
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION PROVIDES COMPREHENSIVE GUIDANCE ON SETTLEMENTS IN HYDROELECTRIC LICENSING PROCEEDINGS

The Federal Energy Regulatory Commission today issued a policy statement in the form of a guidance document for participants in settlement agreements associated with hydroelectric licensing cases, to help parties determine which conditions are appropriate for inclusion in those agreements.

Commission Chairman Joseph T. Kelliher observed:

“Providing clear hydropower settlement guidance has been a priority for me since I became Chairman, and I am glad we are acting today. The Commission supports settlements in hydropower licensing proceedings. This policy statement should facilitate settlements, by recognizing and identifying the limit on what settlement terms can properly be incorporated into a FERC hydropower license. To the extent parties are willing to agree to terms that cannot be included in a license, they can enter into side agreements enforceable in forums other than the Commission.”

The policy statement does not represent a change in Commission policy or precedent. Instead, it recapitulates Commission precedent and case law, draws broad principles, explains the law and provides clarity.

In the past, some settlement agreements have included conditions that did not meet the requirements of the Federal Power Act. It is the Commission’s hope that by providing a review of the principles established in orders dealing with settlements, parties can streamline their settlements to include only appropriate provisions. Settlements, the Commission noted, “save time and money, avoid the need for protracted litigation [and] promote the development of positive relationships among entities.”

When considering a settlement, the Commission said, parties should consider existing information and prelicense studies to determine the environmental effects of the proposed project. Based on this record, parties should develop appropriate environmental measures to address those effects. In addition, parties should take into account recent

Commission precedent and prepare an explanation of the settlement to enable the Commission to better understand the parties' intent.

The Commission said the following principles should be considered when considering measures to be included as conditions of licenses:

- Measures must be based on substantial evidence in the record of the licensing proceeding.
- Measures must be consistent with the law and enforceable. In particular, measures must be within the scope of the Commission's jurisdiction.
- A relationship must be established between a proposed measure and project effects or purposes.
- Measures should be drafted as narrowly as possible, with specific measures preferred over general measures.
- Actions required under measures should occur physically or geographically as close to the project as possible.
- Measures must reserve the Commission's compliance authority, as well as its authority to review and modify as necessary proposed resource or activity plans.

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