



May 11, 2015

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: 2015 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules under Docket No. AD12-6-001

Ms. Bose:

On Friday, April 10, the Federal Energy Regulatory Commission (Commission) issued a memorandum titled *2015 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules* (Staff Memo) that identified a number of hydropower regulations that are appropriate for modification "because they no longer serve their intended purpose." Specifically, the Staff Memo identified 18 C.F.R. Parts 4, 5 and 16, which deal with hydropower prefilling requirements, as ripe for review because they are "possibly ineffective, outmoded, or overly burdensome..."

The Staff Memo is in response to a *FERC Plan for Retrospective Analysis of Existing Rules* (the Plan) (November 8, 2011) that outlined "steps for the future to identify regulations that may be outmoded, ineffective, insufficient, or excessively burdensome, and may warrant streamlining, expansion, repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate." The Plan was developed pursuant to Executive Order 13563, *Improving Regulation and Regulatory Review* (January 18, 2011) and Executive Order 13579, *Regulation and Independent Regulatory Agencies* (July 11, 2011), requesting independent regulatory agencies to follow the principles outlined Executive Order 13563. The National Hydropower Association (NHA)¹ is pleased to submit the following comments on the Staff Memo.

¹ NHA is a national non-profit association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA's membership consists of over 200 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys.

I. 18 C.F.R. Part 4

NHA appreciates the elimination of the requirement to submit copies of certain project maps and drawings in microfilm format on aperture cards. This revision reduces burden on applicants and licensees and eliminates an outmoded process. NHA also commends the Commission's timely implementation of the Hydropower Regulatory Efficiency Act of 2013 (Order 800), which has benefited numerous projects, often resulting in fewer delays and lower costs for developers while maintaining environmental safeguards.

II. 18 C.F.R. Part 5

- **Section 5.3 (Process Selection):** Currently, the Integrated Licensing Process (ILP) is the default process for all license applications. In order for an applicant to use either the Traditional License Process (TLP) or Alternative Licensing Process (ALP) the applicant must submit a request to do so, which can delay the overall licensing process by 60 days. The Staff Memo recommended a TLP or ALP request to be "automatically granted unless Staff issues a letter within 15 days of filing stating that staff will review the request and issue a decision within 60 days of filing."

NHA supports Staff's recommendation as it could potentially save 60 days in the licensing process.

However, NHA believes this recommendation could be improved by repealing the language that states that the ILP is the default process. This would remove the requirement to prepare and submit requests and allow applicants the flexibility to choose the licensing process that they believe is the best fit for their project and circumstances.

- **Section 5.5(c) and 5.6(a)(1) (Landowner Notification):** Currently, Sections 5.5(c) and 5.6(a)(1) require a potential license applicant to distribute its notice of intent (NOI) to file a license application and its pre-application document (PAD) to "appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in the proceeding..." The Staff Memo identified a source of delay in the licensing process when, under Section 4.32(a)(3)(A), affected property owners are notified of a license application being filed at the Commission, but some of these property owners were not notified under either Sections 5.5(c) or 5.6(a)(1). The Staff Memo recommends that a "potential license applicant distribute its NOI and PAD to property owners, as described in 18 C.F.R. 4.32(a)(3)(A)."

NHA disagrees with Staff's recommendation and believes it would result in additional burdens and unnecessary costs on license applicants during relicensing and for original licenses. At the time the NOI and PAD are filed for original licenses the project is in its preliminary stage and many project configurations will be refined, changed, modified, removed, or new configurations will be developed. Further, costly interconnection studies are required to be conducted by the transmission system operator to establish the interconnection route and location. These routes can be modified due to changes in the transmission configuration or electrical load, which requires new plans. These changes can and do occur prior to a license being filed and add another layer of complexity in identifying affected property owners at the NOI and PAD stage. Speculating as to the affected property owners at this early stage in the licensing process could result in unnecessary controversy and lead to duplication of studies at a significant cost.

For projects entering relicensing it would be equally burdensome for the applicant to identify all potentially affected property owners at the NOI and PAD stage. Although projects entering relicensing have a substantial amount of existing data to rely on compared to original licenses, providing the PAD to hundreds of property owners for a single project at this early stage would be prohibitively expensive. Additionally, property ownership within a project boundary, including transmission lines, can change hands numerous times during relicensing, making Staff's recommendation even more burdensome. NHA encourages the Commission to consider modernizing this regulation by relying more on applicant sponsored internet sites or the FERC e-library for affected property owners to find the PAD and other project information.

- **Section 5.13(b) (Revised Study Plan):** Section 5.13(b) gives participants in the licensing process the opportunity to file comments on revised study plans within 15 days. The Staff Memo highlighted instances where participants have raised new issues during the revised study plan comment period that could have been raised and requested in the development of the proposed study plan. Staff recommends that Section 5.13(b) be amended to "clarify the intent of the regulations and prohibit the request for modifications or new studies that could have been made during the proposed study plan comment period."

NHA supports Staff's recommendation and agrees that prohibiting new study requests or modifications at the revised study plan phase would help streamline the licensing process.

- **Section 5.13(c) (Timing of Study Plan Determination):** Section 5.13(c) sets a 30-day deadline for the Director of the Office of Energy Projects to issue the study plan determination after the revised study plan is filed. The Staff Memo cited “extensive issues that need to be addressed causing the revised study plan determination to be voluminous and complex” and to ensure adequate time is given to the issues presented, “additional time is occasionally needed to... make the study plan determination.” Therefore, Staff recommends allowing “more time for both public comment and for the Director’s decision on the study plan.”

NHA disagrees with Staff’s recommendation particularly because no actual deadline for the Director’s determination was provided. NHA believes a firm timeline for a study plan determination is required. A tremendous amount of time and effort goes into developing a study plan and studies are often seasonally sensitive. Without a firm timeline for the Director’s study plan determination projects will experience additional delay and uncertainty, and in some cases, an entire year of study may be lost, significantly extending the licensing process. NHA notes that under Section 5.13(a) the applicant must file its revised study plan within 30-days following comments on the proposed study plan, which is consistent with Section 5.13(c).

Further, it is not clear whether Staff is recommending in this section the extension of the public comment period under Section 5.13(b) above, and if so, how much additional time. On the one hand, Staff is potentially shortening the process under 5.13(b) by prohibiting modifications or new study requests, but on the other hand, Staff is lengthening the process by recommending additional time for public comment on the revised study plan and for the Director’s study plan determination.

- **Section 5.14(d) (Dispute Resolution Panel):** Under Section 5.14(d), if a federal or state agency with mandatory conditioning authority files a notice of study dispute in response to the Director’s study plan determination, a dispute resolution panel is convened within 20 days. Under Section 5.14(k), the panel must deliver to the Director, within 50 days of the notice of dispute, a finding with respect to each study request in dispute. Section 5.14(j) requires the panel to hold a technical conference prior to engaging in deliberative meetings. Staff recommends permitting, but not requiring, “the panel to hold a technical conference if the panel believes it necessary.”

Because the Commission already has the authority to waive the technical conferences, Staff's recommendation, without factors to guide the panel's decision, seems unnecessary. However, NHA believes the technical conferences to be an important aspect of the study dispute process.

III. Conclusion

NHA appreciates the opportunity to comment on the Staff Memo and we encourage the Commission to pursue these recommendations through either a Notice of Intent or Notice of Proposed Rulemaking. NHA also believes additional modifications to 18 C.F.R. Parts 4, 5, and 16 could be made that would further the *FERC Plan for Retrospective Analysis of Existing Rules* and advance the Administration's efforts to improve the performance of federal permitting and review of infrastructure projects, and to reduce delay, redundancy and inconsistency in licensing through retrospective regulatory review of existing regulations.² NHA commits to working with the Commission in identifying additional regulations that are ripe for review and modification.

Respectfully submitted,



Linda Church Ciocci
Executive Director
National Hydropower Association

² See, Exec. Order No. 13604, 60 Fed. Reg. 18887 (Mar. 22, 2012); *Federal Plan for Implementing Executive Order 13604* (Jun. 15, 2012); Exec. Order No. 13610, 93 Fed. Reg. 28469 (May 14, 2012).