



Steve Moyer

Vice President for Government Affairs

May 26, 2015

The Honorable Ed Whitfield, Chairman
Subcommittee on Energy and Power
United States House of Representatives
Washington, DC 20515

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power
United States House of Representatives
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

On behalf of Trout Unlimited's (TU) more than 150,000 members nationwide, I am writing to provide comments for the record of your May 13, 2015 hearing on Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act. Our comments are limited to the discussion of the Hydropower Draft and do not include comment on Gas Pipeline permitting or related processes.

Proponents of the Hydropower Draft claim that its intent is to improve the FERC hydropower relicensing process. TU stands ready to continue to work with the Committee and Congress on real, meaningful process reforms, as we have throughout our history. In fact the bill is yet another attempt in a very long line of efforts by some elements of the hydropower industry to dramatically weaken fisheries conservation standards in the Federal Power Act, some of the most useful resource provisions in federal law. Not only does the draft substantially weaken federal standards, but state standards as well. We urge the Committee to reconsider its approach and to work with stakeholders to find a better path forward.

TU has a huge stake in the health of rivers affected by hydropower dams. TU members live, recreate, hunt and fish along the waterways impacted by hydropower development. We partner with agricultural users at non-powered dams and hydropower producers at powered dams to help maintain a balance between various competing water needs. TU has a long history of engagement in hydropower project development and regulatory processes. We have

A mission to conserve, protect, & restore North America's coldwater fisheries and their watersheds.

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partnered with utilities and project developers to identify and implement collaborative solutions balancing the needs of fish and wildlife with power production goals.

TU has worked with stakeholders to help pass Rep. Tipton's small hydropower bill (P.L. 113-24). We have engaged in cooperative stakeholder processes to restore valuable fisheries and relicense dams owned by Avista Corporation in northwest Montana and PPL on the Penobscot River, Maine. TU worked with stakeholders to develop and implement the Klamath River Restoration agreements, a tremendous solution for longstanding problems in the Klamath Basin that could have never been achieved under the terms dictated by the provisions of the Hydropower Draft.

TU strongly opposes the Hydropower Regulatory Discussion draft. Among our key concerns, the language of this proposed draft would have the following results:

- Reduce local and regional control over resource protections and priorities by taking authority away from federal and state resource agencies and transferring it to FERC.
- Severely restrict data collection and disadvantage sound science by allowing additional study only when FERC determines that value of data outweighs the financial expense.
- Weaken state and federal authority to ensure safe, timely and effective fish passage around dams and hydropower projects.
- Minimize or eliminate a developer's responsibility to comply with state and federal resource protection laws (like the Endangered Species Act (ESA) and the Clean Water Act (CWA), which will place a greater burden on surrounding businesses and communities.
 - Imposes fisheries and wildlife management costs on commercial fishermen, farmers, taxpayers and local communities by exempting hydropower dam owners from reasonable measures to protect fish and wildlife;
 - Shifts the costs and burdens of meeting state water quality standards off of the hydropower industry and onto municipal water treatment facilities, factories, farmers and taxpayers.
- Mandates an overly restrictive scope of project review, prohibiting FERC or the resource agencies from requiring contribution from a project to ongoing project impacts. This would place the burden back on federal agencies to manage any expense or upkeep of underlying facilities, regardless of any profit to the power operator. This amounts to private profit from public resources - allowing private companies to profit from existing infrastructure with no requirement that those developers contribute to the upkeep or enhancement of the underlying facility or its impacts – handing the profit to the developer and leaving the burden on the public resource and taxpayer.

- De-regulates development of certain classes of hydropower at existing non-powered dams, essentially removing these projects from federal and state oversight through the hydropower licensing process.

Diminished state and federal agency authority in licensing processes.

The proposed language would effectively gut the Federal Power Act's mandate to ensure a balancing between power and non-power interests by transferring key protection determinations away from state and federal resource managers and centralizing that power at FERC. Although the Commission has a skilled staff, the agency does not have the congressional directive to protect the lands and resources that are currently within the jurisdiction of its sister agencies in the Department of the Interior and Commerce, such as fish and wildlife, endangered species, and public lands. These federal resource agencies have local and regional field staff with on the ground knowledge of the resources involved in any particular licensing process. This level of familiarity and connection to the resources helps bring a deeper level of knowledge to the process, which is necessary to optimize a license for all uses.

TU relies on these agencies to protect and restore our fisheries resources and to help ensure equal consideration of non-power values in FERC's licensing processes. Hydropower licenses can last as long as 50 years – the licensing process provides a crucial opportunity to ensure a project will be properly developed and operated to ensure our river resources are preserved for future generations. This opportunity is all the more crucial for re-licensing, as many of our nations' existing hydropower projects were developed before the existence of most major natural resource laws. The relicensing process provides our resource managers the much needed opportunity to ensure these projects are upgraded to meet modern day laws and standards for conservation performance.

Hydropower at non-powered dams.

TU strongly supports focusing on enhancing hydro at existing infrastructure rather than new dam construction for new hydropower production. Focusing on improving and investing in existing infrastructure is the most cost-effective way to bring new power online. However, not all existing dams are appropriate for new hydropower development. Dams that are unsafe or where natural resource impacts outweigh the project benefit should not be exempted from applicable requirements for protection of environmental quality and public safety. The proposed draft would exempt currently unpowered dams, conduits and similar facilities without the opportunity for site specific considerations or review.

Existing law already provides an exemption process for certain categories of projects – including conduit-based developments and hydropower capacity added to non-powered

dams.¹ Both of these exemptions must include mandatory fish and wildlife conditions by federal and state resource agencies. Under the existing exemption process, well designed projects can be processed in less than a year. For a project that is seeking a permanent exemption from FERC's licensing process, that is extraordinarily expedient.

In addition to the existing FERC exemption process, there have been a number of additional efforts aimed at improving the regulatory process for hydropower development at existing federal infrastructure. For example, as highlighted above, in 2013, TU supported Representative Tipton's *Bureau of Reclamation Small Conduit Hydropower and Rural Jobs Act*, which became Public Law No: 113-24. The bill was aimed at improving the process for hydropower development at BOR. We supported this bill because it improved a currently difficult process without sacrificing environmental safeguards. In contrast, the proposed discussion draft will cause more confusion, delay and harmful results.

Overly Restrictive Time Limits.

TU supports the concept of a single, FERC generated timeline to help ensure predictability in the licensing process. However, the proposed language takes this idea too far, imposing potentially arbitrary deadlines that do not account for the agency specific processes or information gathering needs of fellow agencies. This language aims to solve an alleged problem of too much delay by attacking the symptom, not the underlying cause. Rather than a lack of clear timeframes, delays seem more often connected to agency budget constraints or other administrative hurdles.

For example, agency authorizations are often delayed where the agency is unable to obtain the necessary information as a part of the FERC study process. Rather than further restricting the agency, delay could be minimized by improving coordination at the study phase to ensure all agencies – not just FERC – are able to obtain the necessary information to complete review and processing of necessary permits and authorizations without additional delay for data collection. Similarly, for agencies struggling with backlogs due to budget constraints, installing a new time limit will not solve the problem. Rather, these time constraints are likely to exacerbate the problem – forcing states to either (a) deny permits, causing delay for the applicant; (b) issue a permit with potentially onerous requirements as a precautionary approach when faced with insufficient resources to make a more informed decision; or (c) waive their authority, leaving the affected waterways unprotected at the state level.

¹ Section 405(d) of the Public Utility Regulatory Policies Act, as amended by the Hydropower Regulatory Efficiency Act of 2013 authorizes the Commission to grant exemptions for hydropower projects added to existing dams with an installed capacity of up to 10mw, subject to certain restrictions.

A better way forward.

We support common-sense reforms that will improve administrative processes without sacrificing resource protections. Rather than minimizing the ability of regional resource managers to include and enforce resource protection and enhancement measures, we suggest that the existing process could be improved through more effective agency coordination and communication, additional process support to first-time applicants, and through enhancements to the power purchase and power interconnect processes.

We anticipate continued activity and interest from this committee and its members related to hydropower regulatory improvements or reforms. As this discussion moves forward, we encourage the committee to seek broader input on the underlying goals of this proposal – i.e., what reforms, if any, are needed - and to work with agencies, industry and members of the affected public to design more balanced solutions to any problems identified. TU is ready to work with representatives from industry, resource agencies, the regulatory Commission and members of this committee to identify process improvements that do not sacrifice the protection, mitigation and enhancement of our nations' rivers and streams.

Thank you for the opportunity to provide comments on the draft hydropower bill.

Sincerely,

A solid black rectangular box used to redact the signature of Steve Moyer.

Steve Moyer
Vice President, Government Affairs
Trout Unlimited