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Hydro Newsletter

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FERC Grants Five-Year License Extension for Small Wisconsin Project

On March 17, 2016, the Federal Energy Regulatory Commission (FERC) [granted](#) a Wisconsin municipality's request to extend its license term for five years. The licensee requested an extension to provide additional time to work with local stakeholders to complete an ongoing comprehensive river corridor plan and to determine whether to relicense the project or surrender the license. In its initial order, FERC denied the licensee's request, finding that it did not qualify under the narrow circumstances in which FERC has extended license terms in the past—namely, to amortize the cost of substantial new improvements or environmental measures, to coordinate the expiration dates of licenses in the same river basin, or because of unique circumstances or circumstances beyond a licensee's control.

On rehearing, FERC granted the license extension, finding that unique circumstances in the case warrant a license extension. In granting the extension, FERC considered the unanimous stakeholder support for the extension, the tying of the extension to the development of a comprehensive river corridor plan, and the fact that the licensee is a small municipality. FERC noted that the strong support for the extension request demonstrated that the licensee was not seeking an extension merely to delay preparation of a license application and to continue generating under more favorable terms.

USFWS Revises Mitigation Policy

On March 8, 2016, the U.S. Fish and Wildlife Service (USFWS) issued proposed [revisions](#) to its Mitigation Policy, originally issued in 1981, which guides the agency's recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitat. USFWS's revised Mitigation Policy is in response to President Obama's November 3, 2015 [Presidential Memorandum](#) on the mitigation of development impacts on natural resources. The Presidential Memorandum instructs the Department of the Interior, the Department of Agriculture, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the Department of Defense to adopt a "clear and consistent approach for avoidance and minimization of, and compensatory mitigation for, the impacts of their activities and the projects they approve," and provides for individual agencies and departments to issue guidance and implementing regulations to effect the policy.

Upcoming Speaking Engagements

- [Chuck Sensiba](#), "NHA Legislative Update and Outlook," 2016 National Hydropower Association Annual Conference, Washington, DC, April 25, 2016.
- [Mike Swiger](#), "Hot Topics in the Southeast," 2016 National Hydropower Association Southeast Regional Meeting, Knoxville, TN, May 12, 2016.
- [John Clements](#), License Compliance Workshop, Midwest Hydro Users Group Spring Meeting, Wausau, WI, May 18, 2016.
- [Chuck Sensiba](#), "Return of the Basin Planning Concept: Issues and Perspectives." HydroVision International, Minneapolis, MN, July 26-29, 2016.
- [John Clements](#), "Jurisdiction Changes – Who's Responsible for What in the U.S.?" HydroVision International, Minneapolis, MN, July 26-29, 2016.

USFWS's revised policy builds from the core policy aspects of the Presidential Memorandum and "provides a framework for applying a landscape-scale approach to achieve ... a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from proposed actions." USFWS revised its Mitigation Policy to broaden its scope to address all resources for which it has authority to recommend or require mitigation and to update its framework "for applying mitigation measures that will maximize their effectiveness at multiple geographic scales."

Comments on USFWS's revised Mitigation Policy are due on May 9, 2016.

Atlantic States Marine Fisheries Commission Issues 2015 Annual Report

In February 2016, the Atlantic States Marine Fisheries Commission (ASMFC) released its [2015 Annual Report](#). The report discusses, among many other things, the status of and conservation efforts for American eel, shad, and river herring, all of which are commonly the subject of fish passage and other requirements in licenses issued by FERC. Although the USFWS found in October 2015 that listing of the American eel under the Endangered Species Act (ESA) is not warranted at this time (see [October 2015 Hydro Newsletter](#)), the ASMFC report emphasizes that the species is depleted with a downward trend in stocks, requiring that the current monitoring and management programs, including harvest quotas, need to remain in place. The ASMFC report also notes continued declines in stocks of shad and river herring attributable to, among other things, migration and habitat access impediments. The report affirms the continuing commitment of ASMFC and member states to assist stock rebuilding by closing of fisheries in all states that have not yet adopted a sustainable management plan.

NGOs Seek FERC Office of Public Participation

On March 7, 2016, over 30 consumer protection and environmental groups filed a petition urging FERC to establish and fund an Office of Public Participation (OPP) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). A section of PURPA states that there shall be an OPP within FERC to coordinate assistance to the public and to intervenors and participants in FERC proceedings. The section also allows FERC to provide reasonable compensation for attorney's fees, expert witness fees, and other costs of participating or intervening in a proceeding if: (1) the entity's participation substantially contributes to FERC's adoption of the position it advocates, and (2) FERC determines that the proceeding is significant and the entity's participation without compensation would be a substantial hardship. The petition may be viewed [here](#).

The petitioners cite the importance of FERC's influence on U.S. electric and natural gas pricing and energy infrastructure development, the dominance of industry participants in FERC proceedings, and the existence of programs in some states to compensate consumer advocates as reasons for FERC to implement the PURPA provision.

Obama Administration Holds Meetings on Quadrennial Energy Review

The Obama administration is continuing the second installment of the Quadrennial Energy Review (QER), an integrated study of the U.S. electricity system, with a series of public meetings around the country to solicit input and foster public dialogue about the QER. The public meetings will feature panel discussions and a public comment period regarding the role of electricity in promoting economic competitiveness, energy security, and environmental responsibility with the aim of identifying possible federal actions that will help meet the objectives of reliable, affordable and clean electricity. Specific topics will include fuel choices, distributed and centralized generation, physical and cyber vulnerabilities, federal, state, and local policy direction, consumer expectations, and existing and evolving business models.

An initial public meeting was held on February 4, 2016, in Washington, DC. A record of that meeting may be viewed [here](#). Additional meetings will be held in the following cities:

Boston, Massachusetts--April 15, 2016
Salt Lake City, Utah--April 25, 2016

Des Moines, Iowa--May 6, 2016
Los Angeles, California--May 10, 2016
Austin, Texas (Date TBD)
Atlanta, Georgia (Date TBD)

Written comments can be submitted through July 1, 2016, through an online comments portal located [here](#).

NMFS to Hold Public Meeting to Review ESA Recovery Planning

On April 19-21, 2016, the National Marine Fisheries Service (NMFS) will hold a public meeting in Silver Spring, MD to review components of its recovery planning program under the ESA. The purpose of the review is to determine if the current recovery planning process results in effective recovery plans that are being implemented and making progress towards meeting recovery criteria for the particular species. NMFS anticipates that the review will provide recommendations regarding improvement of the recovery planning and implementation process.

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