Summary of Testimony of
Curt Hébert, Jr., Chairman
Federal Energy Regulatory Commission
before the
House Energy and Commerce Subcommittee
on Energy and Air Quality

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The Commission currently regulates over 1,600 hydropower projects at over 2,000 dams pursuant to Part I of the Federal Power Act (FPA). These projects represent more than half of the Nation's approximately 100 gigawatts of hydroelectric capacity and over 5 percent of all electric power generated in the United States. Hydropower is an essential part of the Nation's energy mix and offers the benefits of an emission-free, renewable energy source.

The Commission's responsibility in issuing hydropower licenses under the FPA is to strike an appropriate balance among the many competing power and non-power interests, as required by the public interest standards of Sections 4(e) and 10(a) of the FPA. However, various statutory requirements, as interpreted by the courts, give other agencies a powerful role in licensing cases, and significantly affect the Commission's ability to control the timing and content of licenses.

The Commission currently uses two different processes in relicensing: the "traditional" process and the "alternative" process. Experience to date demonstrates that the alternative procedures can reduce the length, cost, and contentiousness of relicensing proceedings.

The Commission has striven, within the constraints of the FPA, to make the hydropower licensing process less time-consuming and costly. The recent energy shortfalls in the West, and especially in California, have given impetus to the need for further improving the licensing process.

Pursuant to Section 603 of the Energy Act of 2000, the Commission Staff on May 8, 2001, submitted to the Congress a report on the costs and time to obtain a license including recommendations, which I endorse, for legislative, procedural and policy changes to reduce those costs and time.

The legislative recommendations include:

1. Establish one-stop shopping at the Commission for all federal authorizations.

Federal agencies with mandatory conditioning authority would retain that authority, subject to a statutory reservation of Commission authority to reject or modify the conditions based on inconsistency with the Commission's overall public interest determination.

If this recommendation is not adopted, then:

2. Require agencies to better support their conditions.
This would require resource agencies to consider the full panoply of public interests, support their conditions on the record, and provide a clear administrative appeal process.

3. Focus Clean Water Act authority.
Limit water quality certification to physical and chemical water quality parameters related to the hydropower facility.

4. Provide a statutory definition of fishway.
The proposed definition recently issued by Interior and Commerce is over-broad and would allow these agencies to dictate virtually all aspects of a project.

5. Remit annual charges for other federal agency FPA Part I costs directly to agencies, specifying that they are to be used for implementing Part I.

The procedural and policy recommendations include:

1. Require license applicants to submit during prefiling consultation a status report focusing on study requests, to enable Staff to determine if pre-filing involvement is warranted.
A cause of significant cost and time delay is the need to agree upon and perform additional environmental resource studies.

2. Allow agencies to revise their recommendations and conditions only with Commission concurrence, and in a reasonable period after the first (or only) environmental document.
Late-filed recommendations and conditions are a source of delay.

3. Require applicants to conduct pre-filing consultation with the public and non-governmental organizations, as well as with agencies and tribes.

4. Allow applicants to maintain public information electronically rather than in hardcopy at a specific location.

5. Continue to promote alternative licensing processes and settlements, through more staff outreach and involvement.

6. Issue both a draft and a final environmental assessment (EA) on a more limited basis.

7. Issue one NEPA scoping document, and accommodate any comments on the scoping document in the environmental analysis document.

8. Increase the standard new license term to 50 years in most cases, in recognition of adaptive management.