

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

**Small Hydropower Development
in the United States**)

Docket No. AD09-9

Comments of the National Hydropower Association

The National Hydropower Association (NHA)¹ hereby submits its written comments as a follow-up to the Technical Conference held by the Federal Energy Regulatory Commission (Commission or FERC) on December 2, 2009, in “Small Hydropower Development in the United States,” FERC Docket No. AD09-9. NHA commends the Commission for its recognition of this important issue and commits to be an active participant in support of the ongoing work to support small hydropower development. As discussed below, NHA believes there are a number of changes to the Commission’s regulations under the Federal Power Act (FPA) that could be accomplished through notice and comment rulemaking, many items that the Commission could undertake immediately through changes in policy, and additional issues that may require further discussion and collaboration with all stakeholders.

I. Introduction

NHA believes the U.S. hydropower industry is primed for responsible growth and ready to play a significant role in the effort to increase renewable generation capacity and reduce

¹ NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including new water power technologies. NHA’s membership consists of more than 170 organizations including public utilities, investor owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants and attorneys. In 2009, NHA established a Small Hydro Council to promote the benefits of the small hydropower resource and to advocate for needed changes to facilitate increased project development. The comments presented here represent input from NHA’s members and the industry in general on barriers to development of small hydro in the U.S.

greenhouse gas emissions. Numerous opportunities are available to expand this country's hydropower base while at the same time providing responsible environmental stewardship of the nation's rivers. These opportunities have grown dramatically with Congress's enactment of the Energy Policy Act of 2005 (EPAAct 2005), and more recently, the American Recovery and Reinvestment Act of 2009 (ARRA). With the inclusion of the 30 percent investment tax credit (ITC) and the Section 1603 grants in lieu of tax credit program for adding hydropower generation at existing facilities and at non-powered dams, ARRA marks the first time since enactment of the Public Utility Regulatory Policies Act, 32 years ago, that Congress has adopted significant legislation to promote new hydroelectric development.

New analysis, including a recently issued hydropower jobs report by NHA, have determined that the hydropower industry could potentially double its current contribution to the country's electric system. NHA's study determined that the potential exists for 60,000 MW of new development by 2025. This development alone translates to 700,000 cumulative new direct and indirect jobs in just the next 15 years.² However, this dramatic increase in environmentally sound hydropower capacity and related jobs likely will not occur without a series of changes to the status quo, including improvements in certain aspects of the regulatory process for hydropower development.

NHA believes greater efficiencies, both in time and resources, can be gained in the licensing and regulatory process for new hydropower development, in particular for small projects, without compromising environmental protection. The Commission is to be applauded for the advancements seen to date through the adoption of the integrated licensing process (ILP) and for the new processes for hydrokinetic technologies – ocean, tidal and instream. Similarly,

² See *Job Creation Opportunities in Hydropower*, Navigant Consulting, October 2009.
http://www.hydro.org/Jobs%20Study/NHA_JobsStudy_Final%20Report_Final_Sept%202020.pdf

new small hydro project development can be advanced by the Commission addressing small hydro's unique circumstances through a rulemaking process and other means in order to fully capitalize on this untapped renewable energy potential. In fact, NHA believes this work may also translate into enhancements to processes generally for development of off-river pumped storage projects, new generation at larger existing non-powered dams, low impact capacity and improvements at existing larger facilities, and hydrokinetics.

Small hydropower projects will make up a critical piece of the industry's development potential. There is a real and immediate opportunity for this country to expand its domestic small hydro resources and help meet its energy, environmental and economic goals. As discussed in NHA's testimony at the FERC workshop in December 2009, however, small hydropower development poses unique challenges with a need to reduce delays, expedite process, and keep costs reasonable – all while preserving environmental protection and working closely with all stakeholders. In order to tap the true potential of the small hydropower sector of the industry, NHA believes we must establish a smarter and more efficient licensing process, one that considers the economies of scale and is commensurate with the project and its impacts.

NHA's comments below are based on input from its members and the hydro industry in general and are intended to acknowledge a broad scope of impediments to the development of small hydro. These comments are broken down into several parts. In Part II below, NHA addresses issues which require a modification or amendment to the Commission's regulations and, therefore, necessitate commencement of a rulemaking proceeding. NHA urges the Commission to immediately initiate the rulemaking process with the issuance of a Notice of Proposed Rulemaking and to set a schedule for that rulemaking proceeding to achieve final revised regulations within nine months.

In Part III, NHA addresses issues that may be resolved through changes and/or clarifications to Commission policy and internal Commission processes as they relate to small hydro, which could be implemented without a rulemaking proceeding. NHA requests that the Commission make these changes and clarifications immediately. Immediate implementation will allow aspects of the licensing process for small hydro to be more efficient and will enable small hydro developers to take advantage of current incentives for small hydro development (including, *e.g.*, Production Tax Credits (PTCs), ITCs and New Clean Renewable Energy Bonds (CREBs), which have set deadlines.

Part IV of these comments presents issues and recommendations that involve participation by other Federal and State agencies in the hydroelectric regulatory process. Although these changes are outside the Commission's jurisdiction, because of their interrelationship with the Commission's regulatory process, NHA requests that the Commission assist in facilitating a discussion with these other agencies and support resolution of these issues.

NHA is strongly committed to participating in collaborative efforts with environmental groups and other stakeholders regarding the recommendations made in these comments. NHA believes that in many cases the best solution can be achieved through collaboration between industry, the Commission, and other stakeholders. In fact, NHA has already begun a conversation with the American Rivers and others on some of these issues and have already found common ground. NHA commits to continue to work toward developing joint recommendations that will hopefully help to guide FERC's review of its policies and procedures for small hydropower. We intend to actively engage in any and all efforts under a rulemaking or other process initiated by the Commission to respond and address the variety of issues raised by all commenters.

Finally, a number of NHA member companies have, or are expected, to independently file comments in response to the Commission's December 2009 Small Hydro Technical Conference. Some of the issues presented in other industry comments may not be addressed in NHA's comments here; however, NHA commends those comments to the Commission as providing valuable input from the industry on real and/or perceived impediments to development of small hydro in the U.S.

II. FERC Regulatory Changes

NHA outlines below its recommendations for regulatory changes that we believe the Commission will need to implement through a formal rulemaking proceeding. Immediate initiation of such a rulemaking proceeding and completion of final regulations expeditiously (*e.g.*, within a 9-month period) will enhance the ability of the hydro industry to develop small hydroelectric projects, particularly in view of the currently available financial incentives with set deadlines. The goal of these proposed changes is to achieve a process that recognizes the economics of small hydro and still provides the appropriate environmental protections.

Reports have shown that, in general, projects supplying the smallest amount of generation are paying the most in process costs because the relative scale of those costs is the same regardless of project size. This situation detracts investor interest in smaller hydro projects, which makes finding financing very difficult. Developers and industry members have proposed a variety of potential solutions to address these issues. In addition, some of the policy/process changes proposed below should be expanded and confirmed through a rulemaking proceeding.

A. Develop and implement a better coordination between the preliminary permit process and the licensing process.

As the Commission has acknowledged, the three-year preliminary permit process does not coordinate with the five-year integrated licensing process (ILP). The lack of such coordination in some cases places permit holders at risk when they are unable to file their license application before the permit expires. In other situations, attempts to reach a reasonable agreement among the stakeholders on the proposed development can be thwarted by the disconnect between the length of the licensing process and the available term of the permit. NHA recognizes the statutory limitations of the Commission's authority to adjust the term of a preliminary permit and is not here seeking support for a statutory change. However, NHA believes that the Commission can make relatively minor schedule adjustments to the ILP process for original license applications that will provide diligent permit holders a reasonable opportunity to file their license application before their permit based priority expires.

To the extent the Commission doesn't make these adjustments, virtually all developers of new projects that obtain preliminary permits and intend to have their projects licensed will have to obtain permission to use the TLP process (because the TLP contains a less lengthy set of pre-filing requirements and steps that in most cases can accommodate the filing of an application before permit expiration), or they will risk having to go before the Commission and request an extension of the permit with the possibility of being denied. From a different perspective, without this coordination legitimate competition from another developer wishing to develop a project that appears to be stalled or delayed can be stymied. In other words, better coordination between the regulatory approval processes provides a confident mechanism to reach the end goal of filing an application before the protections associated with a preliminary permit expire. An alternative to adjusting the ILP process schedule for preliminary permit holders would be to designate use of the TLP to be an option for the applicant, without the requirement for

Commission approval.

B. Develop and implement a smarter and more efficient process for authorizing power generation at existing non-powered dams.

One of the most significant areas of future growth for small hydro is development at existing non-power dams. Only 3 percent of the nation's 80,000 dams currently generate electricity – so the potential for adding electric generation to non-powered dams is enormous. Moreover, the additional environmental impacts associated with the development of hydropower at existing non-powered dams are typically minimal because the most significant environmental impact has already occurred – the construction and operation of a dam. Moreover, in most cases, when hydropower generation is installed at non-powered dams there are no changes in flow requirements, which are typically dictated by the reasons the dams were built originally, such as water supply, transportation and flood control. However, despite the typically minimal impacts, under FERC's current regulatory structure, the licensing process for installing hydro at such existing non-powered dams is 5 to 5.5 years. Such a lengthy process will in many cases stymie such development. Therefore, NHA proposes that the Commission establish a more efficient process for licensing of such new development, with the goal of license issued within 2 years from the filing of a Pre-Application Document.

C. Develop and implement a streamlined process for approval of “non-capacity” amendments and certain “capacity” amendments and enlarge the definition of “non-capacity” related amendment.

The processing of applications to amend licenses or exemptions can be expedited by implementing certain changes to internal processes as discussed further below in Part III, *e.g.*, issuance of an order approving within a specific short period of time where the application is not opposed and the proposal does not raise environmental issues. With parallel additional changes to the regulations, the processing of such an application can become even more efficient.

For example, NHA believes that the thresholds for “non-capacity related” amendments can be increased while still maintaining ample opportunities for public input. Specifically, NHA proposes that the definition of “non-capacity” be expanded to under 10 MW and hydraulic increase under 20%. This slight increase in the scope of amendments relating to increases in power generation more appropriately recognizes the economics of that size of incremental development and provides for the appropriate level of regulatory process under the “non-capacity” amendment regulations. This change also recognizes the increased interest and support for making efficiency improvements at existing hydropower facilities.

D. Develop and implement an automatic approval process for unopposed exemption applications that meet certain specified criteria.

In furtherance of new policies to expedite handling of exemption applications that are unopposed (see Part III below), NHA proposes that the Commission amend its regulations to confirm those policies and also expressly to provide that an unopposed exemption application would be deemed approved within 45 days after the notice period expires, unless the Commission issues an order to the contrary. A computer-generated order approving the exemption (on a standardized form) could be issued to confirm that status.

E. Modify the definitions for conduit exemption to the extent not modified through a clarification or policy statement.

The Commission’s exemption process is intended to provide a simpler framework for obtaining FPA approval. However, NHA’s member companies looking to develop on irrigation canals have expressed concern that the current definitions for the conduit exemption process are artificially limited and are not well-suited to actual circumstances in canals. For example, the current definition of a “conduit” includes qualifying language that has caused confusion. Specifically, the description in FPA Section 30(a) describing what is eligible for a conduit

exemption includes the qualifying phrase: “any facility (not including any dam or other impoundment).”³ However, conduit systems are designed to use gravity to drive the flow of water at a specific speed, and a drop structure may be inserted to dissipate energy and slow the water flow. Confusion in interpreting the requirements for a conduit exemption may call into question a proposed installation that attaches to an existing irrigation drop structure, even though the attachment will not change the operation of the irrigation canal.

To avoid such confusion, NHA believes that is important for the Commission to change the regulations to ensure consistent and appropriate regulation. Specifically, the following language should be incorporated into the regulations:

- “Hydroelectric potential means a drop in elevation or falling water, or moving water through the body of the canal, that can provides force (or power) to the elements of a hydropower generation unit.”
- “Gates, weirs or check structures that have been installed solely for the purpose of directing, measuring flow or controlling the speed and/or level of water to provide lateral distribution may be used as long as the original structure was not created for the sole purpose of generating electricity.”

In addition, the Commission should clarify that the reference to “other impoundment” in FPA Section 30(a) does not cover structures in conduit systems that impede flow for the purpose of maintaining consistent flow and velocities, but which are not designed to create head. Absent such a clarification, there may be a question as to whether new facilities that are connected to an existing impeding structure in a conduit would qualify for the conduit exemption in the same manner as a new facility installed in a freely flowing portion of the conduit.

As discussed below in Part III, these definitions could be modified immediately by clarification or a policy statement to provide immediate guidance.

F. Review additional potential regulatory changes that would assist small hydro development.

³ FPA Section 30(a). [emphasis added]

In addition to the specific proposals for regulatory changes discussed above, NHA also believes that consideration should be given to implementing solutions to the following issues through a rulemaking proceeding that incorporates input from industry, agencies and stakeholders.

- Establish a procedure by which power may be sold from a small hydro development under a pilot process before completion of the licensing proceeding.
- Review study requirements for small hydro to determine if there is a less burdensome way to obtain necessary environmental data prior to regulatory approvals.
- Evaluate alternatives to protection, mitigation, and enhancement measures for a small hydro license or exemption that would better control costs while fulfilling environmental responsibilities.
- Enhance the ability of small hydro projects to obtain access to markets and interconnects to the interstate grid.

III. FERC Policy/Agency Process Improvements

NHA outlines below policy and internal process recommendations that we believe the Commission can institute without the need to enter into a formal rulemaking proceeding. Immediate implementation of these proposals will facilitate a smoother regulatory process, providing immediate benefit to small hydro developers as well as to the FERC Staff. As opposed to the proposed regulatory changes outlined above, NHA believes that the proposals in this section can be implemented without a change in the FERC's formal regulations.

These recommendations cover a broad scope of the regulatory process including new development at existing dams and incremental development at existing hydropower facilities

(both additions of capacity and increases in efficiency) – through the permitting, licensing and the exemption processes. Although these comments are presented in the context of small hydro development, the changes proposed could also be applicable to larger projects and would thereby provide a smarter regulatory process and would support significant additional hydropower development throughout the country. These recommendations also address the need for enhanced tools to educate potential developers on the regulatory processes. NHA understands that the Commission Staff may have already commenced implementing some of these enhancements, and to the extent that has occurred, NHA commends the Staff for those initiatives.

A. Provide enhanced educational tools and increased outreach to developers and stakeholders to facilitate the regulatory process.

NHA believes that the development of small hydro will be assisted by the Commission developing enhanced educational tools, describing the regulatory process specifically for small hydro developers, and increasing outreach to potential developers. New players, from private utilities to local communities, are looking to develop small hydro projects. In many cases, their experience with the FERC’s regulatory process is limited. Outreach by the Commission, through an updated Small Hydro Handbook and meetings through the Commission’s Regional Offices, may assist those considering development. NHA stands ready to assist the Commission including direct regional outreach to potential developers.

NHA suggests that an updated Small Hydro Handbook include particularly an overview of the preliminary permitting, licensing and exemption processes for projects, identifying key differences between these processes (*e.g.*, between licenses vs. exemptions, and between general small hydro exemptions and conduit exemptions). The Handbook should provide greater clarity on the types of improvements that require an amendment to licenses or exemptions, and what

changes to a project do not require license or exemption amendments. An updated Handbook should clarify and confirm the Commission's policy on what type of amendments require 3-stage consultation. Such clarifications of the amendment process would allow the process to work smarter and more efficiently – saving FERC staff time and effort, as well as expediting review of amendments that do not have significant environmental impacts.

The Handbook should also clearly set out the steps for implementing the regulatory approval processes through flow charts. In addition, NHA recommends the Commission include case studies to illustrate common project types and the process to follow for each of them. Having the Handbook available on the FERC's website (for review and for download) with a designated help desk, and updated regularly, would provide great benefit to project developers, the industry in general and others with interest in the process.

Furthermore, NHA recommends that the Commission undertake outreach programs in areas of the country where there are high levels of proposed development of small hydro. Workshops for small hydro developers, explaining the processes and the tools available, could assist such developers in preparing and filing better applications and in participating more efficiently in the regulatory process. The value and usefulness of such enhanced outreach was seen in the Commission's work on hydrokinetic technologies. Again, NHA is available to assist in this outreach effort.

B. Provide online application processes and monitoring capabilities for new permit, license and exemption proceedings.

NHA also recommends that the Commission take full advantage of the technical capabilities of its website by establishing an online application process for small hydro preliminary permits, licenses and exemptions. Similar to the manner in which the Commission handles the electronic filing of a Form 80, the website could provide an applicant the opportunity

to complete a template application and attach consultation and other documentation in support of the application. Assuming that all required data is provided, the Commission's computer system could automatically prepare and post a public notice based on the online application starting the comment/protest period, subject to further verification of the information provided, if necessary. The computer-generated notice would start the notice period more expeditiously and would facilitate more efficient use of staff time (avoiding the need for staff to prepare such notices).

Process recommendations such as this one are important because projects that could effectively deploy stimulus funding and create jobs may be delayed due to lack of knowledge of the regulatory process by potential developers, jeopardizing eligibility for these new incentives and negatively impacting potential job creation opportunities. Low hanging fruit projects, such as conduit power opportunities, incremental hydropower and others, that could deliver distributed baseload renewable energy to the grid with minimal impacts are not being built.

In its regulations the Commission confirms its authority to waive some requirements of the regulatory process for proposed small hydro projects. To make practical use of this authority and help a developer distinguish projects that would have a more expeditious regulatory timetable from others, clarity on which requirements can be waived and under what circumstances is needed. To facilitate a more efficient application process and expeditious handling of small hydro projects, NHA proposes that as part of the online application process the Commission provide interactive guidance tools on potential waivers of process requirements for a small hydro project based on certain stated criteria. For example, a waiver of the 3-stage consultation process should be automatic when the applicant submits any of the following forms of evidence of agency consultation and agreement with its application: 1) agency correspondence confirming no objection to the proposed project; 2) a settlement agreement on

relevant issues; 3) management and mitigation plans with agency concurrence; 4) a draft Environmental Assessment with supporting agency comments. Such a waiver can be presumptive unless an objection is raised by a resource agency or other stakeholder within a specific time-period. NHA also believes that the Commission should explore the potential for additional online tools to facilitate consultation and interaction with resource agencies and interested stakeholders to make the regulatory approval process more efficient.

NHA further proposes that the Commission establish proposed schedules for applications once they are filed, showing anticipated key dates – much as the Commission does now for its National Environmental Policy Act (NEPA) review process. Depending on the capabilities of the Commission’s computer system, such schedules could be computer-generated based on the online application filed, with the ability to make adjustments to the schedule if parties agree. Schedules for applications not filed online could be generated by the Commission Staff once the notice period expired.

If the Commission’s computer system can handle such a process, NHA also recommends that the Commission implement an online tracking system for pending proceedings – showing key process dates perhaps generated by the computer system subject to modification on a case-by-case basis (*e.g.*, draft/final NEPA documents) – and accessible to the applicant and other parties/stakeholders. Such transparency of the process will assist applicants and stakeholders in planning, and could provide assurances to investors about the process.

C. Provide online application and monitoring processes for amendments to licenses and exemptions.

NHA proposes that the Commission implement an online amendment process, similar to the online application process described above for new permits, licenses or exemptions – except generally simpler depending on the nature of the amendment. Such an online process would

assist in the more efficient and expeditious handling of amendment applications. As with applications for new development described above, assuming that the Commission website can handle such a process, an applicant should be able to go online, complete a template application with all necessary documentation, and have the computer generate a public notice within 24 hours if the online application is complete. As with applications for new development, this computer-generated notice would start the notice period more expeditiously and would facilitate more efficient use of Staff time.

Furthermore, modifications or improvements to exempted and licensed projects, that provide additional hydropower with minimal environmental impacts, should be encouraged and their processing expedited at the Commission. To that end, NHA recommends that the Commission establish an internal procedure that expedites handling of capacity amendment applications with minimal environmental impacts. For example, such an internal procedure could provide that an application for amendment to a license or exemption, which is filed online with either a draft environmental assessment or resource management plan (both with agency concurrence) and which has no opposition, would be approved through a standard form order within a short period (*e.g.*, 45 days) after the notice period expires.⁴

D. Provide clarification on definitions, increased flexibility and expedited processing for exemptions.

As discussed in Part II, Sections D and E above, clarification of the exemption process is needed. While a rulemaking proceeding is pending to make such changes to the regulations, NHA believes that the Commission could immediately issue a policy statement clarifying some of the provisions discussed above, followed by confirmation in a change in the regulations.

In addition, under current Commission policy, a holder of an exemption cannot convert

⁴ Through changes to the regulations, as described in Part II above, this expeditious processing of amendment applications could become even more efficient.

that exemption to a license. Under this policy an exemption holder may be prevented from making modification to its facilities if those modifications would move the project outside the scope of an exemptible project. Thus, such a requirement may effectively limit the ability of the exemption holder to expand its facilities to generate incremental hydro. Other changes to an exempt project may also be more readily addressed through a license amendment process, rather than an exemption process, such as where conditions to the exemption need to be changed. Since this limitation is not incorporated into the Commission's regulations, the Commission can remove this limitation through a policy statement confirming the conditions under which an exemption could be converted to a license.

Finally, the Commission should establish an internal procedure (similar to that for amendments to licenses or exemptions as described above) that expedites the handling of an exemption (general or conduit) which is filed online with an environmental assessment, and which has no opposition. Such expedition should provide that the exemption would be approved through a standard form order within a short period (*e.g.*, 45 days) after the notice period expires.⁵

E. Negotiate and implement revised MOUs with other agencies relating to the regulatory process for small hydro.

One of the most significant areas for future growth in the hydropower industry is private development on existing federal dams (both powered and non-powered). Congress required in the EPAct 2005 that the federal government analyze power opportunities on its systems, as administered by U.S. Army Corps of Engineers (Corps) and the U.S. Bureau of Reclamation (Bureau). That report, along with further investigations currently under way, has identified many sites for development. Although EPAct 2005 also provided, for the first time, tax incentives to

⁵ As with amendment proceedings, through changes to the regulations as described in Part II above, this expeditious processing of exemption applications could become even more efficient.

support this type of development, for the last two decades private development had not taken place to any significant extent. As a result of this lack of activity in the past, potential developers at existing federal dams have found a lack of familiarity and understanding of the FERC licensing process among the Corps and Bureau offices and a need for better coordination with the Commission.

NHA recommends that FERC work with the Corps and the Bureau (as well as the Bureau of Land Management) to review and update the licensing MOUs, including development of procedures for better facilitation and enhancement of private development at federal facilities, and with the Commission as the lead in environmental matters. Because many of the new tax and other incentives for this type of development have strict and short timelines, NHA encourages the Commission and the agencies to complete this update as expeditiously as possible, ideally within six (6) months for the MOU between the Commission and the Corps since those discussions have already started. Through an updated and more efficient process, as set forth in the MOUs, potential private development may be able to go forward in time to take advantage of the various incentives currently available.

F. Establish a demonstration/pilot process for new small, low-head or conduit technologies.

Process improvements for testing new technologies, particularly small, low-head and conduit hydropower, are needed to take advantage of these new potential power sources. Even the Commission's exemption process can prove to be lengthy and cost-prohibitive for nascent technologies that require time in the water for additional research, development and demonstration. Currently, there is no pilot process for testing these types of new technologies at the Commission. NHA encourages the Commission to examine implementing a pilot process for certain small, low-head new technologies. The pilot process could be established as a matter of

policy initially, and then affirmed in the rulemaking proceeding.

G. Review additional policy areas where improvements to the regulatory process would assist small hydro development.

In addition to the specific proposals for changes in policy and internal Commission process outlined above in this Part III, NHA believes that consideration should also be given to implementing solutions to the following issues identified by industry members through potential policy/process modifications. NHA has not presented specific proposals or recommendations as to the issues outlined below because, as noted earlier, some of these issues are best handled through a collaborative discussion between the industry, the FERC Staff, resource agencies and other stakeholders. To that end, NHA requests that the Commission establish a framework for that discussion, with a goal to achieving consensus proposals within six (6) months.

- Establishment of the TLP as the default for licensing of new small projects by preliminary permit holders, or alternatively give preliminary permit holders the right to select (without the need for prior Commission approval) the TLP in order to provide an equal opportunity to initiate the licensing process before expiration of the preliminary permit.
- Development of categorical environmental analyses under NEPA for certain types of small hydro technology, for use by multiple small hydro developers subject to specific site proposal modifications.
- Development of provisions to allow for the limited temporary sale of power (not to the interstate grid) for testing new small hydro projects.
- Enhanced coordination between state resource agencies issuing Clean Water Act Section 401 certifications and the Commission's licensing/exemption proceedings.
- Enhanced coordination with the other federal agencies having mandatory conditioning authority under the FPA (*i.e.*, Department of Interior/Fish and Wildlife Service, Department of Commerce/National Marine Fisheries Service, and Department of Agriculture/Forest Service) with the goal of a greater recognition of the benefits provided by small hydro (*e.g.*, in terms of emissions reduction and the integration benefits in support of other variable renewable sources, such as solar and wind).
- Confirmation of what operational changes to non-jurisdictional dams/projects can be implemented without triggering FERC jurisdiction under the FPA.

- Evaluation of state dam safety programs for small hydro with the potential for a closer coordination with the Commission's program to avoid duplication and added expenses.

Again, NHA pledges its support and stands ready to work cooperatively with FERC and others to address these issues.

IV. Changes in Process/Regulation by Other Agencies

Though the focus of these NHA comments is to provide recommendations on policy actions that FERC could undertake directly to support the development of small hydro, NHA has identified other agency actions and issues that also play a role. The hydropower regulatory process involves other federal agencies and, while the Commission cannot direct changes to the procedures followed by the other agencies, the Commission can partner with the industry and other stakeholders in promoting changes at those agencies that would enable more efficient development of small hydro. NHA requests that the Commission work with these other agencies to implement the proposed changes.

Specifically, untapped megawatts of energy are available at many Corps and Bureau facilities around the country. Developers are eager to maximize the use of this infrastructure by adding powerhouses to non-powered dams. NHA commends both the Corps and the Bureau for their recent statements of support for increased hydropower development at their facilities and for instituting a review of the potential and opportunities for growth. However, many of these structures were originally built for other purposes such as flood control, water supply, or irrigation. Some developers have encountered resistance to deploying power facilities at these dams in part due to concern over potential impacts to these other project purposes.

NHA believes that there are ways to address these concerns, including crafting new

procedures for facilitating and enhancing private hydropower development at federal facilities as part of updating the MOUs that the FERC has with the Corps and the Bureau. Additional ways to demonstrate the federal government commitment to hydropower development include: (i) issuance of an executive order from the White House giving appropriate recognition to the importance of power generation at federal dams; (ii) Congressional directive that hydropower is an authorized project purpose at all Corps dams; and (iii) Congressional directive to the Bureau to ensure their policies facilitate development of non-federal, FERC-licensed hydropower development.

In addition, NHA's members have indicated opportunities to increase hydropower generation at federal facilities are being missed because their operation is focused exclusively on their primary purpose (*e.g.*, flood control, navigation). The federal system should be encouraged to examine potential modifications to operations that may be made (*e.g.*, to existing flow regimes) to better maximize hydropower production while appropriately maintaining flood control, navigation and other purposes.

Furthermore, the development of blanket permits for general aspects of hydro projects subject to site-specific requirements may facilitate small hydro development. And finally, NHA believes that a more coordinated regulatory approval process between the Corps/Bureau and the Commission will provide increased incentives to hydro development at these federal dams; again such process can be implemented through updated MOUs, as discussed above.

IV. Conclusion

NHA applauds FERC's interest in encouraging the responsible development of more hydropower resources, particularly in the small hydro sector, and appreciates the opportunity to submit these comments and suggestions on improvements to the regulatory process for small

hydro.

President Obama and the Congress have set ambitious renewable energy goals for the country. Working together – developers, federal and state regulators, other stakeholders – there are tremendous opportunities to accelerate deployment of hydropower resources to meet these goals and realize the clean energy, jobs, and environmental benefits the hydro industry provides.

Interest in low-head/small hydro is experiencing a resurgence with dozens of preliminary permits before FERC, many projects in licensing, and several projects under construction. NHA looks forward to partnering with the Commission and others to reduce barriers to small hydro development and speed these renewable energy resources into service, while preserving the strong environmental commitments all hydropower facilities share.

Respectfully submitted,

NATIONAL HYDROPOWER
ASSOCIATION

By 

Linda Church Ciocci
Executive Director
National Hydropower Association
25 Massachusetts Ave., N.W.
Suite 450
Washington, D.C. 20001
(202) 682-1700