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Philis Posey  
Acting Secretary  
Federal Energy Regulatory Commission  
Mail Code: DHAC, PJ-12  
888 First Street NE  
Washington, D.C. 20426

RE: Whitewater Access Plan for the Rainbow Falls Hydroelectric Facility,  
FERC Project No. 2835.

## COMMENTS

### 1. Introduction

American Whitewater has been actively involved in the relicensing and post-relicensing activities relating to the Rainbow Falls Project for at least seven years. We have been attempting to work with New York State Electric and Gas to complete a whitewater flow study for at least 6 years. Last week, more than 17 months after completing the data collection, we have received the Whitewater Access Plan, and the partial whitewater study. The report is unbound and unclear, lacks figures and tables, lacks appendices, lacks video or still photo documentation, is fraught with errors and bias, and contains conclusions and a proposal in direct opposition of the results of the study and the public interest. The quality of the report is among the lowest we have seen submitted to FERC for any project. With that said, we believe the actual results of the study (excluding several indefensible sections and the editorialized discussion or conclusions sections) are sufficient to base future management decisions on.

American Whitewater has reviewed the vastly delayed "Whitewater Access Plan for the Rainbow Falls Hydroelectric Facility, FERC project No. 2835" (Study). The study reveals a spectacular Class III/IV, IV, or IV/V whitewater river (depending on flows) that naturally flows at good boating flows almost all year including the summer and fall. Let us be clear: the study found no safety problems, no conflicts between boating and other uses, and no significant barriers to access. There are *no* compelling reasons for any access limitations. Indeed, the Ausable Chasm is among the simplest recreational issues we have worked on at any hydro project. NYSEG simply needs to move a fence, build a handful of steps, and allow public access. This public treasure has been made off limits to paddlers for decades by New York State Electric and Gas (NYSEG), and now they are

asking FERC to yet again ban access.

Even though their study found the opposite, NYSEG asserts that there are safety problems, conflicts, and access hurdles. They then ask FERC to consider a wide range of artificial limits to public access, and to then ban public access entirely. The public trust doctrine does not say that all citizens have a right to breathe the air, drink the water, and travel upon rivers and the ocean *on weekends or during certain months*. These resources and their use at all times is a public right that has been recognized since long before our Country was formed. These rights, widely attributed to Justinian of the Roman era, were adopted by our Nation and form the basis for many laws including Articles 17<sup>1</sup> and 18<sup>2</sup> of the Federal Power Act. There is no justification in the study or on the ground for limiting use on the Ausable Chasm, and without justification access must be allowed. Thus, we request year-round access to the Ausable Chasm for members of the public wishing to paddle the incomparable gorge.

We will offer detailed comments on the study, respond to NYSEG's access proposal, and request mitigation for the significant impacts that the management of the Rainbow Falls project has on public enjoyment of the Ausable Chasm.

## 2. AW Comments on the Study

**Report Section 3.1.4:** Using spotters to report “kayaking problems (e.g., hits, stops, drags) and interactions with other river users” is not a peer reviewed methodology and we do not consider this a valid method in this or future studies. It is remarkable in the depths of the distrust that it reveals, and more importantly is not verified as accurate.

We have not yet received the referenced video of the study, and thus cannot offer comments on the video at this time. We ask that the video and still photos be promptly distributed.

**Report Section 3.2.5:** NYSEG portrays carrying capacity in a strange and biased way. They state for example that: “Social carrying capacity was determined...by focusing...on identifying the maximum number of kayaks and the time interval between kayaks that can complete the run *without negatively affecting the quality of the experience by various*

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<sup>1</sup> Article 17 of the Federal Power Act states: “The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such reasonable recreational facilities including modification thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, and shall comply with such reasonable modifications of the project structures and operations as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing.”

<sup>2</sup> Article 18 of the Federal Power Act states: “So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreation purposes, including fishing and hunting: **Provided**, That the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.” (emphasis in original)

*river users.*” Carrying capacity is a measurement of the total recreational capacity of the river to support all recreational use, including angling, private boating, commercial rafting, commercial tubing, and perhaps other uses at the access areas.

Targeting whitewater boaters as the focus of the carrying capacity is inappropriate, since paddlers have the same right to enjoy the river as everyone else. NYSEG’s analysis would be similar to asking men how many women can enter a sports bar before their experience is impacted, with the goal of determining a maximum number of women allowed in the bar. Obviously this would be illegal and inequitable. Managing for carrying capacity is more similar to limiting total occupancy of the sports bar based on the fire code, or perhaps selling a set number of entry tickets to provide a desired level of crowding. Our point is that boaters are not on trial and are not second class citizens, and if recreational capacity is exceeded it would be inappropriate to limit boating without limiting other users equitably.

**Report Section 4.1.2:** NYSEG states several reasons why paddlers did not attend events, including high flows. We would like to point out that many of the participants in the first flow event would likely have returned to the Ausable Chasm if they were allowed to make multiple runs in a single day. This artificial constraint reduced participation in subsequent events.

**Report Section 4.1.4:** We would like to point out that the river received very high marks as a recreational opportunity. This is clearly a high quality and desirable whitewater river. More than anything, the high ratings indicate significant demand.

The Study asserts: “The lower reach...is too shallow to run during low water periods.” This statement is not supported by the study. The lowest flow paddled was 173cfs, which is a very low flow on the Ausable River, and the lower reach was *not* too shallow to run at that flow.

**Report Section 4.2.1:** Note that this section concludes that “access to the river at the NYSEG powerhouse put-in location and the Route 9 Bridge take-out site was adequate”, “participants rated boatability as moderately to highly acceptable”, and that “there were sufficient river-level scouting opportunities.” We agree with these statements. Please also note that at the lowest flow the most difficult rapid was rated Class III/IV, and thus the run is a Class III/IV run at that flow.

**Report Section 4.2.2:** Note the finding that “During all three Study events, no safety-related incident was noted off-the-water (i.e., in the vicinity of the powerhouse and along Route 9) and no injury was observed or reported by participants of the on-the-water investigations.” The Study goes on however to discuss two canoe swims and two kayak flips, inferring that these were safety infractions or concerns. These occurrences are normal and anticipated parts of any whitewater trip and are certainly not a safety concern.

The study states that “One participant suggested that NYSEG consider restricting access to guided kayak groups in an effort to control the level of experience of whitewater

boaters attempting the run.” There is no need for such a restriction and American Whitewater would not support this measure.

Note that other river users did not feel unsafe.

**Report Section 4.2.3:** This section needs a table of summary results. This section references Figures 4 and 5 yet we did not receive those figures. Summary graphs and tables must be included in the report. It is stunning that after 17+ months the report lacks tables and graphs, and the report lacks clear results. The results of this section may best be summarized by the following sentence: “The curves identified the range of suitable flows to be 200 cfs to 1,400 cfs and the range of optimal flows to be 400 cfs to 950 cfs.”

**Report Section 4.2.4:** We agree with the statement “Given the constraints of this study, no standard method of predicting demand exists. This study only can make very rough estimates of potential demand.” That is where our agreement with NYSEG regarding demand ends. Their estimates are without any merit and should be disregarded by the FERC. We would like to respond their assumptions behind their demand estimates:

- **NYSEG Assumption:** “Based on the demographics for Study participants, the whitewater boater user group for the Study Area would best be defined as *Class IV to V kayakers...*”

**AW Response:** We would point out that at lower flows the Ausable River is rated a Class III/IV river that is suitable for a relatively wide range of paddlers.

- **NYSEG Assumption:** “Based on the demographics for Study participants, the whitewater boater user group for the Study Area would best be defined as...living an average of about 150 miles from Ausable Chasm.”

**AW Response:** This is without basis. Many paddlers traveling through the area would be thrilled to experience the river.

- **NYSEG Assumption:** “A good estimate of the approximate number of whitewater boaters in the user group is the number of registrants (89) who responded to Study announcements.”

**AW Response:** This is a remarkable logical leap. NYSEG is asserting that everyone who would want to paddle the Ausable was available on the few study dates, and was not deterred by 4 of the 5 the flows that were rumored to be too high and too low, the reports of higher difficulty and risk, the limit to only one run each day, the unknown nature of the Chasm, the hassle of participating in a study, the failed previous study, and any number of other reasons. Many more people would want to paddle the Ausable River in a given year.

In short, there is no basis for NYSEG’s estimated future use of 100 people and 200 user-days. One need only look at attendance at other regional rivers of with recreational releases such as the Raquette (V), Beaver (IV/V), Moose (IV/V), and Deerfield (III/IV) rivers to know that NYSEG has significantly underestimated future use. Some of these rivers receive well over 100 people per day. The erroneous nature of NYSEG’s use estimates becomes especially apparent when considering that the Ausable flows at suitable boating flows almost every day all summer and fall, as well as often during the

winter and spring.

We feel that in general use of the Ausable Chasm will be moderate on any given day (since there are many opportunities to paddle it), and focused during summer and fall when many other river have insufficient flow to paddle. We expect paddlers living within an hour and a half drive to paddle the section often throughout the year. We expect Class IV and V whitewater paddlers to paddle the Chasm throughout the year and at a wide range of flows, while Class III/IV paddlers will likely select warmer seasons with lower flows. We expect paddlers traveling to or through the area to paddle the Chasm because of its available flows and spectacular scenery. We expect many paddlers to make two or more descents of the river during each trip to the river. That is our best guess regarding demand, however we will not know until the river is made available to the public.

**Report Section 4.2.5:** See our comments on section 3.2.5 and the following comments.

The following statement is lacking critical information:

“During the first Study event on June 25, there was considerable congestion in the parking areas near the powerhouse. Even though NYSEG had noted during the pre-run briefing that there was room for only a few cars by the powerhouse, all of the participants came over to the put-in at the same time, causing congestion. At least four vehicles parked in the lot across from the Rainbow Falls powerhouse to off-load equipment and two drove past NYSEG’s gate into their fenced property, in violation of the NYSEG Ground Rules.”

Participants (myself included) were told to drive to the powerhouse, which we had never been to, and that we would be greeted by NYSEG personnel. There was no one there to instruct us on where to park and the directions given were unclear. So we agree with NYSEG that there was some congestion, but this was certainly no fault of the participants.

We disagree with the statement: “There was a small conflict near Harold’s Bar (across from the powerhouse entrance) as participant vehicles temporarily obstructed a car from entering the lot.” I was there, and would not call someone waiting for another vehicle to pass before pulling into a parking lot a “conflict.”

We have considerable problems with the discussion of carrying capacity, which is related to our comments on Report Section 3.2.5. Namely it is inappropriate to study the impacts that paddlers may have on other users without also giving equal weight to impacts that other users may have on paddlers and/or on each other. More importantly, the study revealed *no* conflicts whatsoever.

**Report Section 4.2.6:** Note the statement: “No substantive interaction was observed between whitewater boaters and the ACC rafts and tubers.” We agree and this is *the* result of the conflict analysis. Other discussion of potential conflicts is simply NYSEG opining, and has no basis in fact.

**Report Section 5.1:** The report states that “The most difficult rapid at all flow levels was identified as Devil’s Oven/Elephant’s Head Right (Class IV/V on June 25 and July 24).” We would note that this rapid is a Class III/IV rapid at lower flows (not class IV/V), and has an alternative left line that is either Class III/IV or is an easy portage route depending on flows.

NYSEG concludes that “Mike’s Hole should be considered a barrier to feasible whitewater boating for all Class IV and lower boaters at flows above about 500 cfs. *This is absolutely untrue.* Mikes Hole was rated at an average of Class 4.1 by participants at a flow of 576cfs, and much easier at lower flows. Class 4.1 is Class IV, so Class IV paddlers are likely capable of running it. At 745 cfs paddlers rated the rapid as Class IV/V which is still within the ability of many Class IV paddlers. Participants anticipated that at some higher flow the difficulty would increase to Class V, however this is unknown. The rapid may even get easier at higher flows. Mikes Hole would not become a barrier to Class IV and lower paddlers until the rapid becomes Class V, which may or may not happen at some significantly higher flow. The study did not reveal any barriers to Class IV paddlers.

We agree with the statement: “Study participants noted that sufficient shoreline scouting opportunities existed throughout the Chasm at the flows encountered during the study.”

The following statement is unfounded and false: “NEA and ACC observed instances during all three on the water runs where kayakers climbed on rocks, both at the shore and in the river, at elevations above the river’s mean high water line. This was done to scout the river, particularly in Devil’s Oven.” NYSEG has no basis for defining the high water mark line in the Ausable Chasm and therefore cannot prove that paddlers were above such a line. The Chasm is very narrow for the size of the Ausable Watershed and it is likely that the regular high water mark is high on the canyon walls. There is no readily visible high water line for paddlers to base their behavior on, or for NYSEG to judge paddler’s behavior on.

**Report Section 5.3:** The following statement is unjustified and false: “Based on the lack of participants for the October 22 Study event, the upper limit of 1,400cfs for the range of suitable flows appears to be overestimated.” Guidebooks and previous studies estimate that 1400 is too high, which may have discouraged attendance, however future use may well determine 1400 to be an adequate flow. Without empirical data, this flow cannot be deemed undesirable.

The following statement is also unjustified and false: “... the presence of Mike’s Hole as a barrier to feasible whitewater boating for all Class V and lower boaters at flows above about 1,000 cfs.” There is absolutely *no* basis for this determination. At the highest flow

witnessed and/or paddled by paddlers (745 cfs) Mikes Hole was rated Class IV/V. Furthermore, even if Mikes Hole does become class V at higher flows, it does not follow that it would be a barrier to Class V paddlers. In fact, it means the exact opposite: the rapid would become more attractive to Class V paddlers at those flows.

**Report Section 5.4:** Please refer to our comments on section 4.2.4.

**Report Section 5.5:** Please refer to our comments on sections 4.2.5 and 3.2.5.

**Report Section 5.6:** Please refer to our comments on sections 4.2.5 and 3.2.5. We object to the following statement: “However, there is potential for the whitewater boaters to disrupt safe launching of rafts and tubes, especially during the peak of ACC’s tourist season when they often cater to several hundred rafters and tubers per day.” There is no basis whatsoever for this comment. No safety impacts or disruption was experienced during the study, and none are likely. Furthermore, one could just as easily state that tubes and rafts could disrupt kayakers.

**Report Section 6.1:** Based on Section 6.1, we are left wondering if NYSEG read the same study that we did. They state conclusions that their own study totally disproved. The basis for their proposal is a total abstraction of reality, and their proposal is thus completely unacceptable and unfounded. In section 6.1 they claim that “...it is not feasible to develop an access plan that will completely avoid conflicts between whitewater boaters and other Chasm users (ACC rafters/tubers, hikers, anglers, etc). This is a ridiculous conclusion given that the study found no conflicts whatsoever between paddlers and rafters, tubers, the ACC, hikers, anglers, or anyone else. NYSEG may confuse recreational interactions with recreational conflicts. Paddlers did interact with several other recreational users, but these interactions were positive or neutral – and were thus not conflicts. The study, experience on other rivers, and common sense confirms that there will be no significant conflicts on the Ausable River involving paddlers.

Even if isolated conflicts were to occur, such conflicts could not be used to ban or limit non-commercial paddling (since paddlers have no less right to enjoy the river). It is not even NYSEG’s role or responsibility to “completely avoid conflicts” and we reject this fundamental basis for their proposed limits. We are unaware of the section of the Federal Power Act that dictates this responsibility to Licensees or FERC. We would like to respond in turn to the points NYSEG makes in defense of their prediction of conflicts:

- Multiple users and interests:

AW Response: All rivers have multiple users and interests, and few have recreational conflicts requiring management. This is not unique to the Ausable.

- physical characteristics of the river (e.g., very narrow passages, steep/high banks, private property)

AW Response: We are unsure how narrow passages and high banks could create

conflicts. Kayaks are highly maneuverable, especially in the hands of Class III+, IV and V paddlers, and the sections of the Ausable used by tubes, rafts, and anglers are flat-water. These conditions make any conflicts incredibly unlikely. Regarding private property, the study confirmed that adequate scouting opportunities exist at river level, which is a protected activity under New York law. Therefore, we fail to see how the private property could cause any conflicts.

- no single Party has or would have jurisdiction over all river activities or its users including but not limited to NYSEG hydroelectric operations, ACC rafting/hiking operations, whitewater boater activities, angler activities, and flat water boating activities.

AW Response: This is true of all rivers that we are aware of, with the possible exception of some rivers in National Parks, and we see no way that this would cause conflicts on the Ausable.

In general, none of these points are unique to the Ausable Chasm, nor are they unique to paddling, nor do they actually support NYSEG's assertion that conflicts will occur and are unavoidable. If these points were true or relevant, conflicts would be rampant on all rivers. NYSEG's points are not based in reality and do not justify any limits on paddling or any other use.

We also strongly refute NYSEG's assertion that "developing a single [access] proposal requires that all involved parties...first reach consensus that some level of whitewater boating, either limited or unlimited, be allowed in the Ausable downstream of the Rainbow Falls powerhouse." This is ridiculous. FERC has the authority to require recreational access to project lands and waters regardless of consensus being reached on that matter. The Federal Power Act does not require consensus for continued operation of hydro projects – or the mitigation of the impacts of those projects.

NYSEG states that "For each access option listed, the access period would be limited to a set daily schedule such as 9 a.m. to three hours before sunset (allows run to be completed during daylight)." This limitation is unacceptable as it would preclude pre and post work runs for local paddlers. Standard park hours of dawn until dusk are more appropriate.

NYSEG claims that "Providing boater access will require NYSEG personnel to travel approximately 20 miles (one-way) to the Project on a regular basis... [for] opening and closing of the pedestrian gates, performing security related functions and checks, and performing grounds maintenance activities such as trash and debris clean-up, emptying trash containers, removing vegetation overgrowth and clearing areas of snow/ice. Each trip is estimated to take three (3) hours at a cost of \$175 per trip for NYSEG labor and vehicle expenses." The standard reimbursement rate of \$0.48 per mile applied to a 40 mile trip would yield a travel cost of \$19.20. Therefore, NYSEG is paying their employees \$155.80 for 3 hours of work. We suggest that paying someone over \$50.00 per hour to open and close a gate might be above the industry standard.

More importantly, we fail to see the need to open and close the pedestrian gates daily. Surely fencing could be designed in a manner that provides adequate security for the project yet allows continuous public access. We would also note that the other functions listed are standard maintenance for the project now – and are not likely to change significantly if public access is allowed. Thus, we feel the O&M costs are significantly inflated, and may actually approach \$0.00 with the correct fencing.

NYSEG states that “For all access options, no new parking areas would be constructed in the vicinity of the put-in site because there is very limited space within the NYSEG property. Parking adjacent to the Old State Road Bridge will not be possible over the long-term because the bridge may be re-opened.” During the study we used parking at the Old State Bridge which was close to the put in. We also witnessed significant space within the NYSEG property, immediately adjacent to the Old State Bridge parking that would be highly suitable and desirable as parking for paddlers. We ask that FERC confirm that there is not room for several parking spaces in the NYSEG property, prior to agreeing that such parking is not possible. The alternative parking that NYSEG has recommended is a significant distance from the put in. We ask that this distance be confirmed by NYSEG.

**Report Section 6.1.1:** NYSEG makes no mention of the impacts of this proposal on paddlers, which would be significant. This proposal is unacceptable, as it results in a total and unjustified ban on access to project waters. There is no basis for this option whatsoever. We are aware of no precedent supporting this option.

**Report Section 6.2.2:** All of these options are based on the faulty assumption that some limits on paddling may be justified. The burden of proof is on NYSEG to justify limiting access to project waters and they have not provided any evidence in support of such limits. In fact, they have provided ample evidence to the contrary. Each of these options has unacceptable impacts on paddlers that are not defined.

We question the cost information supplied for the infrastructure needs associated with all the options. Paddlers need only a roughly 4x4 foot platform (essentially a picnic table) as a launch platform (if any at all) and fail to see how this could cost \$40,000. It may in fact be preferable to have no launch platform, since varied flows would render the elevation of the platform inappropriate, and the existing shoreline was adequate during the study. The shoreline is composed of logs and rocks, and is therefore erosion resistant. We also question the need for trash facilities. In general, given the obvious overestimate of the cost of the launch platform, we must also question the cost estimates on other fencing and plumbing. We ask that FERC confirm these estimates prior to allowing them to influence decision making.

**Report Section 6.2.2 Option 2:** This option is wholly unacceptable as it would adversely impact paddlers by banning paddling during most of the optimal flows (400-950 cfs), by totally banning paddling for 9 months of the year, and by eliminating all opportunities to paddle the river during more challenging Class IV and IV/V conditions. NYSEG claims Option 2 would eliminate or increase specific conflicts, however there is

no evidence whatsoever of any conflicts. Thus, there is no basis for the limits imposed under the Proposal 2.

**Report Section 6.2.2 Option 3:** This option is wholly unacceptable as it would adversely impact paddlers by totally banning paddling for 7 months of the year, and during high challenge flows throughout the year. NYSEG claims Option 3 would increase specific conflicts, however there is no evidence whatsoever of any conflicts. Thus, there is no basis for the limits imposed under the Proposal 3.

**Report Section 6.2.2 Option 4:** This option would ban paddling use on all but a few weekends a year without justification and is wholly unacceptable. We would remind FERC that we are not requesting recreational releases, simply an open gate and perhaps a few parking spaces. Option 4 is an unconscionable and unjustified limit to public recreation. NYSEG claims Option 4 would reduce or increase specific conflicts, however there is no evidence whatsoever of any conflicts. Thus, there is no basis for the limits imposed under the Proposal 4.

**Report Section 6.2.2 Option 5:** This option would ban paddling use on all but one or two weekends a year without justification and is wholly unacceptable. It is nice of NYSEG to offer to run a whitewater festival for paddlers, but we have no interest in this service. We would note that many small communities would rather have regular visitation in relatively small numbers (think economic drip irrigation) than one or two large events (think irrigation with a large hose – the money “runs off” because of inadequate capacity). NYSEG claims Option 5 would reduce or increase specific conflicts, however there is no evidence whatsoever of any conflicts. Thus, there is no basis for the limits imposed under the Proposal 5.

**Report Section 6.2.2 Option 6:** This option is wholly unacceptable as it would adversely impact paddlers by totally banning paddling for 6 months of the year. NYSEG claims Option 6 would increase specific conflicts, however there is no evidence whatsoever of any conflicts. Thus, there is no basis for the limits imposed under the Proposal 6. Ample paddling opportunities on the Ausable Chasm, during times of acceptable weather, regularly occur between November 1<sup>st</sup> and April 30<sup>th</sup>.

**Report Section 6.2.3 Option 7:** This option is acceptable and is the only option that is supported by the record, including the study. NYSEG claims Option 7 would increase specific conflicts, however there is no evidence whatsoever of any conflicts – and none are likely to occur. The winter safety concerns noted by NYSEG are present on many whitewater rivers in the region that receive regular winter paddling use. Paddlers must weigh the risks associated with snow and ice in deciding when and where to paddle. It is inappropriate for NYSEG or FERC to make decisions for paddlers based on potential risks downstream, and regardless no evidence of these risks exists in the record.

Option 7 would allow paddlers to enjoy the Ausable Chasm during the full range of seasons and experience the scenery as it changes with those seasons. It would allow paddlers traveling through the region to experience the river, no matter when they visit.

It would allow local and regional paddlers to enjoy the river as their schedules allow. It would not create any conflicts or have any significant impacts. Assuming a fence system can be configured that can remain open 24/7, then this option would require no daily expenses or activities for NYSEG.

**Report Section 6.2.4:** We are unsure why this section is included in the proposal, since it is beyond the control of NYSEG and the FERC. NYSEG has ample land and resources to provide access. With this being said, our interest is in free, daytime, year-round, public access to the Ausable River above Horseshoe Falls, and we are willing to consider entry locations other than the powerhouse. If NYSEG can negotiate – and FERC can regulate – access agreements that meet these interests we will consider them.

### **3. AW Comments on the Access Proposal**

**Report Section 6.2:** We disagree with this proposal and its stated justification. There is no justification for any limits to paddling access in the record. NYSEG cites “relatively low demand,” however their study concludes that demand will be moderate, even based on their radical and indefensible underestimates of demand. NYSEG cites the high cost of access, however we feel their estimates are significantly inflated and not that high at all, especially compared to the costs other licensees bear when releases *and* access are required. NYSEG cites “concerns” regarding liability, safety, and conflicts, however the record provides no basis for these concerns. Regardless, we should not manage for unjustified *concerns*, we should manage for actual impacts and opportunities.

### **4. AW Requested Mitigation**

American Whitewater hereby requests that FERC require NYSEG to provide free, year-round river access to the Ausable River for whitewater paddlers immediately upstream of Horseshoe Falls, during daylight hours, beginning no later than May 31, 2007. In addition, we ask that FERC require the construction of several parking spaces at the NYSEG powerhouse site if FERC deems space for such parking spaces exists.

We feel that opportunities exist to significantly reduce the costs that NYSEG predicts through designing fencing that does not require a gate to be locked and unlocked daily, and likely through river launch design changes. While we feel that NYSEG has inflated their initial capital investment by at least doubling it, and that their O&M costs could be virtually zero with corrected fencing, it is not our role to dictate exactly how NYSEG manages their facility. We simply want river access below their hydro project.

### **5. AW Conclusions.**

American Whitewater has been attempting to secure access to the Ausable River at the Rainbow Falls Project for at least seven years. River access is specifically mandated under the Federal Power Act and has been provided at countless projects through the dam relicensing process. After a failed 2001 flow study, it took us years to

complete the data collection. Now, after waiting a ridiculous 17 months for the flow study report, we have received it: unbound, lacking figures and appendices, lacking video or still photo documentation, fraught with errors and bias, and with conclusions and a proposal in direct opposition of the results of the study. The delays we have suffered, in concert with the abysmal final product is frustrating to our organization and our members.

The actual study results (not the editorialized discussion or conclusion) clearly show the following findings:

- **Quality:** The Ausable Chasm received an overall rating from paddlers of 6.2 on a scale of 1 to 7.
- **Difficulty:** At low flows the Ausable Chasm is a Class III/IV whitewater run, and at the highest observed flows it is a Class IV/V whitewater run.
- **Boatability:** “participants rated boatability as moderately to highly acceptable.” The rating was 6.5 out of 7.
- **Scouting:** “there were sufficient river-level scouting opportunities.”
- **Safety:** Safety on the Ausable Chasm was rated 5.8 on a scale of 1-7. “During all three Study events, no safety-related incident was noted off-the-water (i.e., in the vicinity of the powerhouse and along Route 9) and no injury was observed or reported by participants of the on-the-water investigations.”
- **Access:** “access to the river at the NYSEG powerhouse put-in location and the Route 9 Bridge take-out site was adequate”
- **Flows and Seasons:** “the range of suitable flows [is] 200 cfs to 1,400 cfs and the range of optimal flows [is] 400 cfs to 950 cfs.” This means that the river is acceptable or optimal for the vast majority of the summer and fall, and significant portions of the remainder of the year.
- **Demand:** “Given the constraints of this study, no standard method of predicting demand exists. This study only can make very rough estimates of potential demand.” Demand (under)estimates in the report are without merit. Based on the facts that the reach was rated safe, scenic, moderate in difficulty, high quality, easy to access, and boatable during times of regional low flows, demand can be expected to be relatively high. Given the relatively short length of the run, demand will be tempered somewhat. Thus, the study points to significant and perhaps moderate demand.
- **Conflict:** “No substantive interaction was observed between whitewater boaters and the ACC rafts and tubers.”
- **Carrying Capacity:** This biased portion of the study should be disregarded. Even with the bias, the findings are that the carrying capacity of the river is 258 paddlers per day and unlikely to be exceeded on a regular basis.

Regardless of these data that fully support unlimited boating access, NYSEG has asked FERC to ban paddling through an access closure. We respectfully suggest that there exists no evidence in the record to justify a limit on paddling in the Ausable Chasm, let alone a total ban. Thus, we request that FERC require NYSEG to provide free, year-round river access to the Ausable River for whitewater paddlers immediately upstream of

Horseshoe Falls, during daylight hours, beginning no later than May 31, 2007. In addition, we ask that FERC require the construction of several parking spaces at the NYSEG powerhouse site if FERC deems space for such parking spaces exists.

Thank you for considering these comments. Our organization, our members, and the paddling community anxiously await the opportunity to enjoy paddling the Ausable Chasm. We also look forward to the resolution of what has been an incredibly frustrating and delayed post licensing study process.

Sincerely,



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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 13th day of April 2007, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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Carla R. Miner  
American Whitewater  
Stewardship Assistant

Contacts listed with '\*\*\*' must be postal served

**Service List for P-2835-000 New York State Electric & Gas Corporation**

<b>Party</b>	<b>Primary Person or Counsel of Record to be Served</b>	<b>Other Contact to be Served</b>
U.S. Fish and Wildlife Service		**David A Stilwell SUPERVISOR U.S. Fish and Wildlife Service 3817 Luker Rd Cortland, NEW YORK 130459385 Cortland
US Department of Interior	Kimberly Owens US Department of Interior 1849 C. Street NW M.S. 6456 Washington, DISTRICT OF COLUMBIA 20240 UNITED STATES kim_owens@verizon.net	**Andrew Titler, tit US Department of Interior 1 Gateway Ctr Ste 612 Newton, MASSACHUSETTS 024582881 Middlesex
U.S. Fish and Wildlife Service		**Alexander R Hoar U.S. Fish and Wildlife Service 300 Westgate Center Dr Hadley, MASSACHUSETTS 010359587 Hampshire
Adirondack Mountain Club		**STEVEN BAILEY Adirondack Mountain Club 883 Jersey Swamp Rd Morrisonville, NEW YORK 129623910 Clinton
Adirondack Mountain Club		**Betty Lou Bailey Chairman Adirondack Mountain Club Canoe Route Subcommittee 4029 Georgetown Sq Schenectady, NEW YORK 123035300
Essex County Fish & Game League		**Don Sage Essex County Fish & Game League Letsonville Road Paradox, NEW YORK 12858
Ausable Chasm Company		**Patricia Stone General Manager Ausable Chasm Company PO Box 390 RT 9 Ausable Chasm, 12911
Lake Champlain Chapter of Trout Unlimited	**George Schmidt Lake Champlain Chapter of Trout Unlimited 1528 Dorwaldt Blvd Schenectady, NEW YORK 123095111 UNITED STATES	**William H Wellman Lake Champlain Chapter of Trout Unlimited 7 Helen St Plattsburgh, NEW YORK 129013322 Clinton

Lake Champlain Chapter of Trout Unlimited	**Thomas Matias Lake Champlain Chapter of Trout Unlimited 37 Douglas Rd Delmar, NEW YORK 120543125 UNITED STATES	**Gene E Webster Lake Champlain Chapter of Trout Unlimited 42 Delmar Pl Delmar, NEW YORK 120543208 Albany
New York State Electric & Gas Corporation	**Robert Malecki New York State Electric & Gas Corporation PO Box 5224 Binghamton, NEW YORK 139025224 UNITED STATES	**Carol A Howland New York State Electric & Gas Corporation PO Box 5224 Binghamton, NEW YORK 139025224 Broome
New York Rivers United	Richard Roos-Collins Director, Legal Services Natural Heritage Institute 100 Pine St. Suite 1550 San Francisco, CALIFORNIA 94111 UNITED STATES rrcollins@n-h-i.org	Bruce R Carpenter Executive Director New York Rivers United Market St PO box 1460 Rome, NEW YORK 13442-1460 bruce_carpenter@newyorkriversunited.org
New York State Department of Environmental Conversation		William G. Little Associate Attorney New York State Department of Environmental Conversation 625 Broadway Albany, NEW YORK 12233-1500 wglittle@gw.dec.state.ny.us
New York State Department of Environmental Conversation		**Alice Richardson New York State Department of Environmental Conversation 317 Washington St Watertown, NEW YORK 136013744 Jefferson
New York State Electric & Gas Corporation	Hugh Ives Hydro Coordinator New York State Electric & Gas Corporation 89 East Avenue Fossil/Hydro Administration Rochester, NEW YORK 14649-0001 UNITED STATES hugh_ives@rge.com	**Cindy D Witt New York State Electric & Gas Corporation 89 East Ave Rochester, NEW YORK 146490001 Monroe