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*Additionally, the firm advises developers of new hydropower projects, including conventional large and small hydro, pumped storage, and emerging technologies using wave and tidal energy.*

#### **Upcoming and Recent Speaking Engagements**

- [Chuck Sensiba](#), "New Hydropower Development in Alaska: Challenges and Opportunities," National Hydropower Association Alaska Regional Meeting, Cordova, AK, September 19-20, 2016.
- [Mike Swiger](#), "Water and Energy – Beyond the Nexus." Association of California Water Agencies Regulatory Summit, Sacramento, CA, October 4, 2016.

# *Hydro Newsletter*

## **VOLUME 3, ISSUE 9: SEPTEMBER 2016**

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- *CEQ Releases Final Guidance on Consideration of Greenhouse Gases and Climate Change in Environmental Reviews*
- *FERC Staff Revises Handbook for Use of Third-Party Contractors to Prepare Environmental Documents*
- *Duke Seeks Judicial Review of FERC Determination on License Term*
- *EPA Extends Comment Deadline for Clean Energy Incentive Program Rule*

### **CEQ Releases Final Guidance on Consideration of Greenhouse Gases and Climate Change in Environmental Reviews**

On August 1, 2016, the White House Council on Environmental Quality (CEQ) released [Final Guidance](#) for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act (NEPA) Reviews. Draft guidance documents were issued for public comment and feedback in 2010 and 2014. The guidance is intended to provide a level of predictability and certainty by outlining how federal agencies can describe these impacts by quantifying greenhouse gas (GHG) emissions when conducting NEPA reviews in order to provide a better understanding of the potential climate impacts of proposed federal actions. Agencies are to consider: (1) the potential effects of a proposed action on climate change by assessing GHG emissions, and (2) the effects of climate change on a proposed action. The guidance encourages agencies to use available tools to quantify projected GHG gas emissions of proposed federal actions, determine the appropriate level (broad, programmatic or project- or site-specific) and extent of quantitative or qualitative analysis required to comply with NEPA, and to consider alternatives that would better enable affected communities to deal with the effects of climate change. Where GHG emissions cannot be quantified because tools, methods, or data inputs are not available, the guidance provides that agencies should include a qualitative impacts analysis. The guidance notes that agency consideration is to be governed by a rule of reason. Although the Federal Energy Regulatory Commission (FERC) generally follows CEQ rules in implementing NEPA, it has held that as an independent regulatory agency, it is not bound by CEQ regulations or decisions.

### **FERC Staff Revises Handbook for Use of Third-Party Contractors to Prepare Environmental Documents**

On August 18, 2016, FERC staff issued a revised [Handbook](#) for Using Third-Party Contractors to Prepare Environmental Documents for Natural Gas Facilities and Hydropower Projects. FERC's third-party contracting program allows hydro license applicants (along with applicants seeking certificates for natural gas facilities) to fund a third-party contractor to assist FERC staff's NEPA review of a proposal. The program is optional; applicants are not required to fund preparation of the NEPA document. Third-party contracts have been used for applicants using FERC's alternative licensing process, and the handbook maintains that there is potential to use third-party contracts for the integrated and traditional licensing processes as well. The handbook provides an overview of the third-party contracting program and outlines the steps for preparation of a request for proposal, third-party contractor selection, and

#### Recent Publications

- [Chuck Sensiba](#) and [Sharon White](#), "Hydropower Licensing under the Federal Power Act: A Century of Resource Conflict Resolution in the Public Interest," Natural Resources & Environment, Summer 2016.

preparation of the NEPA document. Applicants should carefully consider the advantages and disadvantages of pursuing the use of a third-party contractor for their individual proposals.

### Duke Seeks Judicial Review of FERC Determination on License Term

As reported in the [August 2016 Hydro Newsletter](#), on July 5, 2016, FERC denied the request for rehearing by Duke Energy Carolinas, LLC (Duke) of the 40-year term established by FERC in the new license for Duke's 819 MW Catawba-Wateree Project. On rehearing, Duke had argued that the new license should have a 50-year term based on its estimated total annual cost of \$30 million for environmental compliance and lost generation, \$5 million for environmental improvements under the prior license, and the support of parties to a relicensing settlement agreement. FERC denied rehearing, finding that under its "long-standing policy" for determining an appropriate license term, FERC only considers measures required for the first time in the new license. FERC also found that the cost of the environmental measures under the new license was "not unusual" as compared to similar projects, and that the intentions of settling parties may influence but cannot override FERC's determination of what license term is in the public interest. On August 22, 2016, Duke filed with the United States Court of Appeals for the D.C. Circuit in Case No. 16-1296 a petition for review of the Commission's action.

The Senate's pending Energy Policy Modernization Act (S. 2012) would address one of the concerns at issue in the Duke proceeding. Specifically, the bill contains a provision promoting early action by licensees to upgrade their projects by crediting such efforts toward longer new license terms.

### EPA Extends Comment Deadline for Clean Energy Incentive Program Rule

As reported in the [July 2016 Hydro Newsletter](#), on June 16, 2016, the Environmental Protection Agency (EPA) issued a [proposed rule](#) introducing certain changes to its Clean Energy Incentive Program (CEIP) which would benefit hydropower. The CEIP is part of EPA's "Clean Power Plan," a rule promulgated under section 111(d) of the Clean Air Act that requires states to submit plans that will set carbon dioxide emission reduction limits on existing fossil fuel-fired electric generating units in the U.S. The CEIP is an optional program that states may adopt if they wish to incentivize early emission reduction efforts under the Clean Power Plan. Under the CEIP, EPA will provide matching allowances or emission rate credits to participating states in which new qualifying renewable or energy efficiency projects in low-income communities begin generating or reduce energy demand during 2020 or 2021, prior to the rule's compliance start date of 2022. In its original proposed rule, only generation from wind and solar projects qualified for credits under the CEIP. In response to comments filed by the National Hydropower Association and others, EPA has now proposed to expand the eligible renewable energy resources that qualify for the CEIP program to include hydropower and geothermal.

On August 25, 2016, EPA issued a [notice](#) extending the comment period on the proposed rule, which was scheduled to close on September 2, 2016, by 60 days until November 1, 2016. EPA extended the comment deadline to allow for tribal consultation requested in response to the proposed rule.

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