

Testimony of

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**Committee on Energy and Commerce
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“Improving the Hydropower Licensing Process”

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Chairman Upton, Ranking Member Rush, and Members of the Subcommittee:

My name is Terry Turpin and I am Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office is responsible for taking a lead role in carrying out the Commission's responsibilities in siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization of liquefied natural gas (LNG) terminals.

I appreciate the opportunity to appear before you to discuss federal infrastructure permitting and the Commission's processes for conducting environmental reviews required under the National Environmental Policy Act (NEPA). As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

Under the Federal Power Act (FPA), the Commission acts as the lead agency for the purposes of complying with NEPA. Consistent with its role as lead agency, the Commission has developed processes to engage Indian Tribes, state and federal agencies, and other stakeholders and provide them the opportunity to identify significant issues regarding proposed infrastructure. The Commission's practices allow for a systematic, efficient, and collaborative process, which has resulted in substantial additions to the nation's infrastructure.

I. The Commission's Hydropower Program

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams pursuant to Part I of the FPA. Aggregately, these projects represent about 56 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Together, public and private hydropower capacity total about eight percent of U.S. electric generation capacity. Since fiscal year 2010, the Commission has issued 180 hydropower licenses and small hydropower exemptions authorizing approximately 13 gigawatts of generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) 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 the Commission to issue licenses for projects within its jurisdiction, and exemptions (which are actually a simpler form of license) for projects that would be located at existing dams or within conduits, as long as these projects meet specific criteria. Licenses are generally issued for terms of between 30 and 50 years and may be renewed. Exemptions are perpetual and do not need to be renewed.

The Commission has established procedures which allow an applicant to request a review process that it believes best suited to its individual situation. All of these processes, which involve specified procedural steps, are transparent and involve extensive

coordination among the applicant, Commission staff, Indian Tribes, state and federal agencies, and other stakeholders. The three processes are:

- Traditional Licensing Process: best for less complex or controversial projects and is the process used for exemptions;
- Integrated Licensing Process: frontloads issue identification and decisions on information needs to the period before an application is filed and is suited to the more complex or controversial cases; and
- Alternative Licensing Process: allows participants significant flexibility to tailor the licensing process in a manner that can work well for unique, particular circumstances.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, public proceedings, where all significant issues are identified and studied. Commission staff, consistent with the Commission's role as lead agency, develops detailed, thorough environmental analyses, pursuant to the FPA and NEPA. Stakeholders are afforded numerous opportunities to provide the Commission with information, comments, and recommendations.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Coastal Zone Management Act; the Wild and Scenic Rivers Act; the National Historic Preservation Act; the Endangered Species Act; and the Clean Water Act. The statutory requirements of these

acts, along with the FPA, give other agencies a significant role in the licensing process. For example, if a project is located on U.S. lands such as a national forest, section 4(e) of the FPA authorizes the federal land managing agency to impose mandatory conditions to protect those lands. Section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. With respect to exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources.

Under the Endangered Species Act, the Commission is required to consult with the National Marine Fisheries Services or the U.S. Fish and Wildlife Service with respect to threatened and endangered species. In addition, section 401(a)(1) of the Clean Water Act precludes the Commission from issuing final authorization for hydroelectric project construction or operation until the project has first obtained a water quality certification, or a waiver thereof, and requires the Commission to adopt all conditions contained in the water quality certification. There are instances where Commission staff has completed its analysis of a hydroelectric project but final Commission action on the application cannot be taken until issuance by a state, acting under delegated federal authority, of a water quality certification under the Clean Water Act or until endangered species consultation is completed.

In addition to licensing projects and issuing exemptions, the Commission is responsible for ensuring compliance with license and exemption conditions during the life of regulated projects. The Commission also maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

II. Recent Efforts in Process Improvements

The Fixing America's Surface Transportation Act was enacted on December 4, 2015. Title 41 of that act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," issued August 15, 2017, established a federal government policy of providing public transparency, agency accountability, and timeliness regarding environmental review and authorization decisions. On April 9, 2018, Chairman McIntyre, along with the Department of the Interior, Department of Agriculture, Department of Commerce, Department of Housing and Urban Development, Department of Transportation, Department of Energy, Department of Homeland Security, U.S. Army Corps of Engineers, Environmental Protection Agency, and the Advisory Council on Historic Preservation entered into a memorandum of understanding (MOU) on processing environmental reviews and authorization decisions for proposed major infrastructure projects (One Federal Decision MOU). At this point, staff is developing the Commission's implementation plan for submittal to the Office of Management and Budget and the Council on Environmental Quality by the July deadline listed in the One Federal Decision MOU.

To a great extent, the processes envisioned by FAST-41, Executive Order 13807, and the One Federal Decision MOU parallel the Commission's own processes to improve early consultation and to increase transparency of project review. The Commission has for many years worked closely with other federal and state agencies to complete reviews of all

infrastructure projects in an expeditious, coordinated, and transparent manner. The One Federal Decision MOU, which calls for a goal of completing action on all governmental approval decisions within two years, should encourage agencies to redouble their efforts in actively participating in environmental reviews and communicating their analysis needs to each other, and project sponsors, so that the review process is more predictable and transparent.

III. Conclusion

Commission staff remains committed to working with all federal agencies to assist in the successful implementation of these goals and to ensure the most effective processing of energy infrastructure matters before the Commission. This concludes my remarks. I would be happy to answer any questions you may have.