

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Inquiry and Interim Statement of Policy) Docket No. RM07-8-000
Regarding Preliminary Permits for Wave, Current)
And Instream New Technology Hydropower Projects)

COMMENTS OF THE NATIONAL HYDROPOWER ASSOCIATION
ON THE FEBRUARY 15, 2007, NOTICE OF INQUIRY AND INTERIM
STATEMENT OF POLICY REGARDING PRELIMINARY PERMITS FOR
WAVE, CURRENT AND INSTREAM NEW TECHNOLOGY HYDROPOWER
PROJECTS

I. BACKGROUND AND INTRODUCTION

On February 15, 2007, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) issued a “Notice of Inquiry and Interim Statement of Policy Regarding Preliminary Permits for Wave, Current and Instream New Technology Hydropower Projects” in Docket No. RM07-8-000 (“NOI”).¹ The NOI established an interim policy pending the outcome of the NOI proceeding. Under that policy, strict scrutiny will be applied to preliminary permits for wave, current, and instream new technologies (hereinafter “New Technologies”). As part of the NOI, the Commission also sought comments on how it should treat applications for preliminary permits to study projects involving proposals to utilize New Technologies to develop hydropower. The Commission also is seeking comments on how it should oversee any such permits during their terms.

¹ 72 Fed. Reg. 9281 (Mar. 1, 2007).

The National Hydropower Association (“NHA”) commends the Commission for its leadership in undertaking this inquiry and supporting New Technologies. New Technologies offer the promise of expanding the nation’s base of clean, renewable and independent energy sources. As the Commission noted in the NOI, the potential for wave and current power may be over 350-terawatt hours per year.

The nation is at a crossroads in the development of New Technologies. While there are many factors that affect project viability, NHA believes that regulatory processes play a key role in determining the success or failure of New Technologies in the United States. From an international perspective, the United States has fallen behind other nations (for example, European nations) in the support and development of New Technologies. In addition to research and development support, in order for New Technologies to succeed in the United States, regulation of New Technologies must be designed to be as flexible and efficient as possible, commensurate with their anticipated impacts, and reflect important existing policies supporting clean, renewable hydropower generation.

NHA believes the Commission should tailor its use of the preliminary permit process to encourage fair competition among qualified developers of viable sites. In light of that overall objective, NHA provides these comments in support of a Commission policy to apply scrutiny to preliminary permit applications. However, NHA also believes that the requirements placed on the holders of preliminary permits should not be so onerous as to stifle development.

While it may be that changes to the Federal Power Act (“FPA”) and the Commission’s existing regulations are appropriate to encourage development of New Technologies, NHA’s comments in response to the NOI assume no changes will be

made. The Commission has extensive discretion within its existing regulations to streamline and expedite the licensing process. NHA believes that the Commission should seriously consider using all tools at its disposal to give New Technologies the opportunity to succeed.

NHA recommends that in order to support the success of New Technologies as an integral part of the Nation's energy policy, the Commission should approach preliminary permitting, and licensing, of New Technologies with the maximum flexibility provided by law. NHA is encouraged by the Commission's recent efforts to expedite licensing, which in several cases resulted in license issuance within eight months of the license application.² NHA urges the Commission to continue the approach demonstrated by these recent successes and apply them to a wider spectrum of projects.

Separate from this NOI, NHA encourages the Commission to consider whether existing licensing programs provide an effective and efficient means of assessing and implementing New Technologies. NHA urges the Commission to adopt policies using certain waivers provided by law, including waivers for minor parts of complete projects,³ facilities with a total installed capacity of not greater than two thousand horsepower (1.5 megawatts, or "MW"),⁴ and portions of preliminary permit requirements.⁵ Further, the

Commission could issue, where appropriate, exemptions for conduits or small hydroelectric projects of 5.0 MW or less.⁶

Licensing for new technologies should, to the extent consistent with the requirements of the National Environmental Policy Act ("NEPA"), minimize the study

² See, e.g., Lower Turnbull Drop Project No. 12597, Upper Turnbull Drop Project No. 12598, and Mill Coulee Drop Project No. 12599.

³ 16 U.S.C. § 803(i).

⁴ 16 U.S.C. § 803(i); 18 C.F.R. § 4.30(b)(17).

⁵ 18 C.F.R. § 4.81(c)(3).

and analytical requirements for licensing New Technology projects. Substantial information is available regarding the operational characteristics and environmental impacts of some New Technologies, and substantial information is available regarding many potential sites. Technologies with substantial information on environmental impacts are ready for a streamlined approach to licensing. For those projects and technologies for which less information is available, the Commission should develop and implement innovative approaches that allow adaptive management concepts to be applied. This is critically important for the pioneer New Technologies projects. Accordingly, in addition to consideration of appropriate policies for the issuance of preliminary permits, NHA encourages the Commission to consider licensing needs for New Technologies and pursue policies which would provide reasonable opportunities for successful implementation of these emerging technologies in the United States.

II. PRELIMINARY PERMITS

Part I of the FPA authorizes FERC to license the construction and operation of nonfederal hydroelectric power facilities.⁷ Prior to licensing, FERC may issue a preliminary permit.⁸ Under the FPA and Commission regulations at 18 C.F.R. Part 4, the purpose of preliminary permits is to secure priority of application for a license under Part I of the FPA while the applicant obtains the data and performs the acts required to determine project feasibility and support a license application.⁹ The preliminary permit confers upon the permit holder a "priority of application" against potential competitors who might otherwise file a license application before the permittee can assess the feasibility of developing the chosen site. The grant of a preliminary permit also provides

⁶ *Public Utility Regulatory Act of 1978*, 16 U.S.C. §§ 2705, 2708 (2000), as amended by section 246 of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 679.

⁷ 16 U.S.C. § 797(e).

⁸ 16 U.S.C. § 797(f), 798.

the permittee with certain advantages in the competitive proceedings at the licensing stage.¹⁰ Preliminary permits play an important part in achieving the FPA's overall goal of fostering development of the nation's hydroelectric potential.

A. Commission Processing of Preliminary Permits: Strict Scrutiny

The Commission has requested comments on a strict scrutiny preliminary permit approach. The NOI identifies several goals of a strict scrutiny approach, including limiting the project boundaries of the permits, preventing site-banking, and promoting competition.

NHA supports the goals of the strict scrutiny approach as set forth in the Commission's interim policy. NHA believes that this approach, as informed by case-by-case analysis of preliminary permit applications, is appropriate at this early stage of New Technologies development. Questions remain regarding the definition of strict scrutiny in the context of New Technologies. Undoubtedly, the definition will evolve as the Commission gains experience in this area. Accordingly, near-term opportunities for stakeholders to develop a more in-depth understanding of how strict scrutiny is applied will be critically important in determining the appropriateness of such a policy over the longer term.

Some initial recommendations for defining strict scrutiny are provided in Section II.B, below. We also will be glad to participate in any subsequent dialogue regarding the definition of strict scrutiny. With respect to application of strict scrutiny to preliminary permit applications submitted prior to the Commission's February 15, 2007, Interim Statement of Policy, NHA suggests that the Commission provide an opportunity for

⁹ 18 C.F.R. § 4.80.

¹⁰ See 18 C.F.R. § 4.37.

pending applicants to supplement preliminary applications in light of the strict scrutiny standard.

The NOI requests comments on two other preliminary permit options: the standard preliminary permit approach,¹¹ and the policy decision to decline issuing preliminary permits for New Technologies. NHA does not support either of these options. The standard approach could give rise to speculative applications that would impede development of the resource. To prevent this outcome, demonstrations of technical and financial viability should inform preliminary permit decisions. Some level of scrutiny, applied on a case-by-case basis, would provide the Commission with means to distinguish between potential applicants' capability to successfully implement New Technologies. In addition, strict scrutiny is necessary for the Commission to determine appropriate project boundaries for preliminary permits while maintaining the flexibility necessary to implement viable projects.

NHA also does not support eliminating preliminary permits for New Technologies. One of the primary purposes of preliminary permits is to provide some protection for developers willing to invest in potential hydropower projects.¹² While NHA believes some New Technology projects should and will go forward without preliminary permits,¹³ preliminary permits must be available to allow potential applicants to develop sufficient information to prepare a complete license application and make adequate arrangements for financing while providing some protection of the applicant's investment.

¹¹ See, e.g., *Summersville v. FERC*, 780 F.2d 1034 (D.C. Cir. 1986).

¹² *Washington Pub. Power Supply Sys. v. FPC*, 358 F.2d 840, 847 (D.C. Cir. 1966), rev'd on other grounds, *Udall v. FPC*, 387 U.S. 428 (1967).

¹³ A permit is not a prerequisite to studying a site or to submitting a license application. *Centralia v. FERC*, 799 F.2d 475, 477 (9th Cir. 1986).

B. Requirements for Preliminary Permit Applications

NHA believes that successful implementation of a strict scrutiny approach will require the development of technical, financial, and other information prior to submittal of a preliminary permit application. As evidenced by recent New Technologies preliminary permits processed by the Commission, the application requirements for preliminary permits set forth in Commission regulations at 18 C.F.R. § 4.81 generally contemplate conventional hydropower projects. Moreover, certain application requirements may not be appropriate for New Technologies projects.¹⁴ NHA offers the following suggestions for the Commission's processing of preliminary permit applications for New Technologies under a strict scrutiny approach.

The NOI states that two objectives of a strict scrutiny policy would be to prevent site banking and promote competition. NHA believes that these objectives can be achieved in part through a requirement of threshold technical and financial demonstrations by preliminary permit applicants and the careful assessment and tailoring of project boundaries. As currently being applied, however, the strict scrutiny policy and its associated increased regulatory burden for preliminary permit applications could, however, thwart innovation. Therefore NHA urges the Commission to balance a strict scrutiny requirement with flexibility in allowing demonstration projects to be brought on line during the term of a preliminary permit. This would include the availability of revenue streams from power production, as appropriate, and opportunities for staging projects.

¹⁴ See, e.g., 18 C.F.R. § 4.81(c) (regarding dam construction studies).

(1) Technical Demonstration

The Commission's application of strict scrutiny must allow for the adequate processing of preliminary permits for New Technologies across the spectrum of development, from projects involving technologies that are proven and ready for field testing for suitability at particular sites to technologies that are at the laboratory development testing stage.¹⁵ The Commission's strict scrutiny approach must also provide for the adequate processing of preliminary permits for sites believed to be suitable for development of New Technologies but requiring additional technical analysis to determine feasibility and identify appropriate technologies, some of which may not exist today. Accordingly, the application of strict scrutiny must be flexible enough to address preliminary permits for fully developed technologies, developing technologies, and site assessment, as well as sites which will be used for the express purpose of testing and demonstrating various technologies.

For sites not intended to serve as test sites, applicants for a preliminary permit should be required to identify their proposed technology and the interaction with the proposed site, including information on how the particular site's resources may be utilized. Identification of the proposed technology should include a brief description demonstrating that the application is based on specific technology, as opposed to a vague assertion that the applicant will find an appropriate technology to deploy. Applicants unable to provide this level of information may not be prepared to proceed with development, which could prevent the site from being utilized by other developers better prepared to proceed. Such applications are likely premature and should be carefully reviewed under the strict scrutiny approach.

¹⁵ See Attachment A, Preliminary Permit Process for New Technologies.

Nonetheless, where questions arise regarding the viability or feasibility of New Technologies at the preliminary permit stage, NHA suggests the threshold should generally remain low in order to promote innovation. In circumstances where additional inquiry is appropriate, for example where competing applications have been submitted, the Commission should look beyond the application to independent sources for verification. Such sources might include industry or trade recognition and acknowledgement of technology, financial support, or engineering assessment. A Commission decision that does not consider such information may discount potentially viable technologies. In addition, when technical viability is at issue, particularly in situations where competing applications are involved, the Commission should request additional information to satisfy the threshold of technical demonstration. As noted in Section II.B.2, below, where questions remain regarding technical demonstration, the Commission may utilize the developer's schedule and reports of progress to require validation data, technology fabrication and procurement, and other information.

Commission regulations provide that generating unit information and capacity be provided only "to the extent possible."¹⁶ For many New Technologies, unit size and capacity specifics should not be required because the final size of deployed units often depends on the more detailed resource assessments conducted during a preliminary permit period. Information regarding the adaptability of the design to variation in size and, in some cases, a range of sizes may be appropriate if available.

However, NHA does recommend that in lieu of unit size and capacity information, permit applicants be required to provide a preliminary assessment of the flow velocity or wave characteristics. This information could be based upon public data

¹⁶ 18 C.F.R. § 4.81(b).

such as tidal charts, National Oceanic and Atmospheric Administration buoy data, United States Geological Survey data or other information. Using this information, applicants should provide a general assessment of how much energy will be developed from the project. Energy and capacity may be validated by detailed field studies conducted during the term of the preliminary permit and thus subject to revision in the permit reports of progress and actual license application.

For New Technologies that are proven and ready for development, requiring additional information may be appropriate; for instance, operating parameters such as velocity and depth. Information on whether the proposed technology has been commercially deployed or demonstrated should be provided, including identification of the location of deployment. This may be useful for the Commission when deciding between competing applications, and in promoting competition and minimizing site banking.

As contemplated in 18 C.F.R. § 4.81(c)(1)(i), preliminary permit applications also should address any specialized impact issues that may require specific study or analysis. These may include aquatic impacts, safety, and effects (if any) on other uses such as recreation, navigation, and commercial activities. Information on the proposed deployment system, such as drilling or disturbance of ocean, tidal or river beds is necessary. At the preliminary permit application stage, the intent is to show that the applicant has given some technical consideration to what additional information will be necessary to develop an appropriate license application. Any identified studies must have quantifiable thresholds and be proportional to the anticipated impact of the proposed technology.

For test sites being developed for the express purpose of testing and demonstrating various technologies, the applicants will have less knowledge regarding the specific technology that will be deployed. Nonetheless, applicants should be able to describe the range of technologies the facility will accommodate and the infrastructure they propose to install to support the tests. This, along with available site data, characteristics and impacts issues, would form the basis of the application. If an applicant intends to ultimately build out the site as a commercial operation, the applicant should clearly state that in the application. In accordance with 18 C.F.R. § 4.81, information should be provided regarding the proposed interconnection location, and transmission requirements or proposals.

(2) Financial Demonstration

Developers of New Technologies have identified the opportunity to bring New Technologies demonstration projects on line as the primary factor that will determine the success or failure of New Technologies. In Section II.B.7 NHA suggests ways to accommodate this need while satisfying the Commission's legal and policy objectives.

At the preliminary permit stage, applicants should be able to demonstrate financial capability to carry out the feasibility analysis of the project and site. Financial capability can be demonstrated in several ways. Examples include corporate filings similar to K-1 filings or comparable documents, outside auditor reports, New York State Energy Research and Development Authority ("NYSERDA") Program Opportunity Notice ("PON") grant agreements or similar Clean Energy Choice grants, bond rating or bonding authority. Commitments from public or private funders may also be considered. In the case of established utilities, a lesser showing may be required.

NHA believes that financial information should be required only to the extent necessary to demonstrate that the applicant is capable of moving forward with the technical and environmental work contemplated in the preliminary permit. This includes the capability to build and operate any appropriate demonstration projects. The Commission should not require demonstration that the financial resources necessary to fully develop the site commercially are available at the preliminary permit stage. NHA believes that it is also important that the Commission recognize the significant differences in public and private funding sources and large variety of investment mechanisms that can lead to successful hydroelectric development.

As with other portions of preliminary permit applications, financial resource information is proprietary and should be treated as confidential.

(3) Staged Development and Project Boundaries

The Commission's approach to issuing preliminary permits for new technologies should include flexibility to propose stages or phases of development for licensing rather than specifically defined projects. Moreover, project boundaries must be carefully drawn to avoid site banking and provide flexibility to protect investments in New Technologies. Project boundaries should be sufficiently sized to allow staged development, but not so large that competition is eliminated. The size of a project boundary should be technically justified in the permit application.

Allowing staged development supports the Commission's goals of fostering New Technologies development, preventing site banking and promoting competition by ensuring that developers investing in the assessment of the feasibility of a site and appropriate technology can maximize a project's full potential. Allowing staged development will provide some level of protection from competitors willing to bank sites

but unwilling to invest in feasibility assessments where adjacent site developers have undertaken substantial investment in site suitability.

While developers may be able to describe the initial stages of development in some detail, less detail may be available for subsequent stages. Implementation of initial stages will inform subsequent stages, creating the possibility for adaptive management of any resource issues, as well improvements in the design and efficiency of projects.

(4) Reports of Progress

NHA believes that reasonable requirements for reports of progress are necessary to ensure site development is moving forward. The reports will also help avoid site banking. As part of the strict scrutiny approach, NHA favors a detailed 45-day schedule showing specific target dates and milestones, and regular intervals for reports of progress during the permit period. NHA supports the careful review of progress reports and believes all developers should be expected to proceed with their projects or face cancellation of the preliminary permit or loss of priority where there is insufficient progress under 18 C.F.R. § 4.83.

(5) Confidentiality

NHA understands that information necessary for Commission decisions on preliminary permit applications must be made public. However, the Commission also should consider the need to protect trade secret, design, development, financial, and business planning information.

(6) Schedule for Submittal of Notice of Intent and Preliminary Permit Application

NHA is concerned about inconsistencies between the preliminary permit duration, limited to three years, and the licensing process which is generally recognized as a three

year process plus preparation activities (which often take over a year to complete). As an initial matter, NHA recommends that the effective date of a preliminary permit be the first day of the month *following* issuance rather than the first day of the month in which the permit is issued as is current practice.

Timely issuance of a license will be a challenge. NHA encourages the Commission to use available administrative mechanisms to provide flexibility and streamlining of the licensing process, including waivers for minor parts of complete projects and projects with a total installed capacity of not greater than 1.5 MW. Exemptions for conduits and small hydroelectric projects of 5.0 MW or less also could be used. In addition, regulations provide the Commission with authority to itself waive, or recognize waiver by Tribes and resource agencies, some license application content and processing provisions. NHA encourages the Commission to consider these available administrative mechanisms both on a case-by-case basis and as general Commission policy relating to New Technologies.

With respect to environmental assessments, the Commission has categorically excluded issuance of preliminary permits for water power projects pursuant to 18 C.F.R. § 380.4. Thus, the Commission has determined that issuance of preliminary permits does not individually or cumulatively have a significant effect on the human environment and therefore, neither an environmental assessment nor an environmental impact statement is required. This categorical exclusion of preliminary permits has resulted in a more efficient and effective process, while ensuring that environmental resources are protected.

NHA hopes to begin a dialogue with the Commission regarding the appropriate NEPA approach for New Technologies. We also hope to discuss the possibility of other general license programs for demonstration projects and (potentially separately) full

commercial sized projects, applying the successful models for general or nationwide permits implemented by several federal agencies. We note, however, that in proceeding with a programmatic or other approach to environmental analysis or licensing, the option for permitting and licensing individualized projects must be maintained to ensure that a lengthy programmatic process does not further delay development of New Technologies.

NHA supports the use of sequential preliminary permits where sufficient progress is shown, such as when there has been a good faith effort to meet the licensing application deadline and progress intervals. Clearly, unanticipated circumstances or new information may arise during the preliminary permit period which can create the need for sequential permits. As such, the Commission should retain the flexibility and latitude to issue at least one sequential permit where appropriate. Strict scrutiny should be applied to any sequential permit application.

In all instances where there is competition among New Technology preliminary permit applications, including sequential permit applications, more fully developed permit applications should be favored over clearly speculative endeavors. In other words, first in time among like applicants (for example, private versus private, or municipal versus municipal applicants) should no longer be the standard applied to competing applications. Rather, first in time should be considered only when all other aspects of competing applications are equal, a situation which NHA believes will seldom occur.

With respect to licensing processes, NHA remains strongly supportive of the Integrated Licensing Process, but also believes that the Traditional Licensing Process (“TLP”) may be appropriate for certain New Technology projects. However, even a TLP-based licensing approach, without modification, could not be completed during the preliminary permit period. Modifications would be necessary to ensure that necessary

analysis and consultation are completed before the expiration of the preliminary permit. Administrative mechanisms such as the waivers, exemptions, categorical exclusions and programmatic analyses discussed above may also be appropriate. Collection of data using adaptive management regarding multiple stages of development may be needed for some permittees.

(7) Ability to Sell Power

As noted throughout our comments, NHA strongly believes that New Technologies will succeed, or fail, based upon whether demonstration or pilot projects are allowed to sell the power they generate. This issue falls directly within the Commission's purview. Although the Commission recently allowed a specific hydrokinetic technology limited utilization of produced power, the message to the capital market was uncertain and mixed. While the Commission has indicated a willingness to consider available administrative mechanisms to permit New Technologies projects to provide needed power from demonstration or pilot type projects in certain circumstances, capital markets require revenue generation as well as regulatory transparency and certainty in order for New Technologies companies to gain additional access to debt financing. Without a generalized understanding or statement from the Commission regarding its policy of permitting the use of power generated from demonstration or pilot projects, traditional project financing will continue be nearly impossible.

There are a number of factors that affect the ability to bring New Technologies to the market with the assistance of debt or venture capital financing. The ability to derive revenue in a consistent and transparent manner, however, is far and away the most important issue when seeking such financing. Those willing to fund New Technology companies and/or New Technology projects seek both regulatory and financial certainty.

Some degree of regulatory uncertainty is tolerable to certain financiers, but financial uncertainty is not.

NHA is aware that the Commission continues to recognize the need to apply flexibility with respect to renewable power generation, even flexibility in its financing mechanism policies.¹⁷ And while NHA applauds the Commission for its willingness to consider available administrative mechanisms on a case-by-case basis to allow New Technology projects to provide or sell power generated from demonstration or pilot projects, capital markets demand the consistent generation of revenue in order for New Technology companies to gain access to debt or venture capital financing. Without a transparent and definitive statement from the Commission regarding its policy of permitting the use or sale of power generated from demonstration or pilot projects, traditional project financing will continue to be nearly impossible, and that could drive New Technology companies from the United States.

Our New Technology companies are concerned about the affects of case-by-case regulatory policies on the viability of the industry, especially as it relates to power sales and its impact on project financing. NHA believes that, consistent with the nation's energy policy, as well as our need for more clean, domestic and renewable power, the Commission should consider the implications of its policies on the future viability of the industry. Specifically, the industry seeks from the Commission a transparent and consistent approach to allowing the generation of revenues from pilot and demonstration projects. The importance of revenue and financing to the success of New Technologies cannot be understated. NHA encourages the Commission to continue to show flexibility on this issue in the manner stated above.

Specific legal and administrative mechanisms are available pursuant to the FPA and its implementing regulations for the purpose of providing the Commission with flexibility to foster and promote New Technologies. Depriving the New Technologies industry of revenue needed in order to survive would mean missing opportunities to support national energy goals, boost the national economy, and support the global export industry, and result in the failure of an industry with tremendous promise.

A potential solution to this problem is to apply a programmatic approach (as described below for demonstration projects) to the provision of power and revenue generation for New Technologies pilot and demonstration projects. Such an approach would be consistent with Commission regulations and policies and provide transparency and certainty for regulated entities, capital markets and debt finance investors. This approach would provide much needed operational information and would benefit the resource by allowing for assessment of impacts during the pilot and demonstration period. General policies and recommendations that should be applied by the Commission during demonstration and pilot project activities include:

- a. Allow revenue generation (from power sales, renewable energy credits, and production tax credits) for 36 months after the last State or Federal permit has been issued in order to commence operations;
- b. Total nameplate output for a project should not exceed 1.5 MW;¹⁸ and
- c. Purpose of project should be assessment of marine life and environmental impacts proportional to the risk.

¹⁷ See, e.g., California Independent System Operator Corporation, Order No. ELO7-33-000 (Apr. 19, 2007).

¹⁸ 16 U.S.C. § 803(i); 18 C.F.R. § 4.30(b)(17). In 1962, Congress raised the maximum amount of horsepower for qualifying projects in Section 10(i) from 100 to 200, stating that the original Federal Water Power Act in 1920, and its major revision in 1935, recognized “that all of the requirements for licensing a large hydroelectric project were not necessary for small projects,” and that certain requirements were “deemed unnecessary for these small plants, expensive for the licensees to comply with, and expensive for the Commission to administer.” See Act of September 7, 1962, Pub. L. No. 87-647, 76 Stat. 447 (1962), H.R. Rep. No. 2241, 87th Cong., 2nd Sess. (1962), *reprinted in* 1962 U.S. Code Cong. & Admin. News at 2375-79.

C. Facilitating Demonstration Projects

As discussed above, the Commission could facilitate allowing these commercial demonstration projects through, depending on site location, use of waivers provided by law for minor parts of complete projects¹⁹ and projects with a total installed capacity of not greater than 1.5 MW.²⁰ Also, exemptions for hydroelectric facilities utilizing conduits,²¹ and exemptions for small hydroelectric projects of 5.0 MW or less²² are available. Depending on the development method chosen, the Commission should issue these orders with a limited term, such as 36 months. In these situations, the Commission could require that an application for a license to develop the full scale project be filed prior to expiration of the “minor” license or other term. Failure to timely file this full scale license application would open the site up for competition again. Use of this type of development potential would minimize the need for preliminary permits.

III. CONCLUSION

NHA again commends the Commission for initiating this NOI and applauds the work performed by the Commission in support of New Technologies. NHA believes that the Commission’s strict scrutiny approach as an interim policy provides for appropriate consideration of technical, financial, and other factors in the development of preliminary permitting for New Technologies. NHA believes that consideration of the technical justification for boundary size will be important to support the Commission’s policy addressing site banking. NHA encourages the Commission to apply flexibility to promote the success of New Technologies, allowing staged or phased development and considering the challenges of integrating the preliminary permit and license application

¹⁹ 16 U.S.C. § 803(i).

²⁰ 16 U.S.C. § 803(i); 18 C.F.R. § 4.30(b)(17).

²¹ 18 C.F.R. § 4.30(b)(17); 18 C.F.R. § 4.81(c)(3).

timelines. Where appropriate, NHA encourages the Commission to apply flexibility to allow the sale of power and revenue generation for demonstration type projects.

NHA appreciates this opportunity to present its comments on the NOI. NHA looks forward to participation in the Commission's efforts to develop the appropriate regulatory approach to ensure the success of New Technologies as an integral part of the Nation's energy policy.

Respectfully submitted,

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²² *Public Utility Regulatory Policies Act of 1978*, 16 U.S.C. § § 2705, 2708 (2000), as amended by section 246 of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 679.