



City of Gustavus
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March 28, 2024

Jason Custer, Vice President, Regulatory & Government Affairs
Alaska Power & Telephone Company
Sent via email: jason.c@aptalaska.com

Dear Jason,

RE: Public Access requirement in the FERC license for docket P-11659

Attached is a draft document titled "Resolution by the City of Gustavus Declaring that Unfettered Public Access to the Falls Creek Lands Via the Hydro Road is a Public Right". It will be presented to the City Council at its Work Session on April 1, 2024, and will include the as-built survey and a report from the Department of Public Safety. The DPS report was provided in response to a public records request for complaints made to the Alaska State Troopers for criminal activities/disturbances on the Hydro Road for the period 2020 to the present. The attached report states "Results: 0 incidents" although criminality has been a keystone of the Olney's justification for closing the Hydro Road to public access.

We are concerned that with the onset of summer the Olneys will resume attempts to obstruct public access on the road. In an email dated Nov. 12, 2023 I catalogued confrontations initiated by the Olneys during the summer and fall of 2023 to include 17 incidents involving 30 walkers, not including people who turned back or chose not to walk the Road due to fear of confrontation and harassment. The public has exercised unhindered, open and notorious use of the Hydro Road for 13 years, not including the continuing exercise of its recreational rights during the past 2 years. If the dispute resolution efforts between AP&T and the Olneys has reached an impasse, it is the obligation of AP&T to take measures to comply with the FERC's licensing requirements and, if necessary, to pursue remedies such as eminent domain over the contested lands to assure the continuation of public access. In the hopes of achieving a resolution prior to summer, two ideas have been suggested for how AP&T can proceed:

- Michael Schuler, a DOT&PF Right-of-Way Agent has reviewed the existing easement and suggested that the term "invitee" be applied to the general public, i.e., that the Grantee, AP&T, could simply invite the public to use the Hydro Road.
- In the proposed new Utility and Public Access Easement Agreement, amend paragraph 7. Public Access to Easement to read as follows:

*Members of the public ("the Public") shall have twenty-four (24) hours per day, seven (7) days per week, **year-round, pedestrian and vehicular** access to, and use of, the Easement for recreational purposes. The Public shall not be required to secure Grantor approvals for access to, or use of, the Easement. The Grantor shall not interfere with or hinder the Public's access to, or use of the Easement for the lawful purposes described herein.*

As a FERC Licensee, AP&T controls access to the hydro project facilities and, we believe, should inform the Olneys that the road is a public-use easement as required by the FERC license, and that they should no longer interfere with public recreational use of it. All non-compliant signage and game cameras within the Hydro Road easements should be removed and returned to the Olneys; however, adjacent property owners could post their properties along the easement edges as private if such postings do not appear to restrict public use of the road.

Sincerely,



Shelley K. Owens
Mayor

Attachments

Cc: Robert J. Fletcher
Jeffrey D. Hoyle