



Hydropower

Regulatory History

Prior to 1920, hydropower developers needed a special act of Congress to build and operate a project on navigable streams of Federal lands. In 1920, in response to increased demand for electricity during World War I, Congress enacted the Federal Water Power Act which established the Federal Power Commission. The FPC was composed of the Secretaries of War, Department of Agriculture, and the Department of the Interior and was responsible for licensing non-Federal hydropower projects that affected navigable waters, occupied Federal lands, used water or water power at a government dam, or affected the interests of interstate commerce. The Act also required the FPC to license only those projects that in its judgment were "...best adapted to a comprehensive plan for improving or developing a waterway or waterways...." In addition, the FWPA included provisions for protecting the public's interest in the use of a national resource (i.e., rivers). In 1930, the FPC was reorganized into an independent Commission composed of five members appointed by the President with the advice and consent of the Senate.

In 1935, Congress amended the Federal Water Power Act of 1920 as Part I of the Federal Power Act. This legislation extended the FPC's authority to regulate the interstate aspects of the electric power industry. In the Department of Energy Organization Act of October 1, 1977, Congress created the Federal Energy Regulatory Commission and abolished the FPC. The Commission inherited most of the work done by the FPC, including the licensing of non-Federal hydroelectric power projects.

On October 16, 1986, Congress passed the Electric Consumers Protection Act, which amended the Federal Power Act. Major changes included provisions for the following:

- New procedures for processing re-license applications - increasing opportunities for Federal and State agencies, interested organizations, and the public to participate in the process;
- A requirement that FERC base its recommendations for mitigating adverse effects of a licensing proposal on the recommendations of Federal and State fish and wildlife agencies and to negotiate with the agencies if disagreements occur;
- A requirement for FERC to give the same level of consideration to the environment, recreation, fish and wildlife, and other nonpower values that it gives to power and development objectives in making licensing decisions; and
- Authority for FERC to issue compliance orders and assess civil penalties of up to \$10,000 per day for violation of rules, regulations, and license terms and conditions.

On October 24, 1992, Congress enacted the National Energy Policy Act, which:

- Keeps licensees from using the right of eminent domain in parks, recreational areas, or wildlife refuges established under State law;
- Allows applicants for a license to fund environmental impact statements, referred to as third-party contracting; and
- Authorizes FERC to assess licensees for costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies for studies and other reviews for the purposes of administering their responsibilities under the Federal Power Act (although, monies collected on behalf of Federal and State fish and wildlife agencies is directly reimbursed to the treasury - not to the specific agency that incurred the cost).

