

One more step to streamline FERC hydro power licensing

October 19, 2017

Federal Energy Regulatory Commission (FERC or Commission) hydropower licensing processes are perennially criticized for how long they take and for the regulatory uncertainty they involve. On October 19, 2017, FERC took one more step towards streamlining and reducing uncertainty. The Commission finalized a Policy Statement on Establishing License Terms for Hydroelectric Projects (Policy Statement) in which the Commission adopted a 40-year default license term for original and new licenses for hydropower projects located at non-federal dams. The issuance of the Policy Statement followed a Commission Notice of Inquiry (NOI) that was issued on November 17, 2016 that sought comment on whether, and, if so, how the Commission should revise its policy for establishing the length of original and new licenses it issues for hydroelectric projects.

Prior to issuance of this Policy Statement, Commission policy with respect to projects located at non-federal dams was (1) to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; (2) a 40-year term for a license involving a moderate amount of these activities; and (3) a 50-year term where there is an extensive amount of such activity. While the length of an original license had not been contested on rehearing in some time, prior to the issuance of the NOI certain interested parties had contested the length of new licenses in several relicensing proceedings. Although the Commission in those cases declined to deviate from its then current policy, it initiated the NOI to seek comment on whether, and, if so, how the Commission should revise its policy for establishing license terms for projects located at non-federal dams. In total, over 40 comments were filed by industry members, federal and state resource agencies, environmental and recreation groups, and individuals with most commenters supporting revising the current policy.

In evaluating the various comments, the Commission decided that it is in the public interest to establish a 40-year default license term policy for original and new licenses for hydropower projects located at non-federal dams. Additionally, the Commission identified three circumstances where it will consider issuing a license for less or more than 40 years. First, the Commission will establish a shorter or longer term if necessary to coordinate license terms for projects located in the same river basin. Second, the Commission will defer to a shorter or longer term explicitly agreed upon in a generally supported comprehensive settlement agreement, provided that there is no conflict with coordination of license terms for projects located within the same river basin. Finally, the Commission will consider a longer license term at the specific request of the license applicant when doing so is consistent with coordinating license terms within a basin when significant measures are required under the license to be issued or significant measures were voluntarily implemented during the prior license term that were not required by that license or other legal authority and for which the Commission has not already given credit through an extension of the prior license term.

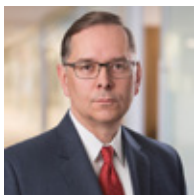
This new policy will provide more certainty to licensees, resource agencies, and other stakeholders and will provide a simpler method for the Commission to establish license terms. Administrative costs will decrease under the Policy Statement because projects will be relicensed less frequently. Additionally, efficient, low-impact projects that require minimal measures will now receive a 40-year license as opposed to a 30-year term license under the current policy, placing these projects on more equal footing with projects that require more measures. Lastly, the Policy Statement may encourage licensees to voluntarily make capacity upgrades and enhance recreational and environmental resources during the prior license term in order to obtain a subsequent license term longer than 40 years.

The Policy Statement will apply to licenses issued following the date of its publication in the Federal Registrar with no retroactive application. License applicants with pending license applications may file a comprehensive settlement agreement, or an addendum to an existing agreement, that includes an explicitly agreed upon license term, or may make a filing demonstrating why the Commission should award them a longer license term.

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