

II. GENERAL COMMENTS

NHA supports the efforts of FERC to find a reasonable fee structure for assessing charges for federal land use by hydropower licensees. NHA also agrees with FERC's Notice² to use the FY 2008 fee structure to assess federal land use for fiscal years 2009, 2010, and 2011, while the Commission develops a new, reasonable fee structure. Any future fee schedule must use an appropriate approximation of the fair market value (FMV) of federal lands occupied by hydroelectric projects, recognize the hydropower industry's varied use of federal lands and public benefit, and provide an opportunity for relief on a case-by-case basis in the extreme case that a licensee's lands are drastically overvalued under the Commission's fee schedule.

III. SPECIFIC COMMENTS

a. An Agricultural Index Should be Adjusted to Reflect the Physical Characteristics of Hydropower Lands

While the Commission decides on a new methodology for assessing federal land use annual charges, NHA must stress that any approach based on an agricultural index, without any adjustment to more accurately capture the character of lands present at hydroelectric projects, is inherently flawed. Agricultural lands are physically different—and more valuable—than lands used for energy projects like hydropower. FERC itself recognized this fact when it issued Order 469,³ finding that an agricultural index would overvalue federal lands at FERC-licensed projects, because these federal lands are, in

² Billing Procedures for Annual Charges For Recompensing the United States for the Use, Occupancy, and Enjoyment of Federal Lands. Docket No. AD11-4-000. Issued March 22, 2011

³ Order No. 469, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Method for Assess Federal Land Use Charges, FERC Stats. & Regs., Regs. Preambles 1986-1990 ¶ 30,741 (1987).

many instances, physically incapable of agricultural use. They often have steep, rocky slopes with low-quality soils that are unsuitable for agriculture.

The NASS Census, an agricultural index, assigns the FMV of agricultural lands that are level and have soils suitable for agriculture. The Commission’s adoption of this index, without proper adjustment, would significantly overvalue hydropower lands because the index tracks the use of fertile, arable lands uncharacteristic of the lands typically present at hydroelectric projects. Because lands valued under the NASS Census are generally much more valuable than the steeply sloped, rugged lands generally found at hydropower projects, the Commission—if it decides to use this index in developing its new federal lands fees methodology—should downwardly adjust the indexed values as part of its new fees schedule methodology. Such an approach would better approximate the value of steeply sloped, rocky, and remote lands at hydroelectric projects that are not conducive to agriculture and meet the Commission’s statutory duty under Section 10(e)(1) of the FPA to assign a “reasonable annual charge” for each hydropower project.⁴

b. Fees Based on the Percentage of Gross Sales or a Rate per Kilowatt-hour Should be Avoided

In the Notice, the Commission cited its past decision not to adopt a federal lands fee based on project gross sales or a per kilowatt-hour rate. Such a fee structure, where land use charges are not related to the value of the land, but to project output or revenues from generation, would result in licensees with similar character and acreage of federal

⁴ The Commission has concluded that a reasonable annual charges is one which reflects the fair market value of the federal lands. Order No. 469, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Method for Assess Federal Land Use Charges, FERC Stats. & Regs., Regs. Preambles 1986-1990 ¶ 30,741 at p. 30,587 (1987); 52 Fed. Reg. 18201 (May 14, 1987).

lands paying greatly different annual charges – an unfair outcome. In rejecting this alternative in Order No. 469, FERC stated that it “overlooks the fact that many projects use a combination of Federal and private lands, and that the power output is a result of many factors (water rights, head, project structure) and not just the acreage of Federal land involved.” NHA agrees with the Commission’s long-standing position on this issue and recommends the Commission, as it investigates a new fee schedule, continue to reject any income- or generation-based methodology in establishing federal land use annual charges.

c. FERC’s Valuation Method Should Take into Account the Varied Land Use at Hydropower Projects

When developing a new federal land fees methodology, the Commission should take into account the varied use of lands and different features of hydropower projects. Under its existing method, FERC assumes that federal lands with transmission lines are 50 percent encumbered, and all other federal lands within project boundaries are 100 percent encumbered. NHA believes that it is inappropriate to assume 100 percent encumbrance of federal lands. Commission-issued licenses reserve authority for federal land management agencies to authorize non-project uses on federal lands within the project boundary, and in many cases these lands support both project and non-project activities, such as flood control, navigation and storage for water supply and irrigation. Hydroelectric development is just one component of the land managing agency’s multi-use administration of the federal lands.

Moreover, many projects significantly enhance the multiple use management of the lands they occupy by providing recreational attractions such as fishing, boating, camping and other activities. Many licensees also provide funding to the federal land

managing agency in addition to the recreation facilities they construct, operate, and maintain.

In light of the opportunities provided by hydropower projects for the public, a 100 percent encumbrance rate is not justified. The industry's contributions to multiple use of federal lands should be reflected in FERC's valuation method by significantly reducing the level of encumbrance of hydropower projects on federal lands.

d. FERC's Method Should Include a Mechanism to Address Special Circumstances Where the Indexed Value Is Significantly Inaccurate

NHA understands FERC's desire to find a fee structure that is uniformly applicable, and believes that with the use of an appropriately adjusted uniform land value index, most annual charges will be based on a reasonably accurate FMV. The Commission has, however, a statutory obligation, under Section 10(e)(1) of the FPA to ensure that annual charges are reasonable for each and every licensee and to avoid increasing the price that consumers pay for electricity.⁵ Recognizing that any index system is likely to produce anomalous circumstances, and could produce a charge that is not based on a reasonable approximation of FMV of federal lands at a project, the Commission should allow an alternative valuation method on a case-by-case basis to resolve anomalies that may occur in using a universal land valuation index. Where a hydropower project's federal lands charges are drastically inaccurate under FERC's method, it should allow a licensee the flexibility to seek relief under an alternative valuation mechanism. NHA believes such flexibility can be achieved in a way that provides licensees redress of their concerns while at the same time provides a minimal additional administrative burden to the Commission.

⁵ 16 U.S.C. § 803(e)(1). *See City of Tacoma*, 331 F.3d 106 (D.C. Cir. 2003).

IV. CONCLUSION

NHA appreciates the Commission's efforts and openness in this process and remains committed to participating in any further FERC efforts to improve its processes as it relates to hydropower. We also note that several NHA member companies have filed individual responses to the Notice and refer the Commission to those comments.

Respectfully submitted,

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