

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Hydropower Regulatory Efficiency Act of 2013

Docket No. AD13-9-000

NOTICE SOLICITING PILOT PROJECTS
TO TEST A TWO-YEAR LICENSING PROCESS

(January 6, 2014)

On August 9, 2013, President Obama signed into law the Hydropower Regulatory Efficiency Act of 2013 (Act). The Act, among other things, directs the Commission to investigate the feasibility of a two-year licensing process for hydropower development at non-powered dams and closed-loop pumped storage projects, develop criteria for identifying projects that may be appropriate for a two-year process, and by February 5, 2014, develop and implement pilot projects to test a two-year process, if practicable.

As directed by the Act, the Commission held an initial workshop on October 22, 2013, to solicit public comment and recommendations on how to implement a two-year process. By notice issued October 8, 2013, the Commission requested that written comments be filed by November 21, 2013. Federal and state agencies, hydropower developers, and non-governmental organizations provided input at the workshop, and 16 comment letters have been filed regarding the two-year process.

The Act does not authorize the Commission, by itself, to develop and implement pilot projects to test a two-year process; therefore, the Commission is seeking proposals from potential applicants wishing to do so. As a general principle, we expect applicants to propose pilot projects that: are located at a non-powered dam or are a closed-loop pumped storage project; have a well-developed project proposal including project facilities and operation; would cause little to no change to environmental resources; and are located in areas where there is substantial existing information on environmental resources and effects. Prior to requesting the use of a two-year process, prospective applicants should meet with federal and state resource agencies, Indian tribes, non-governmental organizations, and the public regarding the project and potential pilot process proposal, potential project-related environmental effects, the availability of existing information, and the need for studies to supplement existing information. Further, prospective applicants should request written comments on the adequacy of available information and the need for studies, including the anticipated scope and duration of the studies.

Based on our experience with expediting projects, the comments received at the initial workshop, and comments filed in response to our October 8, 2013 Notice, we have identified the following minimum criteria and process for projects that may be appropriate for licensing within a two-year process:

- The project must cause little to no change to existing surface and groundwater flows and uses;
- The project must be unlikely to adversely affect federally listed threatened and endangered species;
- If the project is proposed to be located at or use a federal dam, the request to use the two-year process must include a letter from the dam owner that the applicant's plan of development is conceptually feasible;
- If the project would use any public park, recreation area, or wildlife refuge established under state or local law, the request to use the two-year process must include a letter from the managing entity indicating its approval of the site's use for hydropower development;¹ and
- For a closed loop pumped storage project, the project must not be continuously connected to a naturally-flowing water feature.

Any prospective applicant that wishes to test a two-year process must file a request to do so by no earlier than **February 5, 2014 and no later than May 5, 2014**. The request must include:

(1) Demonstration that the proposed project meets the above criteria;

(2) Documentation that the prospective applicant has met with, described, and consulted with the affected federal and state resource agencies, Indian tribes, non-governmental organizations, and the public regarding its project and pilot process proposal along with a summary of verbal comments and copies of any written comments received in response to the meeting;

(3) Copies of written comments from the affected federal and state agencies and Indian tribes regarding the availability of existing information and the need for studies to supplement the existing information, including the anticipated scope and duration of the studies;

¹ Section 21 of the Federal Power Act as amended by the Energy Act of 1992, states that no licensee may use the right of eminent domain to acquire any lands or other property that, prior to October 24, 1992 (the date of enactment of the Policy Act), were owned by a state or political subdivision thereof and were part of, or included within, any public park, recreation area, or wildlife refuge established under state or local law.

(4) A Pre-Application Document (PAD) and Proposed Study Plan that meet the content requirements of 18 CFR § 5.6 and 5.11, respectively. **The PAD must include a defined and well-developed project proposal.** If a prospective applicant determines that a Proposed Study Plan is not needed, then the prospective applicant must demonstrate that the PAD contains sufficient information to address its list of potential environmental effects for environmental analysis;

(5) List of potential environmental effects, including effects on geologic, aquatic, terrestrial, recreational, and cultural resources, as applicable; and

(6) A process plan and schedule. Based on the comments received at the initial workshop and comments filed in response to our October 8, 2013 Notice, the Commission has identified the process plan and schedule below for use by prospective applicants. A prospective applicant may file an alternative two-year process plan and schedule to test under the Act; however, the Commission reserves the right to modify any filed process plan and schedule as necessary to ensure that the Commission fulfills its responsibilities under the Federal Power Act and other applicable laws.

Step	Responsible Party	Pre-Filing Action or Milestone Description	Time
1	Prospective applicant	<p>Prior to filing a request to use a two-year pilot process, prospective applicants must meet with Commission staff to discuss the nature of the project, the status of the applicant's consultation efforts, and the status of the applicant's efforts in obtaining the information described below.</p> <p>Prospective applicant files a request to use a two-year pilot process, a pre-application document including a detailed project description, a list of potential environmental effects for environmental analysis, a proposed study plan with schedule, and certification that the prospective applicant has met with the affected federal and state resource and land management agencies to discuss its project proposal.</p>	0
2	Commission staff	Issue notice of request to use the two-year pilot process and notice of public technical meeting to discuss the two-year pilot process proposal (if needed), or issue a letter rejecting the pilot process request if the request does not meet the criteria or filing requirements, or if the request is otherwise deficient pursuant to the instructions in this notice.	30 days

3	Commission staff, prospective applicant, and interested parties	Hold public technical meeting to discuss the proposed pilot process (if needed as determined by Commission staff).	45 days
4	Commission staff	Issue determinations on the request to use the pilot process, study plan, and environmental effects list, and if the pilot process is approved, designate the applicant to conduct informal section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act (ESA) consultations, as needed.	90 days
5	Prospective applicant	Complete studies, and apply for water quality and coastal zone certifications.	270 days
6	Prospective applicant	File license application. ²	1 year
Step	Responsible Party	Post-Filing Action or Milestone Description	Time
7	Commission staff	Review license application and issue deficiency or additional information letter, if necessary.	395 days
8	Commission staff	Issue combined acceptance and ready for environmental analysis notice.	425 days
9	State coastal zone certification agency	File coastal zone consistency certification, or other relevant finding	450 days
10	Interested parties	File comments, recommendations, preliminary terms and conditions.	485 days
11	State water quality certification agency	File draft water quality certification conditions.	485 days
12	Applicant	File reply comments.	500 days
13	Commission staff	Issue environmental assessment (EA) and draft programmatic agreement (PA), section 10(j) letter, and section 7 ESA informal consultation letter, as necessary.	605 days
14	Interested parties	File comments on EA and draft PA, final terms and	635 days

² The filing of the license application and license application content requirements should be consistent with the Commission's existing regulations, including 18 C.F.R. §§5.17 and 5.18, except as otherwise stipulated in the approved process plan and schedule or other Commission issuance for the proposed pilot process.

		conditions, water quality certification, and response to section 10(j) and informal ESA consultation letters.	
15	Commission staff	Issue final PA and hold section 10(j) meeting, if necessary.	655 days
16	Commission	Issue licensing decision.	2 years

Please note that in the event that multiple requests to test a pilot process are filed, the Commission reserves the right to choose a subset of pilot processes to test.

The Commission strongly encourages electronic filing. Please file your request using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The first page of any filing should include docket number AD13-9-000.

For more information about this Notice, please contact:

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