



FERC Reexamining Policy Governing Length of Hydroelectric Licenses

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On November 17, 2016, the Federal Energy Regulatory Commission issued a Notice of Inquiry (NOI) in Docket No. RM17-4-000 seeking comments on whether or not its existing policy governing the length of original and new hydropower licenses should be modified. The length of original licenses is governed by section 6 of the Federal Power Act which only states that the term of any such license should not exceed 50 years. With regard to relicenses, section 15 of the Act provides that the license shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. Particularly for relicenses, this inquiry represents the first major evaluation of the matter since the 1990s when the Commission established the current policy providing for a 30-year term where there is little or no authorized redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; a 40-year term for a license involving a moderate amount of those activities; and a 50-year term where there is an extensive amount of such activities. As acknowledged in the NOI, the Commission's policy recently has been the subject of appeals by licensees challenging, in particular, the Commission's refusal to take into account even very substantial environmental and capacity improvements under a current license in setting the term for the next license. The Commission's NOI invites comments on five potential options for establishing terms of licenses.

- First, should the Commission just retain its existing policy?
- Second, should the Commission take into consideration measures implemented under the prior license, *e.g.*, capacity related investments, efficiency upgrades, environmental protection, recreational improvement, or enhanced safety measures?
- Third, should the Commission establish a default license term of 50 years, with parties other than the licensee bearing the burden of arguing that the license term should be less than 50 years?
- Fourth, should the Commission add a more quantitative cost-based analysis in setting the license?
- Fifth, should the Commission accept the longer license term agreed upon in an applicable settlement agreement?

Comments on the options will be due within 60 days following publication of the NOI in the Federal Register. Please feel free to contact a member of the VNF hydro team if you would like assistance in filing comments.

For more information

Van Ness Feldman's hydroelectric practice provides comprehensive legal, policy, and business advisory services for the full range of issues facing the hydropower industry. If you would like additional information, please contact any member of our [hydroelectric](#) practice in Washington, DC at (202) 298-1800, or in Seattle, WA at (206) 623-9372.

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