

adversely affect the ability to preserve the existing fleet of licensed hydroelectric projects as well as discourage development of new, emissions free hydroelectric generation.

The NOI does not state a compelling case for an industry-wide solution to address financial qualifications of licensees, but relies upon the recent dam failures in Michigan and general assertions of a more widespread problem in the industry. However, if FERC determines it needs to take some new action with regard to financial assurances, the Public Power Licensee Group proposes a different approach, namely, to include a new condition in Commission licenses and exemptions for small hydroelectric projects at existing dams² to submit a periodic certification of financial qualifications that would be updated during the term of the license.³ The requirement would be satisfied *prima facie* if the certification meets certain defined criteria. If the licensee is unable to meet these criteria or the Commission's review of the certification raises concerns regarding the licensee's financial resources, the new license condition could reserve Commission authority to require additional financial assurances on a case by case basis. This proposal is aimed at enabling the Commission to identify potential financial problems earlier in the license term while not imposing unnecessary requirements and costs on licensees who meet the certification requirements. The proposal is explained in more detail in Section III.C, below.

² The Public Power Licensee Group proposes to exclude holders of small conduit FERC exemptions from this new requirement, since small conduit hydroelectric facilities are defined to exclude any dam, conduit or transmission line. 18 C.F.R. § 4.30(b)(30). For convenience, licensees and holders of FERC exemptions for small hydroelectric projects will be referred to collectively in the remainder of these comments as "licensees."

³ Since FERC issues exemptions in perpetuity unless surrendered or revoked, the periodic certification requirement would apply to exemptees for the life of the exemption.

I. INTRODUCTION

A. Description of Public Power Licensee Group

The Public Power Licensee Group is composed of public power owners of FERC-licensed hydroelectric projects as small as 1.4 megawatts (“MW”) and as large as 1,622 MW. Because the licensees are public entities, they have broad stewardship responsibilities for a range of resources served by their projects. Accordingly, most of the projects serve multiple project purposes such as municipal water supply, irrigation, flood control, low-cost power, recreation, and fish and wildlife protection and enhancement. In many cases, power production is incidental to the primary purposes of project dams.

AMP is a non-profit Ohio corporation with 135 municipal electric system members in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland, and Delaware. AMP provides wholesale energy supply and related services to its members. AMP is the licensee for run of river hydroelectric projects located on U.S. Army Corps of Engineers (“Corps”) locks and dams on the Ohio River, including: the 88.8 MW Cannelton Project No. 10228, the 76 MW Smithland Project No. 6641, and the 108.8 MW Meldahl Project No. 12667, all located in Kentucky; the 44 MW Willow Island Project No. 6902, located in West Virginia; and, together with the City of Hamilton, Ohio, the 70.27 MW Greenup Project No. 2614, located in Ohio. AMP also developed and operates the 42 MW Belleville Project No. 6939, located in West Virginia, on behalf of 42 member communities participating in Ohio Municipal Electric Generation Agency Joint Venture 5.

DWR was established in 1956 by the California State Legislature to protect, conserve, develop, and manage much of California’s water supply. DWR is an agency of

the State of California organized and existing pursuant to the laws of the State of California. DWR is licensee for the 762.85 MW Oroville Project No. 2100, and co-licensee for the 1,622.06 MW South SWP Hydropower, FERC Project No. 2426.

MID is an irrigation district organized under the laws of the State of California. It is licensee for the 101.25 MW Merced River Project No. 2179 and 3.44 MW Merced Falls Project No. 2467. It supplies electric services to commercial, industrial, and residential customers in Eastern Merced County. It also provides affordable irrigation water for its approximately 2,200 local growers.

MRES is a municipal joint action agency formed under Chapter 28E of the Iowa Code and existing under the joint action laws of the States of Iowa, Minnesota, North Dakota, and South Dakota. MRES is an organization of 61 member municipalities that own and operate their own electric distribution systems located in these four states. Through its formal relationship with the Western Minnesota Municipal Power Agency, MRES owns and operates the 36.39 MW Red Rock Project No. 12576, and holds a preliminary permit for the proposed 500 MW Gregory County Pumped Storage Project, both at Corps dams.

PCWA is a California public agency organized and existing pursuant to the Placer County Water Agency Act, California Statutes of 1957, Chapter 1234, as amended, Cal. Water Code App. §§ 81-1 to -25. It has a broad range of responsibilities and functions, including water resource planning and management, retail and wholesale supply of irrigation water and drinking water, and production of hydroelectric energy. PCWA's boundaries are coterminous with those of the County of Placer, State of California, Cal. Water Code App. § 81-1, and it is governed by a five person Board of Directors elected

by the voters in Placer County. PCWA owns and operates the 223.79 MW Middle Fork American River Project No. 2079.

SMUD is the sixth-largest customer-owned municipal utility district in the nation engaged in the generation, distribution, purchase, and sale of electric power to approximately 1.5 million consumers within its boundaries, which encompasses most of Sacramento County and small portions of the Counties of Placer and Yolo, California. SMUD is licensee for the 637.68 MW Upper American River Project No. 2101 and 7 MW Chili Bar Project No. 2155.

United is a special district in central Ventura County, California governed by a seven-member Board. United manages, protects, conserves and enhances the region's water supply. Through careful monitoring and management, United maintains the water resources of the Santa Clara River, its tributaries and associated aquifers, in an environmentally balanced manner. It owns and operates the Santa Felicia Dam and Lake Piru, formed by impounding flows from Piru Creek and licensed by FERC as the 1.42 MW Santa Felicia Project No. 2153. The Santa Felicia Dam and Lake Piru are operated for water resource management purposes and contribute significantly to the regional water resources of Ventura County, California.

YCWA is a public agency specifically created by the State of California to address the water problems in the County of Yuba through countywide water conservation, flood control and development of water resources. YCWA owns and operates the FERC-licensed 361.9 MW Yuba River Development Project, a multipurpose project providing power generation, flood control, reliable water supplies for the county and through transfers to other water users, recreation, and fish and wildlife benefits.

Additionally, YCWA is the licensee of the 12 MW Narrows Project No. 1403, also located on the Yuba River.

B. Interest of Public Power Licensee Group in This Proceeding

The Public Power Licensee Group has three primary interests in FERC's NOI proceeding. First, because the Group's members are non-profit entities all costs of operating and maintaining their projects must be passed on to their electric or water customers. The Group's members have a duty to their customers to keep electric and water rates as low as reasonably possible and to avoid unnecessary costs.

Second, members of the Public Power Licensee Group have a strong interest in being able to direct project revenues to public purposes such as environmental and recreational enhancements, flood control improvements, and other public purposes. As an example, YCWA recently announced its participation in the North Yuba Forest Partnership, a group or organizations committed to forest restoration across 275,000 acres of the watershed, with a \$6.5 million cost-share contribution.⁴ In addition, PCWA has partnered with Placer County, and other key contributors in restoring forest health through the French Meadows Forest Restoration Project. The project is an innovative forest health project aimed at reducing wildfire risk covering 30,000 acres of public and private land around the French Meadows Reservoir west of Lake Tahoe. Also, United recently completed the Pothole Trailhead Parking Area in the Lake Piru Recreation Area in collaboration with the United States Forest Service. The new facility provides parking

⁴ Yuba Water Agency, "Yuba Water commits \$6.5 million to improving forest health and reducing wildfire risk" (Feb. 16, 2021), <https://www.yubawater.org/CivicAlerts.aspx?AID=130#:~:text=Yuba%20Water%20commits%20%246.5%20million,in%20the%20Yuba%20River%20watershed> (last visited Mar. 25, 2021).

and restroom facilities and direct access to Pothole Trailhead in Los Padres National Park.

Third, Public Power Licensee Group members desire to preserve their existing fleet of hydroelectric projects as low-cost sources of renewable, emissions-free energy. Regulatory requirements that unnecessarily increase the costs of operating a project could in some cases make the project economically unviable compared to the cost of alternative sources of electricity. Unnecessary costs also could discourage Group members from developing new hydro generation either through expansion of capacity at existing powered dams or new project development at unpowered dams.

II. FERC'S STATEMENT OF THE ISSUE

The NOI poses the issue as follows:

*Whether, and if so how, FERC should require additional financial assurance mechanisms in the licenses and other authorizations it issues for hydroelectric projects, to ensure that licensees have the capability to carry out license requirements and, particularly, to maintain their projects in safe condition.*⁵

FERC's rationale for additional financial assurance mechanisms is addressed below.

A. FERC's Economic Analysis at Licensing

As explained in the NOI, when FERC issues a license it considers the economic benefits of project power along with a number of other factors under section 10(a) of the Federal Power Act ("FPA").⁶ The purpose of the Commission's economic analysis is only to provide a "general estimate" of the potential power benefits and costs of a project

⁵ NOI at 7081-82.

⁶ 16 U.S.C. § 803(a).

compared to project alternatives. As articulated in *Mead Corp.*,⁷ the Commission’s analysis is intended to provide only a “rough estimate” of the net economic benefits of project power and “is not intended to show whether and to what degree the project will have a positive cash flow over the life of the license,” which the Commission considers speculative.⁸ This creates the possibility that a project could become uneconomic over the license term due to unexpected costs, such as more stringent dam safety requirements or hidden conditions of the dam, or changes in power markets such as increasingly competitive markets or availability of less expensive fuel sources.

A threshold question then arises as to whether FERC should rethink its *Mead Corp.* approach and employ a more rigorous analysis at the time of licensing which would attempt to project power prices into the foreseeable future and anticipate significant potential project costs. Although there may be some merit in the Commission using better analytic tools when evaluating a project’s economic benefits at licensing (much as licensees must do when deciding whether to invest in the project) the Public Power Licensee Group does not recommend that the Commission rely on projections of power value when deciding whether to issue a license for two primary reasons. First, many of the dams owned by Public Power Licensee Group members are multipurpose projects for which hydropower may be an incidental use. Those dams would continue to exist even if there were no FERC-licensed hydroelectric facilities at the dams, and cannot be valued based on power revenues alone. Second, it is not uncommon for power prices

⁷ 72 FERC ¶ 61,027 at p. 61,128 (1995), *reh’g denied*, 76 FERC ¶ 61,352 (1996), *opinion after remand sub nom. Upper Peninsula Power Co.*, 83 FERC ¶ 61,071 (1998), *pet. dismissed by Granholm ex rel. Mich. Dep’t of Nat. Res. v. FERC*, 180 F.3d 278 (D.C. Cir. 1999).

⁸ NOI at 7082.

to change between the time of licensing and when a project is actually constructed, so that a project that may appear uneconomic at licensing may become economically attractive to investors just a few years later.

B. FERC's Existing Financial Assurance Mechanisms

The Commission in the NOI acknowledges that it currently includes an article in licenses authorizing new construction to file a project financing plan to show that the licensee has the necessary funds to complete construction and to operate and maintain the project. However, the NOI points out that the article does not require the licensee to demonstrate the ability to finance “unknown future obligations that may arise from environmental concerns or significant dam safety issues.”⁹ The NOI states that in rare cases FERC has required financial assurance plans including instruments such as a performance bond.¹⁰ FERC appears to use this option selectively depending on the particular circumstances but does not explain why this targeted approach has proven insufficient.

Regarding unknown future environmental obligations, the Public Power Licensee Group observes that section 6 of the FPA prevents the Commission from unilaterally imposing new environmental requirements during the license term.¹¹ The Commission’s reserved authority under Standard License Article 15 is limited to requiring “reasonable” facilities and modifications for fish and wildlife after notice and opportunity for hearing.¹² Unexpected costs can certainly arise as a result of changing requirements

⁹ *Id.*

¹⁰ *Id.*

¹¹ 16 U.S.C. § 799.

¹² *E.g.*, Form L-1, 54 F.P.C. 1799, 1804 (1975).

under FERC's Part 12 dam safety program or hidden defects in a dam. However, FERC can effectively manage financial issues in these situations by allowing a licensee to implement a less costly, alternative safety fix, or allowing for staging of improvements over time based on a licensee's ability to pay.

C. FERC's Explanation of Why Existing Mechanisms Are Inadequate

In support of the concept of requiring financial assurances from the 1,600 licensees under its jurisdiction, the NOI cites the recent dam failures in Michigan. However, the NOI acknowledges that "significant dam failures have fortunately been very rare"¹³ and does not point to any other dam failure that resulted from a licensee's financial difficulties.

The NOI expresses concern about "increasing numbers of projects that are non-operational or out of compliance with their license conditions, where licensees have stated that they cannot afford to operate or maintain the projects or implement required environmental or safety measures."¹⁴ The NOI states that there are 88 projects under its jurisdiction that are currently non-operational or out of compliance with their licenses, but does not say how many fall into each category or how many involve dam safety issues.¹⁵

Section 6 of the FPA provides for surrender of a license if the project becomes uneconomic or the licensee is unable to operate or maintain it for any reason. Under FERC's regulations the Commission can impose conditions on the surrender.¹⁶ The NOI

¹³ NOI at 7083.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 18 C.F.R. § 6.2.

asserts that for an economically marginal project “the surrender process may also be economically infeasible.”¹⁷ But this may be because the Commission has made the surrender process more difficult, time-consuming and expensive than it needs to be in most cases. The Commission could put in place a streamlined surrender process for projects not involving dam removal or other significant environmental impacts. License surrenders involving dam removal or a substantial dam safety rehabilitation are rare; and the NOI does not identify this as a widespread problem, only citing the Michigan case. Further, implied surrenders where the project owner has abandoned the site typically involve very small projects that would not have significant dam safety concerns.

The Commission recognizes in the NOI that “imposing additional financial requirements may pose difficulties for licensees, particularly those operating small projects” but asserts it is “cognizant of our responsibilities to the public.”¹⁸ The Commission does not address, however, the risk that placing more financial burdens on licensees may only exacerbate the problem with marginally economic projects. The NOI also does not explain why, if the problem lies mainly with small project owners, the Commission is considering imposing industry-wide financial assurance requirements. As discussed below, the Public Power Licensee Group believes that the financial assurance mechanisms proposed in the NOI are overbroad, will impose unnecessary costs on the vast majority of licensees, and should be rejected in favor of a more proportional and targeted approach.

¹⁷ NOI at 7083.

¹⁸ *Id.*

III. POTENTIAL MECHANISMS TO PREVENT FUTURE SAFETY AND ENVIRONMENTAL HAZARDS

A. FERC's Questions in the NOI

The NOI poses a number of questions which the Public Power Licensee Group answers as follows:

1. *Should a financial assurance requirement be included in original licenses and/or relicenses?* Answer: The NOI does not make the case that this is needed for the whole industry but if FERC determines to go forward, the Public Power Licensee Group proposes a simple certification requirement as described in more detail in Section III.C, below.
2. *If on relicensing, should such a requirement be included in new licenses for major projects and new licenses for minor projects?* Answer: Yes – MW capacity often bears no relationship to the size of the dam or extent of safety issues. Again, however, the requirement should not impose unnecessary additional costs on small projects.
3. *Should it be included in other authorizations, such as issuance of exemptions, license amendments, and license transfers?* Answer: Yes – this would allow FERC to extend the requirement to as broad a group of licensees as quickly as possible, putting all licensees on the same footing in terms of the need to demonstrate financial qualifications.
4. *Should FERC reopen licenses to impose financial assurances measures?* Answer: No – under FPA section 6, FERC has no authority to unilaterally reopen licenses. None of the standard license articles currently included in Commission licenses applies to financial qualifications.

5. *Should FERC require licensees to reaffirm or recertify that they have adequate financial assurances and if so, how often?* Answer: Yes – the Public Power Licensee Group is recommending a simple recertification every five years to allow for changing circumstances and project economics over the course of the license.
6. *Should licensees be required to notify FERC if their financial circumstances change?* Answer: Yes, if the factual basis for the certification is no longer accurate and the licensee can no longer meet any of the objective criteria (e.g., termination of a power purchase contract or loss of investment grade credit rating).

B. FERC Staff Options for Financial Assurances

The NOI outlines three potential options that Commission staff has identified for establishing financial assurance mechanisms in hydroelectric licenses: (1) requiring licensees to obtain bonds to cover the costs of safety measures and project operation and maintenance; (2) establishing an industry-wide trust or remediation fund or requiring licensees to maintain an individual trust, escrow, or remediation fund; or (3) requiring licensees to obtain insurance policies for unforeseen safety hazards or dam failure. The NOI then poses a number of questions as to each option. Below are the Public Power Licensee Group's comments on the three options, none of which the Group believes is a necessary, viable, or appropriate industry-wide approach.

1. Performance Bonds

- a. *Should FERC require bonds?* Answer: No. The purpose of a performance bond is to ensure that a contractor is competent and qualified to do the work. A bond does not provide additional assurance that the licensee can afford to

operate or maintain the project over the license term. Bonds typically are used to remediate liquidated damages or complete a capital project. They are typically short term and intended to be released once a capital project is completed. Bonds are inappropriate for unforeseen and undefined projects that may be needed in the future but cannot be quantified. Assuring safe operation of a hydroelectric dam into the future is a nebulous purpose for a bond. A bond probably cannot even be obtained for every possible cost that might be incurred over the term of a license, and at the very least would be an additional and unnecessary cost burden for the vast majority of licensed projects.

- b. *How should FERC determine the amount and what factors should FERC consider in setting the amount?* Answer: There is no practical or simple way to determine the amount because it would require a project-specific, comprehensive engineering and environmental risk analysis which in itself would likely be prohibitively expensive and would involve enormous uncertainties.
- c. *Are bonds affordable, including for small projects, and is there any way FERC can mitigate the expense?* Answer: No. They are not going to be affordable except possibly for a specific construction project depending on the magnitude of the project, and would just result in an additional cost burden on small projects.
- d. *What other challenges would bond requirements pose to individual licensees, municipal licensees, the public and FERC?* Answer: For the Public Power

Licensee Group members, a performance bond of the magnitude needed to cover all future license costs, even if one could be obtained, would tie up public funds that could be better spent on infrastructure maintenance and improvements as well as environmental, recreational and other project enhancements.

2. Trust, Escrow or Remediation Fund

- a. *Should FERC establish an industry-wide trust or fund?* Answer: No. Such a fund would unnecessarily drive up costs for most licensees who will never need to tap into the fund. It also would be inequitable for the majority of licensees to subsidize the few who would use the fund. There would be no reasonable way of determining cost share. Such a fund also could have the unintended consequence of incentivizing some licensees not to plan responsibly, but to rely on the existence of the fund to bail them out. The fund could have the further undesirable effect of subsidizing continued operation of projects the licenses for which should be surrendered because the projects cannot meet current environmental or safety standards with a reasonable level of investment.
- b. *If so, how would FERC generate funds for the trust? Through the licensee annual charges program?* Answer: FPA section 10(e)¹⁹ does not authorize FERC to collect for costs that may be incurred by other licensees, only costs incurred by FERC and other federal agencies in administering Part I of the FPA, federal land rents, and use of a government dam. Also, FERC allocates

¹⁹ 16 U.S.C. § 803(e).

administrative annual charges based on project installed generating capacity, and for certain types of projects installed capacity and generation.²⁰ If most underfunded licensees are small hydroelectric project owners, they will pay the least and benefit the most.

c. *How would FERC determine the appropriate level of the fund?* Answer:

There is no practical way to do this because it would require a comprehensive engineering and environmental risk analysis for every FERC-licensed project in the country. This would magnify exponentially the already enormous costs and uncertainties of doing such an assessment for an individual project.

d. *How would FERC determine how the funds are distributed?* Answer: There would have to be an application process by which a licensee would prove that it lacked the financial capacity to make the safety improvements, and a way for the Commission to prioritize remediation of safety issues at various projects across the country. It is not clear that the Commission has statutory authority to administer such a fund, and none is cited in the NOI. Even if the Commission had such authority, it would put FERC in the position of making judgments about which projects should be subsidized in order to keep operating and which projects should not be subsidized and possibly forced into license surrender. It is questionable how FERC could do that on any kind of equitable basis.

e. *Should FERC establish an individual licensee trust or escrow fund requirement?* Answer: No. Such a requirement would be an unnecessary

²⁰ 18 C.F.R. § 11.1.

cost burden imposed on all licensees, including small operators who would be least able to bear it, but would come into play rarely. The Commission should reject this idea just as it has previously rejected the idea for a dam decommissioning fund requirement to be included in project licenses.²¹ As public agencies that own and operate dams, the members of the Public Power Licensee Group hold reserves for covering fluctuations in revenue, responding to dam-related emergencies, or other circumstances that would otherwise affect their ability to fund dam safety projects.

- f. *If so, how would FERC determine the amount of the fund and what factors should FERC consider in setting the amount?* Answer: As discussed above in connection with performance bonds and escrow funds, this would require a comprehensive engineering and environmental risk assessment for the life of the project which itself would be prohibitively expensive for most projects and would have great uncertainties.
- g. *Should FERC require that a licensee set aside a portion of gross power revenue receipts?* Answer: No. This would be an additional cost burden impairing the economic benefits of projects. In the vast majority of cases it would be unnecessary because licensees have other ways of recovering costs and funding capital projects. Further, for small projects most likely to

²¹ Project Decommissioning at Relicensing; Policy Statement, 60 Fed. Reg. 339, 346 (Jan. 4, 1995) (Noting, “[i]n light of the practical problems involved in trying to deal with events far in the future, and because in many cases the time horizon and general financial strength of the licensee may be such that there is no substantial need for a pre-retirement funding program, the Commission will not act generically to impose such programs on all licensees.”).

encounter financial difficulties, a reserve fund based on revenues would be inconsequential.

- e. *What other challenges would such a fund requirement pose to individual licensees, small hydro owners, municipal licensees, the public and FERC?*

Answer: A fund requirement would tie up licensee resources in an escrow account that could be used for other important purposes such as recreation and fish and wildlife enhancements, flood control, and facility maintenance and upgrades.

3. Insurance

- a. *Should FERC require licensees to obtain insurance to cover costs in the event of a safety hazard or dam failure?* Answer: No. Licensees already have insurance products that are commercially available as is required for their operations and financing. A license condition requiring insurance to cover all unforeseen circumstances, including for example the worst-case dam failure, would not likely be commercially available and even if so it would be prohibitively expensive. Most licensees, including members of the Public Power Licensee Group, have other funding mechanisms for remediating safety hazards or paying for dam safety incidents. Thus, a license requirement to cover such contingencies by purchasing insurance would be an unnecessary cost burden. In that regard, the insurance market is getting increasingly tight due to the number of natural disasters in recent years, further making an insurance requirement an unfeasible option.

- b. *How would FERC determine the amount of insurance and what factors should FERC consider in setting the amount?* Answer: As for the other financial instruments proposed in the NOI, this would require a comprehensive engineering and environmental risk assessment for the life of the project which itself would be prohibitively expensive for most projects and would have great uncertainties.
- c. *What other challenges would such an insurance requirement pose for individual licensees, small hydro owners, municipal licensees, the public and the Commission?* Answer: The above challenges eliminate this option as a practical solution.

C. The Public Power Licensee Group Proposal

If the Commission decides to pursue an industry-wide solution to the problems identified in the NOI, the Public Power Licensee Group suggests a simple periodic certification of financial qualifications. The vast majority of licensees have adequate sources of funding to meet license and dam safety requirements. A periodic certification based on objective criteria would give the Commission assurance that the licensee will have sufficient financial resources if unforeseen circumstances arise over the course of the license.

The Public Power Licensee Group proposes that a licensee is deemed to satisfy the financial qualifications requirement if it certifies that it meets at least one of the following criteria:

1. The licensee has an investment grade credit rating;
2. The licensee is entitled by law or contract to cost recovery from retail or wholesale electric or water customers;

3. The licensee has the ability to issue bonds to cover projects operations including reasonably foreseeable contingencies;
4. The licensee has taxing authority;
5. The licensee has a power purchase contract at rates sufficient to cover the costs of project operations including reasonably foreseeable contingencies;
6. The licensee has access to public grants or loans sufficient to cover the costs of project operations including reasonably foreseeable contingencies;²²
7. The project is located at a federal dam and the federal agency already requires financial assurances;²³ or
8. The licensee is self-funded for project operations including all reasonably foreseeable contingencies.

Certification that the licensee meets at least one of the criteria should *prima facie* satisfy the financial qualifications requirement.

The Public Power Licensee Group suggests periodic recertification every five years. Certification on an annual basis would just create unnecessary paperwork for licensees and the Commission. Certification every five years would allow the Commission to track a licensee's financial qualifications over time and identify problems in time to take remedial action if a licensee is unable to meet any of the criteria. While the Public Power Licensee Group believes a performance bond, escrow account or insurance to cover unforeseen costs over the life of the license is unrealistic, a five-year

²² See, e.g., Fed. Emergency Mgmt. Agency, Building Resilient Infrastructure and Communities (BRIC), <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities> (last visited Mar. 25, 2021).

²³ See United States Department of the Interior, Comment of Bureau of Reclamation Regarding Financial Assurance Measures for Hydroelectric Projects at 3, Docket No. RM21-9-000 (filed Mar. 18, 2021).

“look forward” at known or reasonably foreseeable costs is a more manageable obligation.

If a licensee cannot meet any of the *prima facie* criteria or FERC has reason to question the licensee’s financial capabilities (e.g., FERC is aware that the licensee is facing substantial dam safety remediation costs or other costs, or the licensee has a poor compliance record), the license condition could reserve Commission authority to require additional measures, such as a more detailed financing plan.

The Public Power Licensee Group believes a simple, periodic recertification requirement with reserved authority to require additional measures in the relatively rare circumstances such measures would be needed, is a more targeted solution to the problem stated in the NOI. It focuses on prevention rather than remediation and would avoid imposing unnecessary costs on the vast majority of licensees that are financially able to operate their projects safely and responsibly. The Commission could include this new requirement as a condition of original licenses,²⁴ exemptions for small hydro projects at existing dams, license amendments, new licenses and license transfers. This would allow the Commission to have in place as quickly as possible consistent requirements for all licensees.

IV. CONCLUSION

The Public Power Licensee Group appreciates the opportunity to comment on the NOI. If the Commission decides to take action regarding financial assurances, the Group

²⁴ For original licenses, the certification could be part of the financing plan the Commission now requires at least 90 days prior to start of construction. Requiring financial assurances as an upfront condition of granting an original license could discourage new hydroelectric development. Many developers obtain a license with a power purchase agreement not yet in place, or with the intent of ultimately transferring the license to, or adding as a co-licensee, an entity that has the financial capability of building the project.

respectfully requests that it consider the Group's proposal for a periodic, simple certification requirement in lieu of the other options proposed in the NOI. Please contact the undersigned with any questions concerning these comments.

Respectfully submitted,

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