

157 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RM17-4-000]

Establishing the Length of License Terms for Hydroelectric Projects

(November 17, 2016)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on what changes, if any, the Commission should make to its policy for establishing the length of original and new license terms for hydroelectric projects.

DATES: Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments, see the Comment Procedures section of this document.

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SUPPLEMENTARY INFORMATION:

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Establishing the Length of License Terms for
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Docket No. RM17-4-000

NOTICE OF INQUIRY

(November 17, 2016)

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on whether, and, if so, how the Commission should revise its policy for establishing the length of original and new licenses it issues for hydroelectric projects.

I. Background

2. Section 6 of the Federal Power Act (FPA)¹ provides that hydropower licenses shall be issued for a term not to exceed 50 years. There is no minimum license term for original licenses. FPA section 15(e)² provides that any new license (i.e., relicense) shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years.

¹ 16 U.S.C. 799 (2012).

² 16 U.S.C. 808(e) (2012).

3. It is current Commission policy to set a 50-year term for licenses issued for projects located at federal dams.³ For projects located at non-federal dams, the Commission's current policy is to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term for a license involving a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity.⁴ The purpose of this policy is to ease the economic impact of new costs, promote balanced and comprehensive development of renewable power generating resources, and encourage licensees to be better environmental stewards.⁵

4. Determining whether the measures required under a license are minimal, moderate, or extensive is highly case-sensitive and largely based on a qualitative analysis of the record before the Commission. In establishing the appropriate license term, staff initially examines the nature and extent of the required measures in the context of the project at issue,⁶ and then uses the cost of measures as a check on a qualitative conclusion that measures required under a relicense are minimal, moderate, or extensive. Further,

³ See *City of Danville, Virginia*, 58 FERC ¶ 61,318, at 62,020 (1992).

⁴ See *id.* (addressing original licenses); *Consumers Power Co.*, 68 FERC ¶ 61,077, at 61,384 (1994) (addressing relicenses).

⁵ *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,384.

⁶ For example, one type of fishway may be more expensive than another, and a fishway type that might be considered extensive for a small project could be seen as minimal for a larger one.

the Commission's policy is to take a forward-looking approach, such that measures adopted under a previous license term are not considered.⁷ It has also been the Commission's policy to set license terms that coordinate, to the extent feasible, the license terms for projects in the same river basin to maximize future consideration of cumulative impacts at the same time the projects are due to be relicensed.⁸

5. The length of an original license has not been contested on rehearing for some time. The length of a new license, however, has recently been contested in several relicensing proceedings. The arguments raised in these cases include that the Commission, when establishing the license term, should have considered, or given more weight to: capacity-related investments or environmental enhancements made by the licensee during the current license and before issuance of the new license;⁹ total cost of the relicensing process;¹⁰ losses in generation value related to environmental measures;¹¹

⁷ See, e.g., *Duke Energy Carolinas, LLC (Duke Energy)*, 156 FERC ¶ 61,010, at P 19 (2016); *Public Utility District No. 1 of Chelan County, Washington (Chelan PUD)*, 127 FERC ¶ 61,152, at PP 12-14 (2009); *Ford Motor Co.*, 110 FERC ¶ 61,236, at PP 6-8 (2005).

⁸ See, e.g., 18 CFR 2.23 (2016); *Chelan PUD*, 127 FERC ¶ 61,152 at P 18.

⁹ See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at PP 9-26; *Alabama Power Co.*, 155 FERC ¶ 61,080, at P 72 (2016); *Public Utility District No. 1 of Douglas County, Washington (Douglas PUD)*, 143 FERC ¶ 61,130, at PP 12-14 (2013); *Chelan PUD*, 127 FERC ¶ 61,152 at PP 12-14; *Georgia Power Co.*, 111 FERC ¶ 61,183, at PP 10-15 (2005); *Ford Motor Co.*, 110 FERC ¶ 61,236 at PP 6-8.

¹⁰ See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at P 14.

¹¹ See, e.g., *id.* P 12.

the license terms of projects that the licensee states are similarly situated to its project;¹² and the license term provided for in settlement agreements.¹³ In each circumstance, the Commission declined to deviate from its current policy to extend the length of the license.

II. Subject of the Notice of Inquiry

6. The Commission seeks comments on whether, and, if so, how the Commission should revise its policy for establishing license terms for projects located at non-federal dams. Below, we outline five potential options that Commission staff has identified for establishing license terms: (1) retain the existing license term policy; (2) add to the existing license term policy the consideration of measures implemented under the prior license; (3) replace the existing license term policy with a 50-year default license term unless the Commission determines that a lesser license term would be in the public interest (for example, to better coordinate, to the extent feasible, the license terms for projects in the same river basin for future consideration of cumulative impacts); (4) add a more quantitative cost-based analysis to the existing license term policy; and (5) alter current policy to accept the longer license term agreed upon in an applicable settlement agreement, when appropriate. We encourage comments on these options, as well as the

¹² See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at PP 20-23; *Alabama Power Co.*, 155 FERC ¶ 61,080 at PP 71, 75; *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056, at PP 39, 42 (2015); *Douglas PUD*, 143 FERC ¶ 61,130 at P 15.

¹³ See, e.g., *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056 at PP 40, 44; *Douglas PUD*, 143 FERC ¶ 61,130 at PP 18-19; *Chelan PUD*, 127 FERC ¶ 61,152 at PP 16-17.

suggestion of any other alternatives. While the Commission will consider comments filed, the Commission may not, and is not required to, take further action.

A. Retain Existing License Term Policy

7. The Commission could retain its current policy to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term where there is a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity. The Commission seeks comment on whether it should retain its current license term policy and on the following questions:

- i. What challenges does the Commission's current license term policy pose?
- ii. Does the Commission's current license term policy discourage licensees from investing in environmental and recreational enhancements or in development improvements (e.g., efficiency upgrades or project expansions) before relicensing? How so? What other factors affect whether and when a licensee makes such project enhancements or improvements?
- iii. Does a license term affect a licensee's ability to finance its project, and if so, how?
- iv. Does the Commission's license term policy affect the likelihood of parties reaching settlement agreements? How so?
- v. Does the current license term policy have benefits for stakeholders and affected resources? If so, please describe these benefits.

B. Consider Measures Implemented During a Prior License Term

8. In addition to considering measures required under the new license, the Commission could, when establishing the license term, consider measures implemented under the prior license.¹⁴ The Commission would have to determine which measures to consider (i.e., the timing and type of measures), and whether the considered measures justify a 30-, 40-, or 50-year license term. The Commission seeks comment on this policy option and on the following questions:

- i. Why should the Commission consider early measures when establishing a license term?
- ii. What measures should be considered under “early measures” and why? Should the Commission consider all early measures, including developmental, environmental, recreation, and maintenance activities? Are there certain types of measures that the Commission should not consider?
- iii. How would the Commission’s consideration of early measures affect whether and when licensees make non-developmental and developmental improvements?

¹⁴ “Early” measures could include: measures that the licensee implemented through an amendment of its existing license where such amendment did not extend the existing license term, and measures implemented by a licensee that were permissible under but not required by the existing license.

- iv. How should the Commission limit the scope of early measures considered?
Should the Commission only consider activities conducted within a certain number of years of relicensing?

C. 50-Year Default License Term

9. The Commission could establish 50 years as the default license term. A lesser license term could be set to coordinate, to the extent feasible, the license terms for projects in the same river basin for future consideration of cumulative impacts or for other appropriate reasons. Under the 50-year default option, parties other than the licensee would bear the burden of arguing that the license term should be less than 50 years. The Commission seeks comment on establishing a 50-year default license term and on the following questions:

- i. What would be the benefit(s) of the Commission establishing a 50-year default license term?
- ii. What factors, other than the coordination of license terms for projects in the same river basin, would weigh against the presumption of a 50-year default license term?
- iii. How would the default term affect license settlements and negotiations?

D. Quantitative Cost-Based Analysis

10. The Commission could include a more quantitative cost-based analysis that factors-in project size and capacity into its license term policy. The Commission seeks comment on using a more quantitative cost-based analysis to establish a license term and on the following questions:

- i. What costs should the Commission consider in a quantitative analysis?
- ii. How should cost be calculated? Should cost be calculated on a total cost or a on a cost per megawatt basis?
- iii. What weight should the Commission give to costs when establishing the license term?
- iv. The Commission licenses an array of small and large projects. How could the Commission account for project size and capacity when considering project costs?
- v. Commission staff relies on the cost information provided by the licensees. How could the Commission ensure the reliability of the cost information and to what extent would consideration of this type of information affect the licensing process?

E. Agreed-Upon Settlement Term

11. The Commission could establish the license term based on the term negotiated in a settlement agreement when appropriate. The Commission seeks comment on this policy option and on the following questions:

- i. How would establishing the license term based on the term agreed upon in a settlement agreement affect settlement negotiations?
- ii. When should the Commission not defer to the license term agreed upon in a settlement agreement?

III. Comment Procedures

12. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice, and any alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM17-4-000, and must include the commenter's name, the organization they represent, if applicable, and their address.
13. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.
14. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426.
15. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

16. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

17. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.