



July 19, 2018

Secretary Kimberly D. Bose
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: NOTICE OF PROPOSED RULEMAKING, ELIMINATION OF FORM 80 AND REVISION OF REGULATIONS ON RECREATIONAL OPPORTUNITIES AND DEVELOPMENT AT LICENSED HYDROPOWER PROJECTS (DOCKET NO. RM18-14-000)

Dear Secretary Bose:

On Wednesday, May 23, 2018, the Federal Energy Regulatory Commission (Commission or FERC) published in the Federal Register a Notice of Proposed Rulemaking entitled *Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects* (NOPR).¹ The NOPR proposes to “amend regulations to eliminate the Licensed Hydropower Development Recreation Report, designated as FERC Form No. 80” (Form 80), and proposes to “modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees’ compliance efforts.”²

The National Hydropower Association (NHA) appreciates the opportunity to submit these comments in support of the NOPR. NHA is a national non-profit association dedicated to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA’s membership consists of over 240 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys.

I. Removal of the Form 80 Requirement

Section 8.11 of the Commission’s regulations requires hydropower licensees under the Federal Power Act to file Form 80, a report submitted every six years on the use and development of recreational facilities within a licensed project.³ Form 80 requires licensees to report the number of visits, the use capacity for each type of recreation facility, and the annual costs to develop, operate, and maintain the public recreation facilities.⁴

¹ NOPR, 83 Fed. Reg. 23,848 (May 23, 2018).

² *Id.*

³ 18 C.F.R. § 8.11.

⁴ NOPR, 83 Fed. Reg. at 23,849.

The Commission recognizes that many licensed projects have project-specific conditions that require recreation management plans (RMPs). RMPs often make the information required under Form 80 “duplicative and of limited use to Commission staff when compared to the more detailed and descriptive recreation information submitted to the Commission in response to project-specific recreation requirements.”⁵ For projects without RMPs and with limited recreation opportunities, the Form 80 reports “do not provide an effective means to determine whether these projects are meeting public recreation needs.”⁶ The NOPR also states that Commission staff views the Form 80 data as a secondary resource.⁷

Though the Commission has proposed eliminating Form 80, the NOPR emphasizes that licensees will still be required to fulfill any project-specific license requirements and the general obligations set forth in § 2.7 of the Commission’s regulations.⁸ Also, licensees will remain bound by project-specific license conditions that are tied to the Form 80 filing schedule.⁹ The Commission notes that if such conditions exist under a license, and if the Commission’s proposed removal of Form 80 is implemented, the licensee could file a license amendment to remove any linkage between the license and Form 80.¹⁰ The Commission also expects licensees to continue to monitor project recreation resources “in a manner appropriate” for the type, size, and quantity of recreation opportunities provided by a project.¹¹

NHA supports the Commission’s proposed changes under the NOPR as outlined above. Specifically, NHA agrees that project-specific license requirements, including requirements to develop, implement, and update RMPs, provide a more efficient, accurate, and effective manner of communicating information to the Commission as compared to Form 80. For projects with an existing license requirement tied to the Form 80 reporting schedule, NHA agrees that licensees should have the opportunity to amend a license condition or RMP to eliminate the requirement that the license obligation be tied to the FERC Form 80 reporting schedule. NHA also supports the NOPR’s proposed requirement that licensees continue to monitor recreation resources in a manner that is appropriate given the type, size, and quantity of recreation at a licensed project, as it will allow for a more tailored approach to recreation resource monitoring. Moreover, NHA believes that the well-developed RMPs at many licensed projects already meet this standard.

II. Amendments to the Notice Requirements

The Commission is also proposing to revise 18 C.F.R. §§ 8.1 and 8.2 to “modernize public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees’ compliance efforts.”¹²

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 23,850.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 23,848.

Section 8.1 of the Commission’s regulations requires licensees, following the issuance or amendment of a license, to publicize through notices in local newspapers, any information regarding the availability of a project’s land and waters for recreational purposes and any recreation-related license conditions.¹³ The NOPR proposes to “require licensees with project websites to also post notice of recreation-related license conditions on its website.”¹⁴ This new requirement would only apply to a licensee that already has an existing project website or decides to develop a project website in the future.¹⁵

Section 8.2(a) requires licensees to post at each public access point a visible sign that identifies the project name, project owner, project number, directions to project areas available for public recreation, permissible times and activities, and other regulations regarding recreation use.¹⁶ The NOPR proposes to streamline these required disclosures.¹⁷ The proposed revisions would “require signs to, at a minimum, identify: the project name and number, and a statement that the project is licensed by the Commission; the licensee name and contact information for obtaining additional project recreation information; and permissible times and activities.”¹⁸

The NOPR also proposes to revise section 8.2(b) to “require licensees with project websites to include on their websites copies of any approved recreation plan, recreation-related reports approved by the Commission, and the entire license instrument.”¹⁹ This requirement would only apply to a licensee that already has an existing project website or decides to develop a project website in the future.²⁰

NHA supports the Commission’s proposed changes under the NOPR as described above. The additional notice, signage, and website posting requirements are not burdensome – rather, they provide increased flexibility to licensees, reduce the provision of unnecessary information, and recognize changes in the way the modern public obtains information.

III. FERC’s Notice Requirements Should be Further Modernized

Many of NHA’s members have expressed concern regarding the continued feasibility of the newspaper notifications under § 8.1. Technological developments and widespread consolidation in the newspaper industry have pushed out many locally-focused newspapers. As a result, many rural areas where a significant portion of FERC-licensed hydropower projects are located do not have an appropriate newspaper for such notifications.

NHA proposes that licensees who maintain project websites should be able to utilize those websites to satisfy the § 8.1 notice requirements in lieu of newspaper notification. If a licensee does not maintain a project website or if there is no local newspaper, then NHA proposes that the

¹³ 18 C.F.R. § 8.1.

¹⁴ NOPR, 83 Fed. Reg. at 23,850.

¹⁵ *Id.*

¹⁶ 18 C.F.R. § 8.2.

¹⁷ NOPR, 83 Fed. Reg. at 23,851.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

licensee be permitted to post notices through municipality and county websites or offices or to utilize town hall notices.

NHA believes that its proposed changes to the public notice requirements will effectively support the two-fold rationale stated in the NOPR to: (1) put prospective purchasers of land in the project vicinity on notice of the project's public access and recreation purposes; and (2) inform the general public of the location and terms of the use of the project's recreation purposes. At the same time, the proposed changes would recognize that many projects are in areas that are no longer supported by local newspapers.

IV. Conclusion

NHA commends the Commission's ongoing initiatives to reassess and revise its hydropower licensing regulations and policies, and supports the specific revisions set forth in the NOPR. NHA also encourages the Commission to implement additional regulatory reforms that improve, streamline, and modernize its regulations and policies. In particular, NHA urges the Commission to implement FERC Staff's Final Report issued in response to Executive Order 13783, *Promoting Energy Independence and Economic Growth*.²¹ The Final Report identified several hydropower regulations and policies that could be revised to improve the hydroelectric licensing process, including many reforms advocated by NHA. NHA looks forward to working with the Commission as it implements these and other hydropower regulatory reforms.

Respectfully Submitted,



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President and CEO

²¹ Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017).