to “parse through” Applicant’s FLA and its seemingly endless remedial efforts to “piece together . . . the information that . . . [the Commission’s]

⁷ *Paducah* at P 12.

⁸ *Ashuelot*, 36 F.E.R.C. at 61,605 (1986)

⁹ *Id.*

¹⁰ April 28, 2023, Federal Energy Regulatory Commission Letter of Deficiencies and Additional Information Requests, Document Accession #: 20230428-3050 (Deficiency Letter).

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regulations require be presented in a specific, detailed manner”¹¹ at the outset. The serious flaws in Applicant’s initial FLA, followed by subsequent, seemingly never-ending efforts to remedy the faulty filing, collectively represent a “wholesale failure to meet the requirements of the regulations.”¹² Consistent with the Commission’s regulations and precedent, FERC should find that WPW’s license application is patently deficient and reject the FLA with prejudice.

3. Applicant has failed to include required exhibits and other information on a timely basis and has not engaged in meaningful discussions with ELY/NNR on fundamental, foundational Project matters that directly impact them.

Applicant has submitted an FLA reflecting a Project that is a moving target. Applicant has not provided sufficient required information on critical aspects of its Project and continues to resist doing so. All the while, WPW has excluded ELY/NNR from meaningful discussions on a range of Project concerns directly impacting the Railway’s National Historic Landmark status.

The following is a list of WPW’s most significant omissions.

a) WPW has failed to provide information involving the NNR consistent with its status as a National Historic Landmark threatening important protections NNR enjoys under federal law; WPW has failed to consult meaningfully with ELY/NNR regarding these concerns.

NNR has been honored with National Historic Landmark status. This is the highest honor that the federal government can bestow on a historic property and provides the NNR special protections under Section 106 of the National Historic Preservation Act (NHPA), as amended. In *National Parks Conservation Ass’n v. Semonite*, 916 F.3d 1075(D.C. Cir. 2019), the D. C. Circuit issued an opinion holding that federal agencies must determine whether an undertaking may have the potential to affect historic properties, which includes possible alterations of both “direct” and “indirect” characteristics of an historic property.

At page 6 of the ELY/NNR FLA Initial Submission, ELY/NNR complained that “Applicant has had little direct communications or other interactions with NNR concerning the Project pursuant to requirements of the NHPA.” Not much has changed since then. Applicant’s communications with ELY/NNR regarding impact of the Project on the NNR as a National Historic Landmark have been virtually non-existent.

In the Commission’s Deficiency Letter, FERC highlighted several problems with WPW’s examination of NNR as a historic property. Among other matters, the Commission criticized Applicant for being “too anticipatory” and for:

¹¹ *Paducah* at P 14.

¹² *Id.* at P 24.

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avoid[ing] site-specific approaches to evaluate cultural resources for National Register eligibility, or to resolve adverse effects to historic properties (i.e., those cultural resources considered eligible for the National Register), especially in regarding potential adverse effects to historic properties involving an unconstructed project that may receive an original license from the Commission.

Deficiency Letter, Schedule B, P 69.

In the Deficiency Letter, Schedule B, P 73, the Commission also faulted WPW's Draft Historic Properties Management Plan (HPMP) and directed WPW to rewrite the HPMP:

to address known potential project-related adverse effects, especially direct effects caused by ground disturbing activities related to the proposed project. . . . As discussed above, the APE for direct effects is equivalent to the "project footprint," and where White Pine has recorded cultural resources within the direct APE. Therefore, it is known how each of the recorded cultural resources within the direct APE will be potentially affected by the proposed project. As a result, please provide site-specific treatment measures in this section on how to avoid, reduce, or mitigate any anticipated project-related adverse effect to each of the National Register-eligible cultural resources, or other cultural resources considered potentially eligible for the National Register.

In the Deficiency Letter, Schedule B, P 79, FERC additionally rejected Applicant's "proposal to craft a draft mitigation plan within one year of finding potential project-related adverse effects to historic properties" and expressly directed WPW:

to incorporate a detailed mitigation plan **now** and incorporate it into . . . [Applicant's] revised HPMP, and **apply such mitigation measures to existing historic properties, or to other cultural resources considered potentially eligible for the National Register, on a site-specific level. The mitigation plan should focus mostly on those cultural resources located within the direct APE, but also consider mitigation measures to other cultural resources that are known to exist in the indirect APE, as appropriate.**

(Emphasis added).

Notwithstanding these express admonitions and requirements, WPW has failed to consult with ELY/NNR meaningfully concerning the impact of the Project on the Foundation, which is undergoing a pivotal mission expansion for the benefit of the public under the SNPLMA Grant. No mitigation plan discussions have ever been held with ELY/NNR.

- b) WPW has failed to provide adequate or timely information on short-term Project facilities; WPW has failed to consult meaningfully with ELY/NNR regarding these concerns.**

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WPW's short-term Project constructions plans have not been properly presented for examination. Applicant, moreover, has been inconsistent in the limited information it has provided putting an unreasonable burden on reviewing parties.¹³

New Project maps and other information supplied for the first time in response to FERC's AIRs reveal what is essentially a "mini-city" that WPW proposes to construct and operate over the anticipated seven-year, so-called "short-term" construction period to be located between the upper and lower reservoir areas adjacent to the NNR Mainline and HiLine routes.¹⁴ Applicant has neither communicated nor coordinated its short-term plans with ELY/NNR other than through Applicant's submissions filed with the Commission.

No meaningful discussions have occurred between the City and Applicant prior to or after WPW revealed these and related significant short-term Project details.

c) WPW has failed to provide adequate or timely information demonstrating that there is sufficient water available to supply its Project without conflicting with existing water rights; WPW has failed to consult meaningfully with ELY/NNR and other stakeholders regarding these concerns.

Sufficiency of water to satisfy the Project's needs is a foundational Project issue. Applicant has not demonstrated that there is sufficient water available to serve its project without conflicting with existing water rights or causing impermissible impacts to the environment.

Several material issues have been identified regarding the sufficiency of water for WPW's Project needs that include:

- The inadequacy of Project water plan information included in the FLA.
- Insufficient information regarding water availability and water-related impacts to allow even the most basic assessment of the Project's viability. In a belated and roundabout disclosure to the BLM on October 24, 2023, WPW represented that its hydrogeologic testing would not begin until the Fall of 2024, and that its testing is not expected "to be completed" until the "end of November 2024."¹⁵
- The absence of necessary hydrologic studies to determine if there is sufficient water to support the Project and the lack of a monitoring, management, and mitigation plan to address potential impacts to existing water rights and the environment identified by those studies raises serious

¹³ See, e.g., Deficiency Letter, Section B, P 30 ("Section 3.7.2.1 Terrestrial Wildlife and Habitat states that concrete batch plants would likely be erected to produce concrete for the project and no further description is provided. However, Section 2.2.1 Project Facilities does not describe any proposed concrete batch plants."); see also Section I.A.3.d (Project features shown incorrectly on Exhibit G maps).

¹⁴ See generally WPW July 27, 2023, Response to License Application Additional Information Request, Document Accession #: 20230727-5134, at pp. 34-38 (WPW 27July2023 Deficiency Response).

¹⁵ WPW October 24, 2023, Response to FERC's October 18, 2023, Additional Information Request, Document Accession #: 20231024-5103, at p. 2 (WPW 24October2023 AIR Response).

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questions about the Project's viability regarding water use under Nevada state law.¹⁶ The need for hydrologic studies and a monitoring, management, and mitigation plan has become even more acute following the Nevada Supreme Court's recent *en banc* decision in *Sullivan v. Lincoln Cty. Water Dist.*, Nos. 84739, 84741, 84742, 84809, 85137, 2024 Nev. LEXIS 4 (Jan. 25, 2024), involving disputes under Nevada law over "vested" water rights and groundwater pumping to supply a housing development that would impact the flow of water in other designated water basins and affirming the conjunctive analysis and management of surface water and groundwater throughout multiple hydrologically connected basins.

- Whether WPW has Project water rights that can be sourced without degradation to existing water rights of the City of Ely, McGill/Ruth Water District, and other existing White Pine County water users who depend on their water rights for drinking water.¹⁷
- Whether WPW's proposed Project water wells infringe on NNR's Mainline ROW. WPW has never addressed this ROW/water issue adequately even though ELY/NNR expressly raised it in the ELY/NNR FLA Initial Submission,¹⁸ and again in the ELY/NNR July 14, 2023, Comments on June 12, 2023, Response and Corrections of White Pine Waterpower,¹⁹ at pp. 5-7. BLM has voiced related concerns.²⁰
- Relatedly, as discussed in the section below, WPW has failed to provide complete and accurate Project maps relating to these water issues either by the June 12, 2023, deadline imposed by the Commission in its Deficiency Letter or by other subsequent Commission deadlines.

No meaningful discussions have occurred between the City and Applicant on these critical water-related matters.

d) WPW has failed to supply accurate Exhibit G and related maps; WPW has failed to consult meaningfully with ELY/NNR regarding the serious issues revealed by WPW's flawed Project maps.

In its Deficiency Letter, FERC directed WPW to correct and provide missing details of the Project facilities and features required to be shown on the FLA Exhibit G maps consistent with the Commission's regulations.²¹ Despite a series of subsequent submissions by Applicant, ostensibly

¹⁶ See NRS § 533.370(2) (State Engineer must reject applications which would conflict with existing rights or threaten to prove detrimental to the public interest); *Eureka County v. State Engineer*, 359 P.3d 1114, 1119-21 (Nev. 2015) (requiring that a determination be made at the permitting stage that a project will not conflict with existing rights and prohibiting the State Engineer from relying on the future development of a monitoring and mitigation plan to address such conflicts).

¹⁷ See, e.g., ELY/NNR July 14, 2023, Comments on June 12, 2023, Response and Corrections of White Pine Waterpower, Document Accession #20230714-5169, at pp. 2-3 (ELY/NNR 14July2023 Comments).

¹⁸ See *id.* at pp. 10-11.

¹⁹ Document Accession #20230714-5169 (ELY/NNR 14July2023 Comments).

²⁰ See BLM Bristlecone Field Office August 31, 2023, Comments, Document Accession # 20230831-5025, Responses to FERC -AI-5, AI-6 (BLM 31August2023 Comments).

²¹ See Deficiency Letter, Schedule A, Deficiency Nos. 12-15.

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attempting to satisfy this requirement, Applicant's Exhibit G maps are still incorrect and, consequently, not in compliance with the Commission's directives and regulations. Among other things, the Project maps contain the following errors:

- **The Project maps still do not show the Railway's ROW correctly.** Despite repeated submissions of the required Exhibit G and other related Project maps, Applicant to date has failed to accurately reflect the fact that its Project plans infringe on ELY/NNR rights as an owner and operator of land and property on which the HiLine and Mainline tracks reside. Despite Applicant's statements to the contrary,²² WPW still has not reflected ELY/NNR's property rights correctly on its Project maps.

In the ELY/NNR FLA Initial Submission filed over nine months ago,²³ and again in the ELY/NNR July Comments, ELY/NNR stated that "[i]n the Project area, the City of Ely owns the land that the jointly owned [M]ainline railroad track is on."²⁴ BLM in its August 31, 2023, Response filed in this docket confirmed that Ely owns the land on which the Mainline track rests.²⁵ However, even after BLM's confirmation regarding Ely's ownership of the property, Applicant has inexplicably failed to correct its Exhibit G maps. *Indeed, Applicant has allowed this error to persist in subsequent supplemental information response filings.*

The ELY/NNR ROWs have not been shown accurately on WPW's maps filed on July 27, 2023, in response to the Commission's Deficiency Letter (WPW 27July2023 Deficiency Response),²⁶ or in WPW's (Letter dated August 27, 2023) August 25, 2023, Response to FERC's July 13, 2023, Additional Information Requests.²⁷ Nor is NNR's ROW shown accurately in WPW's most recent December 1, 2023, FERC submission responding to BLM comments.²⁸

It is bewildering that Applicant has consistently chosen not to address this basic issue that meaningfully impacts a full understanding of and decisions involving essential Project features and activities that could affect the railroad's property rights and operations (e.g., water wells, lower reservoir and construction activities proposed in that location, to name just a few). It is also disturbing that WPW has demonstrated such casual disregard for the Commission's regulations and filing requirements when directed to correct the map errors.

²² See, e.g., WPW 9August2023 Response, at III. 4 ("WPW has properly described the permanent Project features in Exhibit G of the Final License Application.").

²³ ELY/NNR FLA Initial Submission, at p. 1.

²⁴ ELY/NNR 14July2023 Comments, at pp. 5-6.

²⁵ BLM 31August2023 Comments, Responses to FERC-AI-5, AI-6.

²⁶ WPW 27July2023 Deficiency Response, Attachment 19-1 Exhibit G Maps.

²⁷ Document Accession #: 20230825-5109, Attachment A3-8-1 Map (WPW 25August2023 Response).

²⁸ See Document Accession #: 20231201-5364, Attachment 1-7-Maps, at map captioned "Proposed Project Facilities" (WPW 1December2023 Response to BLM).

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Importantly in this regard, ELY/NNR now further represent that the City and NNR jointly own the railroad tracks **and the land on which the HiLine track is located**. Hence, WPW's Project materials filed with the Commission and otherwise presented to the public for necessary review and examination do not accurately reflect correct ownership of this railroad property that is located within and traverses the Project footprint.

WPW has not consulted with ELY/NNR regarding these fundamental, foundational property issues.²⁹

- **Exhibit G Maps still do not show the Project Features and Boundary correctly.** WPW's Exhibit G Maps also do not accurately show the Project Features and Boundary despite repeated revised Project map filings. In the Deficiency Letter, the Commission directed WPW to correct FLA Exhibit G maps, in part because they did not show required proposed permanent Project features within the Project boundaries.

For example, the revised maps filed with the Commission as part of the WPW July 27 Deficiency Response do not show the permanent spoil disposal at all.³⁰ WPW has represented that this project feature will be located adjacent to the lower reservoir area and is permanent, thereby requiring that this feature be included within the Project Boundary.³¹ In this instance, WPW's failure to correct the maps did not meet the **express directives** of the Commission's Deficiency Letter.³²

²⁹ ELY/NNR are baffled by WPW's repeated representations that "applicant has consulted with and will continue to consult with the NNR/City of Ely" for planning on railroad crossing construction, *see, e.g.*, WPW 1December2023 Response to BLM, at p. 26 (BLM2-3 FERC-A1-5), and that they have "consulted with and will continue to consult with NNR, and the City of Ely as the FERC licensing process progresses." *Id.* at p. 36 (BLM2-12 FERC-A1-19). WPW made the latter representation in response to BLM's reminder that "BLM also requires cadastral consultation for projects located within 1/4 of a mile of non-BLM administered lands." *See id.* Notwithstanding the clear importance of these issues, **neither Ely nor NNR has ever been approached by WPW to engage in ROW-related consultations.**

³⁰ *See* WPW 27July2023 Deficiency Response, Attachment 19-1 Exhibit G Maps, at Map G10.

³¹ *See* FLA, Exhibit A, Section 4, p. 20; FLA, Exhibit E, Section 3.3.2.3, pp. 105-106.

³² *See* Deficiency Letter, Schedule A, P 13 ("Section 4.41(h)(2) of the Commission's regulations requires that the project boundary enclose all project features. Because Exhibit G does not appear to show all proposed project features, including the soil disposal area and the features listed above, enclosed by the project boundary, please correct Exhibit G maps to enclose all proposed project facilities and features within the proposed project boundary."), *clarified*, May 25, 2023, Federal Energy Regulatory Commission Additional Information Request, Document Accession #: 20230525, Exhibit A, P 1 ("if the laydown areas would be for temporary use during project construction, and not for potential continued use during project operations, the laydown areas would not need to be identified in Exhibit G."). The Commission's clarification does not indicate any lesser need for WPW to correct the Exhibit G maps or to suggest examination of short-term Project impacts is unnecessary. Rather, FERC's clarification directed WPW to present the Project's permanent features information clearly in the Exhibit G maps consistent with the Commission's regulations and requirements for purposes of its analysis.

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Following the WPW 27July2023 Deficiency Response, Applicant thereafter added to the confusion when it filed two more different sets of maps showing the lower reservoir area. In a map filed in August, Applicant showed the permanent spoil site once again adjacent to the lower reservoir.³³ WPW, however, did not show project boundaries on this map. (ELY/NNR's analysis also establishes that there is a significant grid/coordinate error in the August 25, 2023, map that was measured as 11,039 feet in a northerly direction. This mistake puts the reservoirs, roads, and all other features of the project more than 11,000 feet to the north of the locations shown in all other Applicant maps.) WPW's newly minted, most recent maps add even more confusion. WPW now identifies a "permanent spoil disposal" site adjacent to the lower reservoir. Inexplicably, however, the site is shaded pink signifying a temporary feature according to the map's legend, thereby, conflicting with WPW's adjacent "permanent spoil disposal" site labeling.³⁴

But that is not all. KOP17.2 photosimulation also shows a berm masking the switchyard that WPW maintains is "correctly shown."³⁵ Yet this berm, which would appear to be a proposed permanent Project feature, ***is missing from every one of the several Project revised maps that Applicant has submitted***, including the most recent maps WPW filed December 1.

What are ELY/NNR, other stakeholders, reviewing members of the public, and governmental bodies expected to make of this colossal muddle?³⁶

WPW has not consulted with ELY/NNR regarding these many Project features and Boundary issues, even though the railroad's property rights are directly and extensively impacted.

The confusion caused by WPW's repeated submissions intended to correct the flawed Project maps, reflects the very apprehension articulated in *Paducah*: by failing to include information timely, an applicant prevents "other agencies and stakeholders" from "obtain[ing] the full understanding of the project and its effects needed to decide whether, and under what conditions, to issue a license."

³³ See WPW 25August2023 Response, Attachment A3-8-1 Map.

³⁴ See WPW 1December2023 Response to BLM, Attachment 1-7-Maps, at map captioned "Proposed Project Facilities."

³⁵ WPW 31October2023 Response, at p. 11.

³⁶ Based on these various concerns and the photosimulations that have been prepared to date, ELY/NNR respectfully urge that BLM reconsider its position as represented by WPW that "[a]s a result of additional consultation, the applicant and BLM agreed that no additional KOPs or photo simulations for the Visual and Aesthetic Studies are necessary." WPW 1December2023 Response to BLM, at p. 21 (BLM1-13 Additional Comment 2). It is likely any such "agreement" was influenced by the flawed information contained in inaccurate photosimulations and maps that WPW presented for BLM's review.

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WPW's failure on this issue has been persistent. Applicant has consistently flouted the Commission's regulations and requirements. On this matter alone, under the precedent established by the Commission in *Paducah* and *Ashuelot*, the FLA should be rejected as being patently deficient.

e) WPW has failed to provide adequate and timely information on several other Project deficiencies that the Commission identified under the Deficiency Letter; WPW has failed to consult meaningfully with ELY/NNR regarding these matters.

WPW has failed to provide adequate and timely information on several other concerns that the Commission identified as being deficient under the FLA. These include:

- **On-site Manpower Requirements and Payroll; Housing Information** – In its Deficiency Letter, the Commission directed WPW to provide on-site manpower requirements and payroll during and after its Project construction.³⁷ WPW has not performed or provided timely reliable studies or data in this regard, choosing instead to rely on anticipated information.³⁸

In a related matter, WPW has also not provided reliable information on available housing stock for its temporary workers, preferring to treat this serious matter as one that can be deferred. ELY/NNR have repeatedly expressed their concern that presently lodging in the area cannot fully meet the demands of tourist visitors on many days of the year. Satisfying the Project's housing requirements for the expected surge of temporary Project workers would appear to be impossible.³⁹

Indeed, the BLM has confirmed that there is a shortage of housing stock in the area and raised other related concerns about WPW's unclear Project housing plans.⁴⁰

ELY/NNR represent that to date no meaningful discussions have occurred between the City and Applicant on these critical issues.

- **Fiscal Impact Analysis** – In its Deficiency Letter, the Commission directed WPW to “correct the FLA in accordance with the Commission's regulations to include a fiscal impact analysis evaluating the incremental local government expenditures in relation to the incremental local

³⁷ See Deficiency Letter, Schedule A, Deficiency Nos. 8 and 9.

³⁸ See generally ELY/NNR 14July2023 Comments, at p. 3.

³⁹ See ELY/NNR FLA Initial Submission, at p. 24; see also ELY/NNR 14July2023 Comments, at p. 4 (WPW concedes that “the condition, size, pricing, and market availability of the housing needed at the start of each phase of construction are not known at this time.”).

⁴⁰ See BLM August 29, 2023, Comments to rPlus on FERC Deficiencies, Document Accession #: 20230829-5043, at p. 4 (BLM 29August2023 Response to rPlus on FERC Deficiencies).

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government revenues that would result from the construction of the proposed project.”⁴¹ Applicant failed to provide this analysis as it pertained to impacts of the Project on the City by the June 12, 2023, deadline imposed by the Commission.⁴²

ELY/NNR represent that to date no meaningful discussions have occurred between the City and Applicant on this important issue.

- f) **WPW has failed to provide adequate and timely information on other critical Project issues, including on geologic characteristics and seismic and hydrostatic forces that pose a threat to major Project structures and public safety; WPW has failed to consult meaningfully with ELY/NNR regarding these matters.**

The geology of the proposed Project area is complex and presents unique challenges and risks to WPW’s Project and the public. To date, WPW has supplied insufficient information addressing these concerns even though this data is essential to a determination as to whether the proposed Project location is suitable and if it can be constructed and operated safely. Particularly troubling is the fact that WPW has not performed the “stability and stress analyses for all major [Project] structures and crucial abutment slopes, including seismic and hydrostatic forces induced by water loads” that FERC requires under its regulations and specifically requested in its Deficiency Letter.⁴³ As discussed below, these and other studies, if they are available at all, have not been made readily available to the public for examination.

Faults

The Nevada Bureau of Mines and Geology (NBMG) mapped a major décollement, or overthrust fault, that is exposed on the west flank of the Duck Creek Range and immediately east of the proposed lower reservoir. The overthrust fault extends eastward into the range through the proposed underground works tunnels and cavern facilities complex (Underground Complex). This overthrust was most recently described by Long, et al. (2022) as part of the regional décollement that includes the Duck Creek Range and the Schell Creek Range to the east.⁴⁴

These décollement and associated thrust faults are strong indications that the upper bedrock throughout the WPW Project site is highly fractured. This likelihood extends to the areas of the proposed upper reservoir, the Underground Complex, including the tunnels, and to the lower reservoir. The upper overlaying strata include the Lower Cambrian age Prospect Mountain Quartzite, Pioche

⁴¹ See Deficiency Letter, Schedule A, Deficiency No. 10.

⁴² See ELY/NNR 14July2023 Comments, at pp. 4-5.

⁴³ Deficiency Letter, Schedule B, P 101.

⁴⁴ Sean P. Long, et al., *The low-angle breakaway system for the Northern Snake Range décollement in the Schell Creek and Duck Creek Ranges, eastern Nevada, USA: Implications for displacement magnitude*, GEOSPHERE, 1194–1222 (vol. 18, no. 4, May 12, 2022), <https://doi.org/10.1130/GES02482.1> (Long, et al. (2022)).

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Shale, and Pole Canyon Limestone.⁴⁵ The Prospect Mountain Quartzite is a thick formation that is known regionally to be extremely hard and brittle, and thus prone to fracturing. Millions of years of tectonic movement and faulting means that extensive fractured quartzite is present in most local underground mining locations.

WPW drilled a core hole in October 2021 on the mountainside above the lower reservoir site and below the upper reservoir site. See **Diagram 1** below. ELY/NNR are unaware whether the drillers were able to reach the approximately 2,100 feet target depth of the hole. ELY/NNR are also unaware if WPW has released a report on the drilling operations or test results of the core. WPW's failure to supply this important data on areas relating to the basic suitability of the proposed Project site prevents ELY/NNR's review and understanding of Applicant's Project.

WPW, moreover, has never consulted with ELY/NNR regarding these matters even though critical questions abound. Applicant has not shown that it can construct its project in this location despite these significant geologic challenges. WPW has also not addressed how the railroad's Mainline and HiLine tracks can continue to operate safely if they are to be sandwiched between Applicant's major Project structures that will need to overcome these challenging geologic considerations.

Seismic Activity

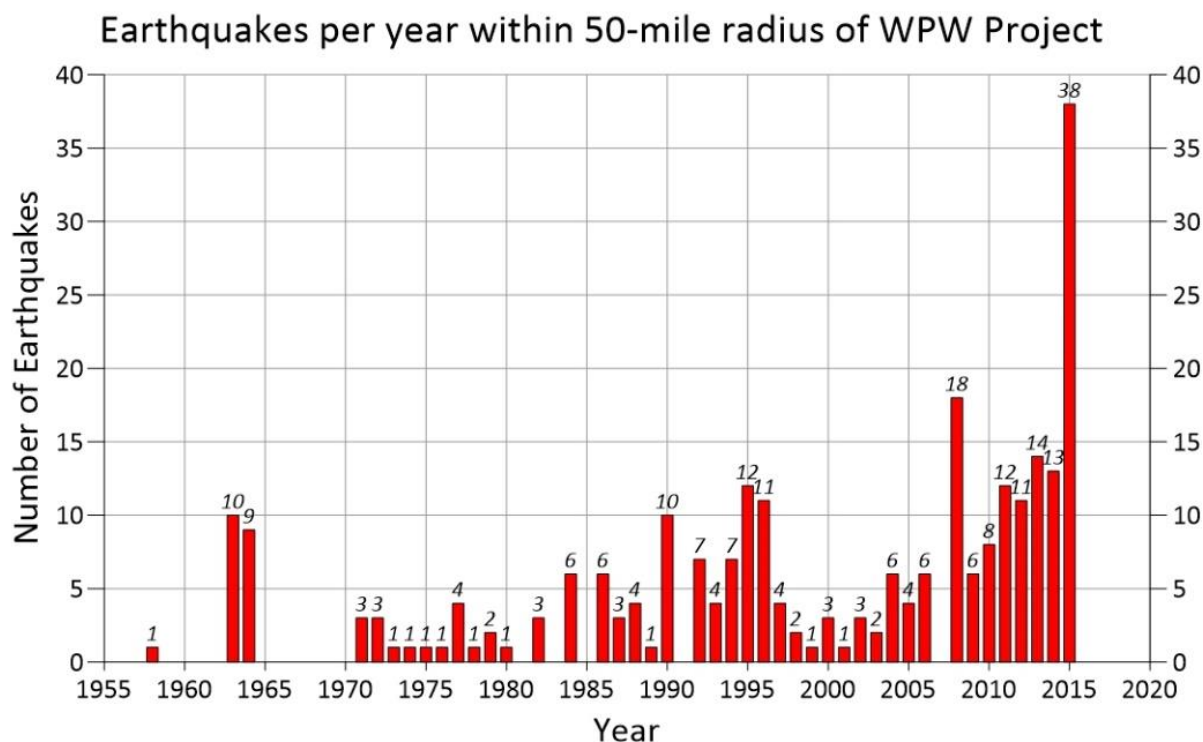
According to the U.S. Geological Survey (USGS), Nevada is the third-most seismically active state in the United States, behind Alaska and California. As relevant to this proceeding, the WPW Project area is seismically active.⁴⁶ Seismic records of the USGS and the NBMG report that there were 263 earthquakes in the 53-year period between 1963 and 2015 within a 50-mile radius of the proposed

⁴⁵ R.K. Hose, et al., *Geology and mineral resources of White Pine County, Nevada*: Nevada Bureau of Mines and Geology Bulletin 85, p. 4-7 (Hose and Blake (1976)).

⁴⁶ See generally FLA, Exhibit E, Section 3.

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WPW Project area. The highest number (38) of those earthquakes occurred in 2015. This activity is shown graphically below:



Data Source: Nevada Bureau of Mines and Geology, 2017
Data Range: 1958-2015

The recorded earthquake nearest to the WPW project area occurred in 2003, two miles south-southeast of the proposed upper reservoir. That earthquake had a magnitude of 3.02 (Richter Scale) (NBMG, 2017). The Volcano Discovery archives also reported an earthquake southwest of the project area within the 50-mile radius. This earthquake occurred on October 14, 2021, and had a magnitude of 3.6.⁴⁷

WPW describes the “largest recent earthquake” that struck near Wells, Nevada, on February 21, 2008.⁴⁸ The earthquake was magnitude 6.0 and its epicenter was about 5 miles northeast of Wells. The shaking from this earthquake lasted for nearly a full minute and significant damage was done to buildings and infrastructure in the heart of downtown Wells. The earthquake was felt in Ely

⁴⁷ <https://www.volcanodiscovery.com/earthquakes/quake-info/6450954/mag3quake-Oct-15-2021-55-km-SSE-of-Eureka-Nevada.html>

⁴⁸ FLA, Exhibit E, Section 3.3.1.14, p. 101. See also dePolo, C.M., Smith, K.D., and Henry, C. D., 2011, Summary of the 2008 Wells, Nevada earthquake: Nevada Bureau of Mines and Geology, Nevada Seismological Laboratory, in MBMG Special Publication 36, <https://data.nbmg.unr.edu/public/freedownloads/sp/sp036/>

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approximately 140 miles south of the epicenter. Minor damage was reported in Ely, including a cracked wall in the Master Mechanic's building at the NNR yard.

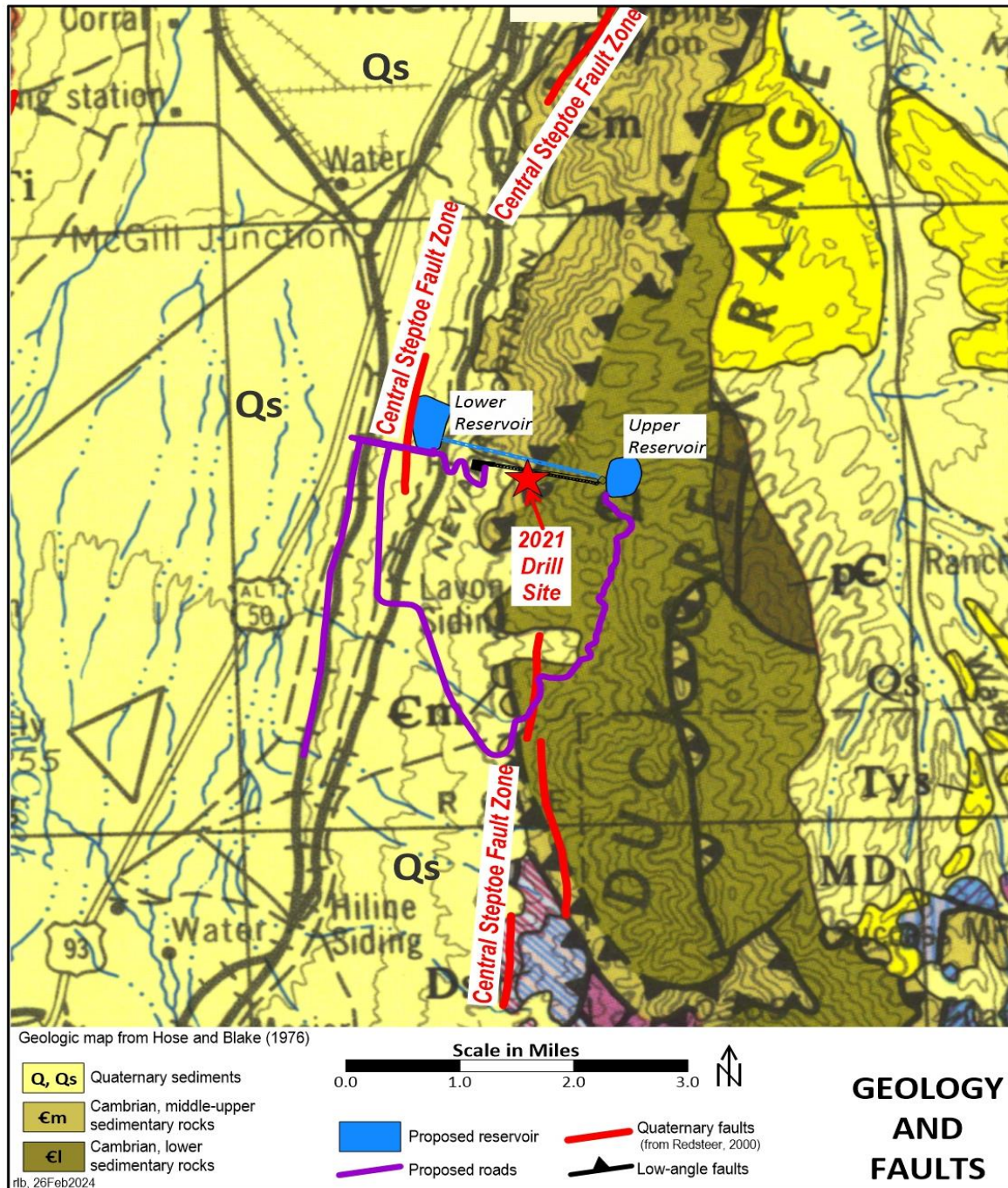
WPW references Redsteer (2000)⁴⁹ in the FLA at Exhibit E for a mapped, young (Quaternary-age) range-front fault that strikes north-south below the western edge of the proposed lower reservoir. The fault, **shown in Diagram 1 below**, is one of several normal faults that comprise the Central Steptoe Fault Zone, identified as Number 1238 by Redsteer. (The fault was previously mapped by Dohrenwend, et al. (1992),⁵⁰ as referenced by Redsteer.)

⁴⁹ *Central Steptoe fault zone, in Quaternary fault and fold database of the United States*, U.S. Geological Survey (M.H. Redsteer compiler, accessed Feb. 4, 2024) <https://earthquakes.usgs.gov/hazards/qfaults> [<http://tinyurl.com/27h9hzns>]

⁵⁰ J.C. Dohrenwend, U.S. GEOLOGICAL SURVEY, *Reconnaissance photogeologic map of young faults in the Ely 1 ° by 2° quadrangle, Nevada and Utah: Miscellaneous Field Studies Map MF-2181* (1991), <https://doi.org/10.3133/mf2181> (Dohrenwend, et al. (1992)).

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Diagram 1



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Dohrenwend, et al. (1992) stated that reconnaissance studies indicated the fault last moved sometime during the late Pleistocene, or sometime between 10,000 and 130,000 years ago. As shown on the geologic maps, the fault is in Quaternary alluvial sediments.⁵¹

Alluvium

Alluvium consists of unconsolidated sediments of clay, silt, sand, and gravel in beds of varying (unknown) thicknesses. As noted above, WPW drilled a test hole near the lower reservoir, but the results are unknown. The hole should have identified the various layers of sediments; further tests could have provided important other information regarding sediment characteristics, bedding, compaction, water saturation, etc.

Geologic Risk Factors

The various risk factors described above that are present in the Project site, namely, the faults, seismic activity, and alluvium, individually and in combination, constitute a major hazard to all WPW Project structures, including to underground Project components.

Studies are needed to identify and map faults within the project area for a better understanding of geologic risks. WPW states that they completed a seismic survey on September 8, 2022, but no known reports have been released.

The western wall of the lower reservoir appears to be on top of the fault scarp mapped by Dohrenwend, et al. (1992). This creates an enormous risk to the lower reservoir with respect to the following:

- The reservoir is to be lined to prevent leakage. However, if leakage occurs into shallow alluvial layers, there could be sluffing or sinking in or near the reservoir.
- Movement along the fault could be caused by the rapid and daily cycling of water. The tremendous weight of the water (more than 7.5 million tons) going in and out of the reservoir daily could eventually create conditions in the underlying and nearby alluvial sediments that could weaken the reservoir structure.
- Clay layers can become slick when wet. Fault gouge is likely present in the fault zone, and water could function as a lubricant that would increase fault movement. Should movement occur on the fault, damage would occur to the reservoir.
- Dewatering has been linked to an increase in the rate of earthquake activities, thus posing an added threat of seismic damage to the lower reservoir in an already proven, active seismic

⁵¹ Although the local geology was mapped by Hose and Blake (1976) and by Long, et al. (2022), the authors did not describe the Quaternary sediments in any detail but focused on the bedrock formations. The Quaternary alluvial sediments are best described by Eakin, Hughes, and Moore in their map of Steptoe Valley water resources. See Thomas E. Eakin, NEVADA DEPT. OF CONSERVATION AND NATURAL RESOURCES, *Water Resources Appraisal of Steptoe Valley, White Pine and Elko Counties, Nevada*, Water Resources-Reconnaissance Series Rep. 42 (June 1967).

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region. Dewatering has also been shown to lead to land subsidence.⁵² WPW's Project water plans rely on aquifers in the Steptoe Valley. WPW's recently disclosed hydrogeologic plans that include hydrogeologic evaluation test wells and alluvial ground monitoring wells have not yet begun. Further information is needed to determine if the Project can be built without creating unacceptable public safety threats connected to the Project's water usage plans.

- If there is a large enough earthquake in the region, a danger to the lower reservoir would arise from soil liquefaction of the alluvial sediments.⁵³ It is well known that damage from earthquakes is most severe in alluvial areas where liquefaction occurs.

ELY/NNR do not know if WPW has performed or intends to perform studies to address these concerns.

In the FLA, WPW reports that it completed a two-day seismic study on September 8, 2022.⁵⁴ That study has neither been presented to, nor discussed with, ELY/NNR. The FLA makes no recommendations regarding seismic activity threats to the major Project structures. The FLA also makes no recommendations regarding geologic and soil resources impacts on the railroad whose tracks would be adjacent to major Project features and whose operations and passengers' safety will be at risk. Moreover, Applicant has failed to address geologic and soil resources impacts on recreational users and on the public generally from the proposed Project. This missing information on public safety matters prevents a full examination of the Project.

WPW has not consulted with ELY/NNR regarding these fundamental Project issues.

4. The Commission should dismiss the FLA with prejudice in the interest of justice.

In its current state, the FLA leaves ELY/NNR, and undoubtedly the Commission, with more questions than answers. WPW has consistently failed to provide required and additionally requested information timely. Indeed, in certain instances, the information has not been provided at all. Applicant has failed to consult meaningfully with ELY/NNR in practically every instance where these failures impact them. WPW's unreasonable approach in the prosecution of its license application has placed unfair burdens on the City and the Foundation. WPW, moreover, has yet to demonstrate that the claimed benefits of the Project give sufficient consideration to the tremendous risks and adverse impacts the Project would have on the City, NNR, and local communities. Accordingly, ELY/NNR respectfully request the Commission find that the FLA is patently deficient and, in the interest of justice, dismiss the FLA with prejudice.

⁵² Colin B. Amos, *Uplift and seismicity driven by groundwater depletion in central California*, NATURE 509, 483–486 (2014), <https://doi.org/10.1038/nature13275>

⁵³ According to the University of Washington's "Soil Liquefaction" web site (2000): "Liquefaction is a phenomenon in which the strength and stiffness of a soil is reduced by earthquake shaking or other rapid loading. Liquefaction and related phenomena have been responsible for tremendous amounts of damage in historical earthquakes around the world."
<https://depts.washington.edu/liquify/html/what/what1.html#:~:text=What%20is%20soil%20liquefaction,historic al%20earthquakes%20around%20the%20world>

⁵⁴ FLA, Exhibit E, Section 3.3.4.1, p. 108.

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B. If The Commission Does Not Reject The FLA With Prejudice, Alternatively, The Commission Should Direct Applicant To Perform The Additional ELY/NNR Studies.

If the Commission does not reject the FLA with prejudice, ELY/NNR respectfully request that the Commission direct WPW to perform the Additional ELY/NNR Studies that ELY/NNR initially sought in the ELY/NNR FLA Initial Submission.⁵⁵ In this regard, ELY/NNR respond to various new arguments that have been raised by Applicant, principally in (i) the WPW 9August2023 Response and (ii) the WPW 31October2023 Response.

As set out in the ELY/NNR FLA Initial Submission and as shown in other filings by ELY/NNR in this matter and below, the Additional ELY/NNR Studies are necessary for a full understanding of Applicant's Project. In support hereof, ELY/NNR state as follows:

1. Introduction.

Applicant would have the Commission deny ELY/NNR's request to perform the Additional ELY/NNR Studies that are needed for full review of the FLA. WPW is forging ahead with its license application, even though the deficiencies in the FLA prevent the comprehensive examination that the law requires. WPW has failed to provide vital information encompassing both short-and long-term aspects of Applicant's Project. Significantly, it was not until this past summer when Applicant responded to the Commission's Deficiency Letter that crucial details about the Project became known *for the first time*.

ELY/NNR are among the stakeholders that would be directly affected by this Project. For ELY/NNR, WPW's belated "reveal" is especially troubling because of the significant impact it would have on them. For over 35 years, ELY/NNR have created a historic railroad experience that is both distinctive and irreplaceable. As a National Historic Landmark, the NNR is vital to the economic well-being of its employees, the City, and White Pine County communities and stakeholders.⁵⁶ The Railway is also a living museum, an important part of the Nation's history and cultural heritage.

Applicant's Project is not a commonplace electric grid infrastructure concept that presents a few lingering concerns that might need attention; it is a massive \$2.8 billion infrastructure project. There should be no mistake about what is at stake: Applicant's Project poses an existential threat to ELY/NNR.

If approved, the Project would be constructed between NNR's two excursion lines over a seven-year period and operate for generations in the very heart of NNR's railroad experience. Without meticulous planning, proper execution, and robust mitigation measures, the Project risks undermining the sustainability of the railroad and the local communities that heavily rely on the commerce NNR fosters in these remote regions.

⁵⁵ See *id.* at pp. 13-27.

⁵⁶ See *also supra* at p. 2.

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Before one shovel of dirt is permitted to be turned on this Project, it must be properly presented and fully understood, with comprehensive mitigation measures developed and in place, secured under a fully vetted Project license. ELY/NNR's additional study requests are an important part of the process needed for that to occur. The Additional ELY/NNR Studies will adduce vital information on still-missing data. Applicant should want this too if they believe their Project is truly in the public interest: performing the Additional ELY/NNR Studies would facilitate the identification, development, and successful implementation of crucial mitigation and safety measures for their proposed Project that is intended to endure for over a century.

In the WPW 9August2023 Response, Applicant argues that FERC should deny the request that WPW perform the Additional ELY/NNR Studies. Applicant contends that these study requests either (i) are already included in ongoing or completed studies, or (ii) are unnecessary for a complete analysis of the FLA on its merits. In the WPW 31October2023 Response, Applicant makes further related arguments opposing ELY/NN's study requests. The Commission should reject these challenges and direct WPW to perform the three studies.

To be clear, ELY/NNR are not seeking to duplicate data already produced. Rather, ELY/NNR's additional study requests are geared towards acquiring vital information that is crucial for assessing Project aspects that still lack transparency. Providing this information is essential for a thorough examination and full understanding of the Project.

2. The Additional ELY/NNR Studies are needed for a full understanding of Applicant's Project.

a) Additional Study Request #1: Southern Nevada Public Lands Management Act-Funded Recreation Resources.

The requested study would examine Project construction and operation on the implementation of recreation enhancements related to recent SNPLMA Grant funds awarded to White Pine County and NNR, including:

- The restoration of the railroad's Mainline from Ely to McGill
- Construction of a Multi-use Recreation Trail within the railroad right-of-way between Ely and McGill

WPW argues that FERC should reject this request for three reasons: (a) the requested study is duplicative; it contains study parameters included in ongoing studies to which the parties have extensively consulted and agreed, (b) to the extent the NNR's grant monies allow improvements to the inactive Mainline or construction of the proposed Multi-use Recreation Trail, such usage will not be materially different than that of the currently active HiLine, and (c) the City of Ely and NNR have neither

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sufficiently defined their proposed railway project nor provided any relevant specifics that could facilitate or be utilized in any additional study.⁵⁷

*i. **Material differences exist between ongoing studies and the further information ELY/NNR is seeking under Additional Study Request #1.***

*aa. **Introduction.***

ELY/NNR are specifically directing Additional Study Request #1 towards Project impacts on the Mainline restoration project that is being funded through the \$10,168,421 SNPLMA Grant. The Mainline restoration project is scheduled to commence in 2024 and should be completed by year-end 2026.⁵⁸ Plainly, a poorly conceived Project could destroy the value proposition envisioned and sanctioned under the SNPLMA Grant. ELY and NNR are seeking this additional study as this Project might affect each of their respective interests.

The restored Mainline will traverse the Project boundaries and allow NNR excursion trains to reach the historic McGill Depot, creating valuable new recreational and economic opportunities for the Foundation, the City and the McGill community. Rehabilitating the track to McGill will allow the Foundation to build upon past successes and develop new opportunities and programs to continue to bring tourists to White Pine County. Once the Mainline track is opened to McGill, 99% of NNR ridership will either be traveling on the Mainline or the HiLine. The short- and long-term impacts of the Project on this new riding experience to either NNR or Ely have not been studied comprehensively under Applicant's studies performed to date.

Contrary to WPW's assertions, ELY/NNR are *not* requesting a study for the same information covered by the National Park Service (NPS or Park Service). Material differences exist between the NPS studies and Additional Study Request #1 requested by ELY/NNR. ***Most obviously, information on short-term impacts of the Project on Ely and NNR involving the Mainline restoration are virtually non-existent.*** But long-term impacts will also need to be studied further to examine the implications of opening-up ridership on a new excursion line that will pass through the Project lower reservoir area. Even though WPW has developed data on NNR riders of the HiLine, this data is in question, among other reasons, because key Project features appear to infringe on NNR/ELY's ROW. Among other shortcomings of Applicant's studies performed to date, WPW has only examined Project impact on NNR HiLine ridership over a four-month period, relying exclusively on photosimulations of *permanent* Project features (that ELY/NNR maintain are also questionable and should be redone). Additional data is needed, including through new KOPs and studies, to determine if the Project threatens the Nation's investment in this new recreational activity under the SNPLMA Grant and, if so, how to construct appropriate mitigation measures.

⁵⁷ WPW 9August2023 Response, Section II.i.

⁵⁸ See SNPLMA Project Description Search Results for 18-11: Nevada Northern Railway Phase III (WP16), Bureau of Land Management (Feb. 12, 2024), <http://tinyurl.com/uu529vfh>

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The SNPLMA Grant will also fund a Multi-use Recreation Trail within the Mainline railroad ROW between Ely and McGill that will connect to existing trails on BLM-administered public land. Only ELY/NNR Additional Study Request #1 is requesting data on the impact of the Project on this aspect of the SNPLMA Grant. ***To date, Applicant has supplied no data relating to Project impact on future users of the planned recreation trail.*** The Commission should reject Applicant's make-weight argument that "the potential viewshed impacts of the Project to that proposed trail will not be materially different from those already identified in the [NPS study] photo simulations."⁵⁹ WPW's argument is wholly unsupported; it is a self-serving *ipse dixit*. It is implausible that Applicant can "draw statistically relevant conclusions relating to potential Project impacts"⁶⁰ applicable to Multi-use Recreation Trail users from data it is collecting from NNR riders under the NPS studies.

bb. Further details on the Mainline restoration and Multi-use Recreation Trail.

WPW complains that NNR's plans for the Mainline restoration lack specifics. Applicant's attempt to deflect further examination for this reason should be dismissed outright. WPW has regularly sought to evade full consideration of its Project impacts. WPW has been aware of the SPLMA Grant since at least the time it submitted its FLA.⁶¹ Details of the SNPLMA Grant, moreover, are set out in the SNPLMA Notice of Award, Department of the Interior (Dec. 29, 2022), included as Attachment 1 to the ELY/NNR FLA Initial Submission. In any event, additional details regarding the SPLMA Grant are provided below and will be regularly updated to assist in the review of Applicant's Project.

Mainline restoration development under the SPLMA Grant

The most successful tourist railroads have a destination for passengers to travel to and explore. The best example of that in the western United States is the Durango and Silverton Narrow Gauge Railroad. It runs several trips per day from its namesake cities. Tourists can board at either city's terminal, ride the train to the other city, exit, explore the town, and ride a later train to return to the starting point. The success of the Durango and Silverton Narrow Gauge Railroad brings in approximately 200,000 visitors a year to the local communities and generates \$200 million annually in revenue for them.

The Foundation's plan under the SNPLMA Grant is to follow the success of the Durango and Silverton Narrow Gauge Railroad. It is expected that restoring and opening the Mainline track to McGill will create the same opportunities for the Ely-McGill/White Pine County communities as Durango and Silverton have experienced. The communities served by the two railroads are

⁵⁹WPW 9August2023 Response, at Section II.i.(b).

⁶⁰ *Id.* at Section II.i.(a).

⁶¹ See FLA, Exh. E, Section 3.2.2.2 Reasonably Foreseeable Future Actions, at p. 88.

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hundreds of miles from population centers. But as the Durango and Silverton Narrow Gauge Railroad has shown, if you offer a destination via a unique railroad excursion, people will come.

Upon restoring the Mainline tracks to McGill, NNR will follow the lead of the Durango and Silverton Narrow Gauge Railroad and run more trains per day. Currently, the Foundation operates just one excursion a day, except for Saturdays when two trains run. NNR anticipates operating at least four trains per day from Ely to McGill, with more running on the weekends.

The Foundation is also embarking on an exciting major development initiative in McGill to boost tourist visitation further in connection with the Mainline restoration. NNR is in the process of developing a Smithsonian Affiliated Earth Sciences Museum that will be located in McGill. The Railway expects this new museum will be a significant attraction that will generate additional tourist visitation from around the region and the Country.

NNR's average annual increase in ridership over the past 20 years has been 13%. The Foundation anticipates that the development of the McGill destination with the museum attraction will increase NNR ridership by 20-25% annually and that after the completion of the track restoration to McGill and the construction of the museum, ridership within five years will be approximately 40,000 to 50,000 riders per year.

There is a synergistic relationship between NNR train ridership and donations on the Foundation's revenues. Over the course of the past 20 years, NNR's revenue from train operations has matched the Railway's revenue from donations dollar-for-dollar. In 2002, the combined total of train operations and donations was \$159,753; in 2023 it was \$1,952,021. 2024 marks the 40th anniversary of the Foundation. During the past 40 years, the Foundation has raised and invested over \$50,000,000 in the preservation and maintenance of the railroad.

The Foundation is building on these many achievements. From 2002 through 2023 the Foundation was awarded nearly \$20,000,000 in grants, including the SPLMA Grant. Currently, the Foundation has nearly \$40,000,000 in grants pending. Plans are being developed to launch \$12,000,000 in new initiatives. If successful, the Foundation will have invested over \$100,000,000 in the preservation of the National Historic Landmark Railway, with substantial benefits flowing to Ely and throughout the White Pine County communities generally.

The Foundation's accomplishments have been considerable and are poised to continue. But all of this is now threatened by the WPW Project.

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Multi-use Recreation Trail development under the SPLMA Grant

In many locations along the railroad's ROW, the railroad bridges several separate parcels of BLM land. The construction of the Multi-use Recreation Trail along the NNR's ROW will connect these parcels and allow their use for all matters of public recreational opportunities.

Because BLM land is public land, various recreational activities on this land are already being enjoyed by the public unrelated to the NNR. These parcels are being used by families and outdoor recreationalists, including horseback riders and mountain bikers. The new Multi-use Recreation Trail is expected to expand recreational use of these public lands for horseback riding, off-highway vehicle (OHV) riding, hiking, bike riding, and wildlife viewing. Other astro tourism opportunities, unrelated to existing NNR/astro tourism excursion programs, will also become available to recreational users.

Essentially, opening the new trail along the railroad ROW will allow the public greater access to BLM parcels that are already being used by the public but are currently isolated. The new Multi-use Recreation Trail will allow access to these parcels directly from the City of Ely and McGill, obviating the need to go around railroad and other private property. Users of the Multi-use Recreation Trail for the most part will not be NNR patrons, but outdoor enthusiasts who either live in White Pine County or who have traveled to White Pine County to enjoy the wide-open spaces that the railroad traverses.

Construction of the WPW Project threatens to discourage – or may even eliminate – enhanced use of these public lands by outdoor enthusiasts, particularly those who currently travel hundreds of miles to the region for recreational purposes.

cc. To date, short-term impacts of the Project relative to the SNPLMA Grant recreation improvements have never been adequately studied.

At this juncture, Applicant has not properly studied the Project's short-term impacts. This fact in and of itself invalidates Applicant's contention that ELY/NNR Additional Study Request #1 is duplicative.

In NPS comments filed in this docket on September 21, 2023, the Park Service discussed its concern that Applicant had never properly divulged short-term Project features while the NPS studies were being developed.⁶² The NPS also observed that this late disclosure by WPW meant that the photosimulations under its study:

will not provide data on Project impacts to NNR visitor experiences during the Project's seven-year construction period. The photosimulations capture the view of Project features at a singular point in time—immediately after Project construction is completed. In contrast, it is likely that visual impacts would be

⁶² Document Accession #: 20230921-5164 (NPS 21September2023 Comments).

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significant and more extensive during project construction than after Project construction has ended. Project impacts during construction need to be similarly studied. Additional analysis would provide the opportunity for all stakeholders to understand overall project impacts fully to enable fashioning appropriate effective mitigation measures that may be necessary.⁶³

Thus, Applicant's recent disclosures on aspects of the Project's proposed short-term facilities, features, and activities provide just the beginning—effectively, an initial rough sketch—of what remains to be learned about the Project.⁶⁴ Currently, however, none of these critical details are well understood or have been studied adequately.⁶⁵ WPW should be directed to provide greater detailed data on these short-term impacts on NNR.

WPW asserts that it has met its license filing obligations because “short-term impacts associated with construction are identified narratively and considered.”⁶⁶ WPW's superficial argument is unpersuasive and disturbingly misleading. It should be rejected without hesitation. The very term “short term” is spurious: WPW projects a “short term” period of at least seven years. This rationale would allow Applicant to avoid a fulsome scrutiny of short-term Project impacts during what would likely be the most disruptive period for ELY/NNR under the planned Project. Complete examination of short-term

⁶³ *Id.* at Section B.2, p. 3.

⁶⁴ See generally WPW 25August2023 Response, 230827 Attachment A3-8-1 Map (*e.g.*, showing proposed location of temporary spoils; laydown areas); WPW 27July2023 Deficiency Response, Response to FERC-A1-30 Exhibit E (Project Information on Temporary Construction Infrastructure); see also *id.* at Response to FERC-A1-22 Initial Statement and Exhibit A (“The proposed 3.2-mile wellfield conveyance access road **does not currently exist and will need to be constructed**. Table 2.1-8 is revised below to include this Wellfield Conveyance Access Road. **The applicant has reissued Exhibit G Maps at a larger scale with the Wellfield Conveyance Access Road now clearly shown** (See Attachment 19-1, Exhibit G, Map G9 and G12).”) (emphasis added).

⁶⁵ Even though the NPS and WPW have reached a consensus on the NPS study dispute in this docket, short-term impacts of the Project on the railroad have not been examined comprehensively under the NPS studies. WPW argues that “[b]ecause the photo simulations include views of these temporary construction areas and because WPW showed these views to the survey respondents in the Visitor Use and Experience Study, their responses to the survey questions are inclusive of these short-term impacts.” WPW 31October2023 Response, at p. 7. This is little more than twisted logic presented as a lawyer's argument. Temporary features were not the focus of the survey nor were they ever clearly presented to survey respondents under any study.

Upon closer examination, WPW's statement reveals that survey respondents in fact had virtually **no meaningful information** to visualize the impact of short-term construction Project activities with the photosimulations they were directed to review under the survey study. Indeed, WPW elsewhere has conceded that **data on Project impact during construction does not exist**:

The photo simulations WPW produced allow FERC an accurate and representative view of the project **pre-construction**, directly **after construction occurs**, and **after the temporary construction facilities are fully reclaimed**.

WPW 30-October2023 Response, at p. 8 (emphasis added).

⁶⁶ WPW 31October2023 Response, at p. 6.

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impact of the Project on passenger perceptions as well as of impact to the railroad's operations is required to address critical safety concerns and to enable the crafting of appropriate mitigation.

There can be no reasonable doubt that NNR faces enormous reputational risk from the short-term Project impacts. Allowing the Project to proceed without proper short-term information for mitigation could be catastrophic to NNR.⁶⁷ Its continued ability to sustain healthy ridership, donations, and other funding for ongoing operations and planned growth would suffer serious injury. Over the span of seven years, excursion trains coping with disrupted schedules during a major construction project will prompt negative social media feedback. None of the pumped storage projects currently under consideration by the Commission share threats remotely like those faced by NNR: the blasting and removal of the equivalent of an eight-story building of rock and rubble over a seven-year period to develop a massive infrastructure project within the heart of a National Historic Landmark's recreational excursion service area. Precisely because of these unique circumstances is why these additional studies are needed.

Several of the short-term threats to NNR operations by the Project are readily foreseeable. WPW has proposed to locate Project staging and laydown areas near the lower reservoir and between the railway's Mainline and HiLine tracks. Proposed access roads for the Project will cross NNR's ROW and tracks in multiple locations connecting the highway to the work areas and the upper reservoir. Immense recreational and safety concerns are presented with every new detail that is announced and revealed.

WPW will dynamite, load, and transport extensive amounts of stone and debris from the underground construction (involving the building of the pump station and generator facility) in heavy vehicles adjacent to and across NNR's ROW and active tracks for disposal near the lower reservoir area. All the while, NNR's excursion trains will be operating. Extensive surface excavations will also occur in the immediate lower reservoir location.⁶⁸ That area will be a beehive of disruptive activity with more construction trucks and vehicles interrupting train rides and disturbing recreational train patrons (and trail users) throughout the day. These trucks will be filled with tons of rocks and debris churning up clouds of dust in the dry desert air as they transport and dump their loads.

To be sure, this is not the experience that most train (and trail user) visitors will want or are likely to enjoy. Greater details are necessary to understand how the numerous proposed construction activities

⁶⁷ WPW contests ELY/NNR's concerns of degree of injury from the Project impacts, asserting they are "specious" and "subjectively based without support." WPW 31October2023 Response, at p. 8. The results of WPW's own ridership study, however, supply the support WPW claims is lacking and establish that it is WPW's argument that is without merit. See discussion *infra* at I.B.2.a.iii.

⁶⁸ See generally WPW 1December2023 BLM Comments Response, at p. 18 (BLM1-11A2-2) ("expected surface and underground rock excavation activities . . . with their anticipated scheduled timeframes.").

As an initial reaction to the recently disclosed construction schedule, ELY/NNR question if WPW's representation is realistic that the "actual visible construction time for the lower reservoir is approximately 1.5 years." WPW 24October2023 AIR Response, at pp. 7-8.

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of varying duration can occur safely and be best coordinated to minimize disruption to scheduled railroad operations.

WPW recognizes that ELY/NNR's short-term construction concerns have not been fully considered in the FLA.⁶⁹ WPW claims that it "is committed to finding meaningful mitigation measures that allow the project to move forward."⁷⁰ But WPW's assurance rings hollow.

WPW has not coordinated with ELY/NNR to discuss "meaningful" mitigation measures. WPW has resisted expanding the NPS studies to consider short-term impacts and it continues to oppose ELY/NNR's efforts to examine these issues. At bottom, there is insufficient data supporting WPW's claim that the "the Project . . . is expected to have a moderate incremental impact on visual aesthetics."⁷¹ Without the information that would be developed under the proposed study, insufficient data exists to support issuance of a Federal Power Act license consistent with the Commission's rules, regulations, and precedent.

Hence, KOPs, photosimulations, and other relevant data must be forthcoming specifically directed at achieving a fuller understanding of the Project's short-term construction details. WPW concedes the relevance and importance of these issues.⁷² It is critical that mitigation on the Project's short-term construction impacts on NNR's operations be developed that include:

- effective dust suppression
- noise minimization
- minimization of Project lighting interference, including vehicle lighting interference from the proposed upper reservoir, to protect NPS/NNR Dark Skies trains and all other NNR's trains passing through the Project area
- least disruptive scheduling of construction activities impacting Mainline and HiLine train excursions, including least disruptive WPW vehicle and equipment movement over the Mainline and HiLine ROWs
- minimization of impact from Project plans --
 - involving temporary spoil disposal sites
 - involving temporary service roads use
 - locating and erecting barricades at key points, chain link fencing and/or signs for security and safety
 - concerning vehicle parking areas, temporary worker trailers, laydown yards and storage and preparation staging areas between and adjacent to ELY/NNR's Mainline and HiLine tracks

⁶⁹ WPW 31October2023 Response, at pp. 14-15.

⁷⁰ WPW 31October2023 Response, at p. 15.

⁷¹ WPW 9August2023 Response, at Section III.1.

⁷² See WPW 31October2023 Response, at p. 14 where WPW acknowledges that:

NNR raises issues and concerns about dust suppression, noise minimization, operational lighting, train scheduling, vehicle parking, use of diesel generators, the batch plant, use of explosives, and NNR's proposed multi-use trail. **While each of these issues is important in the context of the FERC license, none are relevant to, and are outside the scope of, the NPS study dispute resolution** (emphasis added).

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- to install and operate diesel generators
- to construct and operate concrete batch plant, water supply, and wastewater treatment facilities
- to move dangerous explosives across the NNR's Mainline and HiLine tracks, store the explosives in nearby facilities, and use of explosives that would affect NNR's trains, including NPS/NNR Dark Skies trains, passing through the Project area.⁷³ In this regard, coordination with NNR of the following is critical to prevent:
 - accidental triggering of explosions from NNR's radio signals/operations and from other recreational users in the area
 - ground shaking/damage to/settling of/the railroad tracks from planned explosions

⁷³ Applicant acknowledges ELY/NNR concerns regarding use of explosives in the Project vicinity. But WPW does not commit to communicate and coordinate at all with either NNR or Ely in this regard. In a carefully worded statement, Applicant expressly limited its commitment as follows:

WPW, together with its contractors, will work with the **ATF and other federal agencies**, at the appropriate time, to ensure that the transportation, storage, and use of commercial explosives will be safe and permitted in accordance with all federal regulations. **WPW will also consult with White Pine County on any local concerns** with scheduling of blasting activities, joint safety inspections, operational notification and communication, and coordinated training of local emergency responders. (emphasis added).

WPW August 2023 Response, at Section III. 3.

WPW also crafted its communication narrowly with BLM regarding its use of explosives in the lower reservoir, mini-camp area. In so doing, WPW appears to be signaling its desire to minimize direct dealing with NNR:

Both surface and underground rock excavations may require drilling and blasting.

- Drilling and blasting may occur for surface excavation at the tunnel portals, access road rock cuts, and the upper reservoir.
- The underground excavation for tunnels and underground caverns will use a combination of drilling and blasting techniques.

For surface excavations, blasting will only occur during daylight hours. **The applicant will provide all required regulatory notifications and restrict any such activity when NNR trains are in the area.**

WPW 1December2023 BLM Response, at pp. 18-19 (BLM1-11 A2-2) (emphasis added).

By way of contrast, on other blasting-related noise issue concerns, WPW has “ensured” USFWS and BLM that they will receive updated “noise modeling analysis for sage grouse [which] will include blasting operations. . . for review.” *Id.* at p. 19. At a minimum, NNR would welcome a similar commitment as Applicant has made to others involving impact mitigation for sage grouse.

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- minimization of noise disturbances from explosives detonation
 - involving existing utility line relocations and new substation facilities locations
 - to manage the impacted areas for visual experience degradation, recreational experience impairments, safety, runoff, erosion, and other Project-related disturbances that will occur
 - on restoration, improvements, and new Multi-use Recreation Trail opportunities in the Project area relating to the SPLMA Grant
- minimization of impacts from Applicant's wellfield conveyance access road and groundwater well drilling plans

Applicant has left to its Engineering, Procurement, and Construction (EPC) contractor – which has not yet been selected – the development of further meaningful details on implementation, construction, and mitigation for other significant short-term facilities and measures.⁷⁴ These too need to be studied to determine impact of the Project on passenger perceptions as well as impact to NNR operations to enable the crafting of appropriate mitigation and safety measures.

Whatever flaws might exist with Applicant's studies performed to date, additional KOPs and photosimulations are necessary, at a minimum, to accompany the preparation of a new ridership survey that should be performed regarding short-term impacts on ridership experience. New KOPs/photosimulations are also necessary to develop other data regarding impacts and mitigation on NNR's Mainline and HiLine operations over the short-term Project construction period. Corresponding data also needs to be developed for Project impacts on Multi-use Recreation Trail visitors. ELY/NNR recognize the viewshed will be dynamic over this seven-year construction period. ELY/NNR therefore urge the Director to require WPW to prepare supplemental photosimulations for existing KOPs each year during the Project's short-term construction period at six-month intervals for use in the studies.⁷⁵

dd. Applicant's studies performed to date are flawed because they do not show ELY/NNR property rights accurately.

To date, Applicant has failed to accurately reflect the fact that its plans will infringe on ELY/NNR's ROW as the owner and operator of land and property that has been active for decades in the area where WPW intends to locate its Project. Applicant's statements to the contrary,⁷⁶ WPW has still not accurately reflected ELY/NNR's property rights on its Project maps. This is a material error underlying Applicant's Project FLA and related supplemental filings and adversely impacts ELY/NNR. Flawed data at this fundamental level prevents a meaningful review of the Project by ELY/NNR (and other stakeholders) and further establishes

⁷⁴ These include: construction wastewater treatment facility; acid rock drainage and management measures; Spill Prevention, Control, and Countermeasure Plan; hazardous materials management; and construction waste management. See WPW 27July2023 Deficiency Response, at Response to FERC-A1-30 Exhibit E.

⁷⁵ ELY/NNR's request is without prejudice to seek other KOPs and a longer period as may be necessary to align with changes in WPW's short-term construction plans.

⁷⁶ See, e.g., WPW 9August2023 Response, at Section III. 4 ("WPW has properly described the permanent Project features in Exhibit G of the Final License Application.").

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that ELY/NNR's Additional Study Request #1 is not duplicative. This aspect of WPW's Project must be corrected promptly and properly for examination by all public and governmental reviewing parties concerning short- and long-term impacts.

ELY/NNR have previously informed the Commission that in the Project area, the City of Ely owns the land on which the jointly owned Mainline railroad track is located. This representation has been confirmed by the Bureau of Land Management (BLM) in its August 31, 2023, Response filed in this docket.⁷⁷

ELY/NNR now also represent that ELY and NNR jointly own the railroad tracks ***and the land on which the HiLine track is located***. To date, Applicant has never acknowledged this fact in any Project materials presented to the public for necessary review and examination.

Applicant has inaccurately shown the railroad's ROW in WPW's FLA and every one of the supplemental information filings submitted with the Commission to correct WPW's flawed Project maps. Inexplicably, ELY/NNR ROWs have not been presented correctly on WPW's updated maps filed on July 27, 2023, in response to the Commission's Deficiency Letter,⁷⁸ or in WPW's further Response to FERC's July 13, 2023, Additional Information Requests.⁷⁹ Indeed, the ROW error is repeated in the most recent maps included as part of WPW's response to BLM filed with the Commission on December 1, 2023, which still show the Mainline and HiLine tracks located on BLM land.⁸⁰ To be clear, these tracks are *not* located on BLM land.

Notably, however, in these December 1 maps WPW itself appears to have conceded the problem it faces with its Project plans and the ELY/NNR ROW. In the new map captioned "Proposed Temporary Boundary," WPW signals that its Project plans may interfere with the railroad's ROW. Along the western side of the lower reservoir, which skirts the HiLine tracks, WPW has omitted temporary boundary area markings. WPW has also inserted a cryptic note on the map saying "24' to 50' width of temporary area added outside of permanent boundary around lower reservoir, except adjacent to the NNR right-[sic]." Similarly, but this time without including any explanatory note, WPW also presents gaps in its contemplated temporary boundary needs at discrete points along the wellfield conveyance access road where that road nears the Mainline track.⁸¹

⁷⁷ BLM 31August2023 Comments, Response to FERC-A1-5 ("The lowline [*i.e.*, Mainline] has been conveyed to the City of Ely through an interim conveyance at this time. The BLM has no authority over the lands within the conveyance.").

⁷⁸ See WPW 27July2023 Deficiency Response, at Attachment 19-1 Exhibit G Maps.

⁷⁹ See WPW 25August2023 Response, at Attachment A3-8-1 Map of Spoil Disposal Sites.

⁸⁰ See *generally* WPW 1December2023 BLM Response, at Attachment 1-7-Maps.

⁸¹ *Viz.* at Well #3 and approximately 0.5 south of that location.

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WPW has attempted to minimize the significance of this problem and the complications it presents to Applicant's proposed Project plans. WPW seeks to frame the issue of the railroad ROWs as creating concerns limited to a simple fix of obtaining rights at railroad crossings and establishing dust suppression measures that "WPW will develop at least 90 days prior to the start of any ground-disturbing activities."⁸² ELY/NNR disagree. This issue is far more complicated and cannot be managed as readily as WPW indicates – or might prefer.

A determination of Applicant's proposed Project impact on the Railway necessarily begins with a proper depiction on Project maps of ELY/NNR's Mainline and HiLine ROWs. That important first step has yet to occur. Following that, the following issues under ELY/NNR's Additional Study Request #1 must be fully studied relative to the SPLMA Grant recreational enhancements:

- Applicant's planned location of the lower reservoir that might interfere with ELY/NNR property rights involving railway operations and recreation activities.
- Applicant's planned building of a "mini-city" to be located between the lower and upper and lower reservoir areas adjacent to the NNR Mainline and HiLine routes that would include: temporary service roads, barricades at key points, chain link fencing and/or signs for security and safety, laydown areas, construction vehicle parking areas, worker trailers, explosives storage, a concrete batch plant, diesel power generators, water supply and wastewater treatment facilities, construction material storage areas, and staging areas.
- Applicant's plans to move, store, and use explosives in the vicinity of NNR's excursion trains that pass through the Project area.
- Applicant's Project lighting plans could interfere with NNR's excursion trains and ROW that pass through the Project area.
- Applicant's plans for existing utility line relocations and new substation facilities locations that could interfere with NNR's excursion trains and ELY/NNR ROW.
- Applicant's planned groundwater well drilling plans adjacent to the railroad's Mainline that could interfere with NNR operations, ELY/NNR ROW, and Ely's municipal water supply rights.

WPW's failure to reflect NNR's ROW accurately is a continuing problem that has prevented proper review by the public and governmental bodies with mandatory reviewing obligations. This frustrates a full understanding of the impacts of the Project in both the short- and long-run, from initial foundational issues involving the Project's basic viability, through its planned construction activities involving temporary and permanent features. As discussed above, new KOPs are needed to assess short-term impacts.⁸³ And after resolving the Project's conflicts with the railroad's ROW, new KOPs will also likely be needed to capture permanent Project

⁸² See WPW 9August2023 Response, at Section III. 6. See also WPW 1December2023 BLM Response, at 18 (BLM1-11 A2-2) ("dust suppression and control measures appropriate to the specific blasting operation and site conditions" to be addressed under a "yet to be prepared" plan).

⁸³ See *supra* at Section I.B.2.a.i.cc.

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feature impacts on NNR's riders and Multi-use Recreation Trail users. Under ELY/NNR's Additional Study Request #1, information relevant to obtaining that understanding would become available.

ii. Additional Study Request #1 will facilitate full examination of short- and long-term Project impacts consistent with the requirements of the NHPA.

Protections afforded NNR under Section 106 of the NHPA are implicated. Applicant acknowledges that:

Nevada State Historic Preservation Office [SHPO] concurred that six segments of the NNR railway have eligibility under certain [Section 106] criteria for listing in the National Registry of Historic Properties. These segments are near or within the proposed Area of Potential Effect for the Section 106 consultation process.

Short- and long-term Project impacts need to be fully understood in accordance with NHPA requirements. Presently, they are not.

SHPO's Section 106 review is ongoing and may need to be enlarged associated with recreational enhancements under the SPLMA Grant that WPW has not studied. Likewise, recently revealed Project details pertaining to WPW's seven-year short term features to be located between the lower and upper and lower reservoir areas and the Project's well drilling plans along the wellfield conveyance access road must be examined and addressed consistent with NHPA. To date, no short-term studies have taken place for impacts on ELY/NNR.

ELY/NNR take little comfort from WPW's representation that it "will continue to consult with the NNR" regarding the Section 106 consultation process and the NPS studies underway.⁸⁴ WPW's track record for failing to engage with ELY/NNR speaks for itself. In any event, more is needed in these circumstances. Additional Study Request #1 will elicit the data needed to determine and inform the full intersection of the SHPO review required under the NHPA and the Project's impact on the recreation enhancements related to the SPLMA Grant.

iii. Additional Study Request #1 will result in the development of more accurate data, provided necessary corrections are made and if studies are conducted over a full year.

In addition to the concerns discussed hereinabove, there are other problems with the photosimulations that Applicant has prepared to examine long-term Project impacts under the NPS studies. These problems and concerns with the photosimulations used by WPW in their

⁸⁴ WPW 9August2023 Response, at Section III.2.b.

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studies may have skewed the study results in WPW's favor and should be corrected under Additional Study Request #1.

For example, KOP17.2 photosimulation shows a berm masking the switchyard that WPW maintains is "correctly shown."⁸⁵ This berm appears to be a proposed permanent Project feature. Hence, this feature should be – but is not – shown on the several revised Project maps that Applicant has supplied, including the most recent maps WPW filed on December 1, 2023.⁸⁶ ELY/NNR are concerned that this mistake and other concerns with the photosimulations that were used in the NPS studies may have led to material biases that should be eliminated under any additional or supplemental studies that are performed. ELY/NNR described those concerns in the ELY/NNR October 2023 Response, which are incorporated herein by reference.

In this regard, ELY/NNR remain firm in their concern that KOP photosimulations # 16 and 17 high and low water levels are highly misleading because they present idealized views of the lower reservoir. ELY/NNR reject WPW's position that at high-water level the reservoir in the desert basin will resemble an infinity pool at an upscale resort, as Applicant's photosimulations show. If that were so, the fencing around the reservoir, which is barely visible in the photosimulation view, would most certainly be inadequate to prevent unauthorized entry and trespass. But adding a more suitable fence as would be needed—such as one that is higher and having enhanced screening features—would be far less attractive, thereby detracting from NNR ridership experience. The low water photosimulation is likewise misleading. It is simply implausible over time that the reservoir at low-water levels would not show rust and other staining on the walls of the reservoir and the liner, or that the liner would look as fresh as is presented in the photosimulation.⁸⁷

ELY/NNR also continue to maintain that short- and long-term impacts should be studied over a full year. WPW has only studied four months of NNR ridership. WPW's arguments for limiting their survey to an attenuated period are unavailing for the many reasons presented by NPS in their September 21, 2023, Comments⁸⁸ and by ELY/NNR. Since the railroad operates year-round, ELY/NNR explained, the NPS study should have been performed over a twelve-month period. The demographics of the Railway's visitors change with the seasons, from serious photographers in the early part of the year, to

⁸⁵ WPW 31October 2023 Response, at p. 11.

⁸⁶ WPW 1December2023 BLM Response, Attachment 1-7-Maps at map captioned "Proposed Project Facilities"; see also WPW 25August2023 Response, Attachment A3-8-1 Map.

⁸⁷ In the WPW 31October2023 Response, at p. 14, Applicant states, "it is highly unlikely that the water in the lower reservoir would cause any staining of such a nature that would impact the viewshed." WPW's assertion is wholly unsupported, however. ELY/NNR submit that this contention defies common sense and reflects little more than wishful thinking.

⁸⁸ See NPS 21September2023 Comments, at Section C.1 (1-7). Even though NPS settled this issue with WPW, the NPS arguments remain valid and ELY/NNR hereby expressly incorporate them by reference.

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snowbirds, then to families, then to snowbirds and then to families again.⁸⁹ Until proper KOPs and photosimulations are presented to NNR's riders over a full year study, the long-term impacts of the Project's permanent features cannot be gauged reliably.

The need to protect the NNR viewshed experience from adverse Project impacts over the short- and long-term is without question. The recent WPW-Cicero Visitor Use and Experience Survey and Assessment Report (WPW-Cicero Report), NNR Visitor Use and Experience Survey (WPW-Cicero Survey),⁹⁰ establishes the importance of the landscape aesthetic as a critical positive aspect of train passenger experiences during NNR train excursions passing through the Project boundary.

The WPW-Cicero Survey states that one of the three "most important factors Patrons note for taking the excursion . . . [is] experiencing scenic beauty."⁹¹ Hence, the Cicero survey finding strongly refutes the notion suggested by WPW that industrial development has already impaired the viewshed, thus reducing the need for better data that might be developed under improved or additional Project impact studies.⁹²

As discussed above, NNR/ELY have many reasons to be concerned that long-term impacts of the Project could seriously affect the Railway's ridership. Flawed as it is, the WPW study itself establishes that NNR's reputational well-being and financial health are threatened by the Project's long-term impacts. Based on that data, ELY/NNR believe there is legitimate reason to be concerned that the City and the NNR are at risk of even more significant injury from the Project relating to the presently unstudied proposed short-term Project construction activities.⁹³

WPW contends that "[t]he Visitor Use and Experience Study is reliable evidence that the project will have either no impact or a positive impact to most NNR ridership on the active Hi-Line or on the inactive Mainline should NNR rehabilitate it in the future."⁹⁴ ELY/NNR strongly disagree with WPW's interpretation of the study. In fact, the Cicero study reveals a far different takeaway that confirms ELY/NNR's heightened negative concerns regarding the Project's adverse impacts on the railroad's ridership experience, particularly as to return riders, NNR Members and Ely residents.⁹⁵

⁸⁹ See ELY/NNR October 2023 Response, at Section B.

⁹⁰ Document Accession #:20231010-5217.

⁹¹ See WPW-Cicero Survey, at p. 30 (the other two factors are "a historic train ride, and spending time with family and friends." *Id.*)

⁹² See, e.g., WPW 31October2023 Response, at p. 8; see also WPW 9August2023 Response, at Section III.1.

⁹³ See discussion *supra* at Section I.B.2.a.i.aa, cc. (discussing ELY/NNR's short-term Project impact concerns).

⁹⁴ WPW 31October2023 Response, at p. 8.

⁹⁵ See WPW-Cicero Report, at p. 3, which defines rider classifications used in the report as follows (with number of individuals included in the classification sampled):

- **Patrons:** Refers to all individuals collectively in the sample (n=435).
- **Tourists:** Refers to those who are NOT from the Ely area and NOT members of the NNR (n=342).

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Unsurprisingly, WPW does not mention that the Cicero study reports the following meaningful **negative study results** for the HiLine:

- **29 percent** of all NNR patrons reported that the Project’s impact on their *level of enjoyment* for the HiLine was either somewhat or significantly negative⁹⁶
 - **Negative impacts reported were higher for return riders (37%); NNR Members (55%); and Locals (41%)**⁹⁷
- **17 percent** of all NNR patrons stated that the Project would either somewhat or significantly negatively impact their *willingness to ride* the HiLine⁹⁸
 - **Negative impacts reported were higher for return riders (28%); NNR Members (40%); and Locals (37%)**⁹⁹

Study results established similar **negative impacts** for the MainLine:

- **26 percent** of all NNR patrons reported that the Project’s impact on their *level of enjoyment* for the MainLine was either somewhat or significantly negative¹⁰⁰
 - **Negative impacts reported were higher for return riders (34%); NNR Members (45%); and Locals (44%)**¹⁰¹
- **15 percent** of all NNR patrons stated that the Project would either somewhat or significantly negatively impact their *willingness to ride* the MainLine¹⁰²
 - **Negative impacts reported were higher for return riders (26%); NNR Members (36%); and Locals (33%)**¹⁰³

Even without any information on short-term impacts – and reflecting the flaws that ELY/NNR believe are embedded in and tilt the Cicero study in favor of WPW – the magnitude of the negative impact figures is extremely concerning to the City and NNR. WPW has never performed a study on the negative impacts on NNR ridership during the seven-year “short-term” construction period. However, it is highly likely that adverse impacts during the 7-year construction would be catastrophic to NNR ridership.

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- **NNR Members:** Refers to those who are subscribed members of the NNR (n=73).
 - **Locals:** Refers to those who live in the Ely area (n=27).

⁹⁶ See WPW-Cicero Report, at p. 6 (Figure 1).

⁹⁷ See WPW -Cicero Survey, at p. 14.

⁹⁸ See WPW-Cicero Report, at p. 6 (Figure 1)

⁹⁹ See WPW-Cicero Survey, at p. 15.

¹⁰⁰ See WPW-Cicero Report, at p. 7 (Figure 2)

¹⁰¹ See WPW-Cicero Survey, at p. 14.

¹⁰² See WPW-Cicero Report, at p. 7 (Figure 2)

¹⁰³ See WPW-Cicero Survey, at p. 15.

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It is reasonable to anticipate that negative reports posted on social media about traveling through the Project construction area will negatively impact NNR ridership annually for the duration of the seven-year construction period. These negative impacts will certainly be compounding and could become so great that they completely dwarf the already-disturbing findings from the Cicero survey and make them irrelevant.

When the risks are as great as the survey indicates, it is imperative that the best possible data be collected and on-hand for a proper evaluation of Project impacts. Accordingly, Additional Study Request #1 should be studied properly over a period of at least a one full-year for short- and long-term impacts.

b. Additional Study Request #2: Short And Long-term Economic Impacts of the Project on Ely's Tourist Industry.

The Requested Study would:

Examine Project construction and operation for economic impacts on Ely's tourism industry, specifically addressing recreational revenue lost to Ely from impaired recreational visitor use experience and impaired recreational activities (e.g., hunting, fishing, camping, hiking, horseback riding, off-highway vehicle riding, motorcycle riding, cross-country skiing, rock climbing, mountain biking, rail biking, and cultural tourism).

The FLA describes a minimum of seven years for the Project construction activities. Upon completion and operation of the Project, the Project will be a permanent feature impacting residents and visitors to Ely who would be NNR train, Multi-use Recreation Trail users, and other recreational activities users. This study would examine the short-and long-term economic impacts on Ely from residents and recreational users affected by the Project's impact on recreational activities.

WPW argues that this study is duplicative of existing studies that the parties have agreed should be performed. WPW's argument is flawed because it overlooks the fact that the request is drawn broadly to cover the Project impact on **Ely** relating to all recreational activities that provide benefits to **Ely**. In Section II.ii.(a) of the WPW 9August2023 Response, Applicant essentially concedes that Additional Study Request #2 is not duplicative when it recognizes that "WPW has agreed to and is preparing to conduct an **NNR-specific socioeconomic study**," *but not the wider reaching recreational study that ELY/NNR are seeking to examine economic impacts on Ely's tourism industry.*

ELY/NNR inform the Commission that NNR will be conducting an NNR-specific socioeconomic study, obviating the need for WPW to perform that portion of the study. This study will focus on the short- and long-term impacts of the WPW Project on the railroad.

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Applicant, however, has not shown a willingness to study economic impacts on Ely specifically involving residents and recreational users affected by the Project's impact on the full range of recreational activities in the area. Study Request #2 would cover that broader range of recreational activities.

Applicant has not indicated any desire to expand meaningfully its NNR-focused study under the NPS study requests that it has undertaken to consider the full ramifications of the SPLMA Grant. As relevant to this Study Request #2, Applicant has likewise been unwilling to study the impacts of its Project on Ely relating to the Mainline restoration and the Multi-use Recreation Trail improvements. These impacts are included and should be performed under Study Request #2.

In Section II.ii.(b) of the WPW 9August2023 Response, Applicant would have the Commission foreclose an examination of Project impacts on Ely under a different tack. Applicant argues that “[t]he Project is not located in the City of Ely, but in White Pine County, more than eight miles northeast.” Applicant also maintains that “there are no developed recreation facilities in or immediately adjacent to the Project vicinity.”

ELY/NNR are mystified by Applicant’s continued insistence that the NNR, which has been honored with National Historic Landmark status, might not qualify as “recreation facility” located “in or immediately adjacent to the Project vicinity.” WPW is well-aware that NNR has been operating tourist trains in the Project vicinity for over thirty-five years and that during that time the Railway has attracted visitors from across the country and around the world.

In any event, whether WPW’s assertions have any merit they miss an important point: the City is uniquely positioned as a stakeholder that will be impacted in the short- and long-term by the Project relative to tourist and recreational experiences. Ely is physically isolated; it is hundreds of miles and hours away from any major city. Ely also is both the largest city in and county seat of White Pine County. Ely is the joint owner of the NNR, but its interest in the impacts of this Project go beyond impacts on the NNR. Most tourists who visit Ely, whether to experience the NNR or for other recreational activities available in the area, use Ely as their home base. Hence, even though the Project might be located outside Ely’s city limits, most visitors to the area lodge within Ely’s city limits, because Ely has the vast majority of the lodging in White Pine County. Important tax revenues are at stake: Ely receives 2.5 percent of the room tax collected within the city limits.¹⁰⁴

Ely, therefore, has an obligation to administer and safeguard the area’s recreational goals and resources on behalf of its citizens. The entire spectrum of possible Project-related recreational loss and room tax revenue loss should be analyzed and studied to determine how this immense infrastructure project will affect the recreation industry in Ely. These impacts must be examined thoroughly so that appropriate mitigation measures for the City can be designed and incorporated into any Project license that may issue.

¹⁰⁴ The railroad receives two percent of the room tax collected within White Pine County.

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By diminishing the City's custodial role, Applicant may be suggesting that Ely's interest in the Project's impact on non-railway recreation activities and wildlife can be disregarded because the Project would disrupt a relatively small amount of public lands administered by others, such as BLM and Nevada Department of Wildlife (NDW).¹⁰⁵ WPW would have the Commission disregard the irrefragable fact that practically any adverse impact on tourists and recreational users will have adverse economic repercussions on the City. Given that Ely is the destination tourists and recreational enthusiasts will visit to eat, sleep, purchase provisions and fuel-up, among other necessary travel-related activities, detrimental impacts on these visitors will lead to a significant decline in Ely's applicable tax revenues.¹⁰⁶ BLM and NDW are not in a position, nor can they be expected, to act on behalf of the City. BLM's and NDW's interests are distinct from the City's interest to protect the economic interests of recreational users and other tourists who generate vital tourist revenues beneficial to Ely and its residents.

For example, BLM expressed concerns about the Project's impact on a Special Recreation Permitted Motorcycle Racecourse that is:

within the project area and will be impacted by the project. The project bisects the entire course, adding some complexity to course routing and event planning. Coordination with facility and project developers will be required for event activities. The course is raced about once every 3-5 years and has occurred for over 40 years.

BLM 31August2023 Comments, at p.11 (Additional BLM Comments).

Without question, these concerns raised by BLM are important. But they are markedly different than the City's interests in the impact of the Project on the motorcycle event as it relates to visitors who will travel to Ely to enjoy and/or participate in the event.

Ely takes its custodial responsibilities seriously. Ely is firmly committed to creating a "big tent" for tourist visitation that is welcoming to all. Throughout the City, there is evidence of affirmative steps Ely has taken consistent with that goal. Ely also works closely with NNR to afford the opportunity for a positive tourist experience to extend to NNR's visitors and train riders. In this regard, NNR is proud of its record that allows people of all ages, races, genders, and abilities to access public lands. Indeed, NNR goes out of its way to allow disabled individuals complete access to the railroad train ride experience thereby affording them a unique opportunity to enjoy the beautiful scenic views. Neither Ely nor NNR wishes to see the Project's impacts preventing, damaging, and otherwise disrupting enjoyment of the areas' rich recreational offerings in the short- or long-run that are currently available to all visitors.

ELY/NNR are not seeking to duplicate relevant long-term data that WPW may have prepared. There is limited data currently developed showing economic harm to the City from adverse impacts of the

¹⁰⁵ Because of the City's interest in protecting the area's native wildlife, Ely has previously requested to be informed of future technical working group (TWG) meetings so that the City could participate in discussions involving these concerns. See ELY/NNR 14July2023 Comments, at pp. 7-8. WPW has disregarded that request to be informed and included in the TWG discussions.

¹⁰⁶ See generally ELY/NNR FLA Initial Submission, at pp. 18-22.

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Project on NNR ridership. ***But there is no data at all on short-term impacts.*** Moreover, there is no data whatsoever to support Applicant's statement that "[o]verall cumulative effects on recreation would be short-term and minor," FLA, Exhibit E, Section 3.8.3, p. 232. Additional Study Request #2 would assist in understanding economic impacts on Ely involving the full range of tourist/recreational activities in a way that is necessary for this major, complex Project.

c) **Additional Study Request #3: Short and Long-term Impacts of the Project on Ely (excluding the Study Information Covered under Study Request #2).**

The Requested Study would:

Examine Project construction and operation for other short- and long-term impacts on Ely (excluding the study information covered under Additional Study Request #2), specifically addressing impacts of the Project on Ely's: housing, employment, and population; public and social services; healthcare; cultural character; transportation, traffic, property values, economy, and taxes; social services; infrastructure; and on its municipal services (e.g., police, fire, water, sanitation, roads).

The FLA describes a minimum of seven years for the Project construction activities. Upon completion and operation of the Project, the Project will be a permanent feature impacting residents and visitors to Ely. This study would examine the short- and long-term impacts on Ely, its residents, and visitors with respect to the City's range of attributes, including its housing, infrastructure, and municipal services. ***Applicant did not provide a meaningful Socioeconomic Study Plan directed to determining Project impacts on Ely.***

WPW attempts to avoid this study, once again arguing that the requested study is unnecessary. Applicant contends the requested study is duplicative of the Socioeconomic Study already included in the FLA. However, WPW's arguments oversimplify the matter and should be rejected.

Under Additional Study Request #3 ELY/NNR are seeking more detailed, useful data on a range of impacts than what WPW may already have produced, with a particular focus on Project impacts on Ely. The need remains for meaningful data respecting areas of impacts that Applicant has not yet presented fully and that WPW may believe it need not supply. ELY/NNR commit to work with WPW to reduce burden and duplication. Ely is prepared to eliminate the need for relevant data WPW may already have shared relative to Additional Study Request #3 to the extent it is sufficiently robust and useful.

White Pine County is one of the more remote and less densely populated counties in Nevada. While Ely is the largest city and county seat of White Pine County, it is nonetheless relatively small and isolated. With a population of approximately 4,000, about half the population of the county lives in Ely. The fact that Ely is a small, incorporated city, but the principal city, in such a remote area makes understanding the impacts of the Project on Ely and its environs essential. Without visiting Ely, it is difficult to appreciate just how remote the City is. The nearest cities to Ely are either Salt Lake City or Las Vegas,

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which are both 240 miles away. Ely's isolation is illustrated by a Nevada Department of Transportation highway warning sign heading west out of the City that states, "Next Gas 167 Miles."¹⁰⁷

WPW argues that the Socioeconomic Study that it submitted with the FLA "identified and characterized the socioeconomic impacts of the Project. **The study considered White Pine County overall and communities located in the Project vicinity that are expected to be affected by the Project, including Ely, McGill, and Ruth.**"¹⁰⁸ But Applicant has never studied the impacts of the SNPLMA Grant on Ely – indeed, WPW has attempted to avoid consideration of the Grant entirely, dismissively brushing it aside as "speculative."¹⁰⁹

As ELY/NNR have explained, the Grant among other things will enable NNR to restore the Mainline enabling NNR excursion trains once again to reach the McGill Depot, creating valuable new recreational and economic opportunities for the Foundation, the City and the McGill community. Additional Study Request #3 alone seeks data on the economic and social impacts of the Project on Ely relating to the SNPLMA Grant, which Applicant has never studied. This is just one instance of missing data.

More broadly, Applicant has supplied little to no data regarding the short- and long-term Project impacts **on Ely** over a range of concerns set out in the ELY/NNR FLA Initial Submission. These Project impacts need to be fully understood. As discussed above, Applicant has only begun revealing short-term impacts recently with greater specificity in connection with responses to the Commission's AIRs.

Applicant anticipates as many as 900 non-resident full-time construction workers,¹¹⁰ but WPW has insufficiently studied the impact this over 20% immediate increase in the population will have on the community. Currently the community has a small 25-bed hospital that fits the community's needs. Will this be enough during the seven-year construction period? The community only has one grocery store. There is no housing available in the community, nor in the surrounding areas available for the expected surge of construction workers. These important questions and concerns have not been adequately studied, if studied at all.

Need for the proposed study is beyond question. Information gaps persist with respect to a full understanding of the Project's many significant areas impacting the City involving the following:

- Water - There is insufficient information on whether there is sufficient water for the Project in the Steptoe Valley aquifer from which WPW plans to source its water. Currently, WPW's claim that "the use of these water rights will have no adverse socioeconomic or other impact on the City of Ely" is unsupported.¹¹¹ WPW's recently disclosed hydrogeologic plans that

¹⁰⁷ See Attachment I.

¹⁰⁸ WPW 9August 2023 Response, at Section II.iii (emphasis in original).

¹⁰⁹ FLA, Exh. A, Section 1.3, at p. 14.

¹¹⁰ FLA, Exh. E, Section 3.12.2.2, at p. 333.

¹¹¹ WPW 9August 2023 Response, Section III.5.

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include hydrogeologic evaluation test wells and alluvial ground monitoring wells have not yet begun. Study data centering on sufficiency of water is essential to demonstrate viability of and harm from the Project. Ely, for example, is concerned that information is lacking on how WPW's planned Project use might impact the City's water supply, which also relies on aquifers in the Steptoe Valley. Ely has also expressed concern that Project needs could exacerbate groundwater recharge and dewatering leading to increased costs for the City. McGill Ruth District has raised similar concerns.¹¹² Additional Study Request #3 would provide data needed for a comprehensive examination of these critical and highly technical issues.

- Housing - Applicant still has not addressed this issue with meaningful data. WPW has represented that there are 1,000 homes available in the area. That is incorrect – WPW's housing number appears to have been pulled out of thin air – and confirms the flaws in WPW's data. In fact, the Project faces a serious challenge involving housing its temporary workforce. ELY/NNR¹¹³ and BLM¹¹⁴ have confirmed the lack of housing. Nevertheless, Applicant has continued to avoid supplying data respecting this issue. WPW's information responding to Deficiency No. 6 that it plans to address worker housing "at least 90 days prior to contractor mobilization"¹¹⁵ is no more than a commitment to defer addressing the issue. This is a critical concern that should not be avoided or put off. Adequate housing is a long lead time issue that needs to be properly addressed through the development of relevant data and acceptable solutions working with Ely and other stakeholders.¹¹⁶ BLM has expressed similar concerns.¹¹⁷

The WPW 1December2023 BLM Response does little to advance a plan to address this critical issue. Indeed, it is not unfair to say that WPW may be moving in the wrong direction. WPW has provided no indication that it has done anything beyond having "identified . . . unoccupied mobile home trailer lots . . . within five miles of

¹¹² ELY/NNR 14July2023 Comments, at pp. 2-3.

¹¹³ See ELY/NNR FLA Initial Submission, at p. 24.

¹¹⁴ BLM 29August2023 Response to rPlus on FERC Deficiencies, Response to FERC Deficiency No. 9 ("Rentals and RV parks are very limited in this area. The 1,000 vacant structures do not appear to account for condemned or non-rental structures. Additional assessment may be required for more accurate planning requirements, temporary housing feasibility, and socioeconomic impacts.")

¹¹⁵ WPW 25August2023 Response, at p.7 (Response to FERC A3-6 Deficiency No. 10).

¹¹⁶ See ELY/NNR July 2023 Comments, at p. 4.

¹¹⁷ See, e.g., BLM 29August2023 Response to rPlus on FERC Deficiencies, at p. 4 (Response to FERC Deficiency No. 10) ("If temporary housing or RV parks are located on BLM lands, a determination of where water is planned to be obtained from and source-specific analyses are required.").

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the project footprint,”¹¹⁸ and stating that it “does not anticipate using BLM-managed land for temporary housing.”¹¹⁹ WPW continues to rely on its 2022 Socioeconomic Study data that ELY/NNR and BLM have questioned regarding sufficiency of housing stock¹²⁰ and lodging establishments.¹²¹ Disturbingly, ELY/NNR are also left to speculate why WPW persists in stating it will consult only with “White Pine County” regarding worker housing, noticeably omitting plans to engage in discussions with ELY,¹²² which is where the majority of the housing in the county is located.

- Sanitation, fiscal impact analysis, and other city services – Ely has projected that opening a new landfill to meet the City’s needs, including those of the Project construction workers, will cost approximately \$10 million. Presently, Applicant has supplied no meaningful information on this issue. Similarly, WPW has supplied minimal amounts of useful information on other important impact areas of concern to Ely. While WPW “anticipates” all community impact issues can be adequately addressed without burdening local communities, no details have been provided. Applicant concedes that the bulk of tax revenues from the Project will not remain locally.¹²³ Applicant’s few statements in the WPW 9August2023 Response go no further than expressing tepid offers of concern. (*E.g.*, “WPW is committed to the health, safety, and well-being of all community members . . . WPW is committed to working with the City of Ely on finding meaningful solutions.”¹²⁴). All these assurances fall flat: WPW has not consulted with Ely over these essential City service concerns.

These matters of extreme importance to ELY require full examination and analysis so that timely mitigation actions can be developed. Additional Study Request #3 is needed.

¹¹⁸ WPW 1December2023 Response to BLM, at p. 11 (BLM 1-4 Deficiency No. 9).

¹¹⁹ *Id.* at p. 12 (BLM 1-5 Deficiency No. 10., A3-5, and A3-6).

¹²⁰ *See, e.g.*, ELY/NNR 14July2023 Comments, at p. 4 (“White Pine County is currently facing a housing shortage . . . [and] needs at least 450 new residential units built **right now**.”).

¹²¹ *E.g.*, “The area’s current hotel room inventory cannot be viewed as a solution to Project construction worker needs as hotel accommodations presently cannot fully meet the demands of tourist visitors on many days of the year.” ELY/NNR 14July2023 Comments, at p. 4.

¹²² *See* WPW 1December2023 BLM Response, at p. 11 (BLM 1-4 Deficiency No. 9); *see also* WPW 25August2023 Response, at p. 7 (Response to FERC A3-6 Deficiency No. 10).

¹²³ WPW June 12, 2023, Response and Corrections, Document Accession #: 20230612-5177, at p. 21.

¹²⁴ WPW 9August2023 Response, at Section III.(7).

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II. CONCLUSION

For the foregoing reasons, ELY/NNR request the Commission find that the FLA is patently deficient and reject it with prejudice or, alternatively, direct Applicant to perform the Additional ELY/NNR Studies.

**Respectfully submitted,
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APPENDIX A

CITATIONS AND ABBREVIATED CITATION FORMS

Certain filings and Commission issuances in this docket are referred to and cited frequently throughout these Comments in abbreviated form as follows:

- Federal Energy Regulatory Commission April 28, 2023, Letter of Deficiencies and Additional Information Requests, Document Accession #: 20230428-3050 (**Deficiency Letter**)
- ELY/NNR April 28, 2023, Comments, Additional Information Requests, and Additional Study Requests, Document Accession #: 20230501-5051 (**ELY/NNR FLA Initial Submission**)
- ELY/NNR July 14, 2023, Comments on June 12, 2023, Response and Corrections of White Pine Waterpower, Document Accession #: 20230714-5169 (**ELY/NNR 14July2023 Comments**)
- WPW July 27, 2023, Response to License Application Additional Information Request, Document Accession #: 20230727-5134 (**WPW 27July2023 Deficiency Response**)
- NPS September 21, 2023, Comments to Responses of White Pine Waterpower, Document Accession #: 20230921-5164 (**NPS 21September2023 Comments**)
- ELY/NNR October 16, 2023, Response in Support of the National Park Service on Dispute Resolution Request, Document Accession #20231016-5198 (**ELY/NNR October 2023 Response**)
- WPW August 9, 2023, Response to The City of Ely and Nevada Northern Railway Foundation Letter Dated April 28, 2023, Document Accession #: 20230809-5153 (**WPW 9August2023 Response**)
- WPW August 25, 2023 (Letter dated August 27, 2023), Response to FERC's July 13, 2023, Additional Information Requests Document Accession #: 20230825-5109 (**WPW 25August2023 Response**)
- BLM August 29, 2023, Comments to rPlus on FERC Deficiencies, Document Accession #: 20230829-5043, at p. 4 (**BLM 29August2023 Response to rPlus on FERC Deficiencies**)
- BLM Bristlecone Field Office August 31, 2023, Comments, Document Accession # 20230831-5025 (**BLM 31August2023 Comments**)
- WPW-Cicero October 10, 2023, Visitor Use and Experience Survey and Assessment Report (**WPW-Cicero Report**), NNR Visitor Use and Experience Survey (**WPW-Cicero Survey**), Document Accession #:20231010-5217
- WPW October 24, 2023, Response to FERC's October 18, 2023, Additional Information Request, Document Accession #: 20231024-5103 (**WPW 24October2023 AIR Response**)
- WPW October 31, 2023 (Letter dated October 30, 2023), Response to City of Ely and Nevada Northern Railway Letter Dated October 16, 2023, Document Accession #: 20231031-5020 (**WPW 31October2023 Response**)
- WPW December 1, 2023, Response to BLM Comments, Document Accession #: 20231201-5364 (**WPW 1December2023 Response to BLM**)

Attachment I

