

Uncommon Dialogue Working Group 6 Drafting Group
Status of Issues under Discussion

December 16, 2021

| Issue No. | Description | Citation |
|-----------------------|--|------------------------------------|
| Strong Support | | |
| 1 | Shift Federal Power Act (FPA) § 4(e) mandatory conditioning authority for Tribal reservations from Secretary of Interior to the Tribe | §§ 796, 797(e), 803(k), 823d, 823i |
| 2 | Develop a 2-year licensing process for certain types of proposed hydropower development at non-powered dams (including increasing non-federal development at existing federal hydropower dams) | § 823e |
| 3 | Require FERC and other agencies to consult in the development of a coordinated schedule for all federal authorizations for hydropower licensing | § 823i(b) |
| 4 | Modify the existing trial-type hearing procedures by: (1) moving the hearings to FERC's Office of Administrative Law Judges, with opportunities for other agencies' ALJs to preside by designation; and (2) expanding the scope of the hearings to include FERC's factual findings in its environmental review document under the National Environmental Policy Act (NEPA) | §§ 797(e), 811, 823i(d) |
| 5 | Provide an opportunity for FERC and other conditioning agencies and Tribes to attempt to resolve conflicting and inconsistent license terms prior to FERC's licensing decision | § 823i(e) |
| 6 | Affirmatively require FERC and other resource agencies to discharge their obligations under the FPA consistent with Tribal treaty obligations | § 797d(c)(6) |
| 7 | Require FERC to consider the reasonably foreseeable effects of climate change on water resources and to keep abreast of the latest climate science through periodic technical conferences | § 797d(c)(4) |
| 8 | Extend authority to Tribes with a treaty-protected right to submit license recommendations to protect fish and wildlife resources to FERC under FPA § 10(j) | § 803(j) |
| 9 | Require federal reservation mandatory conditions under FPA § 4(e) to address effects of the project | § 797(e) |
| 10 | Require fishway prescriptions under FPA § 18 to address the project's effects on populations of fish species (including related spawning grounds and habitat) | § 811 |
| 11 | Require FERC to consider current and reasonably foreseeable future economic conditions material to the project's value in providing revenues from sales of power, generation capacity, and ancillary services | § 803(a)(2)(E) |
| 12 | Require FERC to undertake a rulemaking to establish procedures for voluntary license surrenders, including greater public engagement and the opportunity for participants to engage on surrender alternatives | § 799 |
| 13 | Require FERC and other agencies to coordinate on the licensing environmental study plan, rely upon existing information where possible, and provide a rationale for any study requirements | §§ 803(l), 823i(c) |
| 14 | Require agencies with mandatory conditioning authority under FPA § 4(e) or § 18 to give "equal consideration" to developmental and non-developmental values when developing their conditions | § 803(k) |

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| 15 | Require agencies and Tribes with mandatory conditioning authority under FPA § 4(e) or § 18 to provide a rationale for their decisions on submitted alternatives under FPA § 33 | §§ 823d(a)(4)(A), 823d(b)(4)(A) |
| Good Progress | | |
| 16 | Encourage expansive use of “cooperating agencies” in FERC’s preparation of its NEPA document by: (1) allowing cooperating agencies to intervene in the FERC proceeding, while maintaining <i>ex parte</i> protections (2) specifying that contractor services may be collected from hydropower licensees under FERC’s annual charges program; and (3) requiring a federal agency’s direct costs for administering its responsibilities under the FPA be refunded directly to the agency | §§ 797d(b), 803(e)(5), 810 |
| 17 | Improve the consideration of ongoing and reasonably foreseeable effects of a project in hydropower licensing by defining the terms “past effect,” “ongoing effect,” and “reasonably foreseeable effect” | § 797d(c)(1) |
| 18 | Require FERC, Tribes, and other agencies to consider whether any ongoing or reasonably foreseeable effect on fish species can be mitigated by providing access to habitat upstream of the dam, or by maintaining or improving downstream habitat | § 797d(c)(2) |
| 19 | Increase public disclosure and use of hydrologic data and models in licensing proceedings, subject to protections for intellectual property | § 797d(c)(3) |
| 20 | Require FERC to prepare a report to Congress that identifies all licensed or exempted projects that have been non-operational for at least 5 years and indicates FERC’s plans for working with the project owner to either bring the project back into operation or to surrender the FERC license or exemption | § 803(c)(2) |
| 21 | Develop a 2-year licensing process for certain types of closed-loop pumped storage projects | § 823f |
| Needs Work | | |
| 22 | Establish an expedited process for certain projects (15 MW or less) to quickly shift from a license to an exemption, to avoid the expense of FERC relicensing, on condition that such projects are subject to ongoing oversight by federal and state resource agencies consistent with other exempted projects | § 2705 |
| 23 | Establish that FERC, Tribes, and other agencies may consider voluntary off-site mitigation measures, including removal of non-licensed dams, and provide liability protections to licensees that undertake a dam removal project as off-site mitigation | § 823j(b) |
| 24 | Establish a voluntary pilot program for conducting basin-scale hydropower licensing | § 823j(c) |
| 25 | Direct Congress to investigate the opportunities and challenges of developing micro hydro projects, and to develop a set of recommendations for regulating these facilities that is commensurate with their size and environmental impact | § 823k |
| 26 | Eliminate requirements for hydropower licensees to maintain amortization reserves | §§ 796(13), 803(d), 803(e)(1) |