



# FERC Takes Action to Streamline its Environmental Review of Hydropower Projects

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By [Natalie Reid](#), [Michael Pincus](#), [Robert Kresch](#)

## Introduction

In its Open Meeting on February 19, 2026, the Federal Energy Regulatory Commission (FERC) took two actions to streamline the environmental review of hydropower projects. FERC issued a [Notice of Proposed Rulemaking](#)<sup>1</sup> to amend its National Environmental Policy Act (NEPA) regulations to adopt Categorical Exclusions (CE) relating to terminations or revocations of water power licenses and exemptions. In another [order](#),<sup>2</sup> FERC formally adopted five CEs currently used by the Tennessee Valley Authority (TVA) for electric infrastructure. CEs are applied to categories of actions that an agency has determined will normally not affect environmental quality and thus do not require the preparation of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA), significantly reducing the agency's processing time.

### **Notice of Proposed Rulemaking for Certain Terminations or Revocations of Water Power Licenses and Exemptions.**

FERC is proposing to amend its NEPA regulations to expand its use of CEs applicable to certain license surrender and exemption revocation actions that involve no ground disturbing work. FERC's existing regulations (18 C.F.R. § 380.4(a)(13)) apply a categorical exclusion to the surrender and amendment of preliminary permits, and the surrender of water power licenses and exemptions, where no ground disturbing activity has or will occur or where no project works exist. As such, for those license surrender applications or preliminary permit amendments that meet these conditions, FERC is not required to prepare an EA or an EIS.

FERC's proposed rule would expand this CE to include:

- (i) Amendments or surrenders of preliminary permits;
- (ii) Amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operations;
- (iii) Surrenders of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred; or

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<sup>1</sup> Categorical Exclusion under the National Environmental Policy Act for Certain Terminations or Revocations of Water Power Licenses and Exemptions, 194 FERC ¶ 61,127, Dkt. No. RM26-7-000 (Feb. 19, 2026), <https://ferc.gov/media/h-1-rm26-7-000>.

<sup>2</sup> Order Adopting Categorical Exclusions from Tennessee Valley Authority Under the National Environmental Policy Act, 194 FERC ¶ 61,128 (Feb. 19, 2026), <https://ferc.gov/media/h-2-cx26-1-000>.

- (iv) Terminations or revocations of water power licenses and exemptions that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows.

The new CE categories would therefore expand the range of activities that will not trigger the requirements to prepare environmental analysis under NEPA.

Hydropower operators should note that one of the proposed CEs applies to license amendments where no ground disturbing work will occur or where there will be no change to project works or operations. This CE would apply to hydropower license amendment applications that may be required to modify license terms, but that nonetheless involve no physical modifications to the project. This new categorical exclusion appears to complement the Commission's recent Notice of Inquiry: Certain Post-Licensing Activities at Hydroelectric Projects.<sup>3</sup> As with the Notice of Inquiry, which aimed to develop strategies for streamlining approvals for post-licensing activities, this CE appears to be aimed at streamlining the processes required for license amendments that are unlikely to have significant environmental impacts.

Comments on the Notice of Proposed Rulemaking will be due 30 days after it is published in the Federal Register.

**Order Adopting Categorical Exclusions from Tennessee Valley Authority under the National Environmental Policy Act**

This order leverages federal agencies' ability to adopt the CEs of another agency, provided it follows four steps from NEPA: identification of the CE in the original agency's NEPA procedures, consultation with the original agency, notification to the public of the proposed CE to be adopted, and documentation of the adoption.

Here, FERC adopts five CEs from TVA, which relate to "electric transmission infrastructure, above ground buildings, infrastructure systems, plant equipment, and facility grounds associated with power generation facilities." In each case, FERC noted that its own experience, as well as that of TVA, supports a finding that significant environmental effects would not result from the use of the CE. However, FERC maintains the authority to foreclose the application of a particular CE on a site-specific basis, where extraordinary circumstances exist.

- (i) *TVA CE 16: New Electric Transmission Infrastructure.* This CE covers the construction of transmission line infrastructure or of electric power substations or interconnection facilities and new associated access roads. This construction is subject to limits on length (10 miles for transmission lines, 1 mile of new access roads), and disturbed acreage (125 acres). For FERC-jurisdictional hydropower projects, its adoption is intended to facilitate incremental transmission additions that are necessary but were reasonably unforeseen at the outset of a project.

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<sup>3</sup> Authorizations for Certain Post-Licensing Activities at Hydroelectric Projects, 90 Fed. Reg. 53310 (Nov. 25, 2025).

- (ii) *TVA CE 17: Maintenance and Minor Upgrades to Existing Electric Transmission Infrastructure.* This CE applies to routine maintenance, modification, and repair of existing transmission infrastructure, as well as minor upgrades and additions to that infrastructure. Examples of these actions include replacement, reconductoring, and/or uprate of transmission lines, addition/retirement/replacement of breakers, transformers, bushings, and relays, and improvements to existing access roads. As with TVA CE 16, it is intended to facilitate project sponsors' ability to respond to new project needs that are limited in scope and fundamentally consistent with the original project.
- (iii) *TVE CE 36: Upkeep of Existing Facilities.* This CE addresses routine "operation, repair or in-kind replacement, and maintenance actions" for existing buildings, infrastructure systems, facility grounds, and equipment. Critically, covered actions under this CE must maintain affected assets in their current locations and in condition suitable for their designated purpose(s). Examples of covered activities include regular servicing of equipment, routine testing and calibration of facility components, repair and replacement of plumbing, and small HVAC systems, and cleanup of minor spills as part of routine operations.
- (iv) *TVA CE 37: Modifications and/or Upgrades to Existing Facilities.* This CE applies where existing facilities are modified, upgraded, or uprated in ways that alter function, performance, or operation, but changes are limited in scale and environmental effect. FERC is adopting this CE in recognition that after initial authorization of a project, "a project owner or operator may identify opportunities to correct problems or to improve the function, performance, or operation of its project with no risk of a significant environmental effect."
- (v) *TVA CE 38: Construction of New Buildings.* This CE covers the siting, construction, and use of "buildings and associated infrastructure" that "physically disturb" no more than 10 or 25 acres of land, depending on the prior status of that land. Typical applications include control buildings, modular structures, or emergency response facilities and the infrastructure (i.e. utility lines) that serve those facilities.

These new CEs take effect on March 22, 2026, 31 days after issuance of FERC's order.

### Implications

FERC has made clear that it is seeking to leverage all available legal pathways to make hydropower licensing and administration more efficient and less burdensome. Its proposed new categorical exclusions and the adoption of existing categorical exclusions in use at the TVA will potentially relieve hydropower operators of the requirement to develop extensive environmental analysis to support routine license surrenders, exemption revocations, amendments, and other routine activities incidental to operating and maintaining hydropower

projects. As explained by Commissioners Rosner and LaCerte in their joint concurrence, both actions advance FERCs goal of promoting regulatory efficiency to bring power to market faster and will likely be a model for more regulatory reforms in the future.

### **For More Information**

Van Ness Feldman closely monitors and counsel clients on FERC-related issues. If you would like more information, please contact the authors or any member of VNF's hydropower practice.

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