

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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

**COMMENTS OF AMERICAN PUBLIC POWER ASSOCIATION,
BROOKFIELD RENEWABLE, CALIFORNIA DEPARTMENT OF
WATER RESOURCES, GRAND RIVER DAM AUTHORITY, LARGE
PUBLIC POWER COUNCIL, LOS ANGELES DEPARTMENT OF
WATER AND POWER, NORTHWEST HYDROELECTRIC
ASSOCIATION, PORTLAND GENERAL ELECTRIC COMPANY,
PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY,
WASHINGTON, PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, WASHINGTON, SOUTH CAROLINA ELECTRIC & GAS
COMPANY, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, AND
YUBA COUNTY WATER AGENCY ON NOTICE OF INQUIRY TO
REVISE POLICY FOR ESTABLISHING THE LENGTH OF ORIGINAL
AND NEW LICENSE TERMS FOR HYDROELECTRIC PROJECTS**

Pursuant to the Notice of Inquiry (NOI) issued on November 17, 2016 in this docket,¹ American Public Power Association (APPA), Brookfield Renewable (Brookfield), California Department of Water Resources (California DWR), Grand River Dam Authority (GRDA), Large Public Power Council (LPPC), Los Angeles Department of Water and Power (LADWP), Northwest Hydroelectric Association (NWhA), Portland General Electric Company (PGE), Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD), South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority (Santee Cooper), and Yuba County Water Agency (YCWA) (collectively, Industry Commenters) hereby submit these comments in response to the Federal Energy Regulatory Commission's (FERC or Commission)

¹ *Establishing the Length of License Terms for Hydroelectric Projects*, FERC Stats. & Regs. ¶ 35,580 (2016), 81 Fed. Reg. 85,218 (Nov. 25, 2016) (hereinafter, NOI).

inquiry on whether to revise its policy for establishing the length of original and new license terms for hydroelectric projects. Industry Commenters believe the Commission should revise its license term policy and adopt a 50-year default policy for new licenses and all original licenses, with limited exceptions as described below.

I. INTRODUCTION

The Commission's NOI seeks comments 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. Under its current policy for new licenses, the Commission will set a 30-year license term for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; a 40-year license term for projects with a moderate amount of such activities; and a 50-year license term for projects with extensive measures² and for projects located at federal dams.³ Under its current policy for original licenses, the Commission will grant a 50-year license term for projects that entail construction of a new dam⁴ and projects at federal dams.⁵ For unconstructed projects at existing non-federal dams, similar to the new license term policy, the Commission will set a 30-year license term for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; a 40-year license term for projects with a moderate amount of such activities; and a 50-year license term for projects with extensive measures.⁶

² *Consumers Power Co.*, 68 FERC ¶ 61,077 at pp. 61,383-84 (1994).

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

⁴ *Little Falls Hydroelectric Assocs.*, 27 FERC ¶ 61,376 at p. 61,726 (1984).

⁵ *City of Danville, Va.*, 58 FERC ¶ 61,318 at p. 62,020.

⁶ *Consumers Power Co.*, 68 FERC ¶ 61,077 at pp. 61,383-84.

In its NOI, the Commission suggests, and seeks comments on, five potential options 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.⁷

Industry Commenters appreciate the opportunity to comment on this important and timely issue, and commend the Commission for soliciting comments and ideas to revise its license term policy that has long been an area of uncertainty and unpredictability, a source of frustration for hydropower licensees,⁸ and an area in which Congress has taken a recent interest.⁹

⁷ NOI at P 6.

⁸ See, e.g., Petitioner Brief, *Duke Energy Carolinas, LLC v. FERC*, No. 16-1296 (D.C. Cir. Dec. 5, 2016) (hereinafter, Duke Petitioner Brief); Request for Rehearing and Clarification of Public Utility District No. 1 of Chelan County, Project No. 2145-092 (filed Mar. 20, 2009); Alabama Power Company's Request for Rehearing of Order Issuing License and Request for Stay at 20-31, Project No. 2146-141 (filed July 22, 2013); Request for Rehearing and Clarification of Duke Energy Progress, Inc. of Order Issuing New License at 14-21, Project No. 2206-048 (filed May 1, 2015); Request for Rehearing of Public Utility District No. 1 of Douglas County, Wash. at 5-18, Project No. 2149-154 (filed Dec. 10, 2012); Southern California Edison Company's Request for Rehearing of the Order Issuing New License for the Big Creek No. 4 Hydroelectric Project at 3-6, Project No. 2017-020 (filed Jan. 5, 2004); Request for Rehearing of Georgia Power Company at 2-4, Project No. 2177-056 (filed Jan. 26, 2005); El Dorado Irrigation District Request for Rehearing at 3-5, Project No. 184-110 (filed Nov. 17, 2006); Request for Rehearing of FPL Energy Maine Hydro LLC at 10-14, Project No. 2283-037 (filed Oct. 23, 2006).

⁹ See Energy Policy Modernization Act of 2016, S. 2012, 114th Cong. § 3001(f) (2016).

Industry Commenters consist of industry trade associations and hydropower licensees who operate FERC-licensed projects located across the nation. It is comprised of independent power producers and investor-owned utilities as well as state and municipal licensees. Their projects range from some of the largest in the United States with hundreds of megawatts (MW) of installed capacity to small projects of less than 5 MW. Industry Commenters will be directly affected by any action taken by the Commission with respect to its license term policy and have a substantial interest in the issues presented in the Commission's NOI.

APPA is the national service organization representing the interests of not-for-profit, state, municipal, and other locally-owned electric utilities in the United States. One in seven electricity customers in the nation is served by public power. More than 2,000 public power utilities, operating in every state but Hawaii, collectively serve more than 49 million persons and account for over 15 percent of all electric energy (kilowatt-hours) sales to ultimate consumers. Hydroelectric projects comprise over 18 percent of public power's total generation. The primary goal of public power utilities is to provide customers in the communities they serve with reliable electric power and energy at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interest of public power utilities with the long-term interests of the residents and businesses in their communities.

Brookfield owns and operates one of the largest renewable businesses in the world, with approximately \$25 billion in assets. Diversified across 82 river systems and 15 power markets in North America, South America and Europe, Brookfield's portfolio is primarily hydroelectric and totals more than 10,700 MW of installed capacity. In the

United States, Brookfield owns nearly 140 hydroelectric facilities and seven wind farms, generating enough electricity from clean, renewable sources to power over 1.2 million homes each year.

California DWR is a state agency which operates the Oroville Facilities, located on the Feather River in Butte County, California. The 762 MW hydroelectric project is part of the State Water Project, a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants. The Oroville Facilities license expired in 2007 and California DWR is awaiting a new license. California DWR also is co-licensee with LADWP of the 1,630 MW South SWP Hydropower Project, currently undergoing relicensing.

Chelan PUD is a municipal corporation organized under the laws of the State of Washington and is authorized under Washington state law (RCW Title 54) to engage in the business of generating, transmitting, and distributing electric energy. Chelan PUD is the licensee for the Rocky Reach Project and the Rock Island Project, both of which are located on the Columbia River. The authorized installed capacities of those hydroelectric projects are 865.73 MW and 409.60 MW, respectively. Chelan PUD is also the licensee for the 59 MW Lake Chelan Hydroelectric Project, which is located on Lake Chelan and discharges into the Chelan River at its confluence with the Columbia River. The Rock Island Project license expires in 2028.

Snohomish PUD is a municipal corporation organized under the laws of the State of Washington and is authorized under Washington state law (RCW Title 54) to engage in the business of generating, transmitting, and distributing electric energy. Snohomish PUD is the licensee for five hydroelectric projects in Snohomish and King Counties.

Snohomish PUD projects include the existing 650 kW Woods Creek Project, 7.5 MW Youngs Creek Project, and 111.8 MW Henry M. Jackson Project. In addition, Snohomish PUD is constructing two recently-licensed hydroelectric projects, the 6.0 MW Hancock Creek Project and the 6.0 MW Calligan Creek Project, and is actively pursuing and investigating additional hydroelectric projects in the area.

GRDA is an agency of the State of Oklahoma and is authorized under its Enabling Act (82 O.S. § 861 et seq.) to control, store, preserve, and distribute the waters of the Grand River and its tributaries for such purposes as hydropower, irrigation, raw water supply, and other useful purposes. Under these authorities, GRDA is the licensee for the 105.2 MW Pensacola Project, 127.5 MW Markham Ferry Project, and 259.8 MW Salina Pumped Storage Project. The Pensacola Project license expires in 2022.

LPPC is an association of the 26 largest state-owned and municipal utilities in the nation. LPPC's membership is located throughout the nation, both within and outside Regional Transmission System boundaries, and its members comprise the larger, asset owning members of the public power community.

LADWP, the largest municipal water and power utility in the nation, was established more than 100 years ago to deliver reliable, safe electricity and water to over four million residents and businesses in Los Angeles. LADWP provides its 1.4 million electric customers and 681,000 water customers with quality service at competitive prices. LADWP owns and operates the Castaic Power Plant, a pumped storage facility with a licensed capacity of 1,275 MW, as part of the South SWP Hydropower Project through a cooperative agreement with California DWR. As noted above, California

DWR and LADWP are currently in the relicensing process for the South SWP Hydropower Project.

NWHA is a non-profit trade association that represents and advocates on behalf of the Northwest hydroelectric industry. NWHA has 125 member companies from all segments of the industry. The members of NWHA provide approximately 21,450 MW of hydroelectric power. NWHA is dedicated to the promotion of the Northwest region's waterpower as a clean and efficient energy source while protecting the fisheries and environmental qualities that characterize the region.

PGE is an integrated electric utility serving nearly 1.5 million people in the Portland metropolitan area. PGE also makes wholesale purchases and sales throughout the Western United States. PGE is the licensee of the 138 MW Clackamas River Project located on the Clackamas River in Oregon, and the 17 MW Willamette Falls Project, located on the Willamette River in Oregon. PGE also is the co-licensee of the 371 MW Pelton Round Butte Project, located on the Deschutes River in Oregon.

SCE&G, a subsidiary of SCANA Corporation, is an electric and gas regulated public utility operating within the State of South Carolina. SCE&G is the licensee of the 207 MW Saluda Project, located on the Saluda River in South Carolina, and the 526 MW Parr-Fairfield Project, located on the Broad River in South Carolina. SCE&G also is the licensee of the 17 MW Stevens Creek Project, located on the Savannah River between Georgia and South Carolina, and the 4 MW Neal Shoals Project, located on the Broad River in South Carolina. SCE&G is currently in the relicensing process for both the Saluda and the Parr-Fairfield Projects.

Santee Cooper is South Carolina's state-owned electric and water utility created in 1934 for rural electrification and public works. Santee Cooper is the primary source of electricity for approximately 2 million people in all 46 counties of South Carolina, and provides wholesale water through the Santee Cooper Regional Water System and the Lake Marion Regional Water System. Santee Cooper is the licensee for the Santee-Cooper Project which created Lakes Marion and Moultrie with the construction of over 40 miles of dams and dikes. The 140 MW Jefferies Generating Station is located on the Cooper River and the 2 MW Spillway facility is located on the Santee River. The Santee-Cooper Project license expired in 2006 and is currently in the relicensing process.

YCWA is a local public agency of the State of California established by a special act of the Legislature.¹⁰ YCWA is mandated by the California Legislature to perform functions of statewide importance, including the beneficial development and supply of water, and flood control. YCWA supplies water and flood control services within Yuba County and has become an important provider of supplemental and emergency water supplies for consumptive and environmental uses within other areas of California. YCWA also is the licensee of the 362 MW Yuba River Development Project, located on the North Yuba River. The Yuba River Project is a multiple-purpose project utilized for flood management, power generation, water supply, recreation, and the protection and enhancement of fish and wildlife, and is currently in the FERC relicensing process.

Industry Commenters favor continuation of the Commission's current policy of establishing 50-year license terms for original licenses that entail construction of a new dam and projects located at federal dams. In addition, Industry Commenters support a

¹⁰ See Yuba County Water Agency Act, 1959 Cal. Stat., ch. 788, *as amended*, Cal. Water Code App. §§ 84-1 et seq. (West 2011).

change in Commission policy to provide a default 50-year license term for all original licenses for unconstructed projects. With respect to relicensings, Industry Commenters support a default 50-year license term for new licenses, with limited exceptions for settlement agreements in which a licensee agrees to a license term of less than 50 years, or for coordination of license terms where a licensee or licensees voluntarily seek to coordinate licenses for multiple projects within a river basin. Should the Commission decline to adopt a 50-year default policy, Industry Commenters would support a 40-year default license term policy with credit (up to 10 additional years) for early action measures performed during the previous license term and deference to license term provisions included in relicensing settlement agreements. These changes to the Commission's license term policy will substantially improve the economic impact of new licenses on licensees and reduce the frequency of challenges to license orders on the issue of license term.

II. BACKGROUND

This is a critical time for the Commission to seek public comment on the effects of its license term policy on hydropower projects at relicensing. Between 2016 and 2030, over 500 projects will begin the relicensing process required by the Federal Power Act (FPA) and the Commission's regulations. This represents about half of all hydropower projects licensed by the Commission, and about 30 percent of the total hydropower licensed capacity under the Commission's jurisdiction.¹¹ The vast majority of these projects are very small; the median installed capacity of the projects is 2.5 MW.

¹¹ Testimony of Ann F. Miles, FERC, before the Committee on Energy and Commerce, Subcommittee on Energy and Power at 8 (May 13, 2015), available at <https://ferc.gov/CalendarFiles/20150513110741-Miles-testimony-05-13-2015.pdf>.

The relicensing process is lengthy, complex, and expensive for a licensee and for other participants, taking up to 10 years or more and costing millions or even tens of millions of dollars for the licensee alone. In addition, relicensing usually results in operating restrictions which lower generation output and/or decrease the value of project power, while increasing environmental mitigation costs. The prospect of incurring these increased operating costs, along with the expense of the relicensing process itself, sometimes can act as a deterrent to relicensing and lead to the decommissioning of the project.¹²

Hydropower is a clean, renewable, and flexible source of energy. However, hydropower continues to face increased competition from natural gas and from other renewable resources (including wind and solar) which do not face limited terms of operation or a lengthy and expensive permitting process,¹³ and have access to state and federal programs (i.e., renewable portfolio standards and production tax credits) which are generally not available to existing hydro assets. These factors have lowered power prices in the organized markets, discouraging new hydropower development and putting

¹² See *PacifiCorp*, 133 FERC ¶ 61,232 at P 7 (2010) (accepting surrender of Condit Project license because the licensee “considered the costs of the Final [environmental impact statement’s] environmental measures, including a mandatory prescription for an expensive fishway, to be economically unacceptable”); *PacifiCorp*, 108 FERC ¶ 61,130 at P 19 (2004) (accepting surrender of American Fork Project license because the licensee determined “the likely cost of environmental protection, mitigation, and enhancement measures associated with relicensing the project would make continued operation uneconomical.”); *Portland Gen. Elec. Co.*, 107 FERC ¶ 61,158 at P 16 (2004) (accepting surrender of Bull Run Project license because the licensee determined “the likely cost of environmental protection, mitigation, and enhancement measures associated with relicensing the project would make continued operation uneconomical.”); see also Gregory B. Poindexter, *Kennebunk utility will not relicense the 600 kW Lower Mousam hydroelectric project*, HydroWorld (June 20, 2016) (reporting that Kennebunk Light & Power District will notify FERC of its intent to surrender its license for Project No. 5362 in 2017 due to high relicensing costs).

¹³ See Testimony of John Suloway, National Hydropower Association, before the U.S. House of Representatives Energy and Commerce Committee, Power and Energy Subcommittee at 9 (Mar. 15, 2017), available at <http://docs.house.gov/meetings/IF/IF03/20150513/103443/HHRG-114-IF03-Wstate-SulowayJ-20150513.pdf> (explaining that “the regulatory approval processes for simple cycle turbine or combined cycle plants are generally 1-2 years, even in urban areas like New York City.”).

cost pressures on the existing fleet.¹⁴ Although hydropower provides a number of key transmission system benefits, including integration of variable generation sources such as wind and solar into the grid, it is inadequately compensated by regional transmission organization and independent system operator pricing mechanisms for those benefits as well as state and federal programs. As summarized by the Department of Energy in its recent Hydropower Vision report:

The full accounting, optimization, and compensation for hydropower generation, grid ancillary services and essential grid reliability services in power markets is difficult, and not all benefits and services provided by hydropower facilities are readily quantifiable or financially compensated in today's market framework. In both traditional and restructured market environments, many hydropower services and contributions are not explicitly monetized, and, in some cases, market rules undervalue operational flexibility.¹⁵

A long license term is vitally important to ensure continued investment in hydropower and to attract new hydropower development. A longer license term affords a licensee needed time to recoup the costs to implement a new license, which often includes new capital and maintenance costs, foregone energy and capacity, reduced flexibility of project operations, and increased continuous flow releases. It also defers the high costs of relicensing, which can be in the tens of millions of dollars.¹⁶ For these reasons, the length of the new license term is frequently an important factor in settlement

¹⁴ See Testimony of Ramya Swaminathan, Rye Development, before the U.S. House of Representatives Subcommittee on Energy at 7 (Mar. 15, 2017), available at <http://docs.house.gov/meetings/IF/IF03/20170315/105702/HHRG-115-IF03-Wstate-SwaminathanR-20170315-U1.pdf>.

¹⁵ U.S. Department of Energy, Hydropower Vision: A New Chapter for America's 1st Renewable Electricity Source at 48-49 (2016), available at http://energy.gov/sites/prod/files/2016/10/f33/Hydropower-Vision-10262016_0.pdf.

¹⁶ See Testimony of Randal S. Livingston, Pacific Gas and Electric Company, before the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Energy and Power at 2 (May 13, 2015), available at <http://docs.house.gov/meetings/IF/IF03/20150513/103443/HHRG-114-IF03-Wstate-LivingstonR-20150513.pdf>.

negotiations. Longer license terms encourage settlements, because the licensee has some certainty of its investment in the new license if the license term is included as a settlement term. A longer license term policy also could promote enhanced water resources stewardship by incentivizing early action measures, including capacity upgrades and resource protection measures, if the Commission recognized these early measures when setting the new license term.

The Commission's current new license term policy, however, discourages investment in hydropower development for several reasons. First, there is a lack of clarity, predictability, and fairness in the Commission's application of the current policy. The Commission does not treat similarly situated licensees in the same manner, and in fact declines to use its prior decisions on comparable projects when setting a license term.¹⁷ This leaves licensees unable to predict what measures they must commit to undertake in relicensing in order to secure a 50-year license. Second, the current policy relates the length of the new license term to the amount of redevelopment, new construction, new capacity, and environmental mitigation and enhancement measures that are authorized or required under the new license and allows no credit for investments made under the previous license. This discourages licensees from undertaking voluntary capacity upgrades and environmental improvements during the license term. While the Commission may, in rare instances, extend a license term up to the statutory maximum of 50 years for substantial improvements or project redevelopment during the license term,

¹⁷ *Duke Energy Carolinas, LLC*, 156 FERC ¶ 61,010 at P 23 (2016) (“[e]ach project is unique and comparing projects can be difficult” (citation and quotation marks omitted)); *see also Summit Hydropower, Inc.*, 90 FERC ¶ 61,087 at p. 61,296 (2000) (in response to the licensee’s comparison of its project to other projects with a comparable amount of new construction, the Commission responded that “[t]he appropriateness of license terms for other [] projects is irrelevant to the issue of the correct license term for this project.”).

the Commission will not extend a license term if the upgrades qualify as maintenance, even if it is extensive maintenance costing hundreds of millions of dollars and is on the eve of relicensing.¹⁸ Thus, unless a licensee gets a 50-year license on the “front end,” it is very difficult to extend the license to 50 years on the “back end.”

These problems with the Commission’s new license term policy have resulted in a number of challenges to new license orders, including an ongoing challenge before the U.S. Court of Appeals for the D.C. Circuit.¹⁹ These challenges will likely continue without a change to the Commission’s license term policy.

III. COMMENTS

A. The Commission Should Grant a 50-Year Original License for All Unconstructed Projects.

Industry Commenters support retention of FERC’s current policy to grant a 50-year license term for original licenses at projects that entail construction of a new dam²⁰ and projects at federal dams.²¹ New projects that require construction of a new dam require large investments of time and resources to obtain a license and substantial capital investments to construct. In addition, the Commission’s policy to grant the maximum statutory license term for original projects involving the construction of a new dam is consistent with Congress’s intent in the FPA to incentivize non-federal hydropower investment.²²

¹⁸ See *Mont. Power Co.*, 45 FERC ¶ 61,485 (1988), *reh’g denied*, 47 FERC ¶ 61,277 (1989).

¹⁹ See Duke Petitioner Brief, *Duke Energy Carolinas, LLC v. FERC*, No. 16-1296 (D.C. Cir. Dec. 5, 2016).

²⁰ *Little Falls Hydroelectric Assocs.*, 27 FERC ¶ 61,376 at p. 61,727.

²¹ *City of Danville, Va.*, 58 FERC ¶ 61,318 at p. 62,020.

²² See *S. Cal. Edison Co. v. FERC*, 116 F.3d 507, 513 (D.C. Cir. 1997).

Industry Commenters also support a change to the Commission’s current policy to provide for a 50-year default license term for all original licenses for unconstructed projects, not just those located at a federal dam or entailing construction of a new dam. Under current Commission policy, “original licenses for hydropower projects shall be issued for a period not to exceed 50 years” and the Commission will “establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures”²³ and projects located at a federal dam or that entail construction of a new dam, as described above. While many recently-issued original licenses for unconstructed projects receive a 50-year term because they are located at a federal dam or entail construction of a new dam, many receive terms of less than 50 years, but still involve costly construction of new powerhouses and/or fish passage facilities.²⁴ Certain other unconstructed projects could entail the construction of new hydropower facilities without the use of a dam, still costing hundreds of millions of dollars and, ironically, fewer environmental impacts than new dam construction, but not guaranteed a 50-year license under the existing policy.²⁵ Given the high capital costs and substantial investment

²³ See *City of Danville, Va.*, 58 FERC ¶ 61,318 at p. 62,020.

²⁴ See, e.g., *Lock 14 Hydro Partners, LLC*, 153 FERC ¶ 62,219 (2015) (granting original license to project at existing state lock and dam entailing construction of a new powerhouse with four generating units with a license term of 40 years); *Lock 12 Hydro Partners, LLC*, 153 FERC ¶ 62,220 (2015) (same circumstances); *FFP Project 92, LLC*, 155 FERC ¶ 62,089 (2016) (granting original license to project at existing state lock and dam entailing construction of a new powerhouse with two generating units with a license term of 39 years and 8 months); *Pepperell Hydro Co., LLC*, 152 FERC ¶ 62,155 (2015) (granting original license to previously unlicensed project entailing installation of minimum flow turbine-generator unit and fish passage facilities for term of 40 years); *Andrew Peklo III*, 149 FERC ¶ 61,037 (2014) (granting original license to project at existing dam entailing construction of a powerhouse and fish passage facilities with a 40-year license term).

²⁵ See, e.g., Snohomish PUD’s proposed Sunset Fish Passage and Energy Project, FERC Project No. 14295 (proposing a river intake structure and powerhouse with no dam or weir).

necessary to develop an unconstructed hydropower project, and the purpose of the FPA to incentivize non-federal investment in hydropower, the Commission should broaden its policy and grant all original licenses for unconstructed projects a 50-year license term.²⁶

B. The Commission Should Change Its Current Policy to a Default 50-Year License Term for New Licenses.

Industry Commenters strongly support a default 50-year license term for new licenses, with limited exceptions described below.

1. Application of the Commission's Current License Term Policy Has Been Problematic.

Since its adoption in 1994, the Commission's current policy for establishing license terms at relicensing has created significant, unintended problems for both hydropower development and environmental resources.²⁷ The current policy does not give credit in a new license term for environmental or developmental improvements under the prior license, no matter how substantial or costly. Such improvements may include, among others, upgrading or expanding the project's generating capacity through the installation of more efficient turbines or larger generators, installation of equipment for increasing dissolved oxygen in the project's tailrace, voluntary modification of project operations to accommodate resource agency concerns for environmental issues not addressed in the current license, enhancement of public safety measures, or investment in new recreational facilities. The Commission also has refused to credit a licensee for mitigation and enhancement measures contained in a Habitat Conservation Plan, a plan

²⁶ See also Comments of FFP New Hydro, LLC and Rye Development, LLC at 2-5, Docket No. RM17-4-000 (filed Mar. 2, 2017) (advocating for 50-year default license term for original licenses).

²⁷ *Consumers Power Co.*, 68 FERC ¶ 61,077 at pp. 61,383-84.

entered into by the licensee in advance of relicensing to protect endangered fish species.²⁸ These environmental or developmental improvement measures reflect a commitment by the licensee to deepen its investment in the project (many times significantly so) and to be a good steward of the project and environmental and other public resources of the water basin in which the project is located, but are omitted from consideration for the determination of the term of the next license. As such, the current Commission policy does not provide incentives to implement beneficial measures during the license term, or to recognize the additional time needed to recoup what can be considerable investments. Instead, the Commission's current policy inexplicably encourages licensees to wait until relicensing—sometimes, for many years—to propose these measures so that it may receive license term credit.

The Commission's new license term policy also has created several other problems. First, the Commission's current policy does not give credit in the new license term for expenditures on obligations under a relicensing settlement agreement that a licensee commences before the Commission issues a new license.²⁹ Nor does it credit project-related environmental obligations that are conducted through off-license agreements. As part of the negotiations in a settlement process, a licensee may agree to undertake immediate measures, whether financial or operational, to address a stakeholder's most pressing issue, without waiting for the issuance of the new license, in exchange for the stakeholder's withdrawal of objections to other issues. While the stakeholder achieves its goal under this policy, the licensee is penalized by not receiving

²⁸ *Pub. Util. Dist. No. 1 of Chelan Cty., Wash.*, 127 FERC ¶ 61,152 at P 23 (2009).

²⁹ *See, e.g., Ford Motor Co.*, 110 FERC ¶ 61,236 at P 8 (2005); *El Dorado Irrigation Dist.*, 117 FERC ¶ 61,284 at P 5 (2006); *Ga. Power Co.*, 111 FERC ¶ 61,183 at P 12 (2005); *Pub. Util. Dist. No. 1 of Chelan Cty., Wash.*, 127 FERC ¶ 61,152 at PP 12-15.

credit toward the new license term. The current policy acts as a disincentive to the licensee in creatively resolving issues in a settlement process.

Second, the current policy does not give credit in the new license term for costs incurred in the relicensing process, no matter how substantial. In a recent proceeding, a licensee incurred over \$100 million in relicensing costs which the Commission refused to consider in determining the new license term.³⁰ The Commission has consistently determined such costs “are not relevant.”³¹ Rather, the Commission looks only to project redevelopment and environmental mitigation and enhancement costs to determine license term. It will consider relicensing costs to determine a project’s economic benefits, but not to determine an appropriate license term.³² Relicensing costs are very real and substantial investments on the part of licensees and should not be ignored by the Commission in determining a new license term. The high costs of relicensing are one of the central reasons that licensees seek the longest license term possible.

Third, the Commission’s current policy does not give credit in the new license term for lost power, foregone water storage, or loss of power value due to environmental restrictions in the new license and instead focuses solely on capital expenditures. Lost generation represents, in many cases, a significant part of a licensee’s commitment over a new license term. A licensee recently sought rehearing on the basis that the Commission

³⁰ See Duke Petitioner Brief at 23-25, *Duke Energy Carolinas, LLC v. FERC*, No. 16-1296 (D.C. Cir. Dec. 5, 2016).

³¹ *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056 at P 43 (2015) (concluding that such costs “are not relevant”); *Pub. Serv. Co. of Colo.*, 79 FERC ¶ 61,148 at p. 61,635 n.60 (1997).

³² *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056 at P 43.

failed to consider lost generation related to environmental measures in determining a license term and the Commission denied rehearing.³³

Fourth, under its current policy, the Commission has moved away from honoring license term agreements among the parties to relicensing settlement agreements. In its Settlement Policy Statement, the Commission strongly encouraged the use of settlement agreements in licensing cases, finding that they

can save time and money, avoid the need for protracted litigation, promote the development of positive relationships among entities who may be working together during the course of a license term, and give the Commission, as it acts on license and exemption applications, a clear sense as to the parties' views on the issues presented in each settled case.³⁴

Yet, the Commission has rejected a number of license term provisions of relicensing settlement agreements in recent years.³⁵ License term, in many cases, is a negotiated component of a relicensing settlement agreement, agreed to in exchange for obligations and commitments made to meet other stakeholders' interests. Under the Commission's current policy, licensees and settlement parties cannot depend on license term as a bargaining chip of considerable value because the Commission could very well reject that component of the settlement in the license order. This undermines the settlement process and increases the number of issues potentially left unresolved through settlement discussions.

³³ See, e.g., *Duke Energy Carolinas, LLC*, 156 FERC ¶ 61,010 at P 17.

³⁴ *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act*, 116 FERC ¶ 61,270 at P 2 (2006) (hereinafter, Settlement Policy Statement).

³⁵ See, e.g., *Pub. Util. Dist. No. 1 of Douglas Cty., Wash.*, 143 FERC ¶ 61,130 at P 19 (2013) (rejecting 50-year proposed license term under settlement agreement in favor of a 40-year license term); *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056 at P 44 (finding that the settlement agreement parties' support for a 50-year license does not persuade the Commission to extend the license term); *Pub. Util. Dist. No. 1 of Chelan Cty., Wash.*, 127 FERC ¶ 61,152 at P 17 (rejecting 47-year proposed license term under settlement agreement in favor of a 43-year license term).

2. The Commission's Current Policy Undermines the Very Purposes It Was Designed to Promote.

The Commission's stated objectives of its license term policy are: "to ease the economic impact of the new costs, to encourage better comprehensive development of the renewable power generating resource," and to encourage licensees to be better environmental stewards.³⁶ The current policy runs counter to each of these objectives.

Instead of easing the economic impact of a licensee's reinvestments in a project during the license term, the Commission's current license term policy stifles and penalizes early action measures in advance of relicensing. It discourages licensees from taking proactive steps to mitigate environmental or operational impacts in advance and incentivizes licensees to put off these measures until relicensing. This runs counter to the balanced and comprehensive development standard of Section 10(a) of the FPA.³⁷ At the same time, the current policy pushes the licensee to offer even more substantial investments at relicensing to earn a 50-year term, even if those improvements are not needed or justified, and even though Commission precedent offers no clear standard of the investment or effort needed to qualify for a 50-year license term. And, if the licensee offers these investments through a settlement agreement in return for the parties' commitment to support a specific license term, the licensee cannot depend on receiving its bargained-for license term because the Commission often rejects license term provisions of settlement agreements.

Rather than encouraging licensees to be better environmental stewards, the Commission's current policy fails to recognize environmental improvements made

³⁶ *Consumers Power Co.*, 68 FERC ¶ 61,077 at p. 61,384.

³⁷ 16 U.S.C. § 803(a) (2012).

during the previous license. While Industry Commenters agree licensees should not be credited for measures undertaken to retain or restore compliance with its previous license, the policy also excludes voluntary environmental improvements made during the license term, which the Commission should recognize are in the public interest and should not be discouraged.

Further, the Commission's current policy, instead of encouraging settlements during the relicensing process, undermines settlements that provide for environmental or recreation improvements as a *quid pro quo* for a 50-year license term. As discussed above, the Commission frequently rejects the license term provision while accepting the environmental and operational commitments of a settlement agreement. In addition, the current policy discourages settlement agreements that provide for early implementation of the settlement measures pending issuance of the new license. If the licensee begins implementing these measures before FERC issues the new license, they will not be considered in determining the new license term.

3. A 50-year Default License Policy Would Better Promote the Commission's Stated Objectives of Its License Term Policy.

A 50-year default license term for new licenses, in contrast to the current policy, would promote the Commission's objectives. Under a 50-year default policy, licensees would not be incentivized to defer capacity or environmental improvements to the next license, since they could expect to receive a 50-year new license term regardless of the timing of improvements. It also would promote clarity and predictability as to what to expect in relicensing, and thus provide an inducement for licensees' continued long-term investments in their projects. In addition, it would eliminate the subjectivity and lack of fairness of the current policy by applying the same policy to all existing licensees, and

would reduce the Commission's burden of having to determine license term on a case-by-case basis. A default 50-year term also is consistent with Congress's intent in the 1986 amendments to the FPA in granting the Commission broad discretion to issue a new license for 30-50 years.³⁸

The Commission should reject any argument that 50 years is too long to freeze a licensee's obligations in time, and that the statutory minimum 30-year term should be the norm to ensure that projects meet current environmental standards. The Commission includes standard provisions in every license that give it authority, after notice and opportunity for hearing, to address environmental issues that unexpectedly arise during a license term.³⁹ If a future issue (such as implementation of fish passage at a downstream project) can reasonably be anticipated at relicensing, a special provision can be included in the upstream license to address it when it happens. The Commission routinely includes a license reopener provision for fishway prescriptions under Section 18 of the FPA as well.⁴⁰ The Endangered Species Act also provides independent protections against take of newly listed species.

Likewise, the Commission should reject any suggestion that a default 50-year license term would give the licensee an upper hand in relicensing settlement negotiations.

³⁸ Section 5 of the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495, 100 Stat. 1243 (ECPA), provides that relicenses may be issued for terms of not less than 30 and not more than 50 years. For initial licenses, though, ECPA retained existing law setting a 50-year term. *See* H.R. Rep. No. 934, 99th Cong., 2d Sess. 29 (1986) (Conference Report).

³⁹ For example, Standard Article 15 authorizes the Commission, for the conservation and development of fish and wildlife resources, to reopen a license, after notice and opportunity for hearing, and require the licensee to construct, maintain, and operate reasonable facilities and comply with such reasonable modifications of project structures and operation upon its own motion or upon the recommendation of the Secretary of the Interior or the state fish and wildlife agency or agencies. *See, e.g.*, Form L-1, Terms and Conditions of License for Constructed Major Projects Affecting Lands of the United States, 54 FPC 1799, 1804 (1975).

⁴⁰ *See Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659 (D.C. Cir. 1996).

On the contrary, the certainty of a 50-year term incentivizes the licensee to commit in settlement negotiations to new environmental investments when they are needed,⁴¹ including early action where appropriate. Given the important regulatory roles of other federal and state agencies in determining the final license conditions, licensees will always have strong incentives to resolve relicensing issues through the settlement process.

Although a 50-year default license policy concededly would make coordination of license terms for projects in a river basin more difficult,⁴² the multiple benefits of a default 50-year license to all interests and resources outweigh these concerns and should take priority over any policy to coordinate license expiration dates. If a licensee with multiple projects in a river basin wants to coordinate the future relicensing of its projects, or multiple licensees desire to coordinate, they can request a license term of less than 50 years, instead of the default license term, to coordinate those future relicensings.

4. Exceptions to the 50-year Default Rule and Retroactivity of New Policy

Industry Commenters suggest that certain exceptions should apply if the Commission adopts a 50-year default license term for new licenses. An exception should be made for settlement agreements in which the licensee and stakeholders agree to a license term of less than 50 years.⁴³ In this case, the Commission should adopt a

⁴¹ See Comments of New York Department of Environmental Conservation at 2, Docket No. RM17-4-000 (filed Jan. 13, 2017).

⁴² See 18 C.F.R. § 2.23 (2016) (Commission's policy to coordinate license terms to address cumulative impacts).

⁴³ The Commission has, in certain instances, granted settlement parties' requests for a license term less than 50 years. See, e.g., *Pub. Util. Dist. No. 1 of Snohomish Cty., Wash.*, 136 FERC ¶ 62,188 at PP 161-62 (2011) (noting that while the licensee proposed extensive investment in environmental measures under the new license, the Commission will grant a license term of 45 years as requested in the settlement agreement); *Reedspport OPT Wave Park, LLC*, 140 FERC ¶ 62,120 at P 107 (2012) (noting that while the

settlement provision for a license term of less than 50 years, without change. Another exception could be made, as discussed above, to coordinate license terms where one or more licensees own and operate multiple projects within a river basin, and the licensee(s) propose on a voluntary basis to coordinate the license terms as a matter of administrative efficiency and cost savings to the Commission, licensees, and stakeholders.

If the Commission amends its license term policy to adopt a 50-year default license term, the Commission should determine whether and how to apply the policy retroactively. Industry Commenters do not advocate that the Commission offer a blanket license amendment to every licensee with a license term of less than 50 years. Rather, Industry Commenters propose that the Commission state its willingness to remove existing impediments in current policies, and to grant amendments that would extend existing licenses to a 50-year term in at least three circumstances. The first would be where the parties to a relicensing settlement agreement stipulated to a 50-year term, or agreed not to object to a 50-year term, but the Commission granted a term of less than 50 years. In such cases, the Commission should allow the licensee to file an application for license amendment based on the prior agreement without having to undertake further pre-filing consultation. Second, even where a relicensing settlement did not contain a 50-year new license provision, the Commission should accept a non-capacity related license amendment application proposing to extend the license term to 50 years if the licensee undertakes pre-filing consultation and, after a notice and comment period, there is no

licensee proposed a moderate amount of new construction and environmental measures warranting a 40-year license term, the Commission will grant a license term of 35 years as requested in the settlement agreement); *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186 at P 109 (2005) (noting that while the licensee proposed a moderate amount of new construction and environmental measures warranting a 40-year license term, the Commission will grant a license term of 30 years as requested in the settlement agreement), *order on reh'g & clarification*, 114 FERC ¶ 61,137 (2006).

substantial opposition to the extension.⁴⁴ Third, where the licensee undertakes a significant new investment in the project—whether it be a capacity expansion or efficiency upgrade, a major maintenance or dam safety improvement, or a significant recreation or environmental enhancement, the Commission should be willing to extend the license term to 50 years if requested by the licensee.⁴⁵

C. Should the Commission Decline to Adopt a 50-Year Default Policy for New Licenses, It Should Adopt a 40-Year Default Policy with Credit for Early Action Measures and Deference to Settlement Agreements.

If the Commission declines to adopt a 50-year default policy for new licenses, Industry Commenters alternatively support a 40-year default policy with credit (up to an additional 10 years) for early action measures and deference to settlement agreements providing for a license term of longer than 40 years. The relicensing process takes 10 years or more to complete. Under a 30-year license, one-third or more of the license term is spent in seeking the next license. Once a new license is issued, it takes several years for the licensee to complete post-licensing implementation plans and required new protection and enhancement measures. This means that at any point in time, a licensee is likely preparing for relicensing, actively going through a relicensing, or implementing a newly issued license. This amounts to a substantial, ongoing investment by licensees. To help break this cycle and alleviate the significant recurring costs that burden not only licensees but, as well, resource agencies, Commission staff, and other stakeholders, a 40-year license should be the minimum new license term under a revised license term policy.

⁴⁴ See 18 C.F.R. §§ 4.38(a)(7), 4.200.

⁴⁵ This would involve a liberalization of the Commission’s current license extension policy. See *Mont. Power Co.*, 47 FERC ¶ 61,277 at p. 61,963 (“The Commission grants extensions of license terms, up to the maximum 50-year period, where the licensee has proposed a substantial improvement to or a significant redevelopment of the project, such as through an increase in project generating capacity; a factor to be considered is whether a longer term of license is needed to ensure the financial feasibility of the proposed new development.”).

Industry Commenters propose that under a 40-year default license term for new licenses, three exceptions should apply. One exception should be made for settlement agreements in which the licensee and stakeholders agree to a license term of less or more than 40 years. In this case, the Commission should adopt the agreed-to license term under the settlement, without change. Second, similar to a 50-year default policy, an exception should be made to coordinate license terms where one or more licensees own and operate multiple projects within a river basin, and the licensee(s) propose on a voluntary basis to coordinate the license terms. Third, the Commission should grant a license term of longer than 40 years if the licensee undertook significant early action measures during the previous license term, as further detailed below.

1. Early Action Measures

As described above, Industry Commenters support a 50-year default license policy, which is the statutory limit under Section 6 of the FPA.⁴⁶ Under a 50-year default policy, early action measures would be fully addressed through a 50-year license term and would not require independent consideration by the Commission. However, if the Commission opts to revise its policy but not adopt a 50-year default license term, it should expressly credit licensees for implementation of significant early action measures during the previous license term, including additional investments and actions not required when the existing license was issued. Industry Commenters provide the following responses to the questions posed in the Commission's NOI regarding early action measures.

⁴⁶ 16 U.S.C. § 799.

- i. *Why should the Commission consider early measures when establishing a license term?*

As described above, the Commission should consider early measures in establishing a license term to recognize the investment—often substantial investment—made by licensees when taking proactive steps to mitigate environmental or operational impacts as they arise and to maintain and expand the project’s energy production in advance of relicensing. This encourages licensees to be better stewards of the water resource and incentivizes more immediate resolutions to project impacts, rather than delaying those resolutions until relicensing. Although typical depreciation periods for capital improvements may be less than 50 years,⁴⁷ a licensee wants the longest period it can get when making a financial investment. This puts more time between the initial investment and the next relicensing, when there will be new requirements requested by stakeholders. From a licensee’s perspective, the best license is the current license, as conventional wisdom and experience suggest that the next license could further limit operations in some way and reduce a licensee’s ability to make or maintain a profit or protect the interests of customers.

- 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?*

Industry Commenters agree the Commission should consider all early measures, including developmental, environmental, recreation, and maintenance activities such as dam safety improvements and upgrades and modernization projects, in establishing a new

⁴⁷ For example, one Industry Commenter uses a 40-year debt period for hydro-related capital expenditures and a 49-year depreciation period based upon a depreciation study conducted in 2014.

license term. With this policy, the Commission would encourage and recognize licensees' substantial and continued reinvestment in all aspects of their projects, and extend the license term to allow time to recoup these investments. The only measures that should not be considered "early action" are developmental or environmental measures that were authorized or required by the original license or, in the case of a project previously relicensed, the earlier new license order. Those measures were intended to mitigate project construction, in the case of an original license, or ongoing impacts, in the case of a previous relicense, and can be considered *quid pro quo* for the license terms previously received.

iii. How would the Commission's consideration of early measures affect whether and when licensees make non-developmental and developmental improvements?

As discussed above, the Commission's current policy penalizes early action measures implemented in advance of relicensing because the licensee is given no credit for the investment in establishing a new license term. If the Commission changed its policy to consider early measures, it would incentivize licensees to take proactive steps to mitigate environmental or operational impacts in advance, and to make infrastructure improvements, rather than put off these measures until relicensing so it can get credit for its investment in the new license term.

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?

Industry Commenters do not believe setting an arbitrary number of years prior to license expiration would be a productive approach. The Commission should consider investments that were made during the expiring license term that have a useful life

extending into the new license and have not been fully depreciated, or for which a licensee will carry over a financing obligation into the new license term. In addition, the Commission should give early action credit for measures that were initiated during the expiring license term and require ongoing expenditures during the new license term (e.g., ongoing maintenance for capital investments such as fish ladders, contributions to a habitat restoration fund, dam safety enhancements, or new recreational facilities). Licensees would have the burden of coming forward with documentation supporting their request.

2. Settlement Term

If the Commission declines to adopt a 50-year default policy, the Commission should, at the very least, revise its license term policy to provide deference to settlement agreements providing for a certain license term. Industry Commenters provide the following responses to the questions posed in the Commission's NOI regarding agreed-upon settlement terms. Deference to settlements should take priority over the Commission's current policy of coordinating licenses within the basin.

- i. How would establishing the license term based on the term agreed upon in a settlement agreement affect settlement negotiations?*

As described above, the Commission's current policy undermines relicensing settlements that provide for environmental or recreation improvements as a *quid pro quo* for a 50-year license term, and discourages settlement agreements that provide for early implementation of the settlement measures pending issuance of the new license. License term is often one of the most important elements of a settlement to a license applicant, and economic decisions and the suite of environmental measures agreed to under the

settlement are based on the agreed-upon license term. If the Commission does not defer to the agreed-upon license term, it has a significant detrimental effect on the settlement. In short, the Commission's failure to defer to the license term set forth in a license settlement undermines the Commission's long-standing policy of encouraging relicensing settlements.⁴⁸ If the Commission revised its policy to establish a license term based on the term agreed upon in a settlement agreement, this would provide certainty and incentivize the licensee to commit to significant new environmental investments in settlement negotiations. With the comfort of knowing that it will have the negotiated license term to recoup its investment, a licensee may be more willing to agree to measures in settlement negotiations than it otherwise would not under the Commission's current policy.

ii. When should the Commission not defer to the license term agreed upon in a settlement agreement?

The Commission should defer to the license term in a settlement agreement among the licensee and the major stakeholders in a relicensing. With governmental resource agencies, some of which have mandatory conditioning authority, playing an active and prominent role in relicensing proceedings, the Commission can be assured that a settlement on license term will be reached by sophisticated parties who are charged under their own enabling statutes to protect the public interest and who have weighed carefully the merits of the agreement on the issue.

⁴⁸ Settlement Policy Statement at P 2.

3. Industry Commenters' Remarks on a Quantitative Cost-Based Analysis

Industry Commenters support a 50-year default license term for new licenses, as described above. Industry Commenters do not support a quantitative, cost-based approach. However, if the Commission does not adopt a 50-year default policy, Industry Commenters provide the following responses to the questions posed in the Commission's NOI regarding a quantitative cost-based analysis.

i. What costs should the Commission consider in a quantitative analysis?

In a cost-based analysis, the Commission should consider all costs to both obtain and implement a new license. This would include the cost of studies and preparation of a license application, settlement negotiations, the value of lost generation under the new license measures, and capital and maintenance costs to implement the license measures.

ii. How should cost be calculated? Should cost be calculated on a total cost or on a cost per megawatt basis?

Industry Commenters do not favor strict application of either a total cost or proportional cost basis, but a more qualitative approach that takes all cost factors into account. Certainly, the magnitude of relicensing costs should be considered. However, consideration should be given to costs proportional to the economic value of the project and what the project can reasonably "afford." Some allowance must be made for project size in order that smaller projects also are able to secure a 50-year license term. At the same time, there should not be a presumption that simply because a project has a large generation capacity, that environmental mitigation must be strictly proportional to the size.

iii. What weight should the Commission give to costs when establishing the license term?

The Commission should not give exclusive weight to the licensee’s costs to obtain a new license, but rather take a more holistic approach when establishing a new license term. Some projects have already been improved and are operating up to current environmental and developmental standards before they enter relicensing. In these circumstances, licensees should not need to incur extensive amounts of redevelopment, new construction, or environmental mitigation and enhancement obligations at relicensing to earn a longer term. A continued environmental “ratcheting up” should not be required in order to obtain a 50-year license term—such an approach makes hydropower less competitive in the marketplace and increases the risk of stranding important hydropower assets. Industry Commenters believe that environmental stewardship, license compliance, dam and public safety, project recreational value, water supply benefits, and all the other public interest considerations the Commission takes into account under FPA Sections 4(e) and 10(a) when issuing a license should be considered in setting 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?

See Response in Section III.C.3.ii above.

- 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?*

Absent a reason to question the reliability of the cost information provided by a licensee, the Commission could rely on an affidavit or certification from the licensee that the cost information provided is accurate.

IV. CONCLUSION

For the foregoing reasons, Industry Commenters respectfully request the Commission to revise its policy for establishing the length of original and new license terms for hydroelectric projects consistent with the recommendations discussed herein.

Respectfully submitted,



Michael A. Swiger
Charles R. Sensiba
Sharon L. White
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
Telephone: (202) 298-1800
Facsimile: (202) 338-2416
mas@vnf.com
crs@vnf.com
slw@vnf.com

Dated: March 24, 2017