



December 3, 2010

Federal Energy Regulatory Commission
Kimberly D. Bose, Secretary
888 First Street, NE
Washington, DC 20426

RE: Docket No. AD10-7-000 2010 ILP Effectiveness Evaluation

Dear Secretary Bose:

By notice dated May 18, 2010, FERC initiated its second effectiveness evaluation of the Integrated Licensing Process (ILP), including interviews and teleconferences with a cross-section of stakeholders, regional workshops, and a multi-stakeholder effectiveness technical conference in Washington, DC on November 3, 2010. By supplemental notice dated September 14, 2010, FERC indicated that written comments could be filed in paper format or electronically by December 3, 2010.

Long View Associates, Inc. (Long View) participated in two of the regional workshops and attended the technical conference in Washington, DC. Below are written comments by Long View regarding the ILP effectiveness evaluation. Long View is a consulting firm that specializes in assisting clients with securing regulatory approvals for energy projects, in particular hydroelectric projects regulated by FERC. Within the last five years, Long View has been involved in five ILPs, and over the last 15 years numerous TLP and ALP licensing efforts. These projects, located in 13 different states, have included relicensings and original licensings, small and large projects, negotiated settlement agreements, and complex resource issues involving federal and tribal reservation lands, ESA-listed fish species, and water quality. This project experience provides Long View with a broad perspective regarding FERC licensing, which serves as the basis for these ILP comments.

We believe that the ILP is a fundamentally sound licensing process that has successfully addressed many of the concerns and frustrations identified during the relicensing of projects in the 1990s and early 2000s. More recent experience with original licensing, the advent of new hydropower technologies, and the increased use of negotiated settlement agreements has indicated the need for additional flexibility in the ILP. Given the variety of licensing situations facing applicants, agencies, tribes, NGOs, and FERC, we believe it would be advantageous to all participants if FERC could provide policy guidance on the kind of situations under which it would consider granting flexibility within ILP process steps and schedule. Such policy guidance would help applicants and others understand the type of flexibility that might be possible as well as provide detail regarding the mechanism for applicants to obtain additional flexibility, well in advance of when such additional flexibility might be needed.

As has been acknowledged by many, the ILP was designed for relicensing existing projects. Much of the structure and required timeframes in the ILP regulations stem from the period of time from the required filing of the Notice of Intent (NOI) 5 to 5 ½ years prior to license expiration and the deadline to file the final license application 2 years prior to license expiration. This provides a 3 to 3 ½ year period in which



to complete the ILP. This predictability is one of the strongest assets of the ILP and works well in most relicensing situations. As such, we believe that the ILP should continue to be the default process for relicensing.

However, we believe that FERC should not continue to require the ILP as the default process for original licensing. Original licensings are more varied than relicensings, ranging from the potential licensing of large unconstructed projects in Alaska to the licensing of projects using new instream, tidal, and ocean hydrokinetic technologies. Such new projects are likely to have information needs that are less predictable than those associated with the relicensing of existing projects. Thus, we recommend that there be no default process for original licensing but rather that the ILP, TLP, and ALP all be equally available to an applicant.

Alternatively, FERC could issue clear policy guidance regarding adjustments that can be made to the ILP timeframes to accommodate original licensing needs. Examples include the potential need to expand the time allotted for the study program, with the related ability to waive the need to prepare a PLP/DLA if an extended study program is deemed appropriate. It is important that this flexibility include the ability to trade off PLP/DLA time for study time instead of simply requiring that the overall pre-filing process be extended. If the PLP/DLA requirement were to be waived to allow additional study time, FERC guidance regarding additional expectations for the initial and updated study reports may be warranted in order to allow agencies and stakeholders adequate opportunity to provide feedback and for the licensee to consider study results in development of the license application. New hydroelectric projects should not be put at a competitive disadvantage relative to other electric power projects due to a longer than necessary licensing process.

When using the ILP for relicensing, we recommend that FERC allow for justified flexibility within the current 3 to 3 ½ year timeframe. This is not to suggest that individual licensees cannot start their outreach and information development prior to their NOI if they perceive the need for information gathering that cannot be accomplished within the available study time in the ILP. Rather, as a policy matter FERC should continue to promote the efficient completion of the relicensing process within the currently applicable timeframes.

At the Washington, DC technical conference, FERC staff mentioned that the two years of "study" time allowed in the ILP was designed to provide one year for information development and one year to evaluate potential project effects and develop proposed management plans and protection, mitigation, and enhancement (PM&E) measures. It would be advantageous in developing a common understanding of how available time should be used if FERC could support this in a policy statement. We believe that most study and PM&E development processes can be completed within two years. There are exceptions, including situations where information on anadromous fish must be developed, and more than one year of data is necessary. In such an instance, FERC should support a request from the licensee to eliminate the PLP/DLA and instead use the time for additional data collection and development of PM&E measures.



We believe that FERC should also consider granting flexibility regarding the requirements for preparing a Preliminary Application Document (PAD) and the PAD's relationship to the issuance of a Proposed Study Plan in the ILP. First, for original licensing proposals where there may be little, if any, existing environmental information, it will be difficult to achieve the purpose of the PAD, i.e., to synthesize and convey existing information to evaluate the need for new information. In such instances, allowing applicants to include proposed study scopes as part of the PAD and thus consolidate these two steps could save substantial time at the beginning of the ILP. This time could then be applied to developing the new information in a more robust study program than would otherwise be possible within the ILP timeframes.

Where licensees already have completed full suites of studies as part of the first relicensing of their projects, they should be afforded a more streamlined approach to subsequent relicensing. Many projects relicensed for 30 years in the 1980s and 1990s will soon come up for relicensing. Given the studies conducted during the first relicensing and the requirements for ongoing monitoring and data collection required by the terms of the existing licenses, more information will be available to support the next relicensing application than has been the case for existing projects. FERC should ensure that a serious evaluation of this information is conducted before requiring new studies. This will require that FERC staff objectively apply the required study criteria when evaluating any requests for new studies or information development. Again, policy recognition regarding FERC's view of the potential differences between "first-time" relicenses and this upcoming group of "second-wave" relicenses for projects that are already in compliance with existing environmental laws and agency requirements would be helpful.

It would also be helpful to provide flexibility related to the timing of ready for environmental analysis (REA) notices. When a licensing effort is proceeding in a constructive manner, FERC should be willing to grant time extensions in its processing schedule to finish studies or pursue completion of a negotiated settlement. Policy guidance indicating under what circumstances this flexibility would be appropriate and what justification would be expected from the applicant would add a level of certainty for applicants and stakeholders alike that they can pursue their pre-filing efforts to a logical conclusion without fear that FERC might issue the REA notice at an inopportune time.

We also recommend that FERC supplement the current policy statement on settlements regarding the use of "off-project" PM&E measures to address project effects, i.e., to waive, when appropriate, the need for including off-project measures in a redrawn project boundary. We understand that FERC views the project boundary as critical to defining the limits of its jurisdiction and authority and that currently there are limited exceptions for approving "off-project" PM&E measures if they involve "one-time" activities. We believe FERC should consider ways to approve "off-project" measures within the license without requiring that physical sites be included within the project boundary. This would allow for more creative PM&E measures to be included in the license.

We believe that current FERC policy in this regard is unclear. Despite the "one-time" test, there are instances where FERC requires PM&E measures in licenses to be implemented in areas outside the



project boundary. An example is the outplanting of hatchery fish to multiple locations outside the project boundary. Neither the locations where the fish are outplanted, nor the river miles above or below a project reservoir where such fish will reside, are required to be within the project boundary. To do so would create an unrealistic burden on the licensee and on FERC. There are other types of PM&E measures considered by applicants and stakeholders that are abandoned because it is assumed that FERC would require areas in which those measures would occur to be brought within the project boundary. Examples include habitat improvement measures in tributaries to a project reservoir that would provide the best available improvement for populations of target species within the project vicinity. Such measures might include placement of large wood or addition of spawning gravel and typically would require long-term maintenance to ensure that the habitat improvements persist. However, the threat that all such areas might need to be brought into the project boundary can eliminate an applicant's willingness to consider such measures.

We understand that FERC must be able to assure that the value of PM&E measures such as habitat improvements continue over the long term. In fact, most PM&E measures included in licenses require that the licensee periodically evaluate the continuing effectiveness of those measures and if necessary repair the measures. For licenses that include off-project PM&Es, FERC could include provisions that require the licensee to provide alternative measures to be implemented if the value of off-project measures can no longer be maintained. This would allow FERC to require alternative measures in situations where changing circumstances (e.g., change in ownership of the site) preclude a licensee from maintaining an off-project measure.

We understand that the flexibility we have recommended could create challenges for FERC staff tasked with implementing new policy guidance in specific project situations. We have had good FERC staff support in the ILPs we have been involved with, but there has been concern expressed regarding the consistency within/among FERC staff participating in ILPs in terms of the guidance given to applicants and stakeholders. Although every project is different, inconsistencies among FERC staff can lead to uncertainty as to the ultimate outcome of a license application. Areas where FERC might consider focusing its attention include study plan determinations and flexibility with the ILP schedule.

Lastly, with regard to original licensing of unconstructed projects there was a comment made at the Washington, DC conference that FERC could provide applicants holding preliminary permits with site preference protection for longer than the three-year preliminary permit period. This would be accomplished through policy guidance or by issuing regulations under which FERC would not accept competing applications for preliminary permits or development applications as long as the holder of the permit for a site is making legitimate progress towards a development application. There would need to be limits on the amount of additional time provided to a permit holder to avoid concerns regarding "site banking." Regardless, FERC should explore its ability to provide this type of assurance to legitimate permit holders. Such an approach, if found to be reasonable by FERC, could address the perception that the maximum preliminary permit terms of three years are inadequate for completing required tasks within any of the available licensing processes.



Long View appreciates the opportunity to provide comments regarding potential improvements to the ILP. We reiterate that the ILP is a fundamentally sound licensing process and that with FERC policy guidance indicating where flexibility can be granted for good cause, the ILP can continue to serve FERC, applicants, and other stakeholders well, in both original and relicensing situations.

Sincerely,

Stephen D. Padula
Principal