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Our current and recent matters involve over 50 percent of all installed hydroelectric capacity in the country.

Additionally, the firm advises developers of new hydropower projects, including conventional large and small hydro, pumped storage, and emerging technologies using wave and tidal energy.

Hydro Newsletter

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DOE Accepting Applications for 2013 Hydropower Production Incentive Payments

As reported in the [March Hydro Newsletter](#) and [July Hydro Newsletter](#), the Fiscal Year (FY) 2014 Omnibus Appropriations bill allocated \$3.6 million in hydroelectric production incentives (HPI) for the development of new hydropower at existing dams and impoundments under the Energy Policy Act of 2005 Section 242 Program. The HPI allows a facility to collect 1.8 cents per kilowatt hour, with a cap of \$750,000 per year, for up to 10 years, from generation from qualifying new turbines or other generating devices that was initiated on or after October 1, 2005.

As reported in the [November Hydro Newsletter](#), the Department of Energy (DOE) issued Updated Guidance in October 2014 which clarified that DOE considers the first year of eligibility to be the first FY (between FY 2006 and FY 2015) that a qualified hydroelectric facility generates hydropower for sale. DOE accepted comments on the Updated Guidance through November 14, 2014.

On January 20, 2015, DOE published [Final Guidance](#) and issued notice that it is accepting applications from January 20, 2015, through February 19, 2015, from owners and authorized operators of qualified hydroelectric facilities for hydroelectric power generated and sold in calendar year 2013. DOE's notice provides an applicant checklist and instructions on how to apply for the HPI.

DOE Issues Potential Funding Opportunities for Hydrokinetic Technologies

On January 14, 2015, DOE's Office of Energy Efficiency and Renewable Energy (EERE) issued a [Request for Information](#) (RFI) regarding a potential effort to facilitate open-ocean or laboratory-scale testing of prototype marine and hydrokinetic (MHK) devices. The EERE requests information regarding MHK systems in the early stages of development that are planned for testing under controlled conditions in the next few years, or systems that have already undergone the controlled testing phase and are ready to deploy at the intended site. EERE will use the information gathered from the RFI to consider whether to issue a funding opportunity announcement (FOA). Responses to the RFI must be received by February 17, 2015.

An FOA was recently announced, entitled "[Marine and Hydrokinetic Systems Performance Advancement II \(SPA II\): Component Metric Validation](#)." SPA II is a progression from FY 2013's Systems Performance Advancement FOA (SPA I). The initiative will focus on supporting components with the greatest potential impacts to annual energy production in three topic areas: advanced controls, crosscutting power take-off components, and innovation structures. Interested applicants must submit a concept paper by February 9, 2015, with a full application due by March 26, 2015.

Upcoming Speaking Engagements

February 19, 2015

[Matt Love](#), Moderator, Emerging Legal & Regulatory Matters Impacting Northwest Hydro, Northwest Hydroelectric Association Annual Conference, Portland, OR

FERC Announces Technical Conferences on EPA Carbon Dioxide Rule

On January 6, 2015, the Federal Energy Regulatory Commission (FERC) announced that it will hold four technical conferences to discuss implications of compliance approaches to the Environmental Protection Agency's (EPA) Clean Power Plan proposed rule, which if finalized would regulate carbon dioxide emissions from existing power plants under Section 111(d) of the Clean Air Act. The [first technical conference](#), to be held February 19, 2015 in Washington, DC, will discuss reliability, infrastructure, and energy market considerations regarding the proposed rule. Subsequent regional technical conferences will be held in Denver, Colorado on February 25, 2015 (Western Region), Washington, DC on March 11, 2015 (Eastern Region), and St. Louis, Missouri on March 31, 2015 (Central Region).

DOE Issues Notice of Second Quadrennial Technology Review

On January 13, 2015, DOE issued a notice of the initiation of its second Quadrennial Technology Review (QTR). Along with this notice, DOE developed the [DOE-QTR-2015 Framing Document](#) as the means of facilitating engagement in the QTR process. The Framing Document describes the nation's energy landscape and challenges, important research, development, demonstration, and deployment opportunities across energy supply and end-uses in order to work towards addressing U.S. energy-linked economic, environmental, and national security challenges. DOE explains that the insight gained from the QTR process will provide information for decision-makers as they develop funding decisions, approaches to public-private partnerships, and other strategic actions over the next five years. Notably, pumped storage hydropower is discussed as an electric energy storage opportunity for enabling modernization of the electric power grid, and MHK is described as an opportunity for advancing clean electric power technology. DOE is accepting submissions of written comments on the Framing Document on or before February 20, 2015.

FERC Rescinds Preliminary Permit for Project Proposed on Superfund Site

On January 22, 2015, FERC [rescinded](#) its preliminary permit for a proposed 150 megawatt pumped storage project to be located in Lyon County, Nevada. The project was to be located at a former copper mine and active Superfund cleanup site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). FERC granted a preliminary permit for the project in October 2014, finding that the potential conflict created by a CERCLA investigation is a premature concern at the preliminary permit stage. On rehearing, FERC reversed course and rescinded the permit, concluding that issuing a permit for a site undergoing an indefinite cleanup process is imprudent. FERC found that the permittee would be unable to perform site-specific studies or take significant steps toward developing a license application, given the size and complexity of the groundwater contamination at the site. This is consistent with FERC's policy not to issue a preliminary permit if there is a permanent legal bar to granting a license application.

Jeff Wright Set to Retire From FERC; Ann Miles to Become Director of OEP

Trade press reports indicate that Jeff Wright, director of FERC's Office of Energy Projects (OEP), is set to retire at the end of February 2015. Mr. Wright joined FERC in 1979, and has served as director of OEP since 2009. He will be replaced by Ann Miles, OEP's current deputy director. Ms. Miles joined FERC in 1985 and specialized in licensing, compliance, and administration of hydropower projects until 2012, when she became the deputy office director. Michael McGehee, current director of OEP's Division of Pipeline Certificates, will serve as the new deputy director of OEP. FERC's OEP consists of five divisions: Hydropower Licensing; Hydropower Administration & Compliance; Dam Safety & Inspections; Pipeline Certificates; and Gas Environment & Engineering.

FERC Issues Updated Fee Schedule for Hydropower Use of Government Lands

On January 8, 2015, FERC issued its [annual update](#) to the fee schedule in its regulations governing per-acre rental fees for the use of government lands by hydropower licensees.

Section 10(e)(1) of the Federal Power Act requires FERC to establish "reasonable" annual charges for hydropower licensees' use and occupancy of federal lands. In January 2013, FERC revised the way it

calculates annual charges for hydropower licensees' use of federal lands. FERC's methodology is based on the per-acre average agricultural land values found in the National Agricultural Statistics Service's Census of Agriculture. FERC revises its per-acre fee schedule by state and county annually. FERC's January 8th notice updates the fee schedule in its regulations for FY 2015.

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