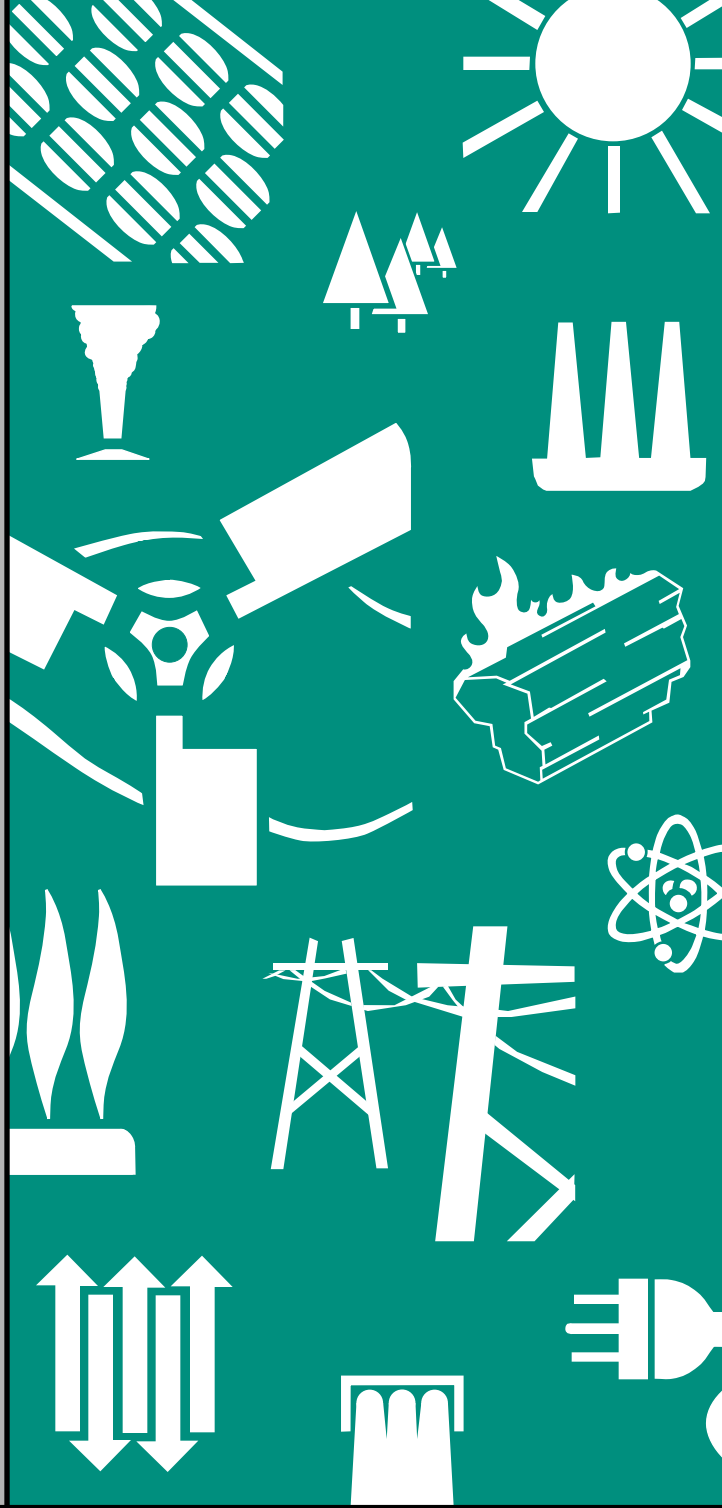


# ENERGY AWARE



## PLANNING

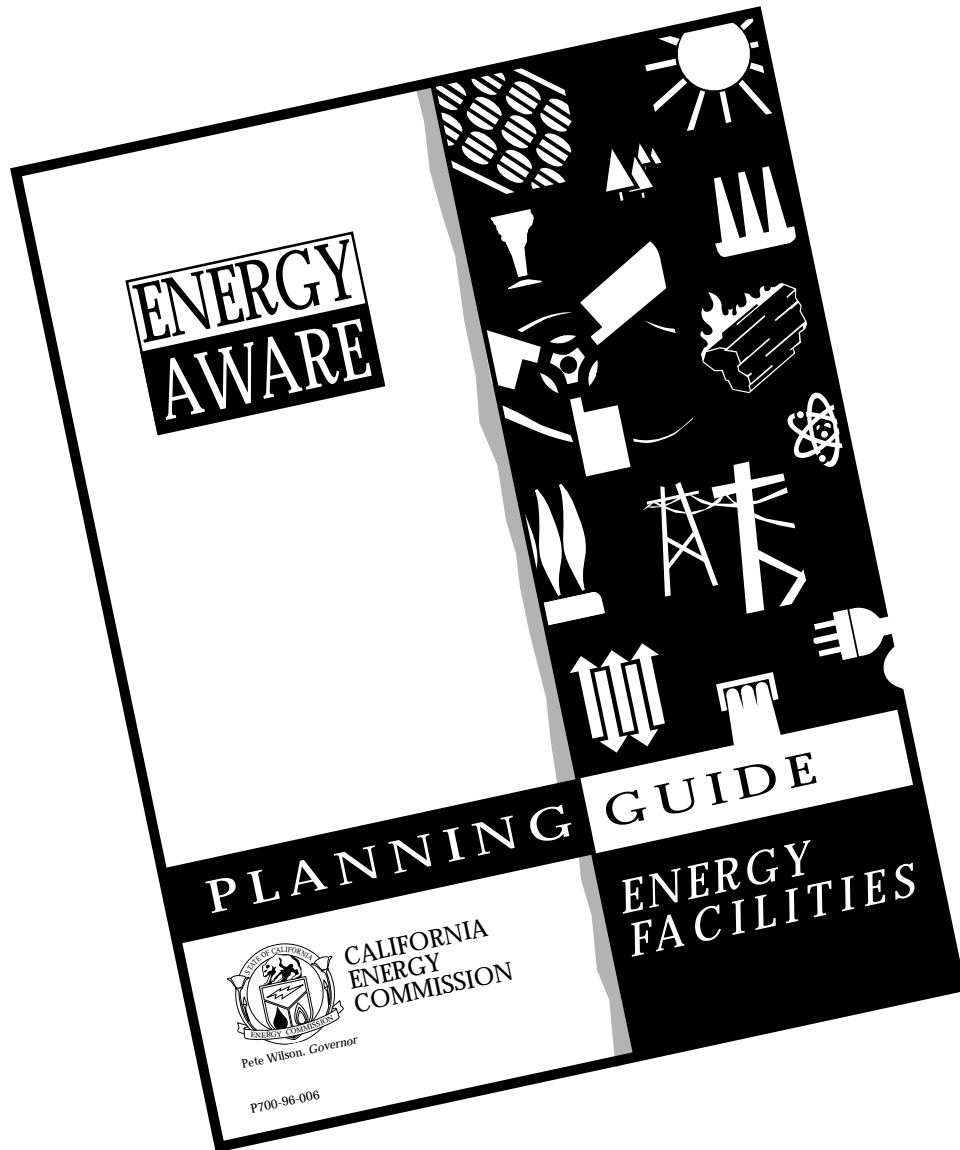
## GUIDE



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# EFFECTIVE LOCAL INVOLVEMENT IN THE LICENSING OF HYDROELECTRIC PROJECTS

*Opinions of the author do not necessarily reflect the views of the Energy Commission or its staff.*

Most of the current activity related to hydroelectric development in California, and the nation as a whole, involves the evaluation of existing hydroelectric projects which must receive new licenses in order to continue operations beyond the term of their expiring licenses. Effective public involvement in the "relicensing" of these projects requires an understanding of the Federal Energy Regulatory Commission's (FERC) licensing process and how FERC is organized to process applications for new licenses. Non-federal hydroelectric projects located on navigable waterways and affecting interstate commerce generally are under the jurisdiction of FERC.

FERC's Division of Project Review (DPR) is responsible for coordinating and managing all aspects of hydropower application processing, including the evaluation of the project in the context of the technical, engineering and environmental requirements of the governing federal legislation. DPR analyzes alternatives to the proposed hydroelectric project. It examines the need for a potential project's power, the project's economic feasibility and environmental effects. Ultimately DPR must determine what project configuration is best adapted to the comprehensive development of the waterway. DPR is also responsible for providing guidance to prospective applicants, to interested federal and state agencies, and to members of the public with respect to the FERC regulatory process.

Of the existing projects in California with FERC licenses, many have licenses expiring between the years 2000 and 2015. Relicensing consultation (the initial steps in the licensing process) on some of these projects will be initiated within the next few years. It is possible that in unique instances, the relicensing process will determine that instead

*"A license must be issued with conditions to ensure that the hydroelectric development is best adapted to a comprehensive plan for improving and developing the waterway for beneficial public uses."*

of issuing a new operating license, FERC should either issue a non-power license to the applicant or recommend to Congress that the federal government "take over" the project from the applicant. In cases of "takeover" the federal



*Stephen D. Padula*

government compensates the licensee for the lost project value. The ultimate fate of the project could theoretically include decommissioning of the power generating facilities or partial/complete project removal.

The official FERC licensing process is not particularly user friendly to local governments and the general public. The process is very complex, potentially intimidating, and the issues very technical. The formal opportunities for involvement and input to the decision-making process are few, and come relatively late in the formal consultation process. In evaluating public involvement in the so-called Class of '93, (approximately 160 relicensing applications for projects with license expiration dates at the end of 1993, that were filed with FERC in 1991) the track record was rather poor. Setting aside organized, special interest, nongovernmental organizations (NGO's), there was relatively little actual public involvement in relicensing consultation. Attendance was low at most public meetings, and very little use was made of the extensive

public information libraries that FERC required licensees to create.

Why the lack of public involvement? Was it an actual lack of interest or did the process appear to be inaccessible? While the causes are uncertain and subject to debate, there is no debate regarding the lack of actual opportunities for public involvement. During the typical three to five years of consultation and application preparation activities, FERC's regulations require only one formal opportunity for public involvement. This occurs when the licensee initiates the formal consultation process. Unfortunately, most of the formal participation opportunities come after license applications are filed with FERC, during FERC's adequacy review and environmental assessment processes. By this time most of the information on which the final decisions are made has been gathered and the positions of the various participants have been set.

This has not gone unrecognized by FERC which in the last several years has initiated an Outreach Program to assist members of the public in their participation in the relicensing process. Licensees starting relicensing today are also attempting to provide additional opportunities for public involvement earlier in the consultation process. These measures include voluntary meetings with the more traditional participants in the process along with local government officials and the general public to solicit input to their relicensing planning efforts. Licensees are also attempting to convey better information about their projects.

The goal is simple. A better informed public will more likely have a better understanding of the resource values; economics and trade-offs inherent in hydroelectric energy production; and in alternative sources of energy that would be required if existing hydroelectric generation capacity or flexibility is reduced in relicensing. Unfortunately however, the relicensing process remains very much the realm of federal and state resource agencies, Indian tribes, and NGO's. It is a daunting arena for local citizens.

To be effective in the licensing process, local governments and members of the public at large must first of all not rely on other participants in the consultation process to represent their interests. Federal and state agencies are typically guided by their own directives and NGOs typically have their own narrow special interests which they will promote. Active participation in the process is the best way for local governments and the general public to see that their interests and values are given proper consideration during the decision making process.

Being informed of the licensing process and the potential issues that may surround a particular licensing action will enhance the effectiveness of local involvement. For projects in California, contact should be made with FERC Division of Project Review West Branch (DPR-WB) representatives to obtain information on projects with upcoming expiring licenses and FERC's plans for processing the relicense applications.

Local interests can also contact the owner of the hydroelectric project located in their community to obtain information on the license expiration date and the licensee's

plans for initiating the consultation process required prior to filing an application with FERC for a new license.

Additionally, federal and state resource agencies with jurisdiction over land or resources potentially affected by the project can be contacted. Through these agencies, one can obtain copies of relevant resource management plans for the land or waters influenced by the project. Such plans may be periodically updated. Local officials and the public can request that they be notified so that they can participate in the revision of agency plans which will influence FERC as it makes its licensing decision.

In contacting FERC, other agencies or the project owner, local officials or members of the public should at the very least know the project name and FERC number. Be as specific as possible about the particular area of interest or concern you may have. Interested parties should request that they be placed on mailing lists for receiving information from resource agencies on management plan activities and from the owner on planned licensing activity.



Success by local government officials and local citizens in affecting the licensing outcome will depend most heavily on taking advantage of additional opportunities to provide input to licensees prior to the filing of the license application, and indeed, prior to the start of formal consultation. Many licensees are starting much earlier to prepare for formal consultation, including earlier evaluation of existing environmental conditions and of opportunities for upgrading existing generating capabilities. Some licensees are also providing information earlier to potentially interested parties in hopes that fewer surprises will occur for all participants once the formal process starts.

Given that the opportunities to officially participate in the licensing process are so limited, it is essential that none of the opportunities be wasted. In particular, involvement in the first official scoping meeting during the first stage of consultation is essential. At this meeting, local officials and the public can officially register their interests or concerns and request that they be kept informed of planned studies by the project owner. This should ensure that they get the opportunity to review and offer the "local" perspective on the owner's draft and final proposals. They will also be able to participate in FERC's NEPA activities after the application for a new license has been filed. Participation in person, where possible, is most effective. Providing formal comments in writing is also essential given the formal nature of the licensing process.

The licensing of hydroelectric facilities by FERC can be an intimidating process. However, with some early research and effort to engage the major participants in the process, local officials and members of the public should be able to effectively represent the important local interests as only they can. New licenses currently being issued by FERC will govern the operation of existing hydroelectric facilities in California for the next 30 to 50 years. Conditions in these licenses will affect such important issues as public access, recreational development and restrictions on development surrounding the project.

Regardless of which side of the particular issues local government officials and their constituents may find themselves, many of these issues have the potential for significant local effects. Local officials should do what they can to ensure that decisions on these issues are not made based solely on the agendas of resource agencies and NGOs, but also on the very important and unique perspective of those in the local community.