

# KPU



Your Community, Your Utility

**General Manager**  
334 Front Street  
Ketchikan, AK. 99901

(907) 228-5603 phone  
(907) 225-5075 fax

# 5b(2)

## TRANSMITTAL MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** Karl R. Amylon, General Manager

**DATE:** March 10, 2021

**RE:** **Authorizing Filing of Comments - Federal Energy Regulatory Commission (FERC) Notice of Inquiry (NOI), Docket No. RM21-9-000 – Requiring New Financial Assurance Measures for Hydroelectric Projects**

By report dated February 11, 2021, my office advised the City Council that the Federal Energy Regulatory Commission (FERC) has issued a Notice of Inquiry (NOI) seeking comments on the possibility of the agency requiring new financial assurance measures for hydroelectric projects. Comments are due March 29, 2021.

Specifically, FERC is considering whether to require additional mechanisms to ensure licensees have the financial resources necessary to be able to safely operate and maintain their projects and to respond to unanticipated events. The NOI seeks comments on how different types of licenses, including licensees of small projects and municipal licenses, may be affected by the financial assurance mechanisms being considered. The adoption of such assurance mechanisms under consideration by FERC may potentially impose significant financial hardship on KPU. Staff is seeking City Council authorization to file the attached comments with FERC.

The Electric Division Manager and the Electric System Engineering Manager will attend the City Council meeting of March 18, 2021, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

### **RECOMMENDATION**

It is recommended the City Council adopt the motion authorizing staff to file comments with the Federal Energy Regulatory Commission in response to the agency's Notice of Inquiry, Docket No. RM21-9-000, in substantially the same form as detailed in the General Manager's report dated March 10, 2021.

**Recommended Motion:** I move the City Council authorize staff to file comments with the Federal Energy Regulatory Commission in response to the agency's Notice of Inquiry, Docket No. RM21-9-000, in substantially the same form as detailed in the General Manager's report dated March 10, 2021.



**General Manager**  
334 Front Street  
Ketchikan, AK. 99901

(907) 228-5603 phone  
(907) 225-5075 fax

March 19, 2021

**VIA E-FILING**

Office of the Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Dear Secretary Bose:

**Re: Docket No. RM21-9-000  
Financial Assurance Measures for Hydroelectric Projects**

With regard to the above referenced subject, please be advised that I am writing in response to the Federal Energy Regulatory Commission's Notice of Inquiry inviting comments on what changes, if any, the Commission should make to its practices for requiring financial assurance measures in licenses and other authorizations for hydroelectric projects.

Potential changes in FERC's practices for requiring financial assurance measures in hydroelectric licenses may have lasting impacts on smaller licensees. Developing broad measures intended to ensure that a licensee has the capability to carry out license requirements and maintain project safety may have an overall adverse impact to small licensee, especially when the circumstances are not present in most instances.

Ketchikan Public Utilities (KPU) is a municipally-owned utility that, since its inception in 1932, has generated and distributed hydroelectric power to the residents of Ketchikan, Alaska. Ketchikan is a small community of 13,477 isolated on Revillagigedo Island in Southeast Alaska. KPU currently owns and operates three small (<7 MW) hydroelectric projects under FERC licenses: the Ketchikan Lakes Project (FERC No. 420), the Beaver Falls Project (FERC No. 1922), and the Whitman Lake Project (FERC No. 11841).

KPU maintains a Dam Safety Program for its three hydroelectric projects and nine dams, which are regulated by FERC. The purpose of the dam safety program is to protect life, property and the environment by ensuring that all dams and appurtenant structures are designed, constructed, operated and maintained safely and effectively. To this end, KPU allocates resources to employ highly skilled professionals; obtain the best available technologies; implement a system of internal compliance, surveillance and monitoring; perform necessary maintenance and repairs; maintain a training program; and perform internal and external assessments of the facilities and dam safety program. KPU's safety program is continuously monitored and updated as necessary to comply with all federal standards.

KPU would like to provide some general responses to the three potential options that Commission staff has identified for establishing financial assurance mechanisms in hydroelectric licenses: Bonds, Trust, Escrow, or Remediation Fund, and Insurance. Each option has a potential to negatively impact KPU's ability to provide affordable power to our small community:

**Bonds.** Requiring KPU to obtain bonds to cover the costs of safety measures and project operation and maintenance is unnecessary; KPU already performs required activities to maintain compliance. A requirement of this type would impact KPU's ability to provide affordable hydropower within the service area.

**Trust, Escrow, or Remediation Fund.** FERC establishing an industry-wide trust or remediation fund that requires all licensees to participate will potentially penalize small licensees that are already complying with standards. In addition, requiring small licensees to maintain individual trust, escrow or remediation funds will increase operational cost; these types of measures, if applied broadly, will harm small operating utilities like KPU.

**Insurance.** Requiring licensees to obtain additional insurance policies for unforeseen safety hazards or dam failures may be too costly for small license holders. As indicated earlier, KPU, already allocates resources to minimize our risk. FERC should ensure that if this action is considered, proper application will be critical to minimize impact to small license holders like KPU.

In conclusion, KPU has consistently demonstrated that it has the capability to meet license requirements and maintain its projects in a safe condition. Any changes that would broadly require a small license holder like KPU to comply with any of the three options covered in the inquiry will have a lasting adverse impact on our small community's ability to maintain affordable and reliable hydropower. I ask FERC to ensure that all proposed changes be developed in a way that will not negatively affect KPU's ability to provide reliable power to the community of Ketchikan at a reasonable cost.

Should you have any questions on this matter, please do not hesitate to contact me.

Very truly yours,

Karl R. Amylon  
General Manager

February 18, 2021

**January 30, 2021 and February 6, 2021 Photo Album Production Report – Ford F550 Super Duty 4x4 Mini Pumper and Associated Equipment**

Manager Amylon provided for Council review is the January 30, 2021 and February 6, 2021 Photo Album Production Report for the Ford F550 super Duty 4x4 mini pumper and associated equipment.

**Recommendation for Accepting Ketchikan’s United States Coast Guard City Recertification Application**

Assistant Manager Simpson updated the Council with the acceptance by the United State Coast Guard board to recertify Ketchikan as “A Coast Guard City” for 2021. She informed the mayors will receive a formal acceptance letter from the Coast Guard Commandant within the coming weeks. She indicated staff will keep the Council informed of these details. She said Ketchikan’s successful recertification was made possible through the many individuals, businesses and organizations that not only supported the application, but Coast Guard personnel and families each and every year. Manager Amylon thanked Ms. Simpson for all her efforts in undertaking that endeavor.

**K.P.U. MANAGER’S REPORT**

**Project Status Reports of the KPU Division Managers – January 2021**

General Manager Amylon attached for Council review the project status reports of the KPU Division Managers for the month of January 2021.

**Reports of January 2, 8 and 14, 2021 Power Outages**

General Manager Amylon attached for Council review a memoranda from Electric System Engineering Manager Bynum regarding the power outages of January 2, 8 and 14, 2021.

**Federal Energy Regulatory Commission (FERC) Notice of Inquiry (NOI) – Requiring New Financial Assurance Measures for Hydroelectric Projects**

General Manager Amylon provided for Council consideration a memorandum from Electric System Engineering Manager Jeremy Bynum indicating the Federal Energy Regulatory Commission (FERC) has issued a Notice of Inquiry (NOI) seeking comments on the possibility of the agency requiring new financial assurance measures for hydroelectric projects. He informed they intend to file comments with FERC in response to the NOI, and a draft of comments will be submitted to the Council for review prior to the March 29, 2021 response deadline.

**CITY CLERK’S FILE** – None

**CITY ATTORNEY’S FILE** – None

**FUTURE AGENDA ITEMS** - None

# KPU



Your Community, Your Utility

**General Manager**  
334 Front Street  
Ketchikan, AK. 99901

(907) 228-5603 phone  
(907) 225-5075 fax

9b(3)

## TRANSMITTAL MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** Karl R. Amylon, General Manager

**DATE:** February 11, 2021

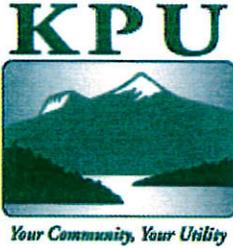
**RE:** **Federal Energy Regulatory Commission (FERC) Notice of Inquiry (NOI) – Requiring New Financial Assurance Measures for Hydroelectric Projects**

As indicated in the attached memorandum from Electric System Engineering Manager Jeremy Bynum, the Federal Energy Regulatory Commission (FERC) has issued a Notice of Inquiry (NOI) seeking comments on the possibility of the agency requiring new financial assurance measures for hydroelectric projects. Comments are due March 29, 2021.

Specifically, FERC is considering whether to require additional mechanisms to ensure licensees have the financial resources necessary to be able to safely operate and maintain their projects and to respond to unanticipated events. The NOI seeks comments on how different types of licenses, including licensees of small projects and municipal licenses, may be affected by the financial assurance mechanisms being considered.

As detailed in his transmittal memorandum, Mr. Bynum point outs that adoption of such assurance mechanisms under consideration by FERC may potentially impose significant financial hardship on KPU. In conjunction with the Southeast Alaska Power Agency (SEAPA) and other southeast Alaska electric utilities, KPU intends to file comments with FERC in response to the NOI. A draft will be submitted to the City Council for review prior to the March 29, 2021 response deadline.

The Electric Division Manager and the Electric System Engineering Manager will attend the City Council meeting of February 18, 2021, in order to address any questions and/or concerns that Councilmembers may have.



Electric Division  
1065 Fair Street  
Ketchikan, AK 99901

Phone: (907) 225-5505  
Fax: (907) 247-0755

## TRANSMITTAL MEMORANDUM

**TO:** Karl Amylon, KPU General Manager  
Lacey Simpson, Assistant KPU General Manager

**FROM:** Jeremy T. Bynum PE, Electric System Engineering Manager

**DATE:** February 9, 2021

**SUBJECT: Federal Energy Regulatory Commission (FERC) Notice of Inquire (NOI)**

On January 19, 2021, the Federal Energy Regulatory Commission (FERC) released a Notice of Inquire (NOI) requesting comments for financial assurance measures in hydroelectric licenses, Docket No. RM21-9-000. FERC provided a news release:

*The Federal Energy Regulatory Commission (FERC) is seeking public comment on possible changes to its practices for requiring financial assurance measures in hydroelectric licenses. Such measures are intended to ensure that a licensee has the capability to carry out license requirements and maintain its projects in a safe condition.*

*In today's Notice of Inquiry, FERC noted there are projects that are non-operational or out of compliance with their license conditions, and where licensees have stated that they cannot afford to operate or maintain their projects or implement required environmental or safety measures. These projects can pose public safety hazards in the event of a dam failure or breach, as demonstrated by the failure of the Edenville and Sanford dams near Midland, Mich., on May 19, 2020.*

*With these environmental and safety concerns in mind, the Commission is considering whether to take additional measures to ensure licensees have the financial resources to operate and maintain their projects, including under unforeseen circumstances.*

*To launch this discussion, FERC outlined three potential options for establishing financial assurance mechanisms in hydroelectric licenses:*

- *requiring licensees to obtain bonds to cover the costs of safety measures and project operation and maintenance;*
- *establishing an industry-wide trust or remediation fund or requiring licensees to maintain individual trust, escrow or remediation funds; or*
- *requiring licensees to obtain insurance policies for unforeseen safety hazards or dam failures.*

*Comments on the three options as well as additional questions on the NOI are due 60 days after publication in the Federal Register.*

Currently, KPU holds three (3) FERC licenses:

Ketchikan Lakes Project, FERC No. 420

- License expires 2030
- One high hazard dam: Ketchikan Lakes Dam
- One low hazard dam: Granite Basin Diversion
- Two dams with classification currently in review: North Fawn Lake Dam, South Fawn Lake Dam

Beaver Falls Project, FERC No. 1922

- License expires 2024, re-licensing in progress
- Three low hazard dams: Upper Silvis Dam, Lower Silvis Dam, Beaver Falls Creek Diversion

Whitman Lake Project, FERC No. 11841

- License expires 2059
- One high hazard dam: Whitman Lake Dam
- One low hazard dam: Achilles Creek Diversion

KPU maintains a Dam Safety Program for its three hydroelectric projects and nine dams, which are regulated by FERC. The purpose of the dam safety program is to protect life, property and the environment by ensuring that all dams and appurtenant structures are designed, constructed, operated and maintained safely and effectively. To this end, KPU allocates resources to employ highly skilled professionals; obtain the best available technologies; implement a system of internal compliance, surveillance and monitoring; perform necessary maintenance and repairs; maintain a training program; and perform internal and external assessments of the facilities and dam safety program. KPU's safety program is continuously monitored and updated as necessary to comply with all federal standards.

KPU has consistently demonstrated that it has the capability to meet license requirements and maintain its projects in a safe condition. KPU intends to coordinate with Southeast Alaska Power Agency (SEAPA) and other industry partners to provide comments to the NOI no later than March 29, 2021. KPU is concerned that each item listed, if implemented, has a potential cost impact.

Currently, KPU is developing general responses for each item listed in the NOI:

- The NOI does not provide enough background information to formulate detailed comments or allow for a full understanding of the potential implications (positive or negative) of these changes. When additional information becomes available, KPU will be able to collaborate with regional partners to provide regional specific recommendations and solutions.
- Requiring KPU to obtain bonds to cover the costs of safety measures and project operation and maintenance is unnecessary; KPU already performs required activities to maintain compliance. If FERC requires a licensee to obtain a bond, it should only be required of those that are not meeting safety standards.

- FERC establishing an industry-wide trust or remediation fund will only penalize licensees that are already complying with standards. In addition, requiring licensees to maintain individual trust, escrow or remediation funds will increase operational cost for licensees; these types of measures should only be required for licensees that are unable to comply with current standards.
- Requiring licensees to obtain insurance policies for unforeseen safety hazards or dam failures should only be a consideration for licensees that are unable to mitigate risk or unable to financially meet appropriate operation and maintenance standards.

KPU will continue to monitor industry responses and will work to ensure our comments are in alignment with our regional partners.

Cc: Andy Donato, Electric Division Manager  
Jennifer Holstrom, Principal Project Engineer  
Mark Adams, Operations Manager  
Diane Walker, Administrative Assistant

Attachment: 20210209 FERC NOI RM21-9-000.pdf  
20210209 S&M\_Alert\_FERC\_NOI.pdf  
20210209 Federal Register Notices.pdf

Sources:

<https://www.ferc.gov/news-events/news/staff-presentation-financial-assurance-measures-hydroelectric-projects-rm21-9-000>

# info@spiegelmc

## HYDROELECTRIC

In this issue:

### CLIENT ALERT: FERC SEEKS COMMENTS ON REQUIRING NEW FINANCIAL ASSURANCE MEASURES FOR HYDROELECTRIC PROJECTS

---

On January 19, 2021, FERC issued a Notice of Inquiry (“NOI”) on financial assurance mechanisms for hydroelectric projects.<sup>1</sup> In particular, FERC is considering whether to require additional mechanisms to ensure that licensees<sup>2</sup> have the financial resources necessary to be able to safely operate and maintain their projects and to respond to unanticipated events. The NOI seeks comments on how different types of licensees, including licensees of small projects and municipal licensees, may be affected by the financial assurance mechanisms being considered. Comments on the NOI are due March 29, 2021.<sup>3</sup>

#### Background

Historically, FERC’s analysis of project financing has been limited to: (1) evaluating the costs and benefits of proposed projects; and (2) ensuring that licensees can finance project construction and, when taking on new construction, finance anticipated operating and maintenance expenses.<sup>4</sup> Currently, FERC generally does not “require a licensee to demonstrate the ability to finance unknown future obligations that may arise from environmental concerns or significant dam safety issues,”<sup>5</sup> and only rarely requires licensees to demonstrate that they “can afford ongoing operation and maintenance expenses, required environmental or safety measures, or measures required to ensure the facility can meet future dam safety requirements.”<sup>6</sup> But since it has found increasing numbers of licensees unable to “afford to operate or maintain [their] projects or implement required environmental

---

<sup>1</sup> *Financial Assurance Measures for Hydroelectric Projects*, Docket No. RM21-9-000, 86 Fed. Reg. 7081 (Jan. 26, 2021), 174 FERC ¶ 61,039 (2021). All citations in this Alert are to the Federal Register version of the NOI.

<sup>2</sup> According to the NOI (n.1), “Use of the word ‘license’ herein refers to both licenses and exemptions or licensees and exemptees, unless otherwise specified.”

<sup>3</sup> *Id.* P 16.

<sup>4</sup> *Id.* PP 3-4.

<sup>5</sup> *Id.* P 4.

<sup>6</sup> *Id.* PP 5-6.

or safety measures”<sup>7</sup>—and in light of the May 2020 failures of the Edenville and Sanford dams in Michigan<sup>8</sup>—FERC is now considering “whether additional measures should be taken to ensure licensees have the financial resources to operate and maintain their projects for the life of the project, including under unforeseen circumstances.”<sup>9</sup>

## **Potential Financial Assurance Requirements**

The NOI identifies three potential financial requirements that could better ensure that licensees have the financial resources needed to adequately operate and maintain their projects: a bond requirement; an insurance requirement; and/or a trust, escrow, or remediation fund requirement.<sup>10</sup>

### **The Bond Requirement**

Under this approach, FERC would require licensees to “obtain bonds to ensure they have sufficient funds to pay for operation, maintenance, environmental, and safety measures throughout the duration of the license.”<sup>11</sup> The NOI seeks comments on a number of questions regarding the bond requirement, including: whether FERC should adopt a bond requirement; whether all licensees could satisfy a bond requirement, and, if not, whether FERC could mitigate expenses; and how FERC should determine the bond amount.<sup>12</sup>

### **The Insurance Requirement**

As described in the NOI, the insurance requirement is substantially similar to the bond requirement. Licensees would be required to “obtain insurance policies to cover costs in the event of a safety hazard or dam failure.”<sup>13</sup> As with the bond requirement, the NOI seeks comments on whether FERC should adopt an insurance requirement, and how FERC should determine the amount of insurance coverage required.<sup>14</sup>

### **The Trust, Escrow, or Remediation Fund Requirement**

Under this approach, FERC would: (1) “establish an industry-wide trust or remediation fund to pay for necessary repairs and remediation,” (2) “require licensees to maintain an individual trust or remediation fund,” or (3) require licensees to establish escrow accounts.<sup>15</sup> As to the industry-wide trust, the NOI asks for comments on: whether FERC should create an industry-wide trust or

---

<sup>7</sup> *Id.* P 8.

<sup>8</sup> *Id.* P 7.

<sup>9</sup> *Id.* P 10.

<sup>10</sup> *Id.* P 12.

<sup>11</sup> *Id.* P 13.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* P 15.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* P 14.

remediation fund; how FERC should determine the amount of money needed for the trust; how the trust should be funded, including whether FERC should use its annual charge authority to fund the trust; and how trust funds should be distributed.<sup>16</sup> The NOI seeks comments on similar issues for individual trust and/or escrow account requirements, including: whether FERC should require licensees to maintain individual trusts or escrow accounts; how FERC should determine the amount of money needed for individual trusts; and whether FERC should “require licensees to retain a certain percentage of generation receipts in an escrow account.”<sup>17</sup>

Finally, the NOI seeks comments on the challenges each of the potential financial requirements might pose to “individual licensees, small hydroelectric project licensees, municipal licensees, the public, or the Commission.”<sup>18</sup>

### **How Additional Financial Requirements May Be Imposed on Licensees**

The NOI asks for comments on how any additional financial requirements FERC adopts should be imposed, and, in particular, when and how additional financial requirements should be included in project licenses. Among other things, the NOI seeks comments on: whether additional financial requirements should be imposed during original licensing, during relicensing, or both; if the requirements are imposed during relicensing, whether they should apply to both new major project licenses and subsequent minor project licenses; and whether FERC should reopen existing licenses to impose these requirements.<sup>19</sup> The NOI also asks for comments on whether additional financial requirements should be included in other types of authorizations—for example, for “exemptions, amendment requests, and transfers.”<sup>20</sup>

Finally, the NOI seeks comments on whether FERC should require licensees to actively reaffirm that they have adequate financial assurance instruments at periodic intervals during the license term, and, if so, how often. The NOI also seeks comments on whether FERC should require licensees to notify it if the “circumstances underlying their financial assurance instruments have changed.”<sup>21</sup>

### **Opportunity to Submit Comments**

While FERC’s consideration of these issues is still at an early stage, the potential financial assurance requirements identified in the NOI could significantly impact licensees. As is often the case, the devil will be in the details. For instance, some licensees may want to argue that they should not be subject to the financial assurance mechanisms identified in the NOI, either because they have access to different tools to assure adequate financial resources (e.g., municipal licensees); because their project

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* PP 13-15.

<sup>19</sup> *Id.* P 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

operations pose much less safety risk (e.g., licensees of projects at dams owned and maintained by the federal government); or because the burden is disproportionate given the size of their project. All these considerations would be appropriate to raise in comments.

Comments on the NOI are due March 29, 2021. Please contact Spiegel attorneys William Huang, Katie Mapes, or Rebecca Baldwin for additional information, or if you would like to submit comments.

---

**FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE FOLLOWING SPIEGEL ATTORNEYS:**

William Huang	<b>202.879.4047</b>	<a href="mailto:william.huang@spiegelmc.com">william.huang@spiegelmc.com</a>
Katie Mapes	<b>202.879.3578</b>	<a href="mailto:katharine.mapes@spiegelmc.com">katharine.mapes@spiegelmc.com</a>
Rebecca Baldwin	<b>202.879.4088</b>	<a href="mailto:rebecca.baldwin@spiegelmc.com">rebecca.baldwin@spiegelmc.com</a>

[www.spiegelmc.com](http://www.spiegelmc.com)

174 FERC ¶ 61,039  
DEPARTMENT OF ENERGY  
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RM21-9-000]

Financial Assurance Measures for Hydroelectric Projects

(January 19, 2021)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on what changes, if any, the Commission should make to its practices for requiring financial assurance measures in licenses and other authorizations for hydroelectric projects.

DATES: Comments are due **[INSERT DATE 60 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by Docket No. RM21-9-000, may be filed in the following ways:

- Agency website: Electronic filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail: Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal

Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland  
20852.

*Instructions:* For detailed instructions on submitting comments, see the Comment  
Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Bootz  
(Legal Information)  
Office of the General Counsel – Energy Projects  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-6452  
Elizabeth.Bootz@ferc.gov

Kelly Houff  
(Technical Information)  
Office of Energy Projects  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(202) 502-6393  
Kelly.Houff@ferc.gov

**SUPPLEMENTARY INFORMATION:**

174 FERC ¶ 61,039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Financial Assurance Measures for Hydroelectric  
Projects

Docket No. RM21-9-000

NOTICE OF INQUIRY

(January 19, 2021)

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether, and if so, how the Commission should require additional financial assurance mechanisms in the licenses<sup>1</sup> 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.

**I. Background**

2. Section 4(e) of the Federal Power Act (FPA) authorizes the Commission to issue licenses “for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient . . . for the development, transmission, and utilization of power.”<sup>2</sup>

Approximately 1,600 hydroelectric projects throughout the United States are under

---

<sup>1</sup> Use of the word “license” herein refers to both licenses and exemptions or licensees and exemptees, unless otherwise specified.

<sup>2</sup> 16 U.S.C. 797(e).

Commission license. In issuing these hydroelectric licenses, the Commission is required to consider power and development purposes and “give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.”<sup>3</sup> Section 10(a) of the FPA requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and use of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.<sup>4</sup>

3. Section 10(c) of the FPA also requires licensees to “maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, . . . make all necessary renewals and replacements, . . . establish and maintain adequate depreciation reserves for such purposes, . . . so maintain and operate said works as not to impair

---

<sup>3</sup> *Id.*

<sup>4</sup> 16 U.S.C. 803(a).

navigation, and . . . conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property.”<sup>5</sup>

4. In making its public interest determination under section 10(a), the Commission considers a number of factors, including the economic benefits of project power. The basic purpose of the Commission’s economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. As articulated in *Mead Corp.*, project economics is one of many factors the Commission considers in determining whether or not, and under what conditions to issue a license.<sup>6</sup> Ultimately, it is up to the applicant to decide whether to accept a license as conditioned and any financial risks that entails. However, the *Mead Corp.* analysis is intended only to provide a rough estimate of the cost of project power compared to that of alternative energy sources: it is not intended to show whether and to what degree the project will have a positive cash flow over the life of the license. The Commission has explained that making predictions of long-term project economics would involve speculation as there are many variables, known and unknown.<sup>7</sup>

---

<sup>5</sup> *Id.*

<sup>6</sup> 72 FERC ¶ 61,027, at 61,069 (1995). For example, the Commission will impose reasonable conditions, regardless of their impact on project economics. See *City of Tacoma, Wash.*, 84 FERC ¶ 61,107 (1998), *aff’d in pertinent part, City of Tacoma, Wash. v. FERC*, 460 F.3d 53 (D.C. Cir. 2006).

<sup>7</sup> See *Mead Corp.*, 72 FERC at 61,068 (explaining that long-term economic analyses require many assumptions and that even under relatively stable conditions, “such forecasts could never be more than a general guide”).

5. The Commission has taken steps to protect against the failure of a project sponsor's financial planning. For example, to reduce the risk that a project under construction could be abandoned before completion of construction because of inadequate funds, the Commission has required the licensee to file a financing plan prior to beginning construction.<sup>8</sup> Initially, financing plans were included in original licenses or relicenses with extensive new construction to ensure that construction could be completed;<sup>9</sup> however, the financing plan article has been modified to ensure funds are available for operation and maintenance in addition to construction.<sup>10</sup> Accordingly, the Commission currently includes a financing plan article in licenses that authorize new construction.<sup>11</sup> This article requires licensees to file a project financing plan with the Commission to show that the licensee has the necessary funds to complete project construction and to operate and maintain the project.<sup>12</sup> This article, however, does not

---

<sup>8</sup> See, e.g., *City of Le Claire, Iowa*, 74 FERC ¶ 61,127, at 61,462 (1996). In requiring financing plans, the Commission has explained that it is concerned not only about potential environmental impacts associated with a partially constructed project, but also with ensuring that projects are developed in a timely and diligent manner. See, e.g., *Clark Canyon Hydro, LLC*, 150 FERC ¶ 61,195, at P 44 (2015); see also *City of Augusta, Ky.*, 72 FERC ¶ 61,114, at 61,594 (1995).

<sup>9</sup> E.g., *Halecrest Co.*, 60 FERC ¶ 61,121 (1992).

<sup>10</sup> E.g., *Marseilles Land and Water Co.*, 137 FERC ¶ 62,235, at art. 307 (2011), *order on reh'g and clarification*, 138 FERC ¶ 61,120 (2012).

<sup>11</sup> License amendments that approve construction for significant modifications to project facilities may also include financing plan requirements. See, e.g., *BMB Enters., Inc.*, 147 FERC ¶ 62,044, at art. 206 (2014).

<sup>12</sup> E.g., *Kenai Hydro, LLC*, 168 FERC ¶ 61,125, at P 109 and art. 207 (2019).

require a licensee to demonstrate the ability to finance unknown future obligations that may arise from environmental concerns or significant dam safety issues.

6. In rare cases, the Commission has also included a requirement to file a financial assurance plan.<sup>13</sup> The financial assurance article requires licensees to submit a plan that identifies the costs of project facilities that would be removed, secured in-place, or otherwise modified to ensure public safety, as well as other measures needed to protect environmental resources, in the event the licensee cannot complete project construction or is unable to operate the project once construction is complete. After approval of the financial assurance plan and before beginning ground disturbing activities, the licensee must obtain a bond or equivalent financial instrument to ensure the licensee has the economic means to implement the plan. The licensee is also required to file annual reports to document that the bond or equivalent financial instrument remains in effect for the ensuing year.

7. However, the vast majority of existing licenses do not include requirements addressing whether a licensee can afford ongoing operation and maintenance expenses, required environmental or safety measures, or measures required to ensure the facility can meet future dam safety requirements.

---

<sup>13</sup> See, e.g., *PacifiCorp*, 144 FERC ¶ 62,239, at art. 307 (2013) (requiring license transferee to file financial assurance plan to demonstrate it had funds necessary to operate and maintain project). See also *Marseilles Land and Water Co.*, 137 FERC ¶ 62,235 at P 80 n.46 (requiring financial assurance plan in addition to the financing plan for an original license, based on “a reasonable possibility that the licensee could find itself in the position of having insufficient funds or project land rights to continue constructing or operating the . . . Project in the absence of a Financial Assurance Plan”).

8. Non-operational or non-compliant projects can pose public safety hazards in the event of a dam failure or breach, as demonstrated by the failure of the Edenville and Sanford dams near Midland, Michigan, on May 19, 2020. The cause of these dam failures is still under investigation. Nonetheless, the licensee of both projects had for many years failed to comply with dam safety directives, at least in part due to the alleged lack of financial capacity to meet Commission requirements, which resulted in the Commission revoking the license for the Edenville project in 2018.<sup>14</sup> The dam failures created an immediate safety hazard requiring thousands to evacuate, and estimates to repair and restore the dams have been more than \$300 million dollars, which does not include the damages that property owners affected by the flooding may have suffered.

9. While significant dam failures have fortunately been very rare, the Commission has seen 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. Commission staff regularly works with these licensees to bring these projects back into operation or compliance, but only with mixed success.<sup>15</sup>

---

<sup>14</sup> See *Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178 (2018) (revoking the license for the Edenville Project No. 10808 due to the licensee's "longstanding failure to increase the project's spillway capacity to safely pass flood flows, as well as its failure to comply with its license, the Commission's regulations, and a June 15, 2017 Compliance Order"), *order on reh'g*, 166 FERC ¶ 61,029 (2019).

<sup>15</sup> Section 6.4 of the Commission's regulations gives licensees three years to resolve their non-operating issues. 18 CFR 6.4.

10. As of December 2020, Commission staff is aware of approximately 88 projects that are non-operational and is working with licensees of non-operating projects to restore operations. A licensee's lack of financial resources is often a key factor in a project becoming non-operational. For those licensees that cannot restore operation, some licensees apply to surrender their licenses. However, for those where operating the project or bringing the project into compliance is too financially burdensome, the surrender process may also be economically infeasible. Where licensees show the inability or unwillingness to maintain their projects and do not voluntarily seek surrender, the Commission has terminated licenses by implied surrender.<sup>16</sup> But implied surrender may not be appropriate where environmental or dam safety measures need to be taken to leave the project in acceptable condition. In addition to voluntary and implied surrender, the Commission has enforcement mechanisms at its disposal, including license revocation, the imposition of civil penalties, seeking injunction relief in federal court, and referral to the Department of Justice for criminal prosecution. These measures, while appropriate in some cases, may not result in necessary license compliance.

11. Based on the concern that inadequate financing may result in threats to public safety and environmental resources, the Commission is considering whether additional

---

<sup>16</sup> See, e.g., *Brentwood Dam Ventures, LLC*, 158 FERC ¶ 61,037 (2017) (terminating the exemption for the Exeter River Hydro #1 Project No. 4254 by implied surrender because the exemptee did not make the necessary repairs to restore project operation); see also *James Lichoulas Jr.*, 124 FERC ¶ 61,255 (2008) (terminating the license for the Appleton Trust Project No. 9300 by implied surrender because the licensee failed to restore project operation after more than a decade), *aff'd*, *Lichoulas v. FERC*, 600 F.3d 769 (D.C. Cir. 2010).

measures should be taken to ensure licensees have the financial resources to operate and maintain their projects for the life of the project, including under unforeseen circumstances. We recognize that imposing additional financial requirements may pose difficulties for licensees, particularly those operating small projects, but are also cognizant of our responsibilities to the public. Therefore, the Commission is soliciting public comment on potential mechanisms to ensure that licensees can afford required safety measures, ongoing project operation and maintenance expenses, and license compliance to prevent future safety and environmental hazards.

## **II. Subject of the Notice of Inquiry**

12. The Commission seeks comments on whether, and, if so, how the Commission should revise its practices for requiring financial assurance mechanisms in the licenses and other authorizations it issues for hydroelectric projects. First, we solicit comments regarding how and when the Commission should require financial assurance from licensees. Specifically, should a financial assurance requirement be included in original licenses and/or on relicense? If on relicense, should such a requirement be included in both new licenses for major projects and subsequent licenses for minor projects? Should the Commission also require financial assurance requirements in other authorizations, such as all exemptions, amendment requests, and transfers? Should the Commission reopen licenses to impose financial assurance measures? Should the Commission require licensees to reaffirm or recertify that they have adequate financial assurance instruments every few years during their license term? If so, how often during a license term should the Commission require licensees to demonstrate that they still have adequate finances?

Should the Commission require licensees to notify the Commission if the circumstances underlying their financial assurance instruments have changed?

13. Below we outline 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 failures. We encourage comments on these options as well as the suggestion of any other alternatives. While the Commission will consider all comments filed, the Commission may not, and is not required to, take further action.

**A. Bonds**

14. The Commission could require licensees to obtain bonds to ensure they have sufficient funds to pay for operation, maintenance, environmental, and safety measures throughout the duration of the license. The Commission seeks comment on this option and the following questions:

- i. Should the Commission require licensees to obtain bonds as a financial assurance mechanism?
- ii. If so, how should the Commission determine the amount of the bond or what factors should the Commission consider when determining the bond amount?

- iii. Are bonds within the resources of all licensees, including those of small hydroelectric projects. Could the Commission mitigate these expenses?
- iv. What other challenges would bond requirements pose to individual licensees, municipal licensees, the public, or the Commission?

**B. Trust, Escrow, or Remediation Fund**

15. The Commission could establish an industry-wide trust or remediation fund to pay for necessary repairs and remediation, similar to the Environmental Protection Agency's superfund program, or could require licensees to maintain an individual trust or remediation fund that is similar to what is done in the nuclear industry. The Commission could also require funds to be placed in escrow. The Commission seeks comment on this option and the following questions:

- i. Should the Commission establish an industry-wide trust or fund as a financial assurance mechanism?
- ii. If so, how should the Commission generate funds for the trust? Should the Commission consider using its annual charge authority to fund an industry-wide trust?
- iii. How should the Commission determine the appropriate level of funds for an industry-wide trust?
- iv. How should the Commission determine how funds are distributed?
- v. Should the Commission require licensees to maintain an individual trust or escrow fund as a financial assurance mechanism?

- vi. For individual trusts, how should the Commission determine the appropriate level of the trust and what factors should the Commission consider in determining amounts?
- vii. For individual escrows, should the Commission require licensees to retain a certain percentage of generation receipts in an escrow account?
- viii. What other challenges would an industry-wide or individual trust pose on individual licensees, small hydroelectric project licensees, municipal licensees, the public, or the Commission?

**C. Insurance**

16. The Commission could require licensees to obtain insurance policies to cover costs in the event of a safety hazard or dam failure. The Commission seeks comment on this option and the following questions:

- i. Should the Commission require licensees to obtain insurance policies as a financial assurance mechanism for project maintenance?
- ii. How should the Commission determine the amount of required coverage of an insurance policy or what factors should the Commission consider when determining the amount of coverage?
- iii. What other challenges would a requirement to obtain an insurance policy pose on individual licensees, small hydroelectric project licensees, municipal licensees, the public, or the Commission?

### **III. Comment Procedures**

17. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice, and any alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**.

Comments must refer to Docket No. RM21-9-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

18. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

19. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number RM21-9-000.

20. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section

below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### **IV. Document Availability**

21. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

22. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

23. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference

Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Docket Numbers:** ER21–915–000.  
**Applicants:** Entergy Arkansas, LLC.  
**Description:** § 205(d) Rate Filing:  
 EAL–MSS–4 Replacement Tariff to be  
 effective 3/20/2021.

**Filed Date:** 1/19/21.

**Accession Number:** 20210119–5191.

**Comments Due:** 5 p.m. ET 2/9/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 19, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–01658 Filed 1–25–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21–908–000]

#### Western Aeon Energy Trading LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Western Aeon Energy Trading LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 8, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Dated: January 19, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–01660 Filed 1–25–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM21–9–000]

#### Financial Assurance Measures for Hydroelectric Projects

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is inviting comments on what changes, if any, the Commission should make to its practices for requiring financial assurance measures in licenses and other authorizations for hydroelectric projects.

**DATES:** Comments are due March 29, 2021.

**ADDRESSES:** Comments, identified by Docket No. RM21–9–000, may be filed in the following ways:

- **Agency website:** Electronic filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- **Mail:** Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

**Instructions:** For detailed instructions on submitting comments, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Bootz (Legal Information)  
 Office of the General Counsel—Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6452, [Elizabeth.Bootz@ferc.gov](mailto:Elizabeth.Bootz@ferc.gov).  
 Kelly Houff (Technical Information)  
 Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6393, [Kelly.Houff@ferc.gov](mailto:Kelly.Houff@ferc.gov).

**SUPPLEMENTARY INFORMATION:** In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether, and if so, how the Commission should require additional financial assurance

mechanisms in the licenses<sup>1</sup> 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.

### I. Background

1. Section 4(e) of the Federal Power Act (FPA) authorizes the Commission to issue licenses “for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient . . . for the development, transmission, and utilization of power.”<sup>2</sup> Approximately 1,600 hydroelectric projects throughout the United States are under Commission license. In issuing these hydroelectric licenses, the Commission is required to consider power and development purposes and “give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.”<sup>3</sup> Section 10(a) of the FPA requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and use of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.<sup>4</sup>

2. Section 10(c) of the FPA also requires licensees to “maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, . . . make all necessary renewals and replacements, . . . establish and maintain adequate depreciation reserves for such purposes, . . . so maintain and operate said works as not to impair navigation, and . . . conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property.”<sup>5</sup>

3. In making its public interest determination under section 10(a), the Commission considers a number of factors, including the economic benefits of project power. The basic purpose of the Commission’s economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. As articulated in *Mead Corp.*, project economics is one of many factors the Commission considers in determining whether or not, and under what conditions to issue a license.<sup>6</sup> Ultimately, it is up to the applicant to decide whether to accept a license as conditioned and any financial risks that entails. However, the *Mead Corp.* analysis is intended only to provide a rough estimate of the cost of project power compared to that of alternative energy sources: It is not intended to show whether and to what degree the project will have a positive cash flow over the life of the license. The Commission has explained that making predictions of long-term project economics would involve speculation as there are many variables, known and unknown.<sup>7</sup>

4. The Commission has taken steps to protect against the failure of a project sponsor’s financial planning. For example, to reduce the risk that a project under construction could be abandoned before completion of construction because of inadequate funds, the Commission has required the licensee to file a financing plan prior to beginning construction.<sup>8</sup> Initially, financing plans were included in original licenses or relicenses with extensive new construction to ensure that construction could be completed;<sup>9</sup> however, the financing plan article has been modified to ensure funds are available for operation and maintenance

in addition to construction.<sup>10</sup> Accordingly, the Commission currently includes a financing plan article in licenses that authorize new construction.<sup>11</sup> This article requires licensees to file a project financing plan with the Commission to show that the licensee has the necessary funds to complete project construction and to operate and maintain the project.<sup>12</sup> This article, however, does not require a licensee to demonstrate the ability to finance unknown future obligations that may arise from environmental concerns or significant dam safety issues.

5. In rare cases, the Commission has also included a requirement to file a financial assurance plan.<sup>13</sup> The financial assurance article requires licensees to submit a plan that identifies the costs of project facilities that would be removed, secured in-place, or otherwise modified to ensure public safety, as well as other measures needed to protect environmental resources, in the event the licensee cannot complete project construction or is unable to operate the project once construction is complete. After approval of the financial assurance plan and before beginning ground disturbing activities, the licensee must obtain a bond or equivalent financial instrument to ensure the licensee has the economic means to implement the plan. The licensee is also required to file annual reports to document that the bond or equivalent financial instrument remains in effect for the ensuing year.

6. However, the vast majority of existing licenses do not include requirements addressing whether a licensee can afford ongoing operation and maintenance expenses, required environmental or safety measures, or measures required to ensure the facility can meet future dam safety requirements.

7. Non-operational or non-compliant projects can pose public safety hazards

<sup>1</sup> 72 FERC ¶ 61,027, at 61,069 (1995). For example, the Commission will impose reasonable conditions, regardless of their impact on project economics. See *City of Tacoma, Wash.*, 84 FERC ¶ 61,107 (1998), *aff’d in pertinent part*, *City of Tacoma, Wash. v. FERC*, 460 F.3d 53 (D.C. Cir. 2006).

<sup>2</sup> See *Mead Corp.*, 72 FERC at 61,068 (explaining that long-term economic analyses require many assumptions and that even under relatively stable conditions, “such forecasts could never be more than a general guide”).

<sup>3</sup> See, e.g., *City of La Claire, Iowa*, 74 FERC ¶ 61,127, at 61,462 (1996). In requiring financing plans, the Commission has explained that it is concerned not only about potential environmental impacts associated with a partially constructed project, but also with ensuring that projects are developed in a timely and diligent manner. See, e.g., *Clark Canyon Hydro, LLC*, 150 FERC ¶ 61,195, at P 44 (2015); see also *City of Augusta, Ky.*, 72 FERC ¶ 61,114, at 61,594 (1995).

<sup>4</sup> E.g., *Halecrest Co.*, 60 FERC ¶ 61,121 (1992).

<sup>5</sup> E.g., *Marseilles Land and Water Co.*, 137 FERC ¶ 62,235, at art. 307 (2011), *order on reh’g and clarification*, 138 FERC ¶ 61,120 (2012).

<sup>6</sup> License amendments that approve construction for significant modifications to project facilities may also include financing plan requirements. See, e.g., *BMB Enters., Inc.*, 147 FERC ¶ 62,044, at art. 206 (2014).

<sup>7</sup> E.g., *Kenai Hydro, LLC*, 168 FERC ¶ 61,125, at P 109 and art. 207 (2019).

<sup>8</sup> See, e.g., *PacificCorp*, 144 FERC ¶ 62,239, at art. 307 (2013) (requiring licensee transferee to file financial assurance plan to demonstrate it had funds necessary to operate and maintain project). See also *Marseilles Land and Water Co.*, 137 FERC ¶ 62,235 at P 80 n.46 (requiring financial assurance plan in addition to the financing plan for an original license, based on “a reasonable possibility that the licensee could find itself in the position of having insufficient funds or project land rights to continue constructing or operating the . . . Project in the absence of a Financial Assurance Plan”).

<sup>1</sup> Use of the word “license” herein refers to both licenses and exemptions or licensees and exemptees, unless otherwise specified.

<sup>2</sup> 16 U.S.C. 797(e).

<sup>3</sup> *Id.*

<sup>4</sup> 16 U.S.C. 803(a).

<sup>5</sup> *Id.*

in the event of a dam failure or breach, as demonstrated by the failure of the Edenville and Sanford dams near Midland, Michigan, on May 19, 2020. The cause of these dam failures is still under investigation. Nonetheless, the licensee of both projects had for many years failed to comply with dam safety directives, at least in part due to the alleged lack of financial capacity to meet Commission requirements, which resulted in the Commission revoking the license for the Edenville project in 2018.<sup>14</sup> The dam failures created an immediate safety hazard requiring thousands to evacuate, and estimates to repair and restore the dams have been more than \$300 million dollars, which does not include the damages that property owners affected by the flooding may have suffered.

8. While significant dam failures have fortunately been very rare, the Commission has seen 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. Commission staff regularly works with these licensees to bring these projects back into operation or compliance, but only with mixed success.<sup>15</sup>

9. As of December 2020, Commission staff is aware of approximately 88 projects that are non-operational and is working with licensees of non-operating projects to restore operations. A licensee's lack of financial resources is often a key factor in a project becoming non-operational. For those licensees that cannot restore operation, some licensees apply to surrender their licenses. However, for those where operating the project or bringing the project into compliance is too financially burdensome, the surrender process may also be economically infeasible. Where licensees show the inability or unwillingness to maintain their projects and do not voluntarily seek surrender, the Commission has terminated licenses by implied surrender.<sup>16</sup> But implied

surrender may not be appropriate where environmental or dam safety measures need to be taken to leave the project in acceptable condition. In addition to voluntary and implied surrender, the Commission has enforcement mechanisms at its disposal, including license revocation, the imposition of civil penalties, seeking injunction relief in federal court, and referral to the Department of Justice for criminal prosecution. These measures, while appropriate in some cases, may not result in necessary license compliance.

10. Based on the concern that inadequate financing may result in threats to public safety and environmental resources, the Commission is considering whether additional measures should be taken to ensure licensees have the financial resources to operate and maintain their projects for the life of the project, including under unforeseen circumstances. We recognize that imposing additional financial requirements may pose difficulties for licensees, particularly those operating small projects, but are also cognizant of our responsibilities to the public. Therefore, the Commission is soliciting public comment on potential mechanisms to ensure that licensees can afford required safety measures, ongoing project operation and maintenance expenses, and license compliance to prevent future safety and environmental hazards.

## II. Subject of the Notice of Inquiry

11. The Commission seeks comments on whether, and, if so, how the Commission should revise its practices for requiring financial assurance mechanisms in the licenses and other authorizations it issues for hydroelectric projects. First, we solicit comments regarding how and when the Commission should require financial assurance from licensees. Specifically, should a financial assurance requirement be included in original licenses and/or on relicense? If on relicense, should such a requirement be included in both new licenses for major projects and subsequent licenses for minor projects? Should the Commission also require financial assurance requirements in other authorizations, such as all exemptions, amendment requests, and transfers? Should the

implied surrender because the exemptee did not make the necessary repairs to restore project operation); *see also James Lichoulas Jr.*, 124 FERC ¶ 61,255 (2008) (terminating the license for the Appleton Trust Project No. 9300 by implied surrender because the licensee failed to restore project operation after more than a decade), *aff'd*, *Lichoulas v. FERC*, 600 F.3d 769 (D.C. Cir. 2010).

Commission reopen licenses to impose financial assurance measures? Should the Commission require licensees to reaffirm or recertify that they have adequate financial assurance instruments every few years during their license term? If so, how often during a license term should the Commission require licensees to demonstrate that they still have adequate finances? Should the Commission require licensees to notify the Commission if the circumstances underlying their financial assurance instruments have changed?

12. Below we outline 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 failures. We encourage comments on these options as well as the suggestion of any other alternatives. While the Commission will consider all comments filed, the Commission may not, and is not required to, take further action.

### A. Bonds

13. The Commission could require licensees to obtain bonds to ensure they have sufficient funds to pay for operation, maintenance, environmental, and safety measures throughout the duration of the license. The Commission seeks comment on this option and the following questions:

- i. Should the Commission require licensees to obtain bonds as a financial assurance mechanism?
- ii. If so, how should the Commission determine the amount of the bond or what factors should the Commission consider when determining the bond amount?
- iii. Are bonds within the resources of all licensees, including those of small hydroelectric projects. Could the Commission mitigate these expenses?
- iv. What other challenges would bond requirements pose to individual licensees, municipal licensees, the public, or the Commission?

### B. Trust, Escrow, or Remediation Fund

14. The Commission could establish an industry-wide trust or remediation fund to pay for necessary repairs and remediation, similar to the Environmental Protection Agency's superfund program, or could require

<sup>14</sup> *See Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178 (2018) (revoking the license for the Edenville Project No. 10808 due to the licensee's "longstanding failure to increase the project's spillway capacity to safely pass flood flows, as well as its failure to comply with its license, the Commission's regulations, and a June 15, 2017 Compliance Order"), *order on reh'g*, 166 FERC ¶ 61,029 (2019).

<sup>15</sup> Section 6.4 of the Commission's regulations gives licensees three years to resolve their non-operating issues. 18 CFR 6.4.

<sup>16</sup> *See, e.g., Brentwood Dam Ventures, LLC*, 158 FERC ¶ 61,037 (2017) (terminating the exemption for the Exeter River Hydro #1 Project No. 4254 by

licensees to maintain an individual trust or remediation fund that is similar to what is done in the nuclear industry. The Commission could also require funds to be placed in escrow. The Commission seeks comment on this option and the following questions:

i. Should the Commission establish an industry-wide trust or fund as a financial assurance mechanism?

ii. If so, how should the Commission generate funds for the trust? Should the Commission consider using its annual charge authority to fund an industry-wide trust?

iii. How should the Commission determine the appropriate level of funds for an industry-wide trust?

iv. How should the Commission determine how funds are distributed?

v. Should the Commission require licensees to maintain an individual trust or escrow fund as a financial assurance mechanism?

vi. For individual trusts, how should the Commission determine the appropriate level of the trust and what factors should the Commission consider in determining amounts?

vii. For individual escrows, should the Commission require licensees to retain a certain percentage of generation receipts in an escrow account?

viii. What other challenges would an industry-wide or individual trust pose on individual licensees, small hydroelectric project licensees, municipal licensees, the public, or the Commission?

### C. Insurance

15. The Commission could require licensees to obtain insurance policies to cover costs in the event of a safety hazard or dam failure. The Commission seeks comment on this option and the following questions:

i. Should the Commission require licensees to obtain insurance policies as a financial assurance mechanism for project maintenance?

ii. How should the Commission determine the amount of required coverage of an insurance policy or what factors should the Commission consider when determining the amount of coverage?

iii. What other challenges would a requirement to obtain an insurance policy pose on individual licensees, small hydroelectric project licensees, municipal licensees, the public, or the Commission?

### III. Comment Procedures

16. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this

notice, and any alternative proposals that commenters may wish to discuss. Comments are due March 29, 2021. Comments must refer to Docket No. RM21-9-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

17. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

18. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number RM21-9-000.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

### IV. Document Availability

20. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

21. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

22. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

Issued: January 19, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-01613 Filed 1-25-21; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP21-21-000]

#### Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 6, 2021, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 700, Houston, Texas 77002-2700, filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued to Columbia by the Commission in Docket No. CP83-76-000,<sup>1</sup> seeking authorization to abandon ten injection/withdrawal wells and associated pipelines and appurtenances, located in its Benton, Crawford1, Laurel and McArthur Storage Fields in Hocking, and Vinton Counties, Ohio (2021 Southcentral Ohio Well Abandonments Project). Columbia states that there will be no change to the existing boundary, total inventory, reservoir pressure, reservoir and buffer boundaries, or the certificated capacity of the Benton, Crawford, Laurel and McArthur Storage Fields as a result of these abandonments. Further, Columbia avers that the proposed abandonments will not affect any other Columbia storage fields, operations, or service, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

<sup>1</sup> Columbia Gas Transmission Corporation (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).