

VIA OVERNIGHT MAIL AND FACSIMILE

June 2, 2009

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**Re: National Hydropower Association and Hydropower Reform
Coalition's Joint Request to Re-Open Public Comment on Interim
Final Rules on Resource Agency Procedures for Conditions and
Prescriptions in Hydropower Licenses**

**U.S. Department of Agriculture: RIN 0596-AC42,
U.S. Department of the Interior: RIN 1094-AA51, and
U.S. Department of Commerce: RIN 0648-AU01**

On November 17, 2005, the Departments of Agriculture, Interior, and Commerce (Departments) issued interim final rules for implementing the trial-type hearing and alternatives provisions of the Energy Policy Act of 2005 (EPAAct 2005).¹ The Departments indicated in the interim final rules that they would consider promulgating revised final rules within 18 months, based on the comments received and the initial results of implementation of the procedures set forth in the rules.

¹ Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses, 70 Fed. Reg. 69804 (Nov. 17, 2005).

The National Hydropower Association (NHA) and Hydropower Reform Coalition (HRC) (Requesting Parties) understand that the Departments have been working on a final rule in this proceeding. NHA filed comments on the interim rule, as provided for in the Federal Register notice, on January 17, 2006.² The HRC filed comments on the interim rules on January 17, 2006.³ Since the close of public comment on the interim rules, the Departments and Requesting Parties have had extensive experience with the trial-type procedures, both in cases that proceeded through trial and others that commenced and settled prior to trial. The experiences of NHA and HRC members have confirmed that in some aspects, our initial comments on the interim rules were correct. For other aspects of the rules, having now used them in practice, we have additional comments and suggestions to improve them. Trial-type hearings under the interim rules have proven to be unnecessarily burdensome and expensive for the parties. The hearing on one project may have cost more than \$5 million. The Requesting Parties believe that there are opportunities to enhance the cost-effectiveness of the procedures.

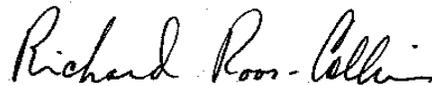
The Requesting Parties request that the Departments: (i) issue notice permitting further public comments for a 60-day period; (ii) identify in the notice any procedures which the Departments believe may benefit from such further consideration and possible refinement, in light of experiences; and (iii) defer issuance of a final rule until the Departments have considered such further comments. Receipt of public comment is critical in drafting an effective set of rules. The final rule for trial-type hearings will be more concise, less burdensome and less likely to be challenged if public comments are addressed prior to its issuance.

Thank you for your consideration of this request. Please contact Linda Church Ciocchi at (202) 682-1700 or Richard Roos-Collins at (415) 693-3000 ext. 103 if you have any questions.

Respectfully submitted,



Linda Church Ciocchi
Executive Director
National Hydropower Association



Richard Roos-Collins
General Counsel
Hydropower Reform Coalition

cc: Mona Koerner

² Comments of the Edison Electric Institute and the National Hydropower Association (Jan. 17, 2006).

³ Comments of the Hydropower Reform Coalition (Jan. 17, 2006).