Testimony of

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Chairman Upton, Ranking Member Rush, and Members of the Subcommittee:

My name is John Katz and I am Deputy Associate General Counsel for Energy Projects at the Federal Energy Regulatory Commission. The Office of the General Counsel provides legal and policy advice to the Commission's Office of Energy Projects, which takes a lead rule in carrying out the Commission's responsibility for siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization and safety of liquefied natural gas terminals.

I appreciate the opportunity to appear before you to discuss discussion drafts of the Hydropower Policy Modernization Act of 2017; the Promoting Hydropower Development at Existing Non-Powered Dams Act; the Promoting Closed-Loop Pumped Storage Hydropower Act; the Promoting Small Conduit Hydropower Facilities Act of 2017; the Supporting Home Owner Rights Enforcement Act; and a Bill to Reinstate and Extend Deadlines for Commencement of Construction for the Jennings Randolph Project No. 12715. I will also address H.R. 446 -- a bill to extend the deadline for commencement of construction for the Gathright Project No 12737 -- and H.R. 447 – a bill to extend the deadline for commencement of construction of the Flanagan Project No. 12740.

As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

I. The Commission's Hydropower Program

A. Background

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams, pursuant to Part I of the Federal Power Act (FPA). Together, these projects represent about 56 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Hydropower is an essential part of the Nation's energy mix and offers the benefits of an emission-free, renewable, domestic energy source. Public and private hydropower capacity together total about 8 percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) Use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions (a simpler form of license) for projects that would be located at existing dams or within conduits as long as these projects meet specific criteria. Licenses are generally issued for terms of between 30 and 50 years, and are renewable. Exemptions are perpetual, and thus do not need to be renewed.

Congress has established two types of exemptions. First, section 30 of the FPA allows the Commission to issue exemptions for projects that use, for generation, the

hydroelectric potential of manmade conduits that are operated for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity. Conduit projects can have a maximum capacity of 40 megawatts and are not subject to National Environmental Policy Act of 1969 (NEPA) review. Second, in section 405(d) of the Public Utility Regulatory Policies Act, as amended by the Hydropower Regulatory Efficiency Act of 2013, Congress authorized the Commission to grant exemptions for small hydroelectric power projects having an installed capacity of up to 10 megawatts. To qualify for this type of exemption, a project must add hydroelectric capacity to and be located at an existing dam that does not require construction or the enlargement of an impoundment, or must add hydroelectric capacity that uses the hydropower potential of a natural water feature, such as a waterfall. Both types of exemptions are subject to mandatory fish and wildlife conditions provided by federal and state resource agencies.

Under the provisions of the Hydropower Regulatory Efficiency Act of 2013, a qualifying conduit facility does not need a license or exemption from the Commission if the facility meets the following requirements: (1) the non-federally owned conduit on which the facility is located operates for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity; (2) the facility generates electric power using only the hydroelectric potential of the conduit; (3) the facility has an installed capacity that does not exceed 5 megawatts; and (4) the facility was not licensed or exempted from the licensing requirements of Part I of the FPA on or before

the date of enactment of the 2013 Act. To date, 83 projects have qualified under these provisions.

The Commission has established three licensing processes, and allows applicants to request the process that it believe to be best suited to its individual proceedings. The integrated licensing process (ILP) frontloads issue identification, and decisions on information needs to the period before an application is filed, and is suited to complex or controversial cases. The alternative licensing process (ALP) allows participants significant flexibility in tailoring the licensing process in a manner that can work well in individual cases. The traditional licensing process (TLP) typically works best for less complex or controversial projects, and is the process used for exemptions. The Hydropower Regulatory Efficiency Act of 2013 required the Commission to investigate the feasibility of a two-year licensing process, from the beginning of pre-filing to Commission action on the license application. Two applications were filed under this provision for this program and one qualified -- an application for the 5-megawatt Kentucky River Lock and Dam No. 11 Project. The two-year process for the project began in May 2014 and the Commission issued a license for the project on May 5, 2016. The Commission held a workshop to review the two-year process on March 30, 2017, and Commission staff is preparing a final report on the two-year process, due to Congress May 29, 2017.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, transparent public proceedings, where all significant issues are identified and studied. Commission staff develops a detailed, thorough environmental

analysis that addresses matters of concern to interested entities and gives stakeholders numerous opportunities to provide the Commission with information, comment, and recommendations. While the Commission's regulations establish detailed procedures, Commission staff retains the ability to waive the regulations or to revise the procedures where doing so will lead to the more efficient and cost-effective processing of an application

It is important to note that in many instances, it is applicants, federal and state agencies, and other stakeholders that determine project success, and control whether the regulatory process is short or long, simple or complex. For example, where a developer picks a site that raises few environmental issues and works early to build a rapport with stakeholders, and where agencies and other stakeholders commit to fully and timely engaging in the regulatory process, project review can move very quickly. In these instances, licenses can be issued in two years or less.

The location of a proposed project and its mode of operation may be at least as significant as project size: a small project that alters the natural flow of a river in a sensitive area may be harder to license than a larger, run-of-river project on a site where there are few environmental issues.

Sections 4(e) and 10(a) of the FPA require the Commission, in making licensing decisions, to consider and balance many competing developmental and environmental interests. Each licensed project will have among its authorized purposes a variety of

beneficial public uses. Among the project purposes specified in Section 10 (a) (1) and Section 4 (e) are: waterpower development, the adequate protection, mitigation, and enhancement of fish and wildlife, irrigation, flood control, water supply, recreation, and energy conservation.

When a license is issued, a project boundary is established to include the lands, waters, works, and facilities that the Commission identifies in the license as composing the licensed project. Fee title to lands within the boundary can be owned by someone other than the licensee, such as federal, state, and private entities, as long as the licensee holds sufficient property interests (e.g., flowage easements) to carry out project purposes. The issuance of a license and the establishment a project boundary do not change existing property rights.

Statutory requirements give other agencies a significant role in the licensing process, thus limiting the Commission's control of the cost, timing, and efficiency of licensing. For example, if a project is located on U.S. lands, such as a national forest, section 4(e) of the FPA authorizes the federal land managing agency to impose mandatory conditions to protect those lands. Further, section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. For exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources. In addition, section 401(a)(1) of the Clean Water Act precludes the Commission from licensing a hydroelectric project unless the project has first obtained state

water quality certification, or a waiver thereof, and requires the Commission to adopt all conditions contained in a certification.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Coastal Zone Management Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the National Historic Preservation Act.

Compliance with these requirements can involve a variety of processes ancillary to licensing, and may be outside of the Commission's control, thus lengthening the time required to obtain a license. Even after the Commission staff has completed analysis of a hydroelectric project and is ready to take final action on the application, the case may be delayed, sometimes for years, until the issuance of a water quality certification under the Clean Water Act, or a biological opinion pursuant to the Endangered Species Act. Over a third of all pending hydropower re-license applications before the Commission are awaiting these approvals from other agencies. By contrast, only a few applications for original licenses are delayed for this reason. Further, mandatory conditions, which the Commission may find to be inconsistent with the public interest, can result in increased costs or reduced power production and significantly affect the economic viability of a project.

In addition to licensing and relicensing projects, and issuing exemptions, the Commission is also responsible for ensuring compliance with license and exemption

conditions during the life of regulated projects, and maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

B. Project Relicensing and License Administration Workload Through FY 2030

Commission staff currently has a full workload processing original license, relicense, and exemption applications, as well as its compliance and dam safety work. The relicensing workload, in particular, has started to increase and will continue to remain high well into the 2030s. Between FY 2017 and FY 2030, about 480 older projects, which represent about 45 percent of our licensed projects and one third of licensed capacity under Commission jurisdiction, will begin the pre-filing consultation stages of the relicensing process. Once new licenses are issued, the license implementation phase begins. Currently, the Commission's license compliance and administration division is processing about 4,000 license and exemption-related filings per year. This will substantially increase commensurate with the increased relicensing workload.

Many projects now beginning relicensing were first licensed in the early to mid-1980s, prior to enactment of modern environmental standards, including those of the Electric Consumers Protection Act of 1986, which directed the Commission, when issuing licenses, to give equal consideration to power and development, energy conservation, fish and wildlife, recreational opportunities, and other aspects of environmental quality.

Commission staff is dedicated to making the regulatory process as timely and cost-effective as possible, especially in consideration of the number of projects that will be undergoing the relicensing process for the first time. Staff is concerned that adding

additional complexity and required procedures to the Commission's review could hinder the timely processing of this large workload.

II. Hydropower Policy Modernization Discussion Draft

The discussion draft of the Hydropower Policy Modernization Act of 2017 has the commendable goals of improving administrative efficiency, accountability, and transparency; promoting new hydropower infrastructure; requiring balanced, timely decision making; and reducing duplicative oversight. Shared decision-making in the regulation of hydropower projects has complicated the Commission's efforts to timely and efficiently process applications, in particular, large, complex relicense applications in certain regions. Therefore, I support efforts to streamline the hydropower review process. I will now comment on specific sections of the discussion draft.

A. Discussion Draft Section 2. Hydropower Regulatory Improvements

Section 2 sets forth the sense of Congress that hydropower is an essential renewable resource and modifies section 203 of the Energy policy Act of 2005 to include hydropower in the definition of renewable energy. Hydropower development has been adversely effected by the fact that hydropower is not always defined as renewable. I therefore support this provision.

i. Preliminary Permit Terms

Section 2 would amend FPA section 5 to increase the maximum term of a preliminary permit from three to four years, to increase the allowable extension of a permit

term from two additional years to four additional years, and to allow a second four-year extension if the Commission determines that extraordinary circumstances warrant doing so.

The purpose of a preliminary permit is to preserve the right of the permit holder to have the first priority in applying for a license for the project that is being studied. For new projects, the Commission's pre-filing license application processes generally take one to three years to complete. While a permittee holds a permit for a site, any other interested entity is barred from filing a license application for a project at the site. For this reason, the Commission expects permittees, during the course of the permit, to diligently carry out prefiling consultation and study development leading to the development of a license application, and where the permittee is not ready to begin preparing the license application due to unfavorable economic or other conditions, to release the site for possible development by others or for other purposes. The public interest in competition generally precludes allowing developers to "site bank." However, there are instances in which a developer cannot move forward with a project for reasons beyond its control. Accordingly, allowing the Commission to extend permit terms where doing so is warranted will give the Commission additional flexibility.

ii. Commencement of Construction Deadlines

Section 2 would allow the Commission to extend the deadline for the commencement of project construction for eight years. Section 13 of the FPA currently allows the Commission to grant such an extension for no more than two years. If a licensee does not timely commence construction, section 13 requires the Commission to terminate

the license. As discussed with respect to preliminary permits, while the public interest generally favors prompt development of hydropower sites, there are times when a developer cannot meet the statutory deadline for reasons it cannot control. The proposed revision would give the Commission the flexibility to deal with such cases, and would avoid licensees having to seek relief from Congress, as is currently their only option.

iii. Consideration of Relicensing

Next, Section 2 would amend FPA section 15(e) to require the Commission when determining the license term on relicensing, to consider project-related investments by the licensee over the term of the existing license, including any annual licenses, that resulted in new development, construction, capacity, efficiency improvements, or environmental measures, but which did not result in the extension of the term of the license by the Commission.

The Commission is aware that this issue is a matter of concern for hydropower licensees, and has issued a notice of inquiry seeking public comment on the Commission's policy for setting license terms. The Commission received 42 comments in response to the notice, and is currently reviewing them.

iv. Mandatory Conditions

Finally, section 2 of the discussion draft would amend FPA section 33 of the Federal Power Act to tighten the standards under which the Secretaries of the Interior, Agriculture, and Commerce establish mandatory conditions and to delete administrative requirements regarding those conditions. As these proposed amendments to section 33 relate to other

portions of the discussion draft dealing with trial-type hearings regarding mandatory conditions, I will address these matters below.

B. Discussion Draft Section 3. Hydropower Licensing and Process Improvements

i. Section 34 – Process Coordination

Section 3 of the discussion draft would amend the FPA to add section 34 establishing the Commission as the lead agency for purposes of: (1) coordinating all applicable federal authorizations; and (2) complying with NEPA for hydroelectric project licensing, license amendments, and exemptions under part I of the FPA. The new section would among other things, require the Commission, in consultation with federal, state, and local agencies and Indian tribes with applicable federal authorization responsibilities, to establish a process for setting a schedule following the filing of an application under part I of the FPA for the review and disposition of each federal authorization. Once established, the Commission would use the process to establish individually and in consultation with said agencies and Indian tribes, a schedule for each application submitted under this part. The schedule, among other things, would have to be consistent with any federal and state deadlines established under federal and state law for the federal authorizations.

FPA section 34 would further: (1) require all other federal and state agencies and Indian tribes considering an aspect of an application for federal authorization to coordinate with the Commission and comply with deadlines established by the Commission; (2) require that the Commission identify any federal or state agency, local government, or Indian tribe that may consider an aspect of an application for federal authorization, and

provide them with the opportunity to participate in the process of reviewing an aspect of an application for a federal authorization; (3) require the notified agencies and Indian tribes to submit a response acknowledging receipt of the notice to the Commission within 30 days; and (4) require the notified agencies and Indian tribes to, as early as possible, share with the Commission and applicant, any issues of concern relating to the federal authorization that may delay or prevent the granting of such authorization, including any issues that may prevent the agency or Indian tribe from meeting the Commission-established schedule. For purposes of coordinating the federal authorizations for each project, the section would require the Commission to consult and make recommendations to the agencies and Indian tribes on the scope of the environmental review. Finally, under certain conditions, the Commission could grant an agency or Indian tribe request for an extension of time of no more than 90 days after the deadline set forth in the schedule.

I support the goal of this section to bring certainty and timeliness to the licensing process. As I discussed earlier, federal authorizations that most commonly delay the Commission's ability to make a licensing decision in a timely manner are Clean Water Act water quality certifications and Biological Opinions under the Endangered Species Act. Both statutes include deadlines for agency action, which the Commission would have to incorporate into its schedule. Unfortunately, these deadlines can be extended by the federal authorizing agency and the applicant, as when an applicant for the federal authorization withdraws and refiles its request for the purpose of resetting the clock or where the federal agency delays the start of the clock by stating that existing information is inadequate for it

to make its decision. It is worth noting that the majority of the cases that are delayed for lack of required mandatory conditions are relicense applications for large, complex projects.

I am concerned that proposed new FPA section 34 could increase the complexity and length of the licensing process, while giving the Commission the added responsibility of policing other entities' compliance with statutory deadlines, without giving the Commission the authority to enforce the schedule that it establishes. This could have the unintended consequence of limiting the staff's ability to expedite the processing of applications for new projects in order to comply with the proposed additional administrative procedures. I also note that the Commission already serves as the lead agency in virtually all hydropower proceedings and sets schedules for those proceedings.

It also may be the case that the procedures contemplated by this section are not appropriate for license amendments and for exemptions, which tend to be simpler matters. The vast majority of amendments are processed in less than six months, and often less, although more complex amendments, such as those that significantly increase project capacity, may take additional time, given the breadth of potentially-affected resources and agencies and other stakeholders. Thus, should any amendments be included in the final bill, we recommend that it be limited to capacity amendments to avoid adding complexity and time to most of the amendments. Like amendments, exemptions are typically simpler and take much less time than licenses to process. In consequence, Congress could consider limiting the proposed new procedures to relicenses and capacity amendments.

C. Section 35 – Trial-type Hearings

Section 3 of the discussion draft would add to the FPA a new section 35, dealing with trial-type hearings regarding mandatory conditions and fishways imposed under sections 4(e) and 18, respectively. These hearing are currently the responsibility of the agencies that impose the conditions: the draft would shift that responsibility to the Commission.

As Commission staff testified regarding the prior discussion draft, licensing stakeholders, including licensees, have informed us that trial-type hearings under the FPA in its current form require substantial time, money, and staff resources. For these reasons, parties have instead chosen to forego the hearings in favor of negotiating alternative terms, conditions, or prescriptions. Shifting oversight of these trial-type hearings to the Commission would not eliminate the substantial expense associated with such hearings, but could encourage the proliferation of them. This could not only result in additional expense and delay, but could also divert Commission resources from processing applications to dealing with hearings, with a negative impact on efficiency.

As an alternative, Congress could consider eliminating trial-type hearings, thereby returning to the agencies the responsibility of supporting their conditions with substantial record evidence.

D. Section 36 – Licensing Study Improvements

The discussion draft would amend the FPA to add a new section 36 requiring the Commission, in consultation with federal and state agencies and interested members of the

public, to compile and maintain a record of studies representing the full range of environmental effects of a hydropower project and reflecting the most recent peer-reviewed science. The Commission, other federal, state, and local governments, and Indian tribes would be required, to the extent practicable, to use the study record to support their actions on their associated federal authorizations. If the agency or Indian tribe would require an applicant to perform an alternative study, the agency or Indian tribe would be required to demonstrate that the study would not be duplicative of an existing study on the record.

The Commission is required to base its decisions on substantial evidence, which generally includes studies performed by applicants, as well as those put into the record by other parties, and peer-reviewed material gathered by Commission staff. Commission staff accepts studies performed in other proceeding or regarding other projects, where it is clear that those studies are applicable to the project under review. I am uncertain whether additional, more formal procedures will improve this process.

Section 36 would also require that the Commission, in consultation with federal, state, and local agencies and Indian tribes, develop comprehensive plans, at the request of project applicants, on a regional or basin-wide scale in basins or regions in which there are multiple projects and applications for projects. The Commission would be required to conduct or arrange for the conduct of regional or basin-wide environmental studies, with the participation of at least two applicants. Any study conducted under this section would only apply to a project for which the applicant participates.

The Commission has a policy of, wherever possible, coordinating the review of projects located in a river basin and conducting appropriate cumulative effects analyses as part of its NEPA responsibility. However the Commission itself does not have the resources or funding to conduct basin-wide studies and, given that the Commission's budget is funded by charges to regulated entities, performance of studies by the Commission could add significant new costs to be borne by licensees and, ultimately, ratepayers. If the Commission is required to implement this provision, additional direction from Congress on the type of comprehensive plan and basin-wide studies it envisions would be helpful.

E. Section 37 -- License Amendment Improvements

The discussion draft would amend the FPA to add a new section 37 requiring two rulemakings related to license amendments. The first rulemaking, under section 37(a), would create a new class of amendments called "Qualifying Project Upgrades" and the second rulemaking, under section 37(b), appears to address all other license amendments. Qualifying Project Upgrades could include capacity increases, efficiency improvements, and other enhancements to hydropower generation, as well as environmental protection, mitigation, or enhancement measures to benefit fish and wildlife, cultural resources, and recreation. Qualifying Project Upgrades would be limited to those amendments that are unlikely to adversely affect threatened or endangered species or critical habitat; are consistent with comprehensive plans; have insignificant or minimal cumulative adverse effects; and are unlikely to adversely affect water quality and water supply. Section 37(a)

sets forth specific steps and timelines that the Commission and other federal agencies, state agencies, and Indian tribes would have to follow to determine if an amendment meets specified criteria and for issuing public notices, providing comments, and issuing any other needed federal authorizations. Section 37(b) does not specify specific steps and timelines but instead, gives the Commission broad authority (after soliciting public comments) to develop the most efficient and expedient process for approving amendments for different categories of amendments.

Regarding the provisions in 37(b), Commission staff currently adapts the processing of amendments according to the scope of the proposal, potential impacts, and other relevant factors. This flexibility has facilitated the expeditious nature of the vast majority of amendments. Developing new procedures for specific categories of amendments could be difficult and could reduce the existing flexibility.

The defined steps and schedules required by the proposed section 37(a) are in significant part currently commonly used in Commission proceedings. However, the defined schedules in the draft document could present some challenges. For example, while the draft requires the Commission to make a preliminary determination of qualification within 15 days, that determination must be based upon consultation under the Endangered Species Act consultation, which can take up to 135 days (and, as discussed above, often much longer). Moreover, the proposed procedures could add to processing time for minor amendments, such as requests to add a new boat ramp, modify a transmission line to make the line raptor-safe, or rewind the project's generators. These

minor amendments can often be processed in two to four months, but might be "qualified" under section 37(a), and thus take longer to resolve. As discussed above, Congress may wish to limit this provision to capacity amendments, which generally take longer. It is also the case that these more complex amendments would have potential significant environmental consequences, and thus not be eligible for treatment as "qualified." Further, the requirements of Clean Water Act, National Historic Preservation Act, Coastal Zone Management Act, and Endangered Species Act, may not be consistent with the proposed process. Finally, I note that the standard for amendment conditions other than those necessary for public safety (a condition must be reasonable, economically feasible, and essential) sets a high bar, and the resources that may be protected do not include irrigation, flood control, historic properties, and recreation, matters that Congress has otherwise directed the Commission to consider.

III. Promoting Hydropower Development at Existing Dams Act

The discussion draft proposes adding a section to the FPA allowing the Commission to, after consultation with certain federal and state agencies and Indian tribes, issue exemptions for qualifying hydroelectric facilities to be located at existing, non-powered dams. The exemption would include any terms and conditions that the Commission determines are (1) necessary to protect public safety and (2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the qualifying facility. In order to qualify, the facility must, among other things: (1) be constructed,

operated, and maintained for electric generation; (2) be located at a qualifying non-powered dam that is operated for the control, release, or distribution of water for various purposes other than electric generation and has been certified by an independent consultant approved by the Commission as complying with the Commission's dam safety requirements; and (3) not change the existing flow release regime at the qualifying non-powered dam. The jurisdiction of the Commission under the exemption for the qualifying facility would be limited to the qualifying facility exempted and any associated primary transmission line, and would not extend to any conduit, dam, impoundment, shoreline or other land, or any other project work associated with the exempted qualifying facility. Annual charges for such facilities would be established within 180 days of enactment of this section after notice and opportunity for public comment.

The development of hydropower at existing, non-powered dams is a laudable objective, because such projects present the opportunity to development a renewable resource with relatively small environmental impacts, a goal shared by many stakeholders. I am concerned, however, that the fact that the bill contemplates that the Commission's jurisdiction would not extend to the dam and impoundment at qualifying facilities would leave the Commission without the ability to ensure that the public was not at risk for hazards arising from project dams or reservoirs. Further, limiting the environmental conditions to those that provide for the protection of fish and wildlife resources would leave unaddressed potential impacts on other resources, including irrigation, flood control, water supply, recreation, and other matters. In addition, the discussion draft appears to

contemplate that the Commission treat such projects as it treats those projects at federal facilities where the Commission only licenses the facilities added to facilitate hydropower generation and the federal owner is responsible for the safety of the dam. If that Congress' intent, it might be appropriate to limit this provision to projects at dams owned by state agencies with an established dam safety programs.

IV. Promoting Closed-Loop Pumped Storage Hydropower Act

Pumped storage projects offer the opportunity to store energy for use when it is needed. This makes these projects a valuable potential resource, one that can balance generation from other renewable projects, as well as traditional projects. Closed-loop projects, which do not regularly require the intake of or supply of water, can have fewer operational effects than other types of pumped storage. The goal of making the process of reviewing closed-loop projects as efficient as possible is a positive one.

The discussion draft would prohibit the inclusion of conditions in licenses for closed-loop pumped storage projects other than those necessary to protect public safety or are reasonable, economically feasible, and essential to protect fish and wildlife. As with the previous draft, I note that conditions relating to resources such as irrigation, water supply, recreation, and other considerations would be precluded. I also note that the most recent pumped storage project that the Commission licensed, the 400-MW Gordon Butte project, was processed in 14 months.

In addition, the new section would allow applicants, even those that claimed municipal preference, to add other entities to preliminary permits and to transfer licensees

to non-municipal entities. This would reverse, as to closed-loop pumped storage projects, the Commission's policy against "hidden hybrids." This policy was established to prevent municipalities, which have a statutory preference over non-municipalities, from manipulating the licensing process by using municipal preference to obtain a license or permit in competition with a non-municipal entity, and then transferring the license or permit to a third party. Should Congress wish to allow the addition of new entities to permits or licenses without disadvantaging non-municipal competitors, Congress could eliminate municipal preference as to closed-loop pumped storage projects, thereby leveling the playing field.

V. Promoting Small Conduit Hydropower Facilities Act of 2017

As discussed above, pursuant to the Hydropower Regulatory Efficiency Act of 2013, a qualifying conduit facility can be exempt from Commission jurisdiction if it meets specified criteria. The qualifying conduit facility program has been effective.

Under the 2013 Act, not later than 15 days from the date of a notice of intent for a qualifying conduit, the Commission must make an initial determination as to whether the facility meets the qualifying criteria, and if so, publish public notice of the notice of intent. If no entity contests whether the facility meets the qualifying criteria within 45 days, the facility is deemed to meet the criteria. If the qualifications are contested, the Commission makes a prompt determination.

The discussion draft would add provisions to Section 30(a) of the Federal Power Act for projects that meet the same criteria, but do not exceed 2 megawatts. For such projects,

there would be no public notice provisions, and the facility would be deemed to qualify upon the affirmative determination by Commission staff, or the failure of the Commission to act, within 15 days of the notice of intent. The current provisions would remain applicable for facilities between 2 and 5 megawatts.

Since the 2013 Act, 83 projects have qualified and not been required to be licensed or exempted by the Commission. The entire process has on average taken just over 2 months, including the required 45-day public notice period. The Commission has rarely received comments that have bearing on whether the facility qualifies. The provisions in the discussion draft would expedite some projects, but might cause confusion because there would be two qualifying conduit provisions. To provide benefits to a greater range of projects, Congress should consider shortening the 45-day notice period for all qualifying projects, rather than creating two classes. Congress may also wish to consider whether larger conduit projects should be eligible for exemption from Commission jurisdiction.

VI. The Supporting Home Owner Rights Enforcement Act

The Supporting Home Owner Rights Enforcement Act would amend section 4(e) of the FPA to add "minimizing infringement on the useful exercise and enjoyment of property rights held by non-licensees" to the list of matters to which the Commission must give equal consideration, and would amend FPA section 10(a)(1) by adding a similar provision in the listing of matters that the Commission must consider in determining that a project is consistent with comprehensive development. The act would also add a new provision requiring licensees, in developing recreational resources, to consider private land ownership

as a means to encourage and facilitate private investment and increased tourism and recreational use.

The Commission includes in licenses only those lands that are necessary for project purposes: those on which project structures are located, those on which project operation, such as flowage, occur, and those that are needed to carry out project purposes, such as public recreation. The issuance of a license or approval of a shoreline management plan does not change property ownership, and there are many private landowners who own property that is within a project boundary, just as there are privately-owned "islands" within some national forests. In the absence of a deeded property right of some kind, a licensee cannot enter into or interfere with private lands.

In addition, standard license conditions authorize licensees to allow private landowners to use licensee-owned lands, so long as the use is consistent with project purposes. Thus, for example, many licensees allow homeowners to maintain walkways across the licensee's land or to build private boat docks. A licensee cannot allow a private landowner to use the licensee's lands in such a way as to preclude the fulfillment of project purposes, as by building a fence along a walkway on the licensee's land that would prevent the public from entering the project shoreline. The Commission encourages its licensees to be good neighbors to landowners, local communities, and other stakeholders.

VII. Commencement of Construction Extension Bills

As noted above, section 13 of the FPA allows the Commission to set a deadline for the commencement of the construction of a licensed hydropower project no later than two

years from licenses issuance, and allows the Commission to grant a single two-year extension. If a licensee does not timely commence construction, the Commission must terminate the license. When this occurs, licensees must turn to Congress for relief. The Commission has a long-term policy that bills that allow the Commission to extend to deadline no more than 10 years from the date of license issuance are consistent with the Commission's policy against site banking. As noted above, the Hydropower Policy Modernization Act of 2017 would allow the Commission to extend the deadlines for start of construction of hydroelectric projects for up to eight years, thus obviating in many cases the need to seek legislation like the bills I discuss below.

A. H.R. 446

On March 13, 2012, the Commission issued an original license for Jordan Hydroelectric Limited Partnership, Virginia's proposed 3.7-megawatt Gathright Dam Hydroelectric Project No. 12737, to be located at the U.S. Corps of Army Engineers' Gathright Dam, on the Jackson River, near Falling Springs, in Alleghany County, Virginia. The license required the company to commence project construction within two years of the date of the license, or by March 13, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, thus making the deadline March 13, 2016. The licensee did not commence construction by the extended deadline. Commission staff understands that the licensee has been working with the U.S. Army Corps of Engineers to obtain a 408 permit, which is needed before construction can begin.

H.R. 446 would authorize the Commission to extend, for six years from the date of expiration of the extension issued by the Commission, the commencement of construction deadline for the Gathright Dam Project, thus extending to 10 years from the date of licensing, and to reinstate the project license, if necessary. The bill is consistent with the Commission's policy.

B. H.R. 447

On January 27, 2012, the Commission issued an original license for Jordan Hydroelectric Limited Partnership, Virginia's proposed 3.0-megawatt Flannagan Dam Hydroelectric Project No. 12740, to be located at the U.S. Corps of Army Engineers' John W. Flannagan Dam and Reservoir, which is on the Pound River, near the Town of Clintwood, in Dickenson County, Virginia. The license required the company to commence project construction within two years of the date of the license, or by January 27, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, thus making the deadline January 27, 2016. The licensee did not commence project construction by the extended deadline. Commission staff understands that the licensee has been working with the U.S. Army Corps of Engineers to obtain a 408 permit.

H.R. 447 would authorize the Commission to extend, for six years from the date of expiration of the extension issued by the Commission, the commencement of construction deadline for the Flannagan Dam Project, thus extending to 10 years from licensing, and to reinstate the license, if necessary. This bill is also consistent with Commission policy.

C. H.R. 2122

On April 30, 2012, the Commission issued an original license for Fairlawn Hydroelectric Company, LLC's proposed 14-megawatt Jennings Randolph Hydroelectric Project No. 12715, to be located on the Corp's Jennings Randolph Dam and Lake, on the North Branch Potomac River in Garrett County, Maryland, and Mineral County, West Virginia. The license required the company to commence project construction within two years of the issuance date of the license, or by April 30, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, thus making the deadline April 30, 2016. On September 22, 2016, the Commission granted a two-year stay of the commencement of construction deadline of the license, or until April 28, 2018. Commission staff understands that the licensee is working with the Corps to obtain construction authorization under section 14 the Rivers and Harbors Act of 1899.

H.R. 2122 would authorize the Commission to extend, for up to three consecutive two-year periods from the date of expiration of the extension issued by the Commission, the commencement of construction deadline for the Jennings Randolph Project, 10 years from license issuance, and to reinstate the license, if necessary. This bill is consistent with Commission policy.

VIII. Conclusion

This concludes my remarks on the draft hydropower bills drafts. Commission staff would be happy to provide technical assistance as you move forward with your consideration of this legislation. I would be pleased to answer any questions you may have.