

## Summary of WG6 Federal Power Act Amendments Package

The Drafting Team for Uncommon Dialogue Workgroup 6 prepared a package of proposed amendments to the Federal Power Act. The package is intended to enhance the economic value and environmental benefits of hydropower projects and healthy rivers. It is driven by eight themes stated below.

### **Improves cooperation among FERC, Federally Recognized Tribes and resource agencies in the hydropower licensing process**

- Requires FERC and other Federal and State agencies and Federally Recognized Tribes to consult in the development of a coordinated schedule for all federal authorizations for hydropower licensing.
- Requires FERC and other Federal and State agencies and Federally Recognized Tribes to meet in a conference to develop a joint study plan to the extent possible, and to document any disagreements.
- Provides an opportunity for FERC and other Federal and State conditioning agencies including Federally Recognized Tribes to attempt to resolve conflicting and inconsistent license terms prior to FERC's licensing decisions.
- Allows participation by all relicensing participants in these technical conferences and consultations.
- Establishes an opportunity for FERC, Federal, state and local agencies, and Federally Recognized Tribes to cooperate in preparation of the environmental assessment or environmental impact statement. Allows cooperating entities party status in the licensing proceeding, with protections against *ex parte* communications.
- Provides that administrative costs recovered in annual charges for Federal agencies' direct costs be refunded to the relevant Federal agency, with public review of annual charges determinations.
- Allows for recovery of administrative costs incurred by Federally Recognized Tribes and State agencies through a fund created by re-allocating other annual charges that FERC currently directs to the Treasury.

### **Expands the authority for Federally Recognized Tribes to protect their lands, waters, other resources and treaty-protected rights**

- Shifts Federal Power Act (FPA) § 4(e) mandatory conditioning authority from the U.S. Department of the Interior to a Federally Recognized Tribe for any project located on land held in trust within the exterior boundaries of a Tribal reservation.
- Requires Federal land management agencies, when developing their FPA § 4(e) mandatory conditions, to consult with the Secretary of the Interior and any potentially affected Federally Recognized Tribes regarding the obligations of the United States that apply in the project area under any effective federal treaty with a Federally Recognized Tribe.

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- Imposes an obligation on FERC and other agencies to meet federal obligations applicable to a federal treaty with a Federally Recognized Tribe.
- Extends FPA § 10(j) recommendation authority to Federally Recognized Tribes during the licensing of a project that may affect treaty rights.

**Promotes a culture of “show your work” in hydropower licensing**

- Requires that mandatory conditions under FPA § 4(e) be reasonably related to project effects on federal lands.
- Modifies Federal Power Act § 18 to require that any fishway prescribed by the Secretary be “as appropriate to address project effects and other relevant factors.”
- Requires Federal agencies and Tribes with mandatory conditioning authority under FPA § 4(e) or § 18 to provide a rationale for their decisions on submitted alternatives under § 33.
- Modifies the trial-type hearing process for mandatory conditions under FPA § 4(e) and § 18 by: (1) allowing hearing on disputed issues of material fact relative to an alternative condition or prescription proposed by the licensee or another party; (2) placing the burden of proof on proponents of disputed issues or alternatives; and (3) providing opportunities for all parties to hearings to participate in settlement negotiations.
- Requires FERC, Federal agencies, and Federally Recognized Tribes to cite to specific parts of documents relied upon for their findings and to state the basis for reliance on the cited information in making their findings.

**Addresses climate change in the hydropower licensing process**

- Directs FERC, mandatory conditioning agencies and Federally Recognized Tribes to consider climate change and changing project effects under a changing climate when developing their license conditions.
- Requires FERC to stay abreast of, and incorporate, climate science and analytical tools through periodic technical conferences convened in consultation with the U.S. Department of Energy.

**Provides improved evaluation of projects during the licensing process**

- Defines the terms “ongoing effect” and “reasonably foreseeable effect,” and defines “project effects” as such ongoing and reasonably foreseeable effects.
- Directs FERC, other Federal agencies, and Federally Recognized Tribes to consider whether any ongoing or reasonably foreseeable adverse effect on any fish species can be mitigated by providing access to habitat upstream or downstream of project dam(s), or by maintaining or improving downstream habitat, or by off-site mitigation.
- Improves the analysis of present and reasonably foreseeable future project economics, taking into account market conditions.
- Requires FERC, licensees, and other parties to disclose hydrologic data and models used in licensing proceedings, subject to protections for intellectual property.

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- Permits consideration of off-site mitigation measures, as appropriate to supplement on-site measures.

**Requires improved processes for license surrender and for addressing non-operational facilities**

- Directs FERC to establish procedures for license surrender proceedings that include timelines, as well as requirements for documentation and public participation that start early in the process.
- Establishes a program for addressing long-standing non-operational projects.

**Provides opportunities for expedited licensing of certain low-impact projects**

- Provides for a two-year licensing process for certain projects at qualifying non-powered dams.
- Provides for a three-year licensing process for certain closed-loop and off-stream pumped storage projects.

**Supports new technologies**

- Requires FERC and other resource agencies to consider innovative solutions and emerging technologies as a means of meeting their responsibilities and authorities in hydropower licensing.
- Requires FERC to conduct a study investigating opportunities and challenges for expanding micro hydropower resources.

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