



Implementing the Hydropower Regulatory Efficiency Act of 2013

On January 6, FERC released a *Notice Soliciting Pilot Projects to test a Two-Year Licensing Process* (Notice) for non-powered dams and for closed-loop pumped storage projects. The Notice identified the following minimum criteria and process for developers interested in a two-year process:

- The project must cause little to not change to existing surface and groundwater flows and uses;
- The project must be unlikely to adversely affect federally listed threatened and endangered species;
- If the project is proposed to be located at or use a federal dam, the request to the two-year process must include a letter from the dam owner that the applicant's plan of development is conceptually feasible;
- If the project would use any public park, recreation area, or wildlife refuge established under state or local law, the request to use the two-year process must include a letter from the managing entity indicating its approval of the site's use for hydropower development; and
- For a closed-loop pumped storage project, the project must not be continuously connected to a naturally-flowing water feature.

In addition to meeting the above criteria, an applicant for the two-year process must also include in its request a list of other information, including documentation that the prospective applicant has met with, described, and consulted with the affected federal and state resource agencies and other stakeholders regarding the project, statements regarding the availability of existing information and the need for additional studies, a process plan and schedule, and a list of environmental effects, among others.

The Notice also required potential 2-year pilot process applicants to submit their applications between February 5 and May 5, 2014 to be considered.

On January 7, NHA held a Hot Topics call with FERC to discuss the Notice and other sections of the Hydropower Regulatory Efficiency Act (HREA). NHA secured the participation of the leadership of the Division of Hydropower Licensing, the Division of Hydropower Administration and Compliance (DHAC) and the Office of the General Counsel. There was also excellent participation by the industry with over 50 representatives from NHA member companies dialing into the call.

To begin, FERC staff stressed that the Commission, who is required to report back to Congress whether pilots are implanted or not, wants to see successful outcomes from the two-year process. Regarding the Notice specifically, FERC did not provide any additional information or details regarding the eligibility criteria or how they would analyze projects under the criteria, but strongly encouraged potential applicants to speak with FERC to answer questions and address concerns as well as to assist them to identify viable projects. Although FERC stressed that developer experience will be an important factor in selecting an applicant, a well-developed and defined proposal that meets the Notice requirements is equally important.



NHA also learned that FERC does not see an immediate need to dedicate additional resources for the pilot projects nor are they planning additional direct outreach opportunities for the industry. However, FERC did state that the absence of pilot applications within the time period identified in the Notice does not mean a two-year process isn't feasible.

Regarding FERC's implementation of other Sections of HREA, we learned:

- Section 3, *Promoting Small Hydroelectric Power Projects* - This section increased the small hydro exemption from 5 to 10 MWs and FERC has updated its website to reflect this change, however no applications have been received to date. A question was asked whether projects with existing licenses, who now qualify for a 10MW exemption, could retroactively apply for an exemption. FERC stated they have not encountered this situation and if you are considering this to call FERC to consider the pros and cons of a change in authorization.
- Section 4, *Promoting Conduit Hydropower Projects* – This section excludes qualifying conduit facilities from the FERC licensing or exemption processes and FERC has provided information on its website on how to apply for a qualifying conduit project. To date, FERC has received 19 applications totaling over 10 MW. Fifteen projects have qualified, two applications are pending, and two applications have been rejected – though one of the rejected projects was later approved when additional information was provided by the applicant. The time between FERC receiving an application to a issuing a determination is averaging around two months. FERC noted that none of the projects have encountered opposition. This section also increased the non-muni conduit exemption eligibility to 40 MW, but FERC has received no applications as of yet.
- Section 5, *FERC Authority to Extend Preliminary Permit Periods* – This section gave FERC the authority to extend preliminary permits on a one time basis for up to 2 years. FERC has posted guidance on its website and to date they have received a number of requests asking for an extension. FERC encouraged those who are interested in using the preliminary permit extension to file in a timely way.