

May 12, 2022

Chairman Frank Pallone, Jr
2107 Rayburn House Office Building
Washington, DC 20515

Ranking Member Cathy McMorris Rodgers
1035 Longworth House Office Building
Washington, DC 20515

Chairman Bobby Rush
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Ranking Member Fred Upton
1035 Longworth House Office Building
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RE: Hearing on "Modernizing Hydropower: Licensing and Reforms for a Clean Energy Future"

Dear Chairman Pallone, Chairman Rush, Ranking Member Upton, Ranking Member McMorris Rodgers and Members of the Committee;

Thank you for the opportunity to submit a letter for the record regarding the Uncommon Dialogue proposed modifications to hydroelectric licensing and policies.

The following comments are based on experience with developing hydroelectric power on existing dams, irrigation canals and conduits. The efforts by Uncommon Dialogue, some environmental organizations, Tribes, and hydroelectric developers working together to negotiate a path forward are to be commended. Based on experience in developing small hydroelectric projects, we respectfully raise concerns with some of the proposed policies and language as to potential unintended consequences.

My name is Jim Price, I am the President of Noah Corporation. Since 1980 I have prepared and had approved a license at about 23 U.S. Army Corps dams; fifteen were licensed; 8 licenses were surrendered as unfeasible; five plants were built and are operating. Developing hydroelectric projects has become more difficult to achieve: the opportunities are less desirable than they were 40 years ago; the power prices defined as Avoided Cost, the PURPA rate state utility commissions approve are rather low; and the environmental regulations are time consuming, expensive, and unnecessary. Retail prices for power have never been higher in the areas where I work, development costs are relatively high, yet power sale prices to utilities have seldom been lower than they are today.

We do know that the only solution to Climate Change seems to be a great reduction in atmospheric release of carbon oxides, particularly from power plants and gas combustion engines. This implies that we need to emphasize renewable power generation and electricity generation that avoids releasing carbon oxides. The more generation we achieve by renewable resources seems to be a step in the right direction. The proposed legislation appears to make the development of new, small hydroelectric projects even more challenging.

Modifying regulations to operate existing hydropower in a way that generates as much renewable power during the peak period of high demand as possible would be beneficial, but is contrary to the FERC and U.S. Army Corps Memorandum of Understanding that usual hydroelectric licenses require no variation in river flow. This is not the way to get the most from renewable resources. The U.S. Army Corps does an excellent job of operating their own hydroelectric projects, so well that they can provide firm power, power that can be dispatched to meet peak demand periods.

We look forward to further collaboration and discussion on these important policies to ensure that the commendable goals cited in the Uncommon Dialogue are achieved. Small hydropower facilities are some of the most environmentally sound and beneficial renewable resources available in the United States. In our efforts to move to a carbon-free future, it is important to be cognizant of the relative burdens placed on these smaller developers. It is vital to ensure that policies are carefully tailored to achieve proper oversight without being so onerous as to stop beneficial utilization of this important resource.

Include hydropower in the definition for “small power production facility”

Congress and the Biden-Harris Administration have a goal to reduce greenhouse gas emissions. Hydroelectric production, especially developed on existing infrastructure, free flowing water, or from marine hydrokinetics have one of the lowest greenhouse gas emitting footprints for electric generation. Hydroelectric power needs to be included as “small power production facility” to put on par with other renewable resources.

Detailed Cost Data to be Shared with Congress

The draft proposal requiring the submission of detailed project costs and data creates yet another bureaucratic burden on the small hydro developers. The data is then to be reported to Congress. Releasing proprietary information to Congress creates financial risks to developers by competitors potentially accessing the information.

Resource Studies to be conducted by the Federal Energy Regulatory Commission

The proposed draft directs the Federal Energy Regulatory Commission to conduct studies on existing non-powered dams, free flowing water, and non-operating hydropower. Given the experience of working with FERC staff who are already stretched to meet deadlines with their existing workload, we question whether the Commission has the employee base or expertise to conduct such studies. Directing the Commission to redo studies that have been conducted several times already starting in 1978 by the Department of Energy or some of the National Laboratories, will most likely create delays in licensing and re-licensing efforts and not add in a substantive manner to that which has already been analyzed.

Addition of “Addressing the effects of Climate Change”

Addressing the effects of Climate Change analysis could result, and has already resulted, in hydroelectric projects and licenses being denied due to any potential yet unknown impacts of hydrologic flows. The scientific analysis of water flow changes is still in the development/speculative stage¹. The burden on a small hydroelectric developer would be too costly to try and demonstrate otherwise with different models. If the GHG analysis is limited to only the emissions from the hydroelectric facility or the grid stability that hydro provides in light of other intermittent renewables, that may be helpful to encouraging the facilities. The proposed language only discusses “the effects of climate change” which

Opperman, J.J. et al. Using the WWF Water Risk Filter to Screen Existing and Projected Hydropower Projects for Climate and Biodiversity Risks, *Water*, 2022. 14. 721.

Conversation with Jeffrey J. Opperman, the primary author of the paper, confirmed that the knowledge of what will happen with hydrologic flows is speculative at this time and that predictions of where and when large rainfall or droughts could occur is not suitable for planning at specific sites.

is overly broad and has already been a hindrance toward hydroelectric project development. The U.S. Army Corp already denied a 1.5 MW project based on potential water flow changes in a region where there are no known concerns about water flow.

Environmental Effects

The draft language discussing “Environmental Effects” appears to be vague and as written could create more barriers to the development of hydroelectric power instead of streamlining the efforts and regulations.

Maintenance and Repair of Infrastructure

The proposed language appears to place the full burden of infrastructure maintenance on the potential hydroelectric owner/operator if developed on existing infrastructure. Presently, hydroelectric developers are responsible for maintenance and repairs on the portion of the infrastructure where the hydroelectric facility is located. Placing the entire burden on the hydroelectric developer, when they are not operators of a lock & dam or requiring the full dam repair and maintenance when other entities benefit from the infrastructure does not seem to be in alignment with trying to encourage, stable, low greenhouse gas emitting electricity sources. If the goal of Congress and the Biden-Harris Administration is to reduce GHG emissions in a cost-effective manner, all low emitting sources must be encouraged, not discouraged. The IJA included significant funds to repair and upgrade existing dams. Congress would do well to consider allocating funds for the portion of the dams and locks that are not being used by the hydroelectric developer for repair and maintenance. By adding more and most costs on the hydroelectric owner, they will NOT be able maintain a break-even business and such projects will not be pursued. A more equitable allocation of costs for the repairs and maintenance of existing infrastructure is needed.

FERC Process for Exempt Hydropower Projects

The FERC process for smaller, exempt hydroelectric facilities works. We question the need to modify the process. Further, there is an addition for review of exemptions by “affected” Indian Tribes. We understand that tribal participation is vital to the Uncommon Dialogue and to our national energy and environmental discussions. However, we would like some clarification on what is meant by “affected” in this context, as it does not seem to appear in other sections and could have a wide variety of interpretations. For all developers, but for small hydropower developers in particular who are making investments in these opportunities, clarity is critical.

Micro Hydropower Facilities

We question the need for the Commission to conduct workshops for identifying micro hydropower facilities and if anything, recommend incorporating micro hydropower exemptions into the exempted processes already existing at the Commission to try and streamline the processes.

Respectfully Submitted,

Jim Price

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