



To Whom It May Concern:


In the Winter of 1998, the Federal Energy Regulatory Commission, the Departments of the Interior, Commerce, Agriculture, and Energy, the Council on Environmental Quality, and the Environmental Protection Agency formed the Interagency Task Force to Improve Hydroelectric Licensing Processes. Through the deliberations of agency staff, and with regular input from key non-federal stakeholders, the task force has made significant progress in developing administrative reforms that will make the hydropower licensing process more efficient and effective.

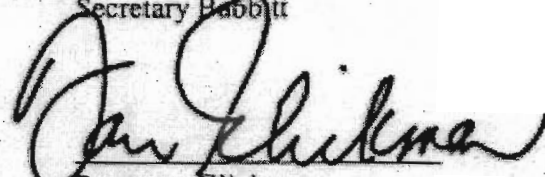
The attached documents provide a summary of the commitments that our respective agencies have made through the Interagency Task Force and as individual agencies dedicated to reform. We are committed to ensuring that our collective efforts result in a greatly improved hydropower licensing program that well serves the public interest.

Signed,


Chairman Hoecker


Secretary Daley


Secretary Rabbitt


Secretary Glickman

May 22, 2000

000531-0400-3

**JOINT STATEMENT OF COMMITMENT
FOR AN
IMPROVED HYDROPOWER LICENSING PROCESS**

Hydropower projects regulated by the Federal Energy Regulatory Commission produce over five percent of all electric power generated in the United States and thus are an important part of the nation's power mix. Streamlining the licensing process – while continuing to find public interest solutions that balance power generation, natural and cultural resource protection, recreation, irrigation, flood control, and other public purposes served by hydroelectric projects – is essential to ensuring the viability of this energy source.

In the Winter of 1998, the Federal Energy Regulatory Commission, the Departments of the Interior, Commerce, Agriculture, and Energy, the Council on Environmental Quality, and the Environmental Protection Agency formed the Interagency Task Force to Improve Hydroelectric Licensing Processes (ITF). Through the deliberations of agency staff, and with regular input from key non-federal stakeholders, the task force has made significant progress in making the hydropower licensing process one that is more efficient and effective, and results in sensible and more timely licensing decisions.

In pursuing these important reforms, the task force has actively sought input from the public. In August of 1999, the task force took formal steps to seek such input by forming an advisory committee comprised of representatives from licensees, non-governmental organizations, tribes, states, and counties. The advisory committee has proven to be a useful vehicle for providing non-federal stakeholders with an opportunity to weigh in on the deliberations and reform efforts of the task force as well as for the task force to better understand, and try to address, the concerns of outside stakeholders. The advisory committee has met three times in the last seven months and will continue to collaborate with the task force until the end of this year when the work of the task force is scheduled to be completed.

The task force has made significant progress in its reform effort. The various attachments to this statement set forth some of the accomplishments of the ITF in more specific detail. In addition to producing concrete policy changes, the ITF also has been a catalyst for notably improved communications and relationships among ITF participants and other non-federal stakeholders with an interest in hydropower licensing. While the task force intends to bring its work to completion in the Fall, the agencies represented on the task force are committed to continuing to work together to ensure that the solutions developed by the task force are institutionalized in the policies and procedures of each participating agency. This post-ITF implementation phase will include an outreach component designed to ensure that all staff involved in hydroelectric licensing – at headquarters and regional levels – understand the benefits of adopting task force solutions.

Agencies are also taking noteworthy steps to improve their hydropower licensing practices in ways that go beyond the scope of what is being done through the task force itself. Most recently, the Departments of the Interior and Commerce have committed to establishing a public review process for their mandatory conditioning authorities. Attachment A summarizes the accomplishments of the ITF while attachments B, C, D, and E describe other improvements or commitments made by individual agencies.

Attachment A

Interagency Task Force to Improve Hydroelectric Licensing Processes Summary of Accomplishments

Representatives of the Federal Energy Regulatory Commission, the Department of Agriculture, the Department of Commerce, the Department of Energy, the Department of the Interior, the Environmental Protection Agency, and the Council on Environmental Quality comprise the Interagency Task Force to Improve Hydroelectric Licensing Processes (ITF). ITF working groups, which also include representatives from the Advisory Committee on Historic Preservation and State agencies, have been reviewing the process by which the Commission, with the input of the listed federal agencies and other participants, issues licenses for non-federal hydropower projects. To date, the task force has accomplished the following:

- **Noticing procedures** The ITF has completed a report which reviews the manner in which the Commission alerts the public and other agencies of proposed hydropower licensing actions. The report proposes changes in Commission and resource agency procedures which expedite issuance and receipt of notices and improve overall communication among federal agencies. The Commission has implemented these changes.
- **NEPA process** The ITF has completed a report which examines the manner in which the environmental impacts of hydropower licensing actions are studied and alternative actions are proposed and evaluated. The report recommends changes that will facilitate better coordination among federal agencies and enable all interested parties to understand and more efficiently work within the NEPA process.
- **Studies** The ITF has completed a draft report which provides basic guidelines on how to identify resource issues, identify and conduct necessary studies during the pre-filing stage, resolve disputes over studies, and address issues related to post-filing studies. These new procedures should help make the licensing process more efficient and eliminate or help resolve disputes early on in the process.
- **Endangered Species Act consultation** The ITF currently is developing an integrated and streamlined process by which the Commission and the resource agencies coordinate Section 7 consultation under the Endangered Species Act with the Commission's traditional licensing process, to facilitate timely licensing actions.
- **Enforceable license conditions** The ITF has completed a draft report which provides guidance to state and federal agencies on how to draft clear and enforceable license conditions, particularly those pertaining to the Coastal Zone Management Act and Section 401 (water quality certification) under the Clean Water Act.

- **Alternative Licensing Procedures** The ITF has completed draft guidelines for use by all stakeholders involved in FERC's alternative licensing procedures (ALP, or "collaborative process"). The guidelines supplement FERC's ALP regulations and are designed to, among other things, assist stakeholders in identifying resource management goals early in the process, establish clear ground rules for participating in an ALP, and help resolve disputes as they arise.
- **Off-the-record communications** The ITF provided useful input to the process whereby the Commission revised its regulations governing off-the-record (i.e., *ex parte*) communications. The new regulations – which were issued in final form on September 15, 1999 – facilitate communications among the participants in hydropower licensing proceedings.
- **Economics** The ITF completed a draft report on how the Commission and the other federal resource agencies use economic information in the Commission's licensing process and in other regulatory fora related to resource protection. This report examines the different types of economic analyses used by different federal agencies and outlines the types of economic data and methodologies that are available.

In addition to the report on endangered species coordination, the ITF will be issuing draft reports in the coming months on issues relating to Sections 4(e), 10(j), and 18 of the Federal Power Act as well as on issues related to the post-licensing phase of hydropower operations.

Attachment B

Actions or Commitments by the Federal Energy Regulatory Commission

The Commission has the responsibility under the Federal Power Act to license non-federal hydropower projects. Over the last several years, Commission staff has been engaged in a major effort to improve the hydroelectric licensing process. As part of that effort, Commission staff has undertaken or commits to the following actions:

- ***Supporting collaborative procedures*** The Commission has promulgated regulations to encourage use of more collaborative alternative licensing procedures. The Commission has also made a significant commitment of its staff resources to support alternative licensing processes, and all collaborative efforts with the applicant and stakeholders. Such processes have led to better understanding of the issues, and often to settlement of some or all of the issues in licensing proceedings. This, in turn, leads to more timely processing of applications and less litigation.
- ***Supporting settlements*** The Commission has committed significant resources to participation in settlement discussions, when requested by the stakeholders.
- ***Clarifying settlement policy*** Commission staff will work to clarify the Commission's policy on jurisdiction over, and enforcement of, settlements, so that participants in hydropower licensing settlements will have a clear understanding on what matters the Commission considers to be within its jurisdiction versus those for which the settlement parties may need to seek alternative enforcement procedures.
- ***Continuing staff efforts to meaningfully involve Tribes in the licensing process*** Commission staff is committed to increase direct consultation with the Tribes, in order to ensure an understanding of Tribal issues and concerns.
- ***Implementing ex parte reforms*** The Commission recently reformed its rules on *ex parte* communications which aim to improve communication during licensing proceedings consistent with maintaining a fair process.
- ***Active outreach*** Commission staff has conducted, and will continue to conduct, outreach meetings throughout the country to educate stakeholders about licensing and alternative licensing approaches available to them, and to assist stakeholder understanding of past Commission actions and regulation.
- ***Implementing progressive environmental policies*** Commission staff will continue to conduct scoping for all license and relicense applications and to issue draft environmental assessments for public comment. (While regulations require the issuance of draft environmental impact

statements, there is no such requirement for draft environmental assessments.) This approach provides a greater opportunity for timely agency, tribe, applicant, and public input.

- ***Quick turnaround in dispute resolution regarding studies*** Commission staff commits to provide a quick response to parties who request staff guidance regarding disputes over what studies should be performed to support the licensing process.
- ***Using ad hoc groups to address specific issues*** Where issues arise that appear common to a number of licensing proceedings, such as cultural resources and Forest Service issues, Commission staff commits to supporting interagency groups to discuss such matters.
- ***Updating FERC relicensing handbook*** Commission staff commits to updating its relicensing handbook which provides guidance about the relicensing process. The new handbook will cover both licensing and relicensing in one volume and will include a section on alternative licensing procedures.
- ***Supporting the Interagency Hydropower Licensing Workshop*** Commission staff continues its commitment to working with staff from other agencies to teach the Hydropower Licensing Workshop, which provides detailed information about licensing processes and issues in an interactive forum with representatives from all sectors involved in hydro licensing.
- ***Improving noticing procedures*** Commission staff is implementing recommendations in the task force's report on noticing, in order to give other agencies and the public more information regarding the scope of licensing proceedings, as well as opportunities for intervention and comment.

Attachment C

Actions or Commitments by the Department of the Interior

The Department of the Interior is comprised of a number of bureaus which play a key role in the hydropower licensing process. They include: US Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and a host of departmental support offices and bureaus (e.g., Solicitor's Office, Office of Environmental Policy and Compliance, Office of Policy Analysis, and US Geological Survey).

In the fall of 1998, concurrent with the initiation of the interagency reform effort, the Department of the Interior initiated its own internal review of its practices, policies and procedures with regard to hydropower licensing. As a result of that review and subsequent reforms, the Department has committed to making the following improvements:

- ***Mandatory conditioning review process*** The Department of the Interior, together with the Department of Commerce, is committed to establishing a public review process for its mandatory conditioning authorities. The Departments have convened a joint drafting committee and are exploring a variety of approaches. The Departments have issued a Federal Register notice to get early input from the public as to how such a review process might work.
- ***Alternative Licensing Process*** The Department strongly endorses the good faith use of the alternative, or "collaborative," licensing process. The Department will support such use of, and participate in, the alternative process when a consensus to use the process exists among key agencies and stakeholders and when staff resources allow for the Department's full and effective participation.
- ***Anticipation of upcoming licenses*** By streamlining various administrative practices (e.g., early circulation of FERC notices, use of intervention templates), the Department's bureaus are now better able to anticipate and get involved early in upcoming relicensing projects.
- ***Coordination*** By convening Department staff on a periodic basis (e.g., through annual regional and national meetings) and creating a comprehensive GIS/web-based project data and tracking system, there is better opportunity to identify bureau interests, coordinate bureau responses to FERC actions, and share the workload required to constructively participate in concurrent relicensing projects.
- ***Consistency*** While recognizing the important differences among individual projects, especially from region to region, the Department has taken a number of steps to ensure that its approach to hydropower licensing is as consistent as possible among bureaus and across regions. These steps include: development of a hydropower licensing handbook; revision of internal procedural

memoranda; increased legal review of bureau comments; and annual Department-wide meetings which provide opportunity for training and coordination.

- ***Study requests*** In making study requests, the Department will provide the applicant with an explanation of resource management goals, study objectives, suggested methodologies, data collection and analysis techniques, and a clear nexus between project operations and effects on the resources being studied. The Department will work with other resource agencies and participants to develop joint study recommendations, thereby increasing the efficiency of the licensing process. The Department will also make available any information it has on resources within the project area.
- ***Coordinating recommendations and conditions*** In cases where the Department shares overlapping statutory authorities with another resource agency, it will seek to work with that agency to try to develop consistent and compatible recommendations and conditions. Where possible, the agencies will try to develop and submit to FERC a coordinated set of recommendations and conditions for proposed inclusion as a stand-alone “alternative” in FERC’s NEPA document.
- ***Coordinating resource agency participation*** In cases where there may be insufficient Interior bureau staff to fully participate in a given relicensing, the Department will seek opportunities to coordinate its efforts with other similar federal agencies, where appropriate (e.g., NMFS in the case of insufficient FWS staffing, or Forest Service in the case of insufficient BLM staffing).
- ***Staff training*** The Fish and Wildlife Service, with input and participation by the Department and other bureaus, is developing a pilot hydro licensing training program. The program is designed to give less experienced staff an opportunity to learn from veteran staff as well as to ensure that all bureau hydro staff are working in a way that is consistent with Department policy and with the other bureaus and regions. To that end, a module on legal issues and the importance of preparing a strong administrative record to support agency conditions will also be included in the training program. The Department is also developing a Hydropower Licensing Handbook that will also serve to improve consistency by creating a standard set of guidelines for all hydro staff to follow.
- ***Post-licensing*** Despite limited resources, the Department will try to continue its active role in the post-licensing arena, especially with regard to adaptive management and implementation of license conditions.

Attachment D

Actions or Commitments by the Department of Commerce

The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS), engages in a wide variety of activities designed to protect, mitigate damages to, and restore living marine and anadromous resources and the habitats upon which they depend. We pursue these objectives under various statutes including the Magnuson-Stevens Fishery Conservation and Management Act, Fish and Wildlife Coordination Act (FWCA), Endangered Species Act (ESA), and the Federal Power Act. NMFS plays a key role in the hydropower licensing process.

The Department has committed to making the following improvements:

- ***Mandatory conditioning review process*** The Department of Commerce, together with the Department of Interior, is committed to establishing a public review process for its mandatory conditioning authorities. The Departments have convened a joint drafting committee and are exploring a variety of approaches. The Departments have issued a Federal Register notice to get early input from the public as to how such a review process might work.
- ***Alternative Licensing Process*** The Department strongly endorses the good faith use of the alternative, or “collaborative,” licensing process. The Department will support such use of, and participate in, the alternative process when a consensus to use the process exists among key agencies and stakeholders and when staff resources allow for the Department’s full and effective participation.
- ***Training*** NMFS Headquarters staff provides hydro licensing training to regional staff as needed. NMFS regional staff have contributed to the development of the Hydropower Licensing Class sponsored by the US Fish and Wildlife Service National Conservation Training Center (NCTC).
- ***Internal Guidance*** NMFS is developing a Hydropower Licensing Handbook that will also serve to improve consistency by creating a standard set of guidelines for all hydro staff to follow.
- ***Interagency Coordination*** Headquarters and regional staff work with other resource agencies to coordinate our positions on hydropower issues, as well as coordinate with other interested entities.
- ***Intra-agency Coordination*** NMFS Headquarters staff serves as coordinators for NMFS's positions on hydropower issues around the country, and helps ensure consistency.

- **Interagency Task Force** Headquarters and regional staff are actively involved in the "Interagency Task Force to Improve Hydroelectric Licensing Processes" effort to develop administrative measures to streamline the hydropower licensing process.

Attachment E

Actions or Commitments by the Department of Agriculture

The U.S. Forest Service of the Department of Agriculture is responsible for protecting National Forest System (NFS) lands and natural resources that may be affected by FERC-licensed hydropower projects. As a result, the Forest Service plays a key role in the licensing process for projects situated on NFS lands.

In recent years the Forest Service and Department of Agriculture have increased their focus on hydropower licensing with the commitment of additional funding, personnel and internal programs designed to improve consistency, coordination and accountability. A brief description of these reforms is included below:

- **National Hydropower Initiative** Since 1998, the Forest Service has budgeted \$10 million annually to address the increased workload in hydropower relicensing. The additional funding has helped establish a National Hydropower Assistance Team (NHAT) comprised of experts in aquatics, terrestrial resources, recreation, wild and scenic rivers, and economics. The NHAT regularly meets with hydropower staff across the country to discuss hydropower issues and assist with specific licensing projects. This initiative has helped improve the Forest Service's quality control and consistency.
- **In-stream flow policy** The Forest Service is in the process of developing an in-stream flow policy to ensure a consistent approach to conditioning bypass flows for hydropower projects.
- **Internal review process for all 4(e) conditions** Before submitting preliminary 4(e) conditions to FERC, the local Forest Service office will submit draft conditions to the NHAT team for review and approval. This process, which is currently being developed, will help ensure that Forest Service 4(e) conditions are adequate to protect NFS resources, are consistent with Agency policy and federal law, and do not conflict with conditions submitted to FERC by other resource agencies.
- **Use of NEPA process for public review of mandatory conditions** Since the 1980s, the Forest Service has used the NEPA process in the formulation of mandatory 4(e) conditions, thereby ensuring the public an opportunity to review and comment prior to the Forest Service decision. The Forest Service is exploring ways of streamlining its NEPA process with that of FERC.
- **Anticipation and tracking of upcoming projects** The Forest Service has set up a National Hydropower Database to help hydro staff identify future licensing projects. Like its sister federal resource agencies, the Forest Service has revised its administrative practices to anticipate upcoming projects and allow it to participate early in the relicensing process.

- **Coordination and Consistency** To enhance nationwide consistency within the Agency, the Forest Service will publish a Hydropower Manual to serve as a compendium of its hydropower policies. Additionally, the Forest Service will publish a companion Handbook to provide general guidelines and assistance. These documents will prescribe procedures to ensure study requests reflect the nexus between project operations and natural resource effects. Moreover, the guidance will encourage the coordination of Forest Service licensing activities with other federal agencies. The Forest Service has been an active participant in the Fish and Wildlife Service-sponsored Hydropower Licensing Training Course.
- **Alternative Licensing Process** The Forest Service endorses the concept of the alternative, or “collaborative,” licensing process. The alternative licensing process is particularly attractive to the Agency where there is a real possibility of settlement and adequate staffing allows for consistent participation.
- **Study requests** In making study requests, the Forest Service will provide the applicant with an explanation of management goals, study objectives, suggested methodologies, and the nexus between project operations and natural resource effects. Where possible, the Agency will work with other resource agencies and participants to develop joint study recommendations, thereby increasing the efficiency of the licensing process.
- **Sharing information** To ensure that all participants in licensing proceedings have information about affected resources early in the process, the Forest Service will seek to timely provide whatever resource information it has to the interested parties (e.g., fishery studies).
- **Post-licensing** The Forest Service is reviewing its past involvement in the post-licensing arena and seeking ways of strengthening its role during this period.