**Outline of National Hydropower Association and Edison Electric Institute**

**Post-Technical Conference Comments**

**Financial Assurance Measures for Hydropower Projects, Docket No. RM21-9**

**Due June 13, 2022**

1. **Introduction**
2. **General Comments**
3. **Financial Assurance for Dam Safety and O&M**

* The vast majority of hydropower licensees operate their projects safely and in compliance with their license and FERC’s comprehensive dam safety requirements.
* Due to their long lifespans, hydropower projects are bound to face unforeseen risks, including economic risks due to changing energy prices and demands and physical risks from impacts of drought and floods. In most cases, licensees are well prepared, technically and financially, to address these risks and collaboratively work with FERC staff and other stakeholders to respond and adapt as needed.
* FERC should focus its efforts on the small number of licensees that are out of compliance with their licenses or whose projects are non-operational (FERC cited 88 projects out of over 2,500+ as non-operational) and avoid imposing new requirements in the absence of an industry-wide problem.
* Licensees are already required under section 10(c) the Federal Power Act to retain funds necessary to maintain and repair project works.
* Respond to Chairman Glick’s query why the Commission should wait for a non-compliance or unexpected issue to arise before ensuring a licensee has funds to address it (i.e., a chicken and egg situation).
  + Physical dam safety is identified and addressed through FERC’s dam safety program.
  + The Commission should not impose industry-wide requirements to protect against the possibility of non-compliance or an unexpected significant issue, both of which are unlikely, where the majority of licensees are compliant and prepared and sufficiently funded to address the unexpected.
* FERC should address any concerns regarding dam safety through its existing dam safety program; it should not impose a financial assurance requirement.
* [Alternative proposal: all licensees provide a periodic self-certification to FERC of their ability to comply with dam safety requirements for that period. FERC can reserve authority to require further financial assurance if licensee cannot meet certification criteria or if there is a significant dam safety issue at the project. This aligns with Public Power Group’s proposal.

1. **Financial Assurance for Environmental Measures and Dam Removal**

* This proceeding originated as an effort to ensure licensees have adequate resources to maintain their projects in safe condition. NHA [and EEI] do not support expanding this effort beyond that mission to include financial assurances for future, unknown environmental measures that could potentially be imposed during a license term.
* The majority of licensees comply with environmental measures in their license.
* FERC has existing mechanisms and enforcement tools to ensure compliance with environmental measures under a license.
* There is no industry-wide problem of non-compliance with environmental license requirements due to lack of funding that would justify a new financial assurance requirement for all licensees for this purpose.
* For the small subset of licensees who may face this problem, FERC should address this on a case-by-case basis.
* NHA and EEI object to comments recommending financial assurance for decommissioning costs. The vast majority of licensees will never decommission their projects. For those that do, most will not include dam removal in their decommissioning plan because the dam serves other important purposes. Licensees should not be required to establish a decommissioning fund as a contingency in the event a project is required to be decommissioned at some point in the future. FERC previously rejected the requirement for licensees to maintain a decommissioning fund and the same reasons for FERC’s decision apply today.

1. **Responses to the Commission’s Post-Technical Conference Questions**
2. **Protecting Hydroelectric Facilities and Communities with Financial Assurance Requirements**

1. What project-specific characteristics, such as facility age, condition, reservoir size, dam safety hazard potential, geography, natural resources, and development in the surrounding floodplain should the Commission consider as it evaluates the need for a financial assurance requirement?

* The Commission should impose financial assurance requirements only on a case-by-case basis based on the licensee’s compliance record and results of FERC’s dam safety inspections of the facility.
* FERC should not attempt to require financial assurance based on characteristics of facilities. Many of these characteristics bear no relationship to safety issues. [Including high hazard, or should low hazard dams be exempted from financial assurance?]

2. How can financial assurance requirements protect against broader risks, including increased risk from aging infrastructure and regional heat/severe storm stressors from climate change?

* The best protection against these risks is compliance with FERC’s robust Part 12 dam safety program and compliance with ongoing project maintenance and license-specific requirements.
* FERC licenses are designed with flexibility to address flooding or drought through adaptive management and other means.
* A financial assurance requirement imposed on all licensees, regardless of risk factors of a particular project, will tie up resources that should otherwise be readily available for ongoing maintenance and investment in upgrades at these facilities to keep them operating safely.

3. How should the Commission weigh the impacts of the various risks when establishing a financial assurance requirement?

* Imposing a financial assurance requirement on the industry creates a new risk of driving small hydropower licensees to surrender their licenses.

4. What are the impacts on communities and how should they be factored into the requirement?

* FERC hydropower licensees have a strong record of protecting and benefitting local communities. Many projects are multi-purpose, providing flood control, water storage, and irrigation. Hydro projects generate tax dollars, create jobs, and provide clean, renewable, low-cost energy to surrounding communities.
* Compliance with FERC’s robust dam safety program is the best way to protect downstream communities.

**B. Factors for Establishing a Financial Assurance Requirement**

1. How should certain project characteristics, such as the hazard classification of the dam, the size of the project reservoir, the size of the project (capacity), compliance history, location, or other factors, inform a financial assurance requirement?

* The Commission should look primarily to a licensee’s compliance history and the results of FERC’s dam safety inspections of the facility [and hazard classification] to determine whether to impose a financial assurance requirement.
* Other project characteristics do not necessarily bear a direct relationship to safety issues.

1. Should the Commission treat projects at government dams where financial assurance may already be required for the use of that facility (e.g., U.S. Army Corp of Engineers and Bureau of Reclamation) differently?

* Yes. Licensees with projects at government dams owned by the Corps of Engineers or Bureau of Reclamation may be required by the license to provide financial assurances through an agreement with the relevant agency. The Commission should not impose financial assurance obligations on licensees that are redundant of requirements imposed by the Corps or Reclamation.
* Any financial assurance for a FERC-licensed project on federally owned infrastructure should be limited to project works, not the infrastructure (including the dam) owned by the federal agency.

1. Depending on the risk (i.e., project specific, regional, or global), how could the appropriate amount of financial assurance be determined?

* Financial assurance does not eliminate risk. The best tool to reduce risk associated with hydropower projects is strict enforcement of FERC’s dam safety program.
* If a dam safety risk arises, the Commission should require financial assurance in an amount to mitigate the identified dam safety issue.

1. What methodology should be used to set the required funding levels (e.g., is it a formula based on the hazard level of the dam and the acre-feet of storage or is it based on the amount of generation)?

* Neither. The Commission should require financial assurance on a case-by-case basis in an amount to mitigate an identified dam safety or compliance issue.
* The Commission should not require all licensees in a particular category to set aside funds to address unidentified potential risks during the license term. These funds should remain available to licensees to fund ongoing maintenance and license compliance.

1. What level of funding or assurance should each licensee be required to demonstrate?  Should this level be applied broadly or be determined on a case-by-case basis?

* The Commission should not require financial assurance on all licensees when only a small subset of licensees are non-compliant or own non-operational projects.
* Rather, the Commission should require financial assurance of a licensee if a significant dam safety issue arises in an amount to mitigate the identified issue.

**C. Mechanisms for Financial Assurance**

1. Should the Commission require licensees to use a performance or surety bond (or bond bank); irrevocable letter of credit; individual trust, escrow, or remediation fund; or insurance policies or self-insurance?

* No. All of these options would impose substantial, and in some cases prohibitive costs on licensees and divert funds away from regular maintenance and upgrades, especially for small hydropower licensees. The vast majority of licensees have the financial means to fulfill license requirements and maintain their projects safely.
* Many of these instruments (such as bonds and letters of credit) are designed to reimburse a damaged party once failure to perform has occurred and are not proactive means to ensure funds are available to prevent dam failures, which is the goal of this proceeding.

2. What is the availability of the various financing instruments?

* None of these financing instruments are available to all licensees.
* Even if they are available to certain licensees, they are costly, time consuming to secure, and tie up funds that should be available for maintenance and reinvestment in the project.

3. Should licensees be required to file financial records or financing plans?  If so, how should the Commission establish financing thresholds or a way to measure or determine if a license’s financials are sufficient?

* Licensees with a history of compliance and no significant outstanding dam safety issues should not be required to file financial records or financing plans.
* The Commission should continue its practice of requiring submission of a financing plan 90 days prior to construction for original licenses.
* The Commission should scrutinize a transferee’s financial capabilities to fund operation and maintenance of a project during a license transfer proceeding.

1. Should the Commission require licensees to reaffirm or recertify that they have adequate financial assurance instruments during their license term?  Or should the Commission reexamine the financial assurance requirements after a set number of years?

* NHA and EEI do not believe that financial assurance requirements across the industry are warranted when the vast majority of licensees have strong records of compliance.
* A universal financial assurance requirement and recertification process would be overly burdensome on both licensees and FERC staff and tie up critical funds that should be available for maintenance and emergencies.
* Hydropower plays a critical role in creating a reliable, affordable, and zero-carbon electricity grid. While the Commission should take appropriate action against non-compliant licensees, it should not impose industry-wide requirements that could drive certain licensees to decommission their projects.
* [If the Commission must impose a financial assurance requirement, it should require a self-certification process where a licensee can demonstrate through one of any available means that it can fund dam safety requirements during the certification period. Do we want to include this?]

1. How should the experience of other federal, state, and industry regulators inform the Commission’s financial assurance requirements?

* The Commission should consider all available examples of financial assurance requirements as guidance. However, the Commission itself, and especially D2SI, are the experts on dam safety requirements and should determine which licensees have significant outstanding issues that warrant a financial assurance requirement.

1. **Conclusion**