



**Federal Energy Regulatory Commission  
April 18, 2019  
Open Commission Meeting  
Staff Presentation  
Item H-1**

Good morning Mr. Chairman and Commissioners.

On October 23, 2018, the America's Water Infrastructure Act was signed into law. Among other things, the Act directed the Commission to issue a rule, within 180 days, establishing an expedited process for issuing and amending licenses for qualifying facilities at nonpowered dams and for qualifying closed-loop pumped storage projects. In establishing the expedited process, the Act also directed the Commission to convene an interagency task force to coordinate the regulatory processes associated with the authorizations required to construct and operate the qualifying hydroelectric projects.

Accordingly, on November 13, 2018, the Commission issued a notice inviting federal agencies, state agencies, and tribes to participate in an interagency task force for the purpose of consulting on a new, expedited licensing process. A month later, on December 12, 2018, the Commission held a meeting with 28 interagency task force participants. Informed by the coordination efforts of the task force, the Commission issued a Notice of Proposed Rulemaking on January 31, 2019.

The final rule in H-1 establishes an expedited process for licensing two types of hydroelectric projects - qualifying facilities at existing, nonpowered dams and closed-loop pumped storage projects. Under this expedited process, the Commission will seek to ensure that a final decision on a license application is issued no later than two years after the Commission receives a completed application. The final rule will be codified in a new part that will be added to the Commission's regulations.

Use of the expedited process is voluntary, and limited in scope to original license applications. The rule does not change the Commission's pre-filing processes. That is, the rule does not modify any of the existing process milestones and stakeholder consultation that an applicant must complete before filing a license application.

Pursuant to the final rule, an applicant must submit a request for expedited processing when it files a license application.

An application submitted with a request to use the expedited process must demonstrate compliance with certain qualifying criteria promulgated by Congress in the 2018 Water Infrastructure Act. Section 34(e) of the Federal Power Act, as amended by the 2018 Act, sets forth the qualifying criteria that a facility at an existing, nonpowered dam must meet in order to be eligible for the expedited licensing process. Section 34(e) also defines the term “qualifying nonpowered dam.”

In contrast, section 35(g) of the Federal Power Act, as amended by the 2018 Act, directs the Commission to establish criteria that a closed-loop pumped storage project must meet in order to be eligible for the expedited process. In establishing the qualifying criteria for closed-loop pumped storage projects, Congress directed the Commission to include two specific criteria. First, an eligible pumped storage project must cause little to no change to existing surface and groundwater flows and uses. And, second, an eligible pumped storage project must be unlikely to adversely affect species listed as threatened or endangered under the Endangered Species Act.

In addition to meeting the eligibility criteria set forth by Congress, the final rule requires an applicant to submit, at the time the application is filed, documentation demonstrating that the applicant has consulted with stakeholders including tribes and federal and state agencies responsible for required authorizations under the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act. If the project is proposed at a nonpowered dam, the applicant must also provide documentation demonstrating that the owner of the dam is not opposed to hydropower development at the site. Lastly, if the project would use any park, recreation area, or wildlife area created by state or local law, the applicant must provide documentation confirming that the managing entity is not opposed to use of the site for hydropower development.

No later than 180 days from the date the application and request are filed, the Director of the Commission’s Office of Energy Projects will act on a request to use the expedited process. If an application demonstrates compliance with the eligibility criteria, includes the required consultation documentation, and has no outstanding

deficiencies, the Director will issue a notice that approves the expedited processing request. This notice will also accept the license application, find it ready for environmental analysis, and provide a processing schedule. If an expedited processing request is approved, the two year process will be deemed to have begun on the date the application was filed. In other words, the amount of time it takes the Commission to approve a request to use the expedited process will be included in the two year timeline.

The final rule will take effect 90 days after publication in the Federal Register.

This concludes our presentation. We are happy to answer any questions you may have.