

1101 14th Street N.W. Suite 1400
Washington, DC 20005
www.hydroreform.org



T: 202.347.7550
F: 202.347.9240
coordinator@hydroreform.org

**HYDROPOWER
REFORM
COALITION**
*Putting water, wildlife,
and people back in rivers.*

September 22, 2020

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

Re: Comments on Proposed Rulemaking on Safety of Water Power Projects and Project Works (RM20-9-000)

Dear Ms. Bose,

The Hydropower Reform Coalition (HRC) submits the following comment to the Federal Energy Regulatory Commission (FERC) on the proposed rulemaking governing the safety of hydropower projects licensed by the Commission under the Federal Power Act.

Founded in 1992, the Hydropower Reform Coalition represents a diverse consortium of more than 160 national, regional, and local conservation and recreation organizations dedicated to protecting and restoring rivers affected by hydropower dams, ensuring public access to these lands and waters, and reforming the federal licensing process to ensure public participation and to improve the quality of the resulting decisions. The HRC's combined membership represents over 1.5 million people nationwide that have protected and restored thousands of river miles, thousands of acres of watershed land, and created countless opportunities for boating, fishing, and other recreational experiences.

The HRC appreciates this effort by FERC to improve dam safety at hydropower projects, and supports the changes proposed. We also see larger structural issues that unfortunately are not addressed by this proposed rulemaking, and through these comments we wish to encourage FERC to undertake broader changes in this area. There are three key issues that must be resolved to fully address dam safety issues. The first is the disconnect between the licensing process and the dam safety process at FERC, the second is the lack of public transparency about the condition of dams (and risk to the public) across the country due to the veil imposed by Critical Energy Infrastructure Information (CEII) restrictions, and the third is the insufficient consequences for hydropower project operators who fail to adequately maintain their facilities and, in so doing, expose the public to downstream risk.

Steering Committee:

Alabama Rivers Alliance American Rivers American Whitewater Appalachian Mountain Club
California Sportfishing Protection Alliance California Trout California Outdoors Foothill Conservancy
Friends of the River Idaho Rivers United Michigan Hydro Relicensing Coalition New England FLOW
South Yuba River Citizens League Trout Unlimited

Dam Safety Must be Considered in Relicensing

In recent years, multiple high-profile incidents have made it abundantly clear that current dam safety measures at hydropower projects are insufficient. One of these was the 2017 Oroville Dam (p-2100) spillway incident in California, which forced the evacuation of 188,000 people from the Feather River Basin, caused significant financial damage, and impacted the lives of people throughout the surrounding area. FERC's Office of Energy Projects completed its final relicensing EIS in 2007 with licensee-proposed and staff alternatives without an auxiliary spillway, despite serious concerns having been raised two years prior by HRC Steering Committee members Friends of the River and South Yuba River Citizens League along with the Sierra Club.¹ The accuracy of those concerns were dramatically illustrated in 2017.

The relicensing process is supposed to include a demonstration “that existing structures are safe and adequate to fulfill their stated functions.”² But in our experience, that process has fallen short — both in substantive outcomes and in public involvement that fosters faith in FERC's processes. As one suggestion to improve this process and reduce silos within FERC, the 5-year safety assessments conducted as part of the 12(d) process should be included in licensing discussions and decision-making. We have argued this point before, including in comments from HRC Steering Committee members California Sportfishing Protection Alliance, American Whitewater, and Friends of the River on the Potter Valley Project (p-77).³ We reiterate now that FERC's policy that “any dam safety concerns developed during (the) relicensing proceeding will be forwarded to our Division of Dam Safety and Inspections (D2SI) for their review”⁴ is an insufficient answer. One of the key recommendations in The Oroville Dam 2017 Spillway Incident report⁵ was that FERC must expand its relicensing process to include consideration of dam safety. We urge the Commission to adopt this recommendation.

Greater Public Transparency is Required for Improved Dam Safety

Including dam safety and physical adequacy of project works in the licensing process will also help address the second key issue, which is the lack of transparency around dam safety. Dam safety assessments for hydropower projects are obscured behind the veil of CEII designation,

¹ Intervention of Friends of the River, Sierra Club, and South Yuba River Citizens League under P-2100, 10/17/2005, FERC eLibrary Accession Number: 20051017-5033, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=4347576.

² 18 CFR § 4.41 (g)(3)

³ Comments of California Sportfishing Protection Alliance, American Whitewater, and Friends of the River on Scoping Document 2 for the relicensing of the Potter Valley Project under P-77, 11/13/2017, FERC eLibrary Accession Number: 20171113-5071, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14618927.

⁴ At Page 9, Letter providing Scoping Document 2 for the Potter Valley Project under P-77, 9/18/2017, FERC eLibrary Accession Number: 20170918-3011, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14603030.

⁵ Report from Friends of the River, California Sportfishing Protection Alliance, South Yuba River Citizens League, and American Whitewater on “The Oroville Dam 2017 Spillway Incident and Lessons from the Feather River Basin,” September 2017, FERC eLibrary Accession Number: 20171010-5246, <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=14706050>.

which prevents the public from being informed about the risks they face. As we stated in our 2016 comments on the proposed rulemaking to implement the Fixing America’s Surface Transportation (FAST) Act,⁶ we believe that public participation and citizen oversight are important democratic values and elements of public safety. More than 45% of FERC dams are considered to be “high hazard,” according to the National Inventory of Dams.⁷ The communities living in harm’s way downstream are often not aware of the risk they face. This was borne out in this year’s catastrophic breach at the Edenville Dam (p-10808) in Michigan, which caused more than \$175 million in flooding damage⁸ and could easily have resulted in tragic death, and which came as a massive surprise to the public. It is important that the public have access to vital information that impacts their safety and well-being. Inclusion of dam safety assessments in the licensing process, which already includes public participation, will increase transparency. After such high-profile dam failures, it will also help FERC persuade the public it is worthy of public trust. The HRC understands the national security rationale for limiting access to some information about our energy infrastructure, and weaknesses therein. However, it is incumbent on FERC to find a path through the labyrinth of CEII and increase public access to crucial dam safety data.

Insufficient Enforcement and Consequences for Dam Safety Violations

The third key issue that is unaddressed by the proposed rulemaking is the lack of sufficient enforcement mechanisms and repercussions for dam owners and operators who repeatedly fail to meet dam safety standards. We saw this in the case of Boyce Hydro, which in 2018 lost its license to operate the dam at Edenville only after nearly two decades of noncompliance and failure to make the improvements called for in FERC’s routine inspections.⁹ FERC’s decision to revoke the license and order the licensee to cease generation was both justified and overdue, and yet this severe consequence still did not adequately address the primary dam safety concern. This is abundantly clear given the cascading dam failure in May of 2020, where the Edenville Dam failure resulted in a breach of the Sanford Dam (p-2785) downstream. More integration of FERC and state dam safety offices is needed in order to ensure that necessary maintenance and equipment upgrades are completed, and to prevent future disasters from occurring. Simply directing a licensee to cease generation without working with state dam safety offices to address the underlying dam safety issue is inadequate and irresponsible.

Proposed Changes

⁶ Comments of Hydropower Reform Coalition on Proposed Rulemaking - Regulations Implementing FAST Act Section 61003, 8/18/2016, FERC eLibrary Accession Number: 20160818-5218, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14487160.

⁷ National Inventory of Dams, 2019 dataset, “NID2019_U”. <https://nid.sec.usace.army.mil/ords/f?p=105:1:.....>

⁸ Matheny, Kieth. Jun 8, 2020. *Michigan puts \$175m price tag on flooding damage in Midland County*. Detroit Free Press. <https://www.freep.com/story/news/local/michigan/2020/06/08/midland-flood-damage-major-disaster-whitmer/5321673002/>

⁹ Boyce Hydro Power, LLC, 164 FERC ¶ 61,178 (2018), FERC eLibrary Accession Number: 20180910-3057, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14703364.

The proposed rulemaking does not address the key concerns outlined above, but it does include some positive changes that the HRC supports. Requiring comprehensive assessments every ten years and periodic inspections in between, as opposed to superficial reviews every five years, is a positive change that we hope will lead to higher quality reviews and improved safety information.

We appreciate the efforts by FERC to address shortcomings in the dam safety process for hydropower projects, and the opportunity to comment on these proposed changes. In order to address the key concerns outlined above, we reiterate our requests that the Commission develop new protocols by which it will allow a public evaluation of the fitness of project infrastructure to achieve the mission of every project as it undergoes relicensing.¹⁰ We recommend that the Commission conduct a workshop to hear recommendations and discussion for the development and substance of such protocols. We stand ready to cooperate and inform any such workshop.

Sincerely,



Colleen McNally-Murphy
Assoc. National Director



Thomas O'Keefe, PhD
National Chair

¹⁰ See Previous Comments: Renewed request for clarification and public process, and comments of Friends of the River, California Sportfishing Protection Alliance, American Whitewater and South Yuba River Citizens League under P-2100, 10/10/2017, FERC eLibrary Accession Number: 20171010-5246; and Comments of California Sportfishing Protection Alliance, American Whitewater, and Friends of the River on Scoping Document 2 for the relicensing of the Potter Valley Project under P-77, 11/13/2017, FERC eLibrary Accession Number: 20171113-5071, https://elibrary.ferc.gov/eLibrary/docinfo?document_id=14618927.