U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

June 5, 2018

TO: Members, Subcommittee on Energy

FROM: Committee Majority Staff

RE: Hearing entitled "Improving the Hydropower Licensing Process"

## I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Thursday, June 7, 2018, at 11:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "Improving the Hydropower Licensing Process." This hearing will review progress toward improving interagency coordination for the timely processing of environmental reviews and authorizations for non-Federal hydropower projects.

## II. WITNESSES

- **Terry Turpin**, Director, Office of Energy Projects, Federal Energy Regulatory Commission;
- **Chris Oliver**, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration;
- **John Goodin**, Acting Director for the Office of Wetlands, Ocean, and Watersheds, U.S. Environmental Protection Agency;
- **Greg Sheehan**, Principal Deputy Director, U.S. Fish and Wildlife Service; and,
- **Ryan Fisher**, Principal Deputy Assistant Secretary of the Army (Civil Works), Department of the Army.

## III. BACKGROUND

Hydropower is an essential component of an "all of the above" energy strategy for the United States. In 2017, hydropower accounted for 7.5 percent of total U.S. electricity generation and 44 percent of electricity generation from renewables.[1] There is tremendous opportunity to expand hydropower production. However, less than 3 percent of the dams in the U.S. – approximately 2,200 dams – produce electricity. A recent report by the Department of Energy (DOE) found that U.S. hydropower production could grow by almost 50 percent from current levels by 2050 from a combination of upgrading existing hydropower facilities, adding generation capacity to existing non-powered dams and canals, and developing new hydropower

[1] *U.S. Energy Information Administration, U.S. Electricity Generation by Energy Source*.

facilities.[2] The benefits of clean, baseload hydropower to the nation's economy and energy security are numerous. The hydropower industry employs a workforce of about 143,000, which, combined with the affordable electricity produced by hydropower projects, brings multiple economic benefits to the communities in which they are located and those that they serve.[3] Hydropower also contributes to flexible and reliable operations of the electric grid by providing energy, capacity, and ancillary services, as well as offering peaking flexibility, load-following, energy storage, and black-start capability.

*Hydropower Licensing under the Federal Power Act*

The Federal Energy Regulatory Commission (FERC) exercises jurisdiction over non-Federal hydropower projects. FERC is authorized under Part I of the Federal Power Act (FPA) to review applications for the construction of hydropower projects and oversee their operation and safety. Licensing new hydropower facilities and relicensing existing facilities requires extensive consultation with multiple Federal, State, and local government entities to balance a wide range of issues, including potential impacts on the natural environment, wildlife, recreation, aesthetics, cultural resources, and land use. FERC regulates over 1,600 non-Federal hydropower projects at over 2,500 dams, which together represents about 56 gigawatts of hydropower capacity, more than half of all the hydropower capacity in the United States.[4] Under the FPA, non-Federal hydropower projects must be licensed by FERC if they are located on a navigable waterway; occupy Federal land; use surplus water from a Federal dam; or are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes FERC to issue licenses for projects within its jurisdiction, and exemptions for projects that would be located at existing dams or within conduits[5] that meet specific qualifying criteria. Licenses are generally issued for terms of between 30 and 50 years, and are renewable. Exemptions are perpetual, and thus do not need to be reviewed. Approximately one year ago, FERC's Deputy Associate General Counsel testified that commission staff had a full workload processing original license, relicense, and exemption applications, as well as its compliance and dam safety work. The relicensing workload, in particular, had started to increase and was expected to continue to remain high well into the 2030s. Between FY 2017 and FY 2030, about 480 older projects, which represent approximately 45 percent of FERC licensed projects, will begin the relicensing process. One year ago, FERC was processing nearly 5,000 licensing and exemption-related filings per year. However, this workload is expected to substantially increase as new relicensing requests are filed.[6]

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[2] *U.S. Department of Energy, Hydropower Vision (2016).* DOE found that U.S. hydropower could grow from 101 gigawatts (GW) of combined generating and storage capacity to nearly 150 GW by 2050, with more than 50 percent of this growth realized by 2030.

[3] *Testimony of Mr. Jeffrey Leahey, Deputy Executive Director, National Hydropower Association*, before the Subcommittee on Energy, May 3, 2017.

[4] *FERC Hydropower Primer: A Handbook of Hydropower Basics* (2017).

[5] Conduits typically consist of tunnels, canals, pipelines, aqueducts and other manmade structures that carry water through electric generating equipment. Such hydropower projects typically do not require the need for a large dam or reservoir and can generate electricity from existing water flows.

[6] *Testimony of Mr. John Katz, Deputy Associate General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission* at pg. 9, before the Subcommittee on Energy, May 3, 2017.

New hydropower development and relicensing of existing projects requires a significant investment of time and financial resources. During a hearing last year on legislation addressing hydropower infrastructure modernization, the Committee received testimony stating that hydropower has the longest, most complex development timeline of any renewable energy technology, with some projects requiring 10 years or longer from the start of the licensing process though construction.[7]

*Interagency Coordination and Permitting Delays*

While FERC serves as the lead agency to coordinate hydropower reviews and convene stakeholders to participate in collaborative, transparent public proceedings, there are often many agencies involved, some of which may be required to conduct separate reviews or issue permits under other laws, such as the Endangered Species Act (ESA) or the Clean Water Act (CWA).[8] Despite its lead agency status, FERC lacks authority under the FPA to resolve disputes among agencies and enforce scheduling deadlines. In testimony before the Committee, FERC staff stated that "in many instances, it is applicants, Federal and State agencies, and other stakeholders that determine project success, and control whether the regulatory process is short or long, simple or complex."[9] In response to questions for the record, FERC Chairman Kevin McIntyre reported 21 separate cases where the Commission has finished its environmental review and is currently waiting for an action to be completed by another agency before FERC can issue a decision on the project.[10] These situations primarily fall into two categories with FERC waiting for: (1) either the National Marine Fisheries Service or U.S. Fish and Wildlife Service to complete consultation under section 7(a) of the ESA and/or; (2) a State water quality agency to issue water quality certification under section 401 of the CWA. In some instances, applications have been stalled for more than a decade due to an agency's failure to act.

*Administrative Actions – Executive Order 13807 "One Federal Decision"*

On August 15, 2017, President Trump signed Executive Order 13807, which established the "One Federal Decision" policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective. The MOU was signed by 12 agencies, including agencies involved in the hydropower licensing processes, such as FERC, the Department of Commerce, the Department of Interior, the Environmental Protection Agency, and the Army Corps of Engineers.

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[7] Hearing entitled *Legislation Addressing Pipeline and Hydropower Infrastructure Modernization*, before the Subcommittee on Energy, May 3, 2017.

[8] These "cooperating agencies", both at the State and Federal levels, are expected to work closely with FERC during the scoping process and to provide input and expertise (within their jurisdiction) to aid in the preparation and development of an environmental impact statement (EIS). FERC, as the lead agency, must respond to all substantive comments or issues raised by these cooperating agencies.

[9] *Testimony of Mr. John Katz, Deputy Associate General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission*, before the Subcommittee on Energy, May 3, 2017.

[10] *Response to Questions for the Record Submitted by FERC Chairman Kevin McIntyre*, hearing before the Subcommittee held on Energy, April 17, 2018.

*Pending Hydropower Legislation*

The House has passed several bills in the 115th Congress to modernize the permitting process and encourage the expansion of hydropower generation by improving administrative efficiency, accountability, and transparency; promoting new hydropower infrastructure; requiring balanced, timely decision making, and reducing duplicative oversight. Examples of recent legislation include: H.R. 3043, Hydropower Policy Modernization Act of 2017 (Rep. McMorris Rodgers); H.R. 2786, To amend the Federal Power Act with respect to the criteria and process to qualify as a qualifying conduit hydropower facility (Rep. Hudson); H.R. 2872, Promoting Hydropower Development at Existing Nonpowered Dams Act (Rep. Bucshon); and, H.R. 2880, Promoting Closed-Loop Pumped Storage Hydropower Act (Rep. Griffith). These bills have passed the House and are currently awaiting action before the Senate.

## IV. ISSUES

The following issues may be examined at the hearing:

- Challenges and opportunities to expand hydropower production in the United States;
- Improving interagency cooperation and coordination through the use of Executive Orders, administrative actions, and memoranda of understanding; and,
- Recommendations to streamline and reduce timelines for completion of reviews and authorizations.

## V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Jason Stanek, Brandon Mooney, or Mary Martin of the Committee staff at (202) 225-2927.