

**NATIONAL HYDROPOWER ASSOCIATION  
MATRIX OF PENDING REGULATORY BUSINESS  
July 2010**

## Table of Contents

<b>DOE-DOI Memorandum of Understanding on Marine Hydrokinetics.....</b>	<b>P. 3</b>
<b>Bureau of Ocean Energy.....</b>	<b>P. 3</b>
<b>FERC: Request for Comments on New Energy Storage Technologies.....</b>	<b>P. 3</b>
<b>NHA Tax Manual.....</b>	<b>P. 4</b>
<b>California-FERC Memorandum of Understanding.....</b>	<b>P. 4</b>
<b>FERC: ILP Effectiveness Conference.....</b>	<b>P. 4</b>
<b>Army Corps: Missouri River Management.....</b>	<b>P. 5</b>
<b>DOE: Marine Hydrokinetics FOA.....</b>	<b>P. 5</b>
<b>FWS: Downgrade of Oregon Chub Protection Status.....</b>	<b>P. 6</b>
<b>DOE-ACE-DOI Memorandum of Understanding.....</b>	<b>P. 6</b>
<b>IHA GHG Emissions from Reservoirs Field Manual.....</b>	<b>P. 6</b>
<b>CEQ: Draft NEPA Guidance Documents.....</b>	<b>P. 7</b>
<b>FERC: Notice of Inquiry Integrating Variable Energy Resources.....</b>	<b>P. 8</b>
<b>Western Climate Initiative Filing.....</b>	<b>P. 8</b>
<b>IHA Sustainability Assessment Protocol.....</b>	<b>P. 9</b>
<b>White House Interagency Ocean Policy Task Force.....</b>	<b>P. 9</b>
<b>Pumped Storage.....</b>	<b>P. 10</b>
<b>Small Hydro.....</b>	<b>P. 10</b>
<b>Low Impact Hydropower Institute .....</b>	<b>P. 11</b>
<b>Trial Type Hearings.....</b>	<b>P. 11</b>
<b>NHA State RPS Report .....</b>	<b>P. 12</b>
<b>Legal Cases .....</b>	<b>P. 12</b>
<b>Miscellaneous Regulatory News .....</b>	<b>P. 13</b>

- **DOE-DOI Memorandum of Understanding on Marine Hydrokinetics**

On June 29<sup>th</sup>, the Departments of Interior and Energy signed a Memorandum of Understanding (MOU) to work together to spur new commercial-scale development of offshore renewable energy projects on the outer continental shelf (OCS).

The purpose of this MOU is to prioritize and facilitate the environmentally-responsible deployment of commercial scale offshore wind and marine and hydrokinetic energy technologies.

The agreement will streamline leasing and regulatory processes for sites with high, commercial-scale wind- and water-power development potential. It will also help the agencies share information on resources and technologies, conduct stakeholder engagements and collaborate on research projects

Within 30 days, an interagency working group will develop an action plan dealing with deployment goals for offshore wind- and water-power projects on the outer continental shelf, siting and permitting, resource assessment, technical standards and data exchange and public interaction.

- **Bureau of Ocean Energy**

The Department of Interior on Jun. 21 announced the reorganization of the Minerals Management Service (MMS), the regulatory agency with authority over the nation's natural gas, oil and other mineral resources on the outer continental shelf (OCS).

The new agency will be called the Bureau of Ocean Energy Management, Regulation and Enforcement, or Bureau of Ocean Energy (BOE). Michael Bromwich has been named Director, following the resignation of Liz Birnbaum in the wake of the ongoing Deepwater Horizon oil spill in the Gulf of Mexico.

In 2005, the MMS took on a larger role in the hydropower industry when Congress gave the Service the authority to regulate renewable energy projects on the OCS, including marine hydrokinetics.

Since the BP disaster, calls came for reform in the agency with criticism focusing on the structure of the agency that allowed the same MMS officials in charge of project leasing and safety to also collect revenue from the industry, which was viewed as a conflict of interest.

To combat such conflicts, beneath BOE will be three separate agencies: the Bureau of Ocean Energy Management, responsible for leasing areas on the OCS for conventional and renewable energy resources; the Bureau of Safety and Environmental Enforcement, responsible for ensuring comprehensive oversight, safety, and environmental protection in all offshore energy activities; and the Office of Natural Resources Revenue, responsible for royalty and revenue management, including collection and distribution of revenue auditing and compliance and asset management.

- **FERC: Request for Comments on New Energy Storage Technologies**

The Federal Energy Regulatory Commission has published a request for comments regarding rates.

accounting and financial reporting associated with services provided by electric storage technologies. The notice seeks comments on when a storage facility should be eligible for transmission rate treatment and on how to deal with cross-subsidization and competitive issues that arise if a storage provider receiving cost-based rates is also allowed to participate in energy and ancillary services markets. Please see the full notice attached for more details.

Comments will be due on August 9<sup>th</sup>. NHA's Pumped Storage Council is working to draft comments.

- **NHA Tax Manual**

NHA partnered with Ernst and Young to create a Hydropower Tax Manual. This manual can serve as an important tool to begin your research into how to utilize the various federal incentives and grow your hydropower resource. NHA members may purchase the manual for \$75. To order, or for more information, contact Diane Lear at [diane@hydro.org](mailto:diane@hydro.org).

- **California-FERC Memorandum of Understanding**

The State of California and the Federal Energy Regulatory Commission signed a memorandum of understanding (MOU) on May 18 to facilitate coordination on hydrokinetic energy projects off the California coast.

California and FERC have agreed to the following:

- Each will notify the other when one becomes aware of a potential applicant for a preliminary permit, pilot project license or license;
- When considering a license application, each will agree as early as possible on a schedule for processing. The schedule will include milestones, and FERC and California will encourage other federal agencies and stakeholders to comply with the schedules;
- They will coordinate the environmental reviews of any proposed projects in California state waters. FERC and California also will consult with stakeholders, including project developers, on the design of studies and environmental matters; and
- They will encourage applicants to seek pilot project licenses prior to a full commercial license, to allow for testing of devices before commercial deployment.

California joins Oregon, Washington, and Maine, who previously have signed similar MOUs with FERC.

- **FERC: ILP Effectiveness Conference**

The Federal Energy Regulatory Commission will convene a technical conference on the multi-stakeholder Integrated Licensing Process effectiveness on Wednesday, November 3, 2010. The technical conference will focus on gathering information to evaluate the effectiveness of the ILP and refining ideas to better implement the ILP. The conference will be held in the Commission Meeting Room at FERC HQ (888 First Street, NE Washington, DC 20426). It will be held from 11am – 3pm.

NHA Staff has begun the process of interviewing member companies on their experiences with the ILP in anticipation of participating in and filing comments on the technical conference.

If you are interested in discussing your experiences with NHA staff, please contact Matt Nocella (202.882.1700 ext 21 or matt@hydro.org)

- **Army Corps: Missouri River Management**

The Army Corps of Engineers has begun a 5-year study of how it manages the Missouri River system. As part of this study, the Corps will hold 41 meetings in the basin states to gather comments.

The \$25 million, five-year study was authorized by Congress to determine whether changes need to be made to the 1944 Flood Control Act that sets eight purposes — flood control, navigation, hydropower, irrigation, water supply, recreation, water quality, and fish and wildlife — for the dams, reservoirs and lower free-flowing river. After completion of the study, the Corps would make recommended changes that require Congressional approval.

The remaining dates and locations for the meetings are:

- July 27, Rock Island, Ill.
- July 28, Des Moines, Iowa
- July 29, Sioux City, Iowa
- July 30, Yankton, S.D.
- Aug. 3, Cheyenne, Wyo.
- Aug. 4, North Platte, Neb.
- Aug. 5, Denver
- Aug. 17, Helena, Mont.
- Aug. 18, Billings, Mont.
- Aug. 19, Thermopolis, Wyo.
- Aug. 20, Casper, Wyo.

For more information, please see the Corps' website at <http://www.usace.army.mil/Pages/default.aspx>.

- **DOE: Marine Hydrokinetics FOA**

The Department of Energy on Apr. 20 issued a Funding Opportunity Announcement (FOA) soliciting applications from industry-led partnerships that propose to advance the technological readiness of marine and hydrokinetic technologies. This FOA totals \$38 million in grant money for the DOE's Marine and Hydrokinetic Technology Readiness Advancement Initiative.

The DOE will use their Technology Readiness Level (TRL) scale, which ranges from 1 to 9, to categorize projects. TRLs 1-3 represent projects in early stage development. TRLs 4-8 describe projects with proven concepts close to commercialization. TRL 9 projects are deemed to be commercially viable.

The first topic area, Marine and Hydrokinetic Technologies Concept Development, will include approximately \$1.6 million to advance technologies through level 3. The grant application should concentrate on research that will contribute to proving scientific or technical feasibility of the approach or concept.

The second topic area, Marine and Hydrokinetic TRL Advancement, includes \$36.72 million to advance technologies in levels 4 thru 8 toward commercial operation and readiness. Applicants will be required to appropriately self-categorize their technology utilizing the guidelines and present a comprehensive RDT&E plan.

Applications for this FOA were due June 7, 2010

- **FWS: Downgrade of Oregon Chub Protection Status**

The Fish and Wildlife Service downgraded the status of the Oregon chub from endangered to threatened after it was found that the minnow is no longer in imminent danger of extinction. The Oregon Department of Fish and Wildlife determined that the chub has exceeded the delisting criteria set forth in the federal recovery plan.

- **DOE-ACE-DOI Memorandum of Understanding**

On Wednesday March 24, the Department of the Interior, Department of Energy and the Army Corps of Engineers signed a Memorandum of Understanding, agreeing to focus on increasing energy generation at federally-owned facilities and explore opportunities for new development of low-impact hydropower.

The MOU signed by the three agencies establishes a particular plan of action with specific deadlines. It includes a realistic assessment of growth opportunities on the federal system with a report by October of this year; a commitment to upgrade federal facilities and demonstration of new technologies at existing locations; coordination of research and development on advanced technologies; and increasing generation through low-impact and sustainable development.

The text of the MOU can be found here: <http://www.hydro.org/Federal%20Hydro%20MOU%202010.pdf>

On June 14<sup>th</sup>, NHA sent a joint letter with the Hydro Reform Coalition to Interior, Energy and the Corps urging them to support the creation of a National Hydropower Coordinating Collaborative as an open, neutral forum that would promote transparent dialogue and collaboration among federal and state agencies, environmental NGOs, the hydropower industry, and other stakeholders with an interest in hydropower.

- **IHA GHG Emissions**

In April, the International Hydropower Association (IHA) working jointly with the United Nations Educational, Scientific and Cultural Organization (UNESCO) accepted comments on draft greenhouse gas (GHG) measurement guidelines for freshwater reservoirs.

The completed guidelines are scheduled to be published in June 2010 with a briefing set for Jul. 26 at HydroVision International in Charlotte, NC to present the document and discuss the next steps for the project.

NHA on Mar. 9 filed comments with the International Hydropower Association (IHA) on their Field Manual for Measuring GHG Emissions from Reservoirs.

The Protocol, a joint work between the IHA and the United Nations Education, Scientific and Cultural Organization, aims to improve understanding on the potential impact of reservoirs on natural GHG emissions in a river basin, obtaining a better comprehension on current methodologies and helping to overcome knowledge gaps.

In the comments, NHA commended the UNESCO/IHA team for putting together a technically sound approach and working toward a standardized measurement protocol in an emerging issue where the science is not yet fully understood. However, NHA expressed its concern that the complexity and the significant costs that may be associated with the protocol makes it infeasible as the basis for a broad industry program.

NHA advocated for a review of the protocol after its initial application. The review should include a cost-benefit analysis, an examination of more efficient data collection methods, and a determination of the need for larger scale reservoir testing.

The complete comments that were filed can be found on the members' side of the website.

- **CEQ: Draft NEPA Guidance Documents**

The White House Council on Environmental Quality (CEQ) released a draft guidance memorandum on Feb. 18 proposing to require federal agencies to consider greenhouse gas (GHG) emissions and climate change when conducting National Environmental Policy Act (NEPA) reviews.

The draft guidance states that proposed federal actions reasonably anticipated to cause 25,000 metric tons or more of CO<sub>2</sub>-equivalent GHG emissions annually will trigger a quantitative and qualitative assessment.

For long-term actions that have annual direct emissions of less than that amount, CEQ encourages Federal agencies to consider whether the action's long-term emissions should receive similar analysis. CEQ does not propose this standard as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs.

Stating that climate change is a global problem that results from numerous and varied global GHG emissions sources, CEQ proposes to recommend that environmental documents reflect this global context and be realistic in focusing on ensuring that useful information is provided to decision makers for those actions that the agency finds are a significant source of GHGs.

With regard to the effects of climate change on the design of a proposed action and alternatives, Federal agencies would be required to ensure the scientific and professional integrity of their assessment of how climate change is impacting, or could impact, environmental effects of the proposed action. Under the guidance, CEQ proposes that agencies use the scoping process to set reasonable spatial and temporal boundaries for this assessment and focus on aspects of climate change that may lead to changes in the impacts, sustainability, vulnerability and design of the proposed action and alternatives.

NHA filed comments on May 24 with CEQ on its draft NEPA guidance document. In the comments, NHA urged CEQ to recognize the GHG reduction benefit of hydropower generation and the role of

hydropower in integrating variable renewable resources. NHA also commented on the value and limitations of current climate change modeling.

Full comments can be found on the Regulatory Affairs side of the NHA website.

- **FERC: Notice of Inquiry Integrating Variable Energy Resources**

The Federal Energy Regulatory Commission on Jan. 21 published a Notice of Inquiry in the Federal Register, requesting industry and stakeholder input on their regulatory policies to integrate variable energy resources into the nation's electricity grid.

The increasing use of more variable sources of electrical generation, such as wind and solar, presents challenges to industry, such as location constraints and limited dispatch ability.

“To accommodate that expansion, it is our job to ensure that FERC has in place the market and operational reforms necessary to ensure that all wholesale electricity tariffs are just, reasonable and not unduly discriminatory,” said FERC Chairman Jon Wellinghoff in a statement.

In the request, FERC asked that commenters take a broad view and address the effects of variable energy resources on data and reporting requirements, including accurate forecasting tools; scheduling flexibility and incentives for accurate scheduling of variable energy resources; forward market structure and reliability commitments; balancing Authority Area size and coordination; suitability of reserve products; capacity market reforms; and re-dispatch and curtailment practices.

Thanks to the work of NHA Past President Rick Miller, NHA has filed comments with FERC on their Notice of Inquiry on integration of variable energy resources into the grid. In the comments, NHA discusses the benefits of hydropower and pumped storage projects to assist in the integration of VERs, the Denmark example of hydropower's contribution to VER integration, policies needed to incentivize pumped storage development, and the potential impact of VERs on hydropower operations. The full comments can be found on the members' side of the NHA website.

- **Western Climate Initiative Filing**

NHA filed comments with the Western Climate Initiative (WCI) on Jan. 29 in response to their Complementary Policies White Paper. The Complementary Policies Committee is tasked with recommending public policies to WCI Partner jurisdictions that can "address market barriers that would otherwise limit the use of low-cost greenhouse gas (GHG) emission reduction options" and lower the overall cost of reducing GHG emissions.

In the comments, NHA urged the WCI to recognize and recommend a broad range of hydropower policies that would help lower greenhouse gas emissions, firm up variable renewables, and boost clean energy jobs. NHA believes that all of these benefits of hydro fit into the evaluation criteria that is laid out by the WCI and therefore warrants consideration as a complementary policy.

The WCI issued its final Complementary Policies White Paper in May. It incorporated a suite of hydropower recommendations as a direct result of the comments NHA had filled.

- **IHA Sustainability Assessment Protocol**

The National Hydropower Association filed comments Dec. 10 with the International Hydropower Association (IHA) on its draft Sustainability Assessment Protocol. The Protocol was developed to assist IHA members in assessing their performance against the IHA's sustainability guidelines and relied on a systematic approach to managing economic, social and environmental issues that result from the development of hydropower projects.

While noting its importance in jurisdictions lacking regulatory and legal processes for hydropower development, and applauding IHA for its work to date, NHA was not able to support the Protocol at this time.

NHA stated that the Protocol lacks applicability in the United States because it fails to recognize the significant regulatory processes that already exist in the U.S. NHA suggested "that current licensing and relicensing processes together with the network of other federal and state laws programs create a regulatory environment stringent enough to obviate the need for the audit process within the Protocol, which would be redundant of the framework already in place in the U.S."

IHA will hold a briefing at HydroVision in Charlotte on Tuesday, July 27, 2010 to discuss the current status of its work on sustainability.

- **White House Interagency Ocean Policy Task Force**

The White House Interagency Ocean Policy Task Force has released its final report of recommendations for a national ocean policy, which President Obama has adopted through Executive Order.

It is now the policy of the United States to:

- Protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- Improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- Bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- Use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;
- Support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
- Respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
- Exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
- Increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;

- Improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and
- Foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

The full report can be found at [www.whitehouse.gov/oceans](http://www.whitehouse.gov/oceans)

In February, NHA, as part of the Industry-NGO group, filed a follow-up letter with the Council on Environmental Quality on the release of the White House Oceans Policy Task Force's Interim Framework.

The letter re-emphasized principles laid out in comments previously filed with CEQ. Among these, the letter advocates for a regulatory transition protocol in order to avoid stopping projects that are already under way; urges the Task Force to make a clearer statement of the importance of comprehensive research that is appropriately funded; recommends that they consider the avoidance of greenhouse gases and carbon emissions when determining use of marine space; encourages flexibility in the process to include not only changed environmental conditions, but also new technology and data that give us a better idea of what is a needed or appropriate use of marine space; and proposes that comprehensive marine spatial planning should streamline the regulatory process and urges the Task Force to add details about what final plans will look like and how they will achieve efficiency.

- **Pumped Storage**

In association with the Northwest Hydroelectric Association (NWA) and the Bonneville Power Administration (BPA), NHA's Pumped Storage Development Council held a meeting on Feb. 18 in Portland, OR to examine the need and potential for new projects in the Northwest.

MWH's Michael Manwaring presented the findings of a Council survey on ancillary benefits that described the various markets, or lack thereof, across the country's regional transmission organizations. In further discussion, the group decided to move forward on a white paper highlighting the ancillary benefits pumped storage projects provide, the need for incentives to support development of new projects, and to increase the recognition for the support current projects already supply the grid.

Mark Jones of BPA discussed the ongoing studies Bonneville is conducting to evaluate the feasibility of new projects. NHA's Jeff Leahey reported on the Bureau of Reclamation's examination of two potential new Northwest pumped storage projects as well. Leahey also provided an update on NHA's work to secure an investment tax credit (ITC) and Clean Renewable Energy Bonds (CREBs) program eligibility for pumped storage development costs.

- **Small Hydro**

The Small Hydro Council has released its Initial Report on proposed solutions to remedy barriers to development of small hydro. Included in the document are policy or process changes, regulatory changes, and legislative changes. Policy changes contained within the report do not necessarily represent policies yet adopted by the NHA Board. The full report can be found on NHA's website.

On April 15, the Federal Energy Regulatory Committee announced a series of administrative steps it will take to ease development of small hydropower projects by making the process more user-friendly. New

web-based resources will debut in August 2010, including a roadmap that will walk applicants through the process of selecting a project site, determining if the project is jurisdictional, selecting the FERC licensing process, consulting with stakeholders, and preparing their application. Also among these tools will be a “fill-in-the-blank” templates intended to make it easier for applicants to apply for a license or exemption. The action plan that FERC is pursuing includes some of the NHA recommendations that were filed, such as the license application template.

A day and a half summit sponsored by Oakridge National Laboratory was held in NHA’s offices on April 7 and 8<sup>th</sup>. More than 20 experts on small hydro development, including turbine manufacturers, developers, federal operators, equipment providers, attorneys and the finance community converged to discuss these challenges and brainstorm ways in which industry and the Department of Energy could overcome the obstacles and secure real growth.

Nancy Skancke and Chuck Alsberg, co-chairs of NHA’s Small Hydropower Council participated in the summit and reported on the work of the council and the recommendations NHA presented to FERC at its Small Hydropower Workshop and subsequent filing.

- **Low Impact Hydropower Institute (LIHI)**

The Low Impact Hydropower Institute (LIHI) sought specific public comment on draft revisions to their certification criteria and welcomed any further comment on their Program. NHA's Regulatory Affairs Committee undertook the task of preparing comments through the formation of a drafting group. Its goal was to prepare a comment letter that was consensus based and agreeable to all who wished to participate and present it to the Board for final consideration.

Developed by a drafting group of Regulatory Affairs Committee members, the comments applauded LIHI for seeking public input on the proposed changes, and in particular, reaching out for industry feedback. The document then outlined many specific detailed comments and revisions to the program supported by the association.

NHA also highlighted the need for the certification program’s criteria to consider the changing shape of the energy industry, noting the program can be more effective if a broad range of industry participants concurs with the substance of the criteria.

NHA comments are now posted on the association’s website on the Regulatory Committee page of the members’ only side of the site. Please contact Diane Lear if you need to obtain your company’s username and password information.

The LIHI Governing Board will review and evaluate comments, make revisions or edits as necessary, distribute a Final Draft to all commenters, and put the Final Draft on the LIHI website.

LIHI anticipated that revisions to the criteria will be in place by Sep. 1, 2009, but no revisions have been made as of July 12, 2010.

- **Trial Type Hearings**

The Government Accountability has been asked by the majority staff of the Senate Energy and Natural

Resources Committee to draft a report on the implementation of trial-type hearings. On July 15, 2009 NHA staff met with GAO to answer their questions and encouraged them to speak with industry members.

The GAO has completed its work and gave NHA Staff and members two opportunities to view the report in mid-June 2010. The report sought to determine the extent to which licensees and other non-federal stakeholders used section 241 provisions and their outcomes and describe federal and non-federal stakeholders' views on section 241's impact on the process. It also offered two recommendations: to direct agencies where proposed alternatives were not adopted to include in the written statement filed with FERC its reasons for not doing so and; issue final rules governing the use of section 241 after providing an additional period for notice an opportunity for public comment.

After careful review, NHA filed comments with the GAO on July 9, 2010. NHA strongly endorsed these recommendations because they offer further comment on a process that the industry now has experience with and adds greater accountability and transparency to the alternative proposals process. NHA's comments will be included in the report to Congress and the GAO will include its comments on our comments in the report.

NHA does not expect the report to be finalized and delivered to the congressional requesters for another 3-4 weeks, who will then be given time to review before its public release, which should come before fall.

- **NHA State RPS Report**

The NHA State RPS Paper was updated at the end of April 2010 and is available on the Regulatory Committee webpage on the members' side of the NHA website.

- **Legal**

**1. PPL Montana, LLC. v. State of Montana, 2010 MT 64 (Mar. 30, 2010).**

**Procedural History:** District Court Decision: Jun. 13, 2008; Argued before the MT Supreme Court: September 16, 2009; Submitted: October 27, 2009; **Decided: March 30, 2010.**

**Issues:** The case involves interpretation of the Montana constitution and state law regarding whether hydropower project owners are required to pay the State for the use of state-owned lands (riverbeds) while appropriating water for the beneficial use of hydropower production. PPL claimed that the right to appropriation includes the right to the means of appropriation—in this case, the dams – and asserted it cannot be assessed rent for its occupancy of state lands, as such occupancy is an incident of its lawful right to appropriate water. The District Court had found that PPL was required to compensate the State.

**Result:** The Montana Supreme Court affirmed the decision of the District Court, finding that PPL is required to pay the State compensation for the use of state-owned riverbeds. The court disagreed with PPL that its use and appropriation of the water, and the incidents necessary to enjoy such appropriation, affect or limit the State's ownership interests in the riverbeds, the State's ability to subject such use to the requirements of Montana law, or its ability to seek compensation for an appropriation of water occurring entirely upon public lands.

Note: Since the decision in the case, PPL requested NHA file an amicus brief with the Supreme Court encouraging the court to grant certiorari. In summary, the NHA Board decided not to participate in an amicus brief at this time. There were two main reasons for the decision. First, Board members were unconvinced that the case was of sufficient national significance to warrant NHA involvement, with much of the facts of the case turning on analysis of Montana state law. Related to this, Board members expressed concern over the risk that should the Supreme Court take the case, an adverse decision is possible that would in fact set negative national precedent. Second, the Board was concerned over utilizing unbudgeted NHA financial resources to support participation at this time.

Though the NHA Board decided not to participate at this time, should the Supreme Court take the case, NHA may re-evaluate its position on participation. The Association has taken a similar stance in the past, most recently in the S.D. Warren case. NHA did not participate in an amicus brief supporting certiorari, but ultimately did file on the merits when the Court decided to hear the case.

- **Miscellaneous Regulatory News**

Obama Administration Energy Post Nominations and Appointments

The Senate on Jun. 22 confirmed, by voice-vote, the nominations of Philip Moeller and Cheryl LaFleur as Commissioners of the Federal Energy Regulatory Commission.

LaFleur joins the Commission replacing Suedeon Kelly, whose term ended last year. This is Moeller's second term at FERC.

Prior to FERC, LeFleur served as executive vice president and acting CEO of National Grid USA, responsible for the delivery of electricity to 3.4 million customers in the Northeast, until she retired in 2007. Her previous positions at National Grid and its predecessor New England Electric System included COO, president of New England distribution and general counsel. Her term expires in 2014.

Moeller, an appointment President George W. Bush, joined the Commission in July 2006. Moeller's energy policy experience is broad: he served as an energy policy advisor to U.S. Senator Slade Gorton (R-WA) where he worked on electricity policy, hydropower issues, electric system reliability, energy efficiency, nuclear waste, energy and water appropriations and other energy legislation. Throughout his career, Moeller has been an advocate of hydropower technologies. His term expires in 2015.