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Life Begins at 50: FERC Relicensing Under the Federal Power Act

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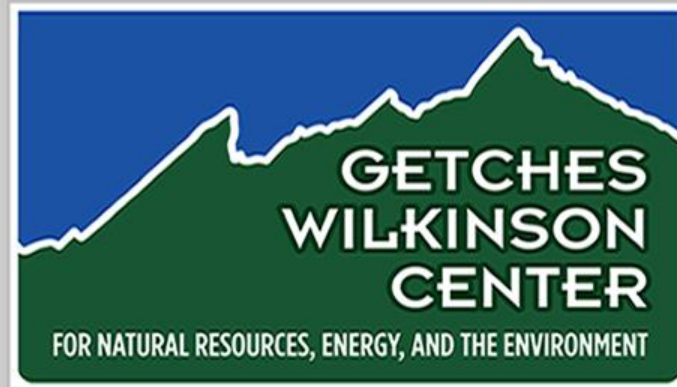
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**LIFE BEGINS AT 50:
FERC RELICENSING UNDER THE FEDERAL POWER ACT**

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DAMS: Water and Power in the New West

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Natural Resources Law Center
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Life Begins at 50: FERC RELICENSING UNDER THE FEDERAL POWER ACT

Today's Objective

- What the Federal Power Act requires
- Lessons learned
- The relationship of NEPA, FPA and EPAct
- Role of competition in relicensing

What is the FERC?

- Federal Energy Regulatory Commission
- Doesn't finance, construct, operate or own projects
- Regulates non-federal hydropower projects
- Issues licenses for 30-50 years

What Can FERC Do On Relicensing?

- Deny a license
- Issue a license with new terms and conditions
- Terms and conditions are usually dealing with environmental factors

Assumptions (Bad Ones)

- FERC Hydro Projects have ruined the environment therefore ... Stakeholders will be in a hurry to relicense and implement environmental enhancements
- Licensees will want to expedite relicensing and avoid uncertainty

More Bad Assumptions

- A "One Size Fits All" Relicensing Process is good for America
- The Federal Government will decide to take over the projects
- Stakeholders will follow FERC regs.
- Stakeholders are incapable of resolving relicensing issues among themselves

The Bigger Picture

- All developers and stakeholders have the existing licensing process
- Increased competition and reform in the electric and water sectors
- Entities are beginning to fight over water in the East

More of the Big Picture

- Reform in these sectors will be jeopardized, if environmental, health and safety concerns are not dealt with effectively
- Need for a conflict resolution mechanism

Sustainable Development at the FERC

- At the end of a license, consider whether a project should be relicensed
- Use NEPA, and FPA section 10(a) to consider *everything* that is important to the public in a relicensing decision
- Consider what federal, state and local agencies, Indian Tribes and NGOs want

Vision

- Promote sustainable energy development via section 10(a), NEPA and EPA Act
- Improve environmental quality and water use
- Reduce delays
- Reduce overall costs
- Reduce overall benefits

FERC's New Role

- Provide a forum for conflict resolution at the river basin level
- Minimize risks to stakeholders and developers for doing something different by actively participating and rewarding participants for their efforts

Impediments

- We've never done this before!
- We're selling out!
- It sounds risky, let's study it.
- FERC won't like it.
- Little experience with multi-sectoral approaches and adaptive management

More Impediments

- Tendency to view environmental, energy, and water resources separately
- It's too complicated, so let's take the easy route and stick to what we know
- Stakeholders are hopelessly entrenched and committed to litigation

FERC's New Strategy

- Promote options to the standard licensing process
- Actively support non-traditional approaches
- Focus on groups of projects at the river basin level

More on Strategy

- Don't be a typical regulator
- Foster cost effective solutions to reduce or eliminate adverse effects
- Have FERC staff serve as an information resource

FERC's Approach

- Front load the NEPA process
- Use collaborative/cooperative teams of stakeholders to scope issues, design studies, and analyze impacts and best ways to mitigate or enhance
- Emphasis is on the river basin when developing mitigative measures

More on the Approach

- Settlements/Agreements - project is approved with certain negotiated conditions, but it is applicable *only* to the specific project
- Settlements/Agreements help you *save face*

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