

160 FERC ¶ 61,004  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 11

[Docket No. RM16-19-000]

Annual Charges for Use of Government Lands in Alaska

(August 17, 2017)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Power Act requires hydropower licensees to recompense the United States for the use, occupancy, and enjoyment of federal lands. The Commission assesses annual charges for the use of federal lands through Part 11 of its regulations. The Commission proposes to revise the per-acre land value component of its methodology for calculating these annual charges for hydropower projects located in Alaska. Under the proposed rule, the Commission would calculate a statewide average per-acre land value for hydropower lands in Alaska. The Commission would use the statewide average per-acre land value, rather than a regional per-acre land value, to calculate annual charges for use of federal lands for all hydropower projects in Alaska, except those located in the Aleutian Islands Area.

DATES: Comments are due **[INSERT DATE (60) days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions*: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Annual Charges for Use of Government Lands  
in Alaska

Docket No. RM16-19-000

NOTICE OF PROPOSED RULEMAKING

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NOTICE OF PROPOSED RULEMAKING

(August 17, 2017)

1. The Federal Power Act (FPA) requires hydropower licensees that use federal lands to compensate the United States for the use, occupancy, and enjoyment of federal lands.<sup>1</sup> Currently, the Commission uses a fee schedule, based on the U.S. Bureau of Land Management's (BLM) methodology for calculating rental rates for linear rights of way, to calculate annual charges for use of federal lands. The Commission's fee schedule identifies a fee for each county or geographic area, which is the product of four components: a per-acre land value, an encumbrance factor, a rate of return, and an annual adjustment factor. The per-acre land value for a particular county or geographic area (i.e., a regional per-acre land value) is determined using the average per-acre land value identified by the National Agricultural Statistics Service (NASS) Census. Under the proposed rule, the Commission would use a statewide average per-acre land value for the state of Alaska, rather than a regional per-acre land value.

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<sup>1</sup> 16 U.S.C. 803(e)(1) (2012).

## I. Background

2. Section 10(e)(1) of the FPA requires Commission hydropower licensees using federal lands to:

pay to the United States reasonable annual charges in an amount to be fixed by the Commission . . . for recompensing [the United States] *for the use, occupancy, and enjoyment of its lands or other property* . . . and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require . . . .<sup>2</sup>

In other words, licensees that use and occupy federal lands for project purposes must compensate the United States through payment of an annual fee, to be established by the Commission.<sup>3</sup>

3. The Commission has adopted various methods over the years to accomplish this statutory directive.<sup>4</sup> Currently, the Commission uses a fee schedule method, based on land values published in the NASS Census, to calculate annual charges for use of

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<sup>2</sup> 16 U.S.C. 803(e)(1) (2012) (emphasis added). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of administering Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this proposed rule.

<sup>3</sup> Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2012), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the Treasury of the United States, 50 percent is paid into the federal reclamation fund, and 37.5 percent is paid into the treasuries of the states in which particular projects are located. No part of the fees discussed in this proposed rule is used to fund the Commission's operations.

<sup>4</sup> See *Annual Charges for Use of Government Lands*, Order No. 774, FERC Stats. & Regs. ¶ 31,341, at PP 3-20 (2013) (cross-referenced at 142 FERC ¶ 61,045) (examining the myriad methodologies the Commission has used or considered for assessing annual charges for the use of government lands since 1937) (Order No. 774).

government lands. The Commission adopted this approach in a final rule issued on January 12, 2013.<sup>5</sup>

**A. Order No. 774**

4. In Order No. 774, the Commission adopted a fee schedule method for calculating annual charges for use of government lands, based on BLM's methodology for calculating rental rates for linear rights of way. Pursuant to section 11.2 of the Commission's regulations, the Commission publishes an annual fee schedule which lists per-acre rental fees by county or geographic area.<sup>6</sup> To calculate a licensee's annual charge for use of government lands, the Commission multiplies the applicable county or geographic area per-acre fee identified in the fee schedule by the number of federal acres used by the hydroelectric project, as reported by that licensee.

5. The per-acre rental fee for a particular county or geographic area is calculated by multiplying four components: (1) a per-acre land value; (2) an encumbrance factor; (3) a rate of return; and (4) an annual adjustment factor.

**1. Per-Acre Land Value**

6. The first component – the per-acre land value – is based on average per-acre land values published in the NASS Census. Specifically, the per-acre land value is determined

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<sup>5</sup> See generally, Order No. 774.

<sup>6</sup> 18 CFR 11.2 (2017). The fee schedule is published annually as part of Appendix A to Part 11 of the Commission's regulations.

by the applicable county or geographic area “land and buildings” category<sup>7</sup> from the NASS Census. This NASS-published per-acre value is then reduced by the sum of a state-specific modifier (to remove the value of irrigated lands) and seven percent (to remove the value of buildings or other improvements). The end result is the adjusted per-acre land value.

7. The NASS Census is conducted every five years, with an 18-month delay before NASS publishes the census data. The Commission incorporates another 18-month delay to account for revisions, consistent with BLM’s implementation of its 2008 rule.

Therefore, the Commission based the 2011-2015 fee schedules on data from the 2007 NASS Census. The Commission’s 2016-2020 fee schedules will be based on data from the 2012 NASS Census; the 2021-2025 fee schedules will be based on data from the 2017 NASS Census; the 2026-2030 fee schedules will be based on data from the 2022 NASS Census; and so on. State-specific adjustments to the per-acre land value are performed in the first year that data from a new NASS Census are used, and will remain the same until the subsequent NASS Census data are used to calculate the forthcoming set of fee schedules.

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<sup>7</sup> The “land and buildings” is a combination of all land use categories in the NASS Census, including croplands (irrigated and non-irrigated), pastureland/rangeland, woodland, and “other” (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings).

## 2. Per-Acre Land Values for Alaska

8. With regard to Alaska, Order No. 774 explained that the final rule would adopt BLM's approach to per-acre land values by designating lands in Alaska as part of one of the five NASS Census geographic area identifiers: the Aleutian Islands Area, the Anchorage Area, the Fairbanks Area, the Juneau Area, and the Kenai Peninsula Area. Several commenters asserted that a per-acre statewide value, a category also reported by the NASS Census, should be used to establish assessments for federal land in Alaska.<sup>8</sup>

9. Order No. 774 considered the arguments raised in support of a statewide per-acre value. In particular, several commenters asserted that it is inappropriate to use regional per-acre values for Alaska because Alaska does not use county designations; the number of farms surveyed for the NASS Census in the entire state of Alaska is less than the number of farms surveyed in most counties in the lower-48 states; and, certain per-acre land values near Anchorage and Juneau are very high, resulting in a substantial increase in annual charges for the use of government lands by hydropower licensees in these areas. However, the Commission ultimately concluded that the commenters had not advanced a sufficient explanation for why it was more appropriate to use a statewide per-acre value for Alaska, rather than the smallest NASS Census defined area for Alaska – the geographic area identifier. Although the Commission rejected the use of a statewide per-acre land value for Alaska in Order No. 774, the Commission clarified that it would

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<sup>8</sup> Order No. 774 at P 44.

not use rates based on the Anchorage Area and the Juneau Area values to assess annual land use charges “because these high, urban-based rates would not reasonably reflect the value of government lands on which hydropower projects are located.”<sup>9</sup> Instead, for purposes of determining a per-acre land value, the Commission decided to use the Kenai Peninsula Area per-acre land value for projects located in the Anchorage Area or the Juneau Area.

**B. Fiscal Year 2016 Fee Schedule**

10. The Commission used the 2012 NASS Census data to calculate its fee schedule for the first time in Fiscal Year (FY) 2016. Due to per-acre land value increases in the 2012 NASS Census data, hydropower projects located in certain geographic areas in Alaska experienced a significant increase in federal land use charges when compared to the rates assessed in FY 2015.<sup>10</sup>

**C. Petition for Rulemaking**

11. On June 6, 2016, the Alaska Federal Land Fees Group, comprising six hydroelectric licensees with projects in Alaska (Alaska Group),<sup>11</sup> petitioned the

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<sup>9</sup> *Id.* at P 45.

<sup>10</sup> In the 2012 NASS Census, changes in land values in other parts of the country varied widely: some rose significantly, some rose by relatively small amounts, and some decreased.

<sup>11</sup> Alaska Electric Light and Power, Bradley Lake Project Management Committee (on behalf of licensee Alaska Energy Authority), Chugach Electric Association, the Ketchikan Public Utilities, Copper Valley Electric Association, and Southeast Alaska Power Agency.

Commission to conduct a rulemaking to revise its method of calculating federal land use charges for hydropower projects in Alaska. The Alaska Group's petition focuses solely on the first component of the Commission's fee schedule – the per-acre land value – and requests that the Commission: (1) calculate an adjusted statewide average per-acre land value for Alaska and (2) apply this adjusted statewide average per-acre fee to all projects in Alaska, except those located in the Aleutian Islands area.<sup>12</sup>

12. In support of this proposal, the Alaska Group states that due to the small number of farms (and associated acreage) that contribute to the data compiled in the NASS Census, there is insufficient data in any individual Alaska area (with the exception of the Aleutian Islands)<sup>13</sup> to produce a fair estimate of land values within that area. Because there are so few farms outside of the Aleutian Islands area, the Alaska Group indicates that the per-acre land values in the other four geographic areas of Alaska are extremely sensitive to any changes in the voluntary, self-reported farm data compiled by the NASS Census.

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<sup>12</sup> The Alaska Group requests that any project located in the Aleutian Islands Area continue to be assessed annual charges for use of government lands based on a regional per-acre land value.

<sup>13</sup> The Alaska Group contends that because the Aleutian Islands Area contains the greatest amount of farmland in the state (668,016 acres), the NASS Census data for the Aleutian Islands Area is “robust, reliable, and an accurate estimate of fair market value.” Alaska Group's June 6, 2016 Petition for Rulemaking at 18. Therefore, the Alaska Group requests that the proposed statewide average per-acre land value be applied to all hydropower projects located in Alaska, except those projects located in the Aleutian Islands Area.

13. For these reasons, the Alaska Group asserts that an adjusted statewide average per-acre land value would better reflect the diverse topography of the state and insulate against land value fluctuations caused by individual changes in farm data. The Alaska Group believes that this method would produce a more accurate estimate of the fair market value of federal lands in Alaska.

## **II. Notice of Inquiry**

14. On November 17, 2016, the Commission issued a Notice of Inquiry soliciting input on a narrow question related to its current methodology for calculating annual charges for the use of government lands – whether regional per-acre land values based on data published in the NASS Census “land and buildings” category result in reasonably accurate land valuations for projects that occupy federal lands in Alaska. In response to the proposal advanced by the Alaska Group’s petition for rulemaking, the Notice of Inquiry requested comments on several specific questions. First, the Commission asked whether it should use a statewide average per-acre land value rather than a regional per-acre land value to calculate the adjusted per-acre land value for projects that occupy federal lands in Alaska. Second, if a statewide average per-acre value is preferred, the Commission sought input on whether the statewide value should be applied to (i) all projects in Alaska, or (ii) all projects in Alaska except those located in the Aleutian Islands Area. Finally, the Commission requested commenters to identify which of the five geographic regions of Alaska it should use to calculate the statewide average per-acre land value.

15. In addition, the Notice of Inquiry encouraged commenters to submit alternative proposals for determining a reasonably accurate per-acre land value for projects in Alaska, provided that the proposed calculation was based on data published in the NASS Census. The notice also invited federal land management agencies to comment on how they would view reductions in annual charges for the lands they administer.

16. The Notice of Inquiry identified five requirements that any proposed methodology should satisfy, derived from the Commission's statutory obligations under the FPA<sup>14</sup> and the Commission's past experience in implementing various methodologies. Any proposed methodology must: (1) apply uniformly to all licensees in Alaska; (2) avoid exorbitant administrative costs; (3) not be subject to review on an individual basis; (4) reflect reasonably accurate land valuations; and (5) avoid an unreasonable increase in costs to consumers.

17. In response to the Notice of Inquiry, seven entities filed comments: the Alaska Group; U.S. Senator Lisa Murkowski; Homer Electric Association, Inc. (Homer Electric); Kodiak Electric Association, Inc. (Kodiak Electric); the U.S. Forest Service (Forest Service); Erin Noakes; and Chelsea Liddell.

18. The Alaska Group filed comments reiterating its position that the Commission should adopt a statewide average per-acre land value for all hydropower projects in Alaska, and that the statewide average should be applied to all projects in Alaska, except those located in the Aleutian Islands Area. The Alaska Group states that it does not

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<sup>14</sup> See 16 U.S.C. 803(e)(1) (2012).

believe that the Commission needs to change its methodology for calculating annual charges for the Aleutian Islands Area since the substantial amount of agricultural acreage represented in the NASS Census data results in a fair estimate of land values for this particular region.

19. In support of its position, the Alaska Group states that the use of a statewide average per-acre land value would provide “a more robust and representative assessment of fair market value of federal lands in [the Kenai and Fairbanks] areas of Alaska, because it draws on a larger and more diverse dataset from across the state, and ensures that rates are less prone to fluctuation over time.”<sup>15</sup> According to the Alaska Group, if the Commission were to adopt a statewide average per-acre land value for Alaska, it would recognize several unique burdens faced by Alaska hydropower licensees and ratepayers, including the exclusive responsibility borne by Alaska ratepayers for all costs associated with hydropower projects, including annual charge assessments and the predominance of federal acreage in Alaska.

20. Senator Murkowski urges the Commission to use a statewide average per-acre land value, stating that the NASS Census data does not provide an accurate accounting of land values in Alaska because the state has fewer farms and farm acreage than any other state in the Pacific Northwest. Homer Electric, an electric distribution cooperative that provides service in the Kenai Peninsula, agrees with Senator Murkowski’s comments that the NASS Census data does not provide an accurate accounting of Alaskan land values.

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<sup>15</sup> The Alaska Group’s January 24, 2017 Comments on Notice of Inquiry at 16-17.

Homer Electric also urges the Commission to adopt a statewide average per-acre land value for Alaska.

21. Kodiak Electric, a licensee of a hydropower project located in the Aleutian Islands Area, states that the regional per-acre land values published in the NASS Census result in reasonably accurate land valuations for hydropower lands in the Aleutian Islands Area.

Because of the large number of agricultural acreage reported by the NASS Census for the Aleutian Islands Area, Kodiak Electric believes no changes to the Commission's current methodology are needed for this geographic region. If the Commission decides to adopt a statewide average per-acre land value for hydropower projects in Alaska, Kodiak Electric recommends that the Commission refrain from applying the statewide value to projects located in the Aleutian Islands Area.

22. The Forest Service observes that from an economic perspective the use of a statewide average per-acre land value for Alaska, derived from data published in the NASS Census, would result in a significant reduction in rental rates for the land in question. However, the Forest Service states that it does not recommend the use of a fee schedule based on NASS Census data for Alaska because of the small number of farms in the state. Instead, the Forest Service recommends that the Commission calculate federal land charges for Alaska using BLM's "Minimum Rent Schedule for BLM Land Use Authorizations in Alaska 2015." The Forest Service also suggests that the Commission consider a fee based on power generated, similar to BLM's solar fee schedule.

23. Erin Noakes and Chelsea Liddell each filed individual comments recommending that the Commission decline the request to alter its current methodology for calculating

federal land charges for hydropower projects in Alaska. Ms. Noakes observes that the use of a statewide average per-acre land value may result in the under-collection of reasonable annual charges for the use of federal lands by hydropower projects in Alaska. Ms. Liddell asserts that the Alaska Group has not sufficiently demonstrated that a statewide average per-acre land value would be any more accurate than a regional per-acre land value.

### **III. Proposed Rule**

24. The Commission proposes to adopt the use of a statewide average per-acre land value, rather than a regional per-acre land value, for the purposes of calculating annual charges for hydropower projects that occupy federal lands in Alaska.

25. To calculate the statewide average per-acre land value for Alaska, the Commission will average the data published in the “lands and buildings” category of the NASS Census for two geographic areas: the Kenai Peninsula Area and the Fairbanks Area.<sup>16</sup> Pursuant to the Commission’s current methodology, this statewide average will be reduced by Alaska’s state-specific reduction to remove the value of irrigated lands, as well as a seven percent reduction to remove the value of buildings. The Commission will apply the resulting adjusted statewide average per-acre land value to all hydropower projects in Alaska except for projects located in the Aleutian Islands Area. Because of

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<sup>16</sup> As we noted earlier, the Commission does not use the NASS Census data from the Anchorage Area or the Juneau Area for the purpose of determining per-acre land values because the predominantly high, urban-based rates do not reasonably reflect the value of government lands on which hydropower projects are located. *See supra* P 9.

the large amount of farmland acreage represented in the NASS Census for the Aleutian Islands Area, the Commission is satisfied that the NASS Census data for this geographic area results in reasonably accurate per-acre land values. Therefore, the Commission will continue to apply the regional per-acre land value for the Aleutian Islands Area.

26. We believe this proposal responds to the issues identified by the petitioners – the prevalence of federal lands in Alaska, the sparse amount of agricultural acreage reflected in the NASS Census, and the increase in annual charges that resulted when the Commission began using data from the 2012 NASS Census. Combining the value of the farmland acreage in the Kenai Peninsula and Fairbanks Areas to calculate a statewide average land value will result in a larger, more robust data set. A larger data set will be less prone to future fluctuation due to changes in the level of participation in NASS Census data reporting or specific anomalies in the data reported. We are satisfied that a statewide average per-acre land value based on the NASS Census data from the “land and buildings” category for the Kenai Peninsula and Fairbanks Areas will result in reasonably accurate land values for hydropower projects that occupy federal lands in Alaska.

27. While the Commission is proposing to implement a statewide average per-acre land value to address these concerns, we are not persuaded that the Aleutian Islands Area values, which are lower than land values elsewhere in the state, should be used in calculating a statewide average that is applied to hydropower projects located outside of the Aleutian Islands Area.

28. The Forest Service recommends that the Commission employ a method based on the 2015 Minimum Rent Schedule for BLM Land Use Authorizations in Alaska.<sup>17</sup>

Following an analysis of this alternative, Commission staff concluded that the use of BLM's Minimum Rent Schedule would result in higher per-acre fees compared to the Commission's current methodology. BLM's Minimum Rent Schedule for Alaska uses land values based on rural sales data. The underlying land values for the Kenai Peninsula, Fairbanks, and Aleutian Islands Areas are all higher than the corresponding land values published in the NASS Census. The Commission does not believe that there is sufficient justification for using – only for Alaska – BLM's Minimum Rent Schedule, instead of continuing to use NASS Census data to establish federal land use charges for all areas of the country.

29. In addition, the Forest Service suggests that the Commission consider a fee based on power generated, similar to the solar fee schedule. For solar energy right-of-way authorizations, BLM charges a combined rent and fee consisting of an acreage rent paid annually regardless of the stage of development, and a megawatt capacity fee paid

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<sup>17</sup> See generally BLM, *Rent for Remote Non-Linear Rights-of-Way, Permits and Leases*, <https://www.blm.gov/policy/im-ak-2015-010> (instruction memorandum describing the U.S. Department of the Interior – Office of Valuation Services' April 2015 Minimum Rent Analysis & Schedule, which provides guidance and a rental schedule for land use authorizations of up to 25 acres across each of BLM's district and field offices in Alaska).

annually once electricity generation begins.<sup>18</sup> BLM uses per-acre data from the “land and buildings” category of the NASS Census as a baseline for determining the acreage rent.<sup>19</sup> Since this method is based on the same regional NASS Census data that the Alaska Group questions, and includes a megawatt capacity fee in addition to the acreage rent,<sup>20</sup> it does not address the Alaska Group’s suggestion that a larger, more robust data set is needed to balance the paucity of regional agricultural acreage for Alaska reflected in the NASS Census. In addition, the acreage rent is determined using a fee schedule that is

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<sup>18</sup> See *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections*, 81 Fed. Reg. 92,122, 92,217-18 (December 19, 2016) (to be codified at 43 CFR pts. 2800 and 2880).

<sup>19</sup> The acreage rent is calculated by multiplying the number of acres included in the right-of-way authorization by a per-acre zone rate from the solar energy acreage rent schedule. To determine the per-acre zone rate, BLM calculates a state-specific factor, applies the state-specific factor to NASS-published data, and uses the resulting per-acre value to assign a particular county or geographic area to the appropriate rent schedule zone.

<sup>20</sup> The Commission previously rejected, as unreasonable, methods based on power sale revenues or a rate per kilowatt hour because such fees would result in a royalty as if the occupied federal lands themselves were producing power. Such criticism could also be levied against a megawatt capacity fee. See *Annual Charges for the Use of Government Lands*, FERC Stats. & Regs ¶ 32,684; 137 FERC ¶ 61,139, at P 9 (2011) (citing *Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges*, Order No. 469, FERC Stats. & Regs., Regulations Preambles ¶ 30,741, at 30,589-90 (1987)).

divided into geographic zones, a practice that the Commission previously rejected.<sup>21</sup> For these reasons, the Commission will not consider this alternative further.

#### **IV. Regulatory Requirements**

##### **A. Information Collection Statement**

30. The Paperwork Reduction Act<sup>22</sup> requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contemplated by proposed rules.<sup>23</sup> This proposed rule does not impose or alter existing reporting or recordkeeping requirements on applicable entities as defined by the Paperwork Reduction Act.<sup>24</sup> As a result, this proposed rule does not trigger the Paperwork Reduction Act.

##### **B. Environmental Analysis**

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the

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<sup>21</sup> See Order No. 774 at PP 23-24 (. . . “the Commission agreed with commenters that BLM’s ‘zone system’ inflates the values of all counties in a zone except the highest valued county.”).

<sup>22</sup> 44 U.S.C. 3501-3521 (2012).

<sup>23</sup> See 5 CFR 1320.11 (2017).

<sup>24</sup> 44 U.S.C. 3502(2)-(3) (2012).

human environment.<sup>25</sup> Commission actions concerning annual charges are categorically exempt from this requirement.<sup>26</sup>

**C. Regulatory Flexibility Act**

32. The Regulatory Flexibility Act of 1980 (RFA)<sup>27</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.<sup>28</sup>

33. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>29</sup> The SBA revised its size standard for electric utilities (effective January 22, 2014) from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.<sup>30</sup> Under SBA's current

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<sup>25</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>26</sup> 18 CFR 380.4 (a)(11) (2017).

<sup>27</sup> 5 U.S.C. 601-612.

<sup>28</sup> 5 U.S.C. 603(c) (2012).

<sup>29</sup> 13 CFR 121.101 (2017).

<sup>30</sup> SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

size standards, a hydroelectric generator is small if, including its affiliates, it employs 500 or fewer people.<sup>31</sup>

34. Section 10(e)(1) of the FPA requires that the Commission fix a reasonable annual charge for the use, occupancy, and enjoyment of federal lands by hydropower licensees.

To date, the Commission has issued 21 active licenses that occupy federal lands in Alaska to 15 discrete entities. Therefore, the proposed rule will apply to a total of 15 entities. Of these 15 entities, 13 entities would be impacted by the proposed rule because they hold licenses that occupy federal lands in the Kenai Peninsula, Fairbanks, Juneau, or Anchorage Areas. The proposed rule adopts the use of a statewide average per-acre land value, rather than a regional per-acre land value, for the purpose of calculating annual charges for the use of federal lands in Alaska. The Commission will apply the statewide average per-acre land value to all hydropower projects in Alaska, except for projects located in the Aleutian Islands Area. The Commission will continue to apply the regional per-acre land value for the Aleutian Islands Area.

35. Based on a review of the 13 licensees that would be impacted by the proposed rule, we estimate that most, if not all, are small entities under the SBA definition. These 13 licensees include utilities, non-for-profit electric cooperatives, cities, and companies.

36. Any impact on these small entities would not be significant. Under the proposed rule, a statewide average per-acre land value for hydropower lands in Alaska would be calculated based on a larger agricultural data set, resulting in land values that will be less

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<sup>31</sup> 13 CFR 121.201, Sector 22, Utilities (2017).

prone to future fluctuation caused by changes in census data reporting. For Fiscal Year (FY) 2017, the use of a statewide average per-acre land value would result in a lower per-acre fee than that assessed in FY 2016. Accordingly, the 13 affected licensees would pay lower annual charge assessments for use of federal lands in FY 2017 than they did the previous fiscal year. Furthermore, six of the 13 affected licensees are members of the Alaska Group, which petitioned the Commission to revise its methodology for calculating annual charges for use of federal lands by establishing a statewide average per-acre land value for Alaska. Consequently, the proposed rule should not impose a significant economic impact on small entities.

37. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

**D. Comment Procedures**

38. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM16-19-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

39. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word

processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

40. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

41. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**E. Document Availability**

42. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

43. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

44. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 11

Dams, Electric power, Indians-lands, Public lands, Reporting and recordkeeping requirements.

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Federal Energy Regulatory Commission proposes to amend Part 11,

Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 11 – ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT**

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 792-828c; 42 U.S.C. 7101-7352.

2. In § 11.2, add new paragraph (c)(1)(iv) to read as follows:

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) For all geographic areas in Alaska except for the Aleutian Islands Area, the Commission will calculate a statewide average per-acre land value based on the average per-acre land and building values published in the NASS Census for the Kenai Peninsula and the Fairbanks Areas. This statewide average per-acre value will be reduced by the sum of the state-specific modifier and seven percent. The resulting adjusted statewide average per-acre value will be applied to all projects located in Alaska, except for those projects located in the Aleutian Island Area.

\* \* \* \* \*