

**A Discussion of the Implementation of the National Environmental Policy Act (NEPA)
within the Federal Energy Regulatory Commission's Division of Hydropower Licensing
and a Comparison of NEPA within Their Three Licensing Procedures**

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Abstract. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. Under the authority of the Federal Power Act, as amended,¹ the Federal Energy Regulatory Commission (Commission or FERC) has the exclusive authority to license most *nonfederal* hydropower projects located on navigable waterways or federal lands, or connected to the interstate electric grid. Applicants for licenses may use the integrated, traditional, or alternative licensing process.

This paper discusses the implementation of NEPA within the Commission's Division of Hydropower Licensing (DHL) and analyzes the three aforementioned licensing processes. Issues such as purpose and need and establishing reasonable and viable alternatives will be discussed and areas such as tribal consultation, scoping, and preparation of the environmental document will be contrasted and compared.

National Environmental Policy Act

The National Environmental Policy Act of 1969 is our nation's basic charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy.² In accordance with NEPA, all federal agencies must prepare a written statement on the environmental impacts of a proposed action. NEPA provides that federal agency decision-makers, in carrying out their duties, have the responsibility to "use all practicable means" to:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, and environment which supports diversity and variety of individual choice;
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.³

The provisions to ensure that federal agencies act according to the letter and spirit of NEPA are in the Council on Environmental Quality regulations for implementing NEPA.

Federal Energy Regulatory Commission

The FERC is an independent agency that regulates the interstate transmission of

¹ 16 U.S.C. §791(a)-825r.

² 40 CFR §1500.1.

³ 42 U.S.C. §4331(b).

electricity, natural gas, and oil. The FERC also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines as well as licensing hydropower projects. The Energy Policy Act of 2005 gave the FERC additional responsibilities. As part of those responsibilities, the FERC:

- Regulates the transmission and sale of natural gas for resale in interstate commerce;
- Regulates the transmission of oil by pipeline in interstate commerce;
- Regulates the transmission and wholesale sales of electricity in interstate commerce;
- Licenses and inspects private, municipal, and state hydropower projects;
- Approves the siting of and abandonment of interstate natural gas facilities, including pipelines, storage and liquefied natural gas;
- Ensures the reliability of high voltage interstate transmission system;
- Monitors and investigates energy markets;
- Uses civil penalties and other means against energy organizations and individuals who violate the FERC rules in the energy markets;
- Oversees environmental matters related to natural gas and hydropower projects and major electricity policy initiatives; and
- Administers accounting and financial reporting regulations and conduct of regulated companies.

The Commission is composed of five members appointed by the President with the advice and consent of the Senate. The Commission is supported by a staff with environmental, engineering, and legal expertise, who, among other things, evaluate hydropower license applications and makes recommendations to the Commission on hydropower licensing matters. The FERC's hydropower responsibilities include:

- Issuance of licenses for the construction of a new project;
- Issuance of licenses for the continuance of an existing project (relicensing); and
- Oversight of all ongoing project operations, including dam safety inspections and environmental monitoring.

With respect to hydropower projects, the FERC safeguards the environment by:

- Ensuring that planned projects will minimize damage to the environment;
- Requiring that all hydropower applicants communicate with federal and state Natural Resources agencies, Indian tribes, and state water quality agencies prior to submitting an application to the FERC;
- Ensuring that all license applicants perform the necessary studies to base an informed decision on the project;
- Issuing environmental assessments (EA) or environmental impact statements (EIS) for comment.
- Incorporating license requirements designed to reduce environmental impacts; and
- Visiting projects that are requesting relicenses or license amendments. Scoping meetings are held to determine the most important environmental resources to address in an EA or EIS.

Overview of the Division of Hydropower Licensing

Hydropower projects (federal and non-federal) account for approximately 10 percent of all electricity generated in the United States. The FERC has the exclusive authority, pursuant to the Federal Power Act (FPA) as amended, to issue licenses or exemptions from licensing for non-federal hydropower projects. As of February 2009, the FERC regulates over 1,600 licensed or exempted hydropower projects; 1,028 licenses and 600 exemptions, representing over 54 gigawatts (GW) of authorized installed capacity, which is more than half of all hydropower in the United States.

The Division of Hydropower Licensing (DHL) is responsible for coordinating and managing the processing of hydropower project license applications. This includes determining the effects of licensing hydropower projects on environmental resources, the need for the project's power, and the project's economic viability; and for preparing environmental documents (EAs and EISs) that clearly describe the effects of the proposal and alternatives, recommend mitigation and enhancement measures, balance developmental and non-developmental resources, and recommend action to the Commission. The DHL staff has expertise in areas such as wildlife and fishery biology, recreation, cultural resources, and engineering.

The DHL has the responsibility, when deliberating the licensing of a hydropower power project, to consider all aspects of the public interest and to license only those projects that are consistent with the best comprehensive use of the waterway. The FPA also requires the FERC to give equal consideration to environmental resources and energy conservation, as well as developmental values such as power production. The responsibility of determining the proper balance between the development of hydropower power as a renewable energy source and environmental protection rests with the FERC. The most common issues the FERC considers in its environmental documents are water quality and quantity, in-stream flows for fish, fish passage, endangered species, reservoir level fluctuation, recreation, shoreline management, and the effects on cultural and tribal resources.

While the Commission's responsibility under the FPA is to strike an appropriate balance among the many competing developmental and environmental interests, several other laws, statutes, and executive orders affect the licensing process. These include, but are not limited to, the National Environmental Policy Act, the National Energy Policy Act of 1992, the Energy Act of 2000, the Energy Policy Act of 2005, the Clean Water Act, the Coastal Zone Management Act, Endangered Species Act, the National Historic Preservation Act, the Wild and Scenic Rivers Act, Americans with Disabilities Act, the Pacific Northwest Power Planning and Conservation Act, and the Fish and Wildlife Coordination Act, each with its own procedural and substantive requirements. Compliance with all these requirements involves a multitude of different processes ancillary to licensing.

Evaluation of Purpose and Need

Purpose of Action

The "Purpose of Action" section of an EA/EIS explains why the Commission requires a license for the project and, therefore, a NEPA analysis. It includes the alternatives that are assessed and a listing of the major issues that are addressed. This section explains that the proposed federal action is the Commission's decision whether to issue a license for the proposed project and, if so, what conditions should be placed in the license. The purpose of the proposed action is to determine whether to grant an application for the construction and operation, or continued operation, of hydropower and related facilities in compliance with FPA requirements and other laws. The following language is also included in this section:

“In deciding whether to issue a license for a hydropower project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (e.g., flood control, irrigation and water supply), the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.”

In addition to this general description, a brief description of the project-specific issues that will be addressed in the environmental document is included.

Need for Power

The "Need for Power" section of an EA/EIS presents the need (both project-specific and regional) for the power the hydropower project would generate, including total energy and capacity needs and fossil fuel displacement, and shows why providing that energy is important. Any plans or reports used to project future power demand are cited and how the project satisfies or would help satisfy these power demands is explained. If the applicant is not a utility, only the regional need for power is discussed, and the amount of power to be sold and, if known, identification of the purchasers is included.

Selection of Reasonable and Viable Alternatives

Developing a reasonable range of alternatives to be explored and evaluated is critical to ensuring that a NEPA document fully discloses the options before the decision maker and the affected public. One issue is whether certain types of alternatives need to be included in the NEPA document and to what extent such alternatives should be analyzed. Another issue is how the “no-action” and resource agency alternatives are developed and defined, and to what extent resource agency scoping comments, recommendations, and mandatory conditions are used in the development of alternatives.

The “Proposed Action and Alternatives” section of an EA/EIS explains: (1) the proposed project - the facilities and how they will operate, including any proposed environmental measures; (2) action alternatives to the proposal; and (3) the no-action alternative. Most environmental documents will have, at a minimum, three alternatives; the applicant's proposal, a staff alternative, and a no-action alternative. In rare cases, there may be no staff alternative.

In addition to the applicant’s proposal, staff alternative, and the no-action alternative, alternatives could also include, depending on the circumstances, an agency alternative or a project retirement alternative.

Applicant’s Proposal

This section describes proposed changes to the project, including changes in project facilities and operation, new environmental measures, and any proposed modifications to the project boundary.

Staff Alternative

The other action alternative analyzed throughout the environmental document, with rare exceptions, is a staff alternative. This may include modifications to the applicant’s proposal, along with additional measures that staff recommends, such as mandatory conditions under sections 4(e) or 18 of the FPA, fish and wildlife recommendations under section 10(j), and recommendations under section 10(a).

No-Action Alternative

The no-action alternative is the baseline from which to compare the proposed action and all action alternatives that are assessed in the environmental document. Under the no-action alternative, for relicenses, the project would continue to operate under the terms and conditions of the current license. For unlicensed, operating projects, the no-action alternative would be continuation of current operation. Thus the no-action alternative would include the existing facilities and current project operation.

Hydropower Licensing Processes

*Traditional Licensing Process*⁴

Prior to 1985, at a time when most applications were for original licenses for new projects, the Commission was compelled to reject many applications as patently deficient for failure to conduct studies necessary to evaluate the project. This failure commonly resulted from inadequate consultation between license applicants and federal and state resource agencies.

⁴ Unless otherwise noted, the information in this section is taken from the Report on Hydroelectric Licensing Policies, Procedures, and Regulations Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000; Federal Energy Regulatory Commission; May 2001.

Applicants were required to consult further with the agencies, conduct additional studies, and resubmit their applications. This cycle of inadequate initial consultation, rejection, reconsultation, and resubmittal of an application often wasted the time, resources, and money of the applicants, the agencies, and the Commission.

To make the process more efficient, the Commission revised its consultation regulations in 1985, establishing what is now referred to as the traditional licensing process (TLP). The substantive elements of the TLP are essentially the same for original and new licenses, but detailed procedural and information requirements specifically applicable to relicenses were issued in 1989 to implement the relicensing provisions of the Electric Consumers Protection Act of 1986 (ECPA), including deadlines for applicants and agencies to complete the steps of the prefilings process so that an applicant would be able to timely file the application for a new license.

The Commission then adopted further revisions to its procedural regulations for all applications for hydropower licenses, implemented other provisions of ECPA, especially Section 10(j) of the FPA, and made the licensing process more efficient, fair, and understandable for all participants. In the latter regard, the Commission clarified and improved many of the regulations governing prefilings consultation and hearing practices. These improvements included adding a requirement for applicants to meet with consulted entities during the first stage to discuss potential alternatives and study requirements and for consulted entities to provide follow-up comments in writing, increasing opportunities for public and Indian tribe participation in prefilings consultation, expanding the time for agency review and comment on draft license applications, adding a process for resolving disputes over necessary scientific studies, and establishing deadlines for various prefilings activities.

In 1992, the Commission further amended the license application and post-license issuance regulations to remove several outdated or unnecessary requirements. In 1993, the Commission convened a Relicensing Roundtable with stakeholders on ways to improve licensing. As a result of that event, the Commission committed to increasing the number of multi-project NEPA documents for applications for projects in the same river basin or subbasin; revised its policies on license terms to help ensure coordination of future relicensing proceedings in the same river basin or subbasin, began issuing draft environmental assessments (EAs) for comment; agreed to include license articles providing for reopening of licenses to consider cumulative environmental impact issues raised by future applications in the same basin or subbasin; and involve Commission staff earlier in the process where possible.

The TLP, as it exists today, is described below. During the stage one, applicants must consult extensively with relevant federal and state resource agencies, affected land managing agencies, Indian tribes, and state water quality agencies. The applicant must provide the consulted entities with detailed information describing the proposed project (initial consultation document). This is followed by a joint meeting with the agencies open to the public to discuss the proposed project and the data and studies that the applicant will provide as part of the consultation process. The consulted entities have an opportunity to make additional written comments and study requests following the meeting.

During the second stage of consultation, the applicant must perform any reasonable studies that are necessary for the Commission to make an informed decision on the application. The applicant completes its draft application, which includes the results of the studies; proposed protection, mitigation, and enhancement measures based on the study results; and the applicant's responses to the consulted entities written comments and recommendations made during stage one. The applicant must then send a copy of its draft application to the consulted entities, allowing them 90 days for review and comment. If the applicant and a consulted entity are not able to agree on necessary studies, either participant may submit to the Director of the Office of Energy Projects a request for dispute resolution. Based on the disagreeing parties' submissions, the Director will issue a written resolution. An applicant who disagrees with the outcome of a dispute resolution is not required to conduct studies pursuant to the resolution but, if it elects not to, must include with its application an explanation of the basis for that decision.

The third stage of consultation is initiated with the filing of the license application, accompanied by certification that it simultaneously is being mailed to the consulted and other specified entities. Applicants are required to include, among other things, a summary of the consultation process and any written comments and recommended terms and conditions from resource agencies, Indian tribes, and the public, notice of remaining disagreements concerning study requirements, and a discussion of the basis for the applicant's disagreement with recommendations of the resource agencies or tribes.

In the case of existing projects, an application for a new license must be filed at least two years before the existing license expires. If no application is filed by the incumbent licensee, the Commission issues a notice seeking applications. If no other applications are received, the licensee is required to file an application to surrender the license.

When the application is filed, the Commission reviews it for deficiencies. If an application lacks all required information but does not have major deficiencies, the Commission keeps the application on file and sends the applicant a list of the deficiencies and establishes a schedule for the missing information to be supplied. When an applicant has cured all deficiencies, the Commission issues notice accepting the application for filing and setting deadlines for comments, interventions and protests.

Within 60 days after the application filing deadline, the Commission issues public notice of certain processing deadlines and the date for final amendments. License applicants sometimes file amendments that materially modify their application. Such amendments require pre-filing consultation, with the agencies having an opportunity to comment on the proposed amendment to the application. The applicant must respond to any comments in its amendment application. In many cases, scoping meetings are held in the vicinity of the project to help better determine the scope of environmental issues requiring analysis in the NEPA document and to narrow the scope of analysis to the extent feasible. In some cases, staff are able to conduct NEPA scoping via written submissions.

When additional information is no longer required, the Commission issues notice that the project is ready for environmental analysis (REA notice). The REA notice triggers a deadline for comments, recommendations, and mandatory conditions or prescriptions, and for replies to such

filings. When these filings are complete the Commission has all the information needed to prepare the NEPA document. If agencies are not ready to make their mandatory conditions and prescriptions known, they must file preliminary conditions and a schedule for filing final conditions. A draft NEPA document will be prepared using the preliminary conditions.

A chief advantage of the TLP is that the process is straightforward and familiar to licensees, agencies, non-governmental organizations (NGO), and the FERC. Therefore, there is little room for disagreement on the process. However, its chief disadvantage is that the both the pre-filing consultation process and the NEPA process follow an extensive study and consultation period, thus making the relicensing process duplicative and costly for both the licensee and the stakeholders. Often, stakeholders may become involved in relicensing only after the NEPA process begins and raise new issues after significant time and resources have been spent. This contributes to the often-contentious nature of the TLP.⁵

Alternative Licensing Process⁶

In Section 2403 of the EPACT, Congress authorized the Commission, in preparing a NEPA document in hydropower licensing proceedings, subject to certain conditions, to permit the applicant or its contractor or consultant to prepare an EA (Applicant Prepared Environmental Assessment, or APEA) or a contractor or consultant chosen and directed by the Commission and funded by the applicant to prepare an EIS (third party EIS). The provision left untouched the Commission's own responsibilities under NEPA.

The Commission initially implemented this provision of the Act by permitting hydropower applicants to explore alternative licensing procedures which would integrate the application preparation process under the FPA with the environmental review process under NEPA. The Commission's staff responded to such requests on a case-by-case basis. Staff advised potential applicants that staff could not participate unless entities that might reasonably have an interest in the contemplated hydropower application are invited to participate in the pre-filing process. Such entities included all resource agencies, Indian tribes, local governments, citizens groups, and members of the general public affected by the proposed project. In order to receive the necessary waivers of pre-filing consultation and application requirements, applicants were required to demonstrate the interest and commitment of substantially all agencies and key nongovernmental entities and to develop a communications protocol governing how the participants, including Commission staff, may communicate with each other during the pre-filing process. The process also included public and Federal Register notice requirements at various stages during the pre-filing process. The resulting license application would include a cooperatively developed record and an APEA. The first license application accompanied by an

⁵ The information in this paragraph is taken from "Relicensing Hydroelectric Power Projects – A Handbook for People Involved in Relicensing Hydropower Projects; The National Hydropower Association, March 1999.

⁶ Unless otherwise noted, the information in this section is taken from the Report on Hydroelectric Licensing Policies, Procedures, and Regulations Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000; Federal Energy Regulatory Commission; May 2001.

APEA prepared under an alternative process was filed in August 1995. The license was issued seven months later in March 1996.

In 1995, the National Hydropower Association (NHA) filed a petition for rulemaking. Like the cooperative alternative proceedings being fostered by staff, the goal was to shorten and simplify relicensing by eliminating repetitious steps in the pre-filing and post-filing stages by integrating the application preparation process under the FPA with the environmental review process under NEPA. The NHA proposal would also have involved Commission staff prior to the filing of the application, and afforded resource agencies and the public greater opportunities to participate in the pre-filing process. NHA also sought to promote settlements and to allow greater communication among parties and Commission staff by relaxing restrictions on ex parte communications. NHA's proposed revisions, including a "collaborative option" wherein participants could agree to an alternative process for preparing and evaluating an application for a new license, would have applied to all relicensing proceedings, regardless of whether there was a supporting consensus.

NHA's petition was opposed by most federal and state agency commenters that are active in licensing proceedings, and received only mixed support from the hydropower industry. It was uniformly opposed by NGOs. The proposal would, in effect, have eliminated the pre-filing consultation process, and required the Commission's staff to be involved in developing every application for a new license and to render decisions on the details of the steps required in that development. The Commission observed that it did not have the resources to carry out such an open-ended mandate and that if staff assumed the role of decision maker during pre-filing consultation for all proceedings, concerned parties (including applicants) might be discouraged from trying to form a consensus on how to study and resolve critical issues in a mutually satisfactory manner. The Commission was also concerned that NHA's proposal would have shortened the applicable time frames for responses and decisions in an inflexible manner, thus jeopardizing the development of a cooperative approach to resolving licensing issues.

These difficulties with NHA's proposal and the promising results of the voluntary pre-filing collaborative process initiated by the Commission staff led the Commission to instead propose refinement and codification of the latter process (Alternative Licensing Process, or ALP), and to leave intact the existing pre-filing and hearing procedures (traditional process) for use in proceedings where there is neither a consensus on suitable alternative procedures nor any reasonable prospect for their success in expediting the proceeding.

The goals of the ALP include integrating the pre-filing consultation process and the environmental review process, and the administrative processes associated with Section 401(a)(1) of the Clean Water Act, by facilitating greater participation by Commission staff and the public in the pre-filing consultation process, allowing the applicant to prepare an EA or a contractor to prepare an EIS, encouraging the applicant and interested persons to narrow any areas of disagreement, and promoting settlement of the issues raised by the applicant's proposal. Commenters almost uniformly supported the proposed ALP, and suggested various modifications. The final rule adopting the ALP included several revisions based on the comments, including notice, filing and service requirements, and provision for dispute resolution.

Integrated Licensing Process

In July 2003, the FERC introduced the Integrated Licensing Process (ILP), a new set of rules for obtaining a federal hydropower license. The ILP combines the tight deadlines of the TLP with some components of the ALP that facilitate stakeholder collaboration. The result is a hybrid that offers more opportunities for public participation with very tight deadlines, especially in the initial information-gathering stages of the process. The ILP became the FERC's default hydropower licensing process in July or 2005. Power companies that wish to use the FERC's TLP or ALP must obtain the FERC's permission to do so.

The principal aim of the ILP is to make the licensing process more predictable, efficient, and timely while balancing stakeholder interests and improving the quality of decision making. The efficiencies expected to be achieved through the ILP are founded in three fundamental principles:

- Early issue identification and resolution of studies needed to fill information gaps, avoiding studies post-filing;
- Integration of other stakeholder permitting process needs; and
- Established time frames to complete process steps for all stakeholders, including the Commission.

The ILP includes concurrent environmental scoping pursuant to NEPA with the applicant's pre-filing consultation; increased public and Commission staff participation in pre-filing consultation; better coordination between the Commission's processes and those of federal and state agencies with authority to require conditions for Commission-issued licenses; development by the applicant of a Commission-approved study plan; encouragement of informal resolution of any study disagreements, followed by mandatory, binding study dispute resolution; and establishment of schedules and deadlines. This process is expected to significantly reduce the time needed to process applications after they are filed with the Commission. For example, the relicensing of the Mystic Lake Project (No. 2301) took one year from the filing of the application to issuance of the license.

Similarities and Differences Among the Processes

The ILP, TLP, and ALP have several basic steps in common. These include:

Prefiling:

- Consult with interested parties on issues and studies;
- Conduct studies; and
- Prepare license application

Postfiling:

- Seek comments from interested parties;
- Prepare EA or EIS and seek comments; and
- Weigh all information in record before Commission decision

The *fundamental* differences between the ILP, the TLP, and ALP are: (1) in an ILP and an ALP, the NEPA process begins early in the application preparation process; while in the TLP, the NEPA process does not begin until after the application has been filed and accepted, and all necessary studies are complete; (2) a license application prepared under an ALP contains a preliminary draft NEPA document, which is largely the product of stakeholder collaboration instead of an exhibit containing the results of environmental studies prepared solely by the applicant; and (3) Commission staff are involved in advising the team throughout ILP and ALP pre-filing activities, whereas in the TLP, Commission staff are very rarely involved in pre-filing consultation.

Key differences among the ILP, TLP, and ALP are outlined in the table on the following page.

	Traditional Licensing Process (TLP)	Alternative Licensing Process (ALP)	Integrated Licensing Process (ILP)
Consultation with Resource Agencies, Indian Tribes & Public	Paper Driven	Collaborative	Integrated
FERC Staff Involvement	Post Application filing	- Pre-Filing - Early involvement on requested basis	Pre-Filing; beginning at filing of NOI; early and sustained throughout process
Deadlines	- Pre-Filing; some deadlines for participants - Post-Filing; defined deadlines for participants	- Pre-Filing; deadlines defined by collaborative group - Post-Filing; defined deadlines for participants	Defined deadlines for all participants throughout the process, including the FERC
Study Plan Development	- Developed by applicant based on early agency and tribal recommendations - No FERC involvement	- Developed by collaborative group - FERC staff assist as resources allow	- Developed through study plan meetings - Plan approved by the FERC
Study Dispute Resolution	- FERC study dispute resolution available upon request - OEP Director issues advisory opinion	- FERC Study dispute resolution available upon request - OEP Director issues advisory opinion	- Informal dispute resolution available to all participants - Formal dispute resolution available to agencies with mandatory conditioning authority Three-member panel technical recommendation on study dispute - OEP Director issues binding opinion
Application	Draft and final application including Exhibit E	Draft and final application with applicant prepared EA or third-party EIS	Preliminary licensing proposal or draft application and final application including Exhibit E that has form and contents of EA
Additional Information Requests	Available to participants after filing of application	- Available to participants primarily before filing of application - Post-Filing requests available but should be limited due to collaborative approach	- Available to participants before filing of application
Timing of Resource Agency Terms & Conditions	- Preliminary terms and conditions filed 60 days after REA notice - Schedule for final terms and conditions	- Preliminary terms and conditions filed 60 days after REA notice - Schedule for final terms and conditions	- Preliminary terms and conditions filed 30 to 60 days after REA notice - Modified terms and conditions 60 days after comments on draft NEPA document

Conclusion

The hydropower licensing process has been criticized because of its lengthy nature. Implementation of the NEPA process, a major part of licensing, may contribute to this problem. If stakeholders (federal and state agencies, non-governmental organizations, tribes, and public citizens) do not get involved until late in the process, information is not developed early on, or the FERC is not promptly made aware of potential conflicts regarding licensing, action on a license application may be delayed.

Licensees may utilize three different licensing processes when applying to the FERC for a hydropower license. The TLP, the ALP, and the ILP all accomplish the requirements and goals of NEPA; however each process is different enough to meet the distinct needs of any hydropower project to be licensed. Since the ILP is the Commission's default licensing process, most licensees are utilizing this process for their applications. The Commission has issued three licenses under the ILP. Thus far, the ILP has proved to be a very timely and cost-efficient process. The relicensing of the Mystic Lake Project (No. 2301), the Morgan Falls Project (No. 2237), and the Canaan Project (No. 7528) took one year, 15 months, and 17 ½ months, respectively, from the filing of the application to the issuance of the license. These short licensing time frames have decreased the amount of money the licensees have had spend to process their applications. To this day, FERC continues to strive to make hydropower licensing as collaborative, balanced, and efficient as possible.