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The Honorable Fred Upton
Chairman
Subcommittee on Energy
2125 Rayburn House Office Building
Washington, DC 20515

April 12, 2017

Dear Chairman Upton:

Please find attached responses to the Questions for the Record after the Subcommittee on Energy's March 15, 2017 hearing entitled "Modernizing Energy Infrastructure: Challenges and Opportunities to Expanding Hydropower Generation."

As each of the listed questions asked about positions of the National Hydropower Association (the NHA), the responses attached have been developed by staff of the NHA.

Thank you again for the opportunity to testify before the Subcommittee. We look forward to working with the members of the Subcommittee to expand the opportunities for hydropower generation.

Sincerely,

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Ramya Swaminathan

Additional Questions for the Record

Responses Submitted by Rye Development on behalf of NHA

The Honorable Fred Upton

1. In your testimony, you discussed some of the challenges that can occur post licensing that delay the start of construction of projects. Does the National Hydropower Association, as an organization, support an amendment to the Federal Power Act to allow FERC to extend the construction deadlines beyond the time period currently allowed?

Answer: Yes. The National Hydropower Association supports an amendment to the Federal Power Act, which would allow FERC to make a decision on extensions.

Hydropower projects can face a variety of obstacles that push back construction timelines. These include: delays in necessary post-licensing construction approvals; additional environmental permits; refinements in final project design; continuing negotiations on power purchase agreements; securing financing; and others.

Today, the only way license holders can extend the construction deadline if they encounter any of these obstacles is to seek congressional approval for an individual project extension. The legislative process to enact such a bill into law can be a long, costly and uncertain one. This is borne out by the fact that there are several projects needing such a congressional approval and who have been working for several years, unsuccessfully, to pass such legislation. In fact, NHA testified in favor of several of these projects in an Energy and Power Subcommittee hearing last year.

An amendment as discussed above was under consideration by the conference committee on last year's energy bill. It would have allowed FERC to grant a licensee to receive an extension of the commence construction deadline for up to an additional 8 years. NHA also supported that provision.

Addressing this issue would be a significant improvement for projects in the circumstances described above – one that would allow the developers to complete the process and protect the significant investment of time and financial resources they have spent on the project.

2. Does the National Hydropower Association support establishing FERC as the lead agency for the purposes of coordinating all Federal authorizations and for the purposes of complying with the National Environmental Policy Act?

Answer: Yes, NHA supports this provision. Similar language, which NHA also supported, was included in H.R. 8, the North American Energy Security and Infrastructure Act of 2015.

As the issuer of the license governing the terms and conditions under which a hydropower project operates, it is only sensible that FERC be given the authority to

coordinate all the federal authorizations that are required to construct, operate, and maintain the project.

The many interrelated approvals required for non-federal has created a long and complex procedural process. Currently, no single agency has control over the sequencing and schedules required for the many different authorizations required for non-federal hydropower under Federal law—e.g., licensing before FERC under the FPA, ESA section 7 consultation, CWA section 401 certification, CWA 404 permitting, Coastal Zone Management Act (CZMA) consistency determination, authorization under section 14 of the Rivers and Harbors Act, and permitting under the Federal Land Policy and Management Act.

This lack of centralized coordination has led to duplicative environmental reviews, inconsistent and conflicting requirements, and excessive delays. Such a provision would clearly empower FERC with a coordinating role for the purpose of improving the other processes that will continue to occur before various Federal and State authorities in fulfillment of their statutory obligations.

3. What does the National Hydropower Association believe should be the role for Federal and State agencies considering an aspect of an application for Federal authorization?

Answer: NHA believes the multitude of Federal and State agencies, as well as the public and other stakeholders, play a major and important role in the hydropower licensing process.

However, as discussed above, the general permitting and licensing process is one of decentralized independent decision making by each of these individual regulatory entities. NHA believes improvements to the overall process, guiding all of the various authorizations required under federal law, can be made without sacrificing environmental values or rescinding statutory obligations. However in implementing their statutory responsibilities, and in exercising decisions on any federal authorization, agencies should act in a timely and coordinated manner, with transparency and accountability.

NHA is aware of close to 3 dozen projects currently in the approvals process where FERC has completed its NEPA analysis, but for which another agency approval is delayed (e.g. Clean Water Act Section 401 certification by the state; Endangered Species Act biological opinion by F&WS or NMFS). In some of these cases, the delay on the needed approval is years overdue - a handful still waiting for a decision after 10 years.

Such delays do not represent good government. Not only does this negatively impact the license applicant through increased costs and uncertainty, but it also postpones the implementation of mitigation and improvement measures that are included as part of the final license, which is a no-win scenario for the industry and the environment.