Early Action in Hydropower Licensing
New FPA Section 36

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Overview

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- Reinvestment philosophy
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- FERC outreach and policy statement
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Federal Power Act provides that hydropower licenses shall be issued for a term not to exceed 50 years.

FPA provides that any new license shall be for between 30 – 50 years.

FERC policy tied license term, in part, to level of investment:
- Commission sets a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement;
- a 40-year term for a license involving a moderate amount of these activities;
- and a 50-year term where there is an extensive amount of such activity.

Some licensees had sought rehearing of FERC relicense orders based on license term.
Origin of “Early Action” Concept

- FERC policy hit home for Chelan PUD a decade ago
  - FERC declined to consider new $110 million juvenile fish bypass system when making a license term determination for the Rocky Reach Project.
  - Project received a 43-year license despite $425 million (NPV) in proposed PM&Es.
  - Bypass was installed as part of a habitat conservation plan to address the project’s biggest issue in relicensing – anadromous salmon and steelhead.
  - Other factors were in play, including FERC’s desire to see the project license expire in coordination with neighboring projects.
  - The 2009 license term was at odds with a settlement agreement that recommended a license term of between 47-50 years.
Origin of “Early Action” Concept

- Downstream Rock Island Project license expires in 2028.
- Chelan PUD began contemplating effects of FERC license term investment policy.
- Rock Island also incorporated an HCP into its license in 2004. In addition, Chelan PUD is undergoing a modernization of the project, with investments upwards of $600 million – mostly before 2028.
- Chelan PUD may have opportunities to make other new investments in the project before 2028.
Reinvestment Philosophy

- Public good is best-served if proactive stewardship actually can result in a longer (not shorter) license term and more overall certainty for hydropower owners.

- Major asset investments can have an effect on a licensee’s books for 50 years and sometimes longer.

- Decision-making should encourage licensees to make early investments.

- The timing of the investment, particularly if it extends useful life, should not bar it from positively influencing license term.
Concept evolved since 2015 through legislative proposals.
- National Hydropower Association advocated as component of licensing proposals
- Worked with Washington’s Senator Maria Cantwell and Rep. Cathy McMorris Rodgers


S. 1460, the Energy and Natural Resources Act of 2017 required FERC give “equal weight” to a licensing investment whether it occurred pre-or-post licensing (and had not already been considered in the existing license).

H.R. 3043, the Hydropower Policy Modernization Act of 2017, directed FERC to give the “same weight” to such early investments.
Chelan PUD reached out to FERC to discuss policy and legislative activity.

FERC sought comment on whether to amend its license term policy in November, 2016 (five options).

October 19, 2017 policy statement on establishing license terms for hydroelectric projects

Adopts a 40-year default license term for original and new licenses for hydropower projects located at non-federal dams. Will consider issuing a license for less or more when:

- Necessary to coordinate license terms for projects in the same river basin;
- Deferring to settlement agreements;
- When a license applicant asks for a longer term based on significant measures expected under the new license or significant measures implemented during the prior license term that were not required by that license or other legal authority.

FERC’s policy statement allows “early action” to count toward the next license term, but:

- Disallows “maintenance” measures; and
- Disallows measures that were required by the existing license or “other legal authority.”
Continued parallel legislative path:

- Benefits to codification
- Equal weight for early investments
- Broad list of eligible activities
  - redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures conducted over the term of the existing license
- Clarification around “maintenance measures”, which the policy would not consider
- Created process for licensees to seek a determination of eligible investments from FERC (to reduce uncertainty).
- Enacted October, 2018.
FERC issued its first order under Section 3005 of AWIA on April 18, 2019, granting PG&E a 50-year license for its Poe Project.

In December, 2018 (post AWIA enactment) FERC issued a 40-year license for the project.

PG&E then sought rehearing, arguing that under FERC’s policy statement, $54 million in investments it made in the project during the existing license term should have been considered by FERC.

On rehearing, FERC said that the investments qualify under AWIA and concluded that a 50-year license was appropriate.
Chelan PUD sought first Section 36 determination on June 10, 2019 of $710 million in investments.

FERC issued a determination on project investment on August 9, 2019.

The Commission determined over $600 million in investments qualify or likely qualify:

- Chelan PUD’s investments made to rehabilitate the two Rock Island powerhouses and project spillway improvements.
- HCP investments “appear” meet the criteria, but more information would be helpful to address questions around the extent to which activities fulfilled existing license requirements.
- Would need more information to include investments in ancillary facilities.
On October 8, 2019, SCPSA sought determination under section 36 of the FPA regarding about $99 million in investments made over the existing term of the Santee Cooper Project license.

On December 3, 2019, FERC found about $89 million in investments met the AWIA criteria.

FERC found, in some instances, that investments “appear” to meet the criteria and invited clarifying information from SCPSA. Specifically, FERC to make an eligibility determination, it would need more information to determine whether about $10 million in investments is more than “repairs and replacements necessary to ensure continued operation.”

FERC could not make a determination on one item.
In SCPSA order, FERC stated that the Office of Energy Projects will issue initial orders regarding section 36 requests, subject to Commission Review.

Continue to monitor for determination orders.

Licensees should track investments not required by the existing license.

Licensees could consider taking proactive early action with some certainty (through the determination process) that the investment will “count” toward the next license term.

For example, Chelan PUD is seeking input from stakeholders on potential early action measures.
Questions?

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