

INSIGHTS

FERC Proposes Reforms to Hydropower Recreational Use Requirements

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On May 17, 2018, the Federal Energy Regulatory Commission (“FERC”) issued a Notice of Proposed Rulemaking to eliminate the *Licensed Hydropower Development Recreation Report*, or FERC Form No. 80 (Form 80) and revise certain public notice requirements (“Hydro Recreation NOPR”). For licensees, the proposed elimination of Form 80 would save the expense of compliance with a regulatory requirement that the Hydro Recreation NOPR itself concedes is otherwise provided to FERC pursuant to license conditions or other requirements.

The Form 80 requirement dates back to 1966 when FERC amended its regulations to compel licensees to compile a report of the use and development of recreational facilities at each development contained within a licensed project every six years.^[1] The Hydro Recreation NOPR represents a comprehensive reassessment of how recreational use of licensed projects is measured, evaluated and administered. In addition to proposing to eliminate the Form 80, FERC seeks to modify how licensees communicate their recreational use practices with the public.

Elimination of Form 80

Form 80 requires licensees to report the number of visits, the use capacity, and the total annual cost to develop, operate, and maintain the public recreation facilities. All licensees must comply with the Form 80 requirements unless they obtain an exemption for developments with minimal potential recreational use.

The Hydro Recreation NOPR proposes to eliminate the filing of Form 80 because it contains largely duplicative information and lacks specificity. The Hydro Recreation NOPR notes that FERC’s modern practice is to gather information related to a development’s recreational use through specific license conditions, sometimes through the requirement to develop and administer a recreation plan for the project. In practice, FERC staff utilizes the recreational information obtained through these license conditions, thereby obviating the need for the Form 80. Removing the Form 80 obligation will not relieve licensees from other existing requirements including providing public access and monitoring recreational resources.

Website Posting of Recreation Information

The Hydro Recreation NOPR also proposes to update licensee public communication with respect to recreation by requiring licensees to post information relevant to recreational use and development, including a statement of license conditions relating to recreation, to the

licensee's existing project-specific website. Licensees would only be subject to this requirement if they already have a project website and the proposal would not obligate a licensee to create a new website specifically for this purpose. This proposal is intended to provide the public with greater access to the recreation-related information.

In addition, the Hydro Recreation NOPR would require licensees to include copies of approved recreation plans, recreation-related reports, and the entire license instrument on any existing project websites. Licensees are already required to make this information available for public inspection at its local offices, and this proposal would provide an alternate method for the public to obtain this same information for licensees with existing project websites.

Recreational Signs

Lastly, the Hydro Recreation NOPR would reduce the amount of information licensees are required to include on signs at each public access point for a project. Under existing regulations, a licensee is required to post a sign at each public access point that includes project-related information and public recreation areas, times and recreation-related regulations.

The Hydro Recreation NOPR would reduce the required sign information to include:

- The project name;
- The project number;
- A statement that the project is licensed by FERC;
- The licensee name and contact information for obtaining additional information; and
- Permissible recreation times and activities.

Next Steps

The Hydro Recreation NOPR was issued by FERC on May 17, 2018. A 60-day comment period will commence from the proposed rule's publication in the Federal Register. Even if comments on the Hydro Recreation NOPR display large areas of consensus, the time frame for further FERC action to finalize or modify the proposals in the Hydro Recreation NOPR is unclear, given that FERC has a number of competing priorities.

[1] See 18 C.F.R. § 8.11 (requiring the filing of information on the use and development of public recreation opportunities).