

**Testimony of  
Commissioner Nora Mead Brownell  
Federal Energy Regulatory Commission  
before the  
House Energy and Commerce Subcommittee  
on Energy and Air Quality**

**June 27, 2001**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit written testimony regarding the need for hydroelectric power and the Commission's role in licensing hydroelectric projects.

Clearly, hydroelectric power is an important piece of our Nation's energy portfolio and one which needs more attention today than ever before. As you know, the Commission currently regulates over 1600 hydroelectric projects at over 2,000 dams that account for half of our Nation's approximately 100 gigawatts of hydroelectric power and over 5 percent of all electric power generated in the United States. As of January 1, 2001, the Commission was regulating 1,033 licensed projects.

I also recognize that certain regions of our country are acutely dependent on hydroelectric power, particularly California and the rest of the west. To provide some context, 40 percent of the total generating capacity in the 11-state Western Systems Coordinating Council (WSCC) is hydroelectric based and hydroelectric accounts for fully 65 percent of the Northwest generation. The Commission regulates 326 projects in the WSCC with a combined total capacity of 24,600 MW.

Any action taken by this Commission to make the hydroelectric licensing process more efficient and timely, consistent with our environmental protection responsibilities, can help keep our Nation's energy supplies in better balance with its demand. I am committed to working with my fellow Commissioners, Congress, the Executive Branch, Federal and State agencies and the various stakeholders to improve the licensing process.

The Commission's authority to license and regulate hydroelectric projects is found in the Federal Power Act (FPA). The Commission's authority over the licensing process is not exclusive. Section 4(e) of the FPA authorizes federal land-administering agencies, typically the Departments of Agriculture and Interior, to impose mandatory conditions on projects located on Federal reservation they supervise. Section 18 of the FPA authorizes the Departments of Commerce and Interior to impose mandatory fishway prescriptions. Section 401 of the Clean Air Act precludes the Commission from licensing a project unless the project has obtained State water quality certification. The Coastal Zone Management Act permits States to impose conditions on projects within or affecting their coastal zone. In addition, there are a number of other statutes that require the Commission to consider various impacts or consult with various entities before licensing a project.

As a result, the Commission can only issue a license with the mandatory condition(s) or deny the license application. Given the significance of hydroelectric power to our Nation's supply portfolio, denial is not obviously a desirable option. But, this raises the question whether this paradigm effectively balances out the Nation's

interest to optimize the use of our waterways and our responsibilities for environmental preservation with our energy needs in a timely manner and economically efficient manner. More bluntly, are too many cooks spoiling the broth? While I am new to this issue, I would suggest this paradigm needs to evolve.

While we have taken some steps such as implementation of the Alternative Licensing Process (ALP) to improve the process, hydroelectric licensing is still too complex, time-consuming, and costly. On December 9, 2000, Congress passed Section 603 of the Energy Act of 2000 which required the Commission, in consultation with other appropriate agencies, to undertake a comprehensive review of the policies, procedures, and regulations for licensing hydroelectric projects to determine how to reduce the cost and time of licensing and report its finding, including any recommendations for legislative changes, within 6 months. The Commission Staff issued such a report in May 2000 (Staff 603 Report). The Staff 603 Report indicates that, although ALP has reduced processing time, the pre-filing period is still approximately 40 months and the post-filing period is approximately 16 months. The traditional licensing process is even longer. We can do better.

The Staff 603 Report recommends several legislative changes. The primary legislative recommendation is to make the authority that other Federal agencies currently have to impose mandatory conditions on licenses subject to Commission authority to reject or modify such conditions based on the Commission's overall public interest determination. In the alternative, the Staff 603 Report contained several other legislative

recommendations that might improve the licensing process even with mandatory conditions. The first recommendation would require agencies to better support their conditions. The second is to focus the Clean Air Act authority by limiting, at least for hydroelectric projects, water quality certification to the physical and chemical characteristics of the water and not water use or administrative conditions. The third is for Congress to clarify the existing definition of a fishway. The final legislative recommendation is to amend the appropriate laws to allow the Commission to remit directly to other agencies their FPA Part I costs.

The Staff 603 Report also recommends several procedural or policy changes to reduce the cost and time of the licensing process. Those recommendations include requiring applicants to submit during pre-filing consultation a status report focusing on study requests; allowing agencies to revise their recommendations or condition only with the Commission's agreement; requiring applicants to conduct pre-filing consultation with the public and Non-government organizations; revising the regulations to allow public information to be maintained electronically; having the Commission issue a draft and final environmental assessment only if necessary; handling the comments on the scoping document in the National Environmental Policy Act document; and increasing the standard new license term to 50 years.

I intend to carefully consider them and push to implement those that improve our processes without undermining our environmental responsibilities. My background is consensus-building. With NARUC, I worked with my colleagues across the country

overcome regional differences to arrive at consensus positions on very controversial and complex issues. With the Pennsylvania Commission, I also had the opportunity to implement and direct similar processes of consensus advancement. My approach has been one of inclusion and, as mentioned at my confirmation hearing, one of my primary goals at the Commission is to reach out to the various stakeholders to seek input on how to solve the problems we face. Inclusion breeds innovative thinking that helps solve complex problems. Therefore, I am again emphasizing my commitment to working with my fellow Commissioners, Congress, the Executive Branch, Federal and State agencies and the various stakeholders to make the necessary improvements, whether legislative or administrative.