

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 9, 2016

The Honorable Ed Whitfield, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Whitfield:

Thank you for the opportunity to appear before the Subcommittee on Energy and Power on Tuesday, February 2, 2016, to testify at the hearing entitled "A Legislative Hearing on Eight Energy Infrastructure Bills." Attached are my responses to the Supplemental Questions for the Records.

Sincerely,

A solid black rectangular redaction box covering the signature of Ann F. Miles.

Ann F. Miles
Director, Office of Energy Projects

Additional Comments for the Record
Ann F. Miles

The Honorable Pete Olson

1. Are you aware of any situations where a state agency, acting pursuant to a federal delegated authority, has failed to meet the schedule established by FERC?

A. Anytime this happened, are you aware of a state agency not meeting your schedules?

Answer: In the Energy Policy Act of 2005, Congress directed the Federal Energy Regulatory Commission (Commission) to establish schedules for all federal authorizations for jurisdictional natural gas projects. Section 157.22 of the Commission's regulations, promulgated to implement this authority, requires that federal or state agencies issue final decisions on requests for federal authorizations no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by federal law.

Commission staff monitors the status of permit applications for federal authorizations during the pre-filing review period, the application review period, and the environmental review analysis. Commission regulations require that applicants identify each federal authorization that a project will require, the date the applicant requested the authorization, and any reasons why such a request has not been made by the time of the formal application.

Some statutes – such as the Clean Water Act, which gives a state agency up to one year to act on a request for water quality certification – provide timeframes that may allow an agency longer to act than the Commission's schedule. Also, some agencies ask applicants to refrain from submitting federal permit applications until the applicant has obtained information, such as identification of plant and animal species and cultural resources that can only be gathered by on the ground surveys. Where landowners decline to allow access to their property, this information can only be obtained after the Commission issues certification, which carries eminent domain rights. In these cases, a federal or state agency will not comply with the schedule set by the Commission. Rather, the Commission order will require action on federal authorizations before construction may begin. Commission staff does not track the timing of permits issued after Commission action on the project.

In situations where an applicant has made the necessary request for a determination to the permitting agency, the Energy Policy Act of 2005 provides an avenue for the permit applicant to seek judicial review of federal or state agency inaction if it extends past the deadline established by the Commission. There has been one case in which the applicant has sought this remedy: *Dominion Transmission, Inc. v. Summers* (D.C. Cir. No. 13–1019), July 19, 2013. In this case, the Maryland Department of the Environment, acting on delegated federal authority under the Clean Air Act, refused to process Dominion’s application for an air quality permit. The Court directed the agency to process the permit application. It did so and issued a construction permit to Dominion.

The Honorable Richard Hudson

- 1. What is the number and experience of the staff administering the licensing and regulation of hydropower projects (the number of PhDs, master's degrees, etcetera)?**

Answer: Of the 250 scientists and engineers in the three Divisions that administer the licensing, compliance, and dam safety of hydropower projects, 144 (58%) have advanced degrees.