FERC 101 Relicensing Outreach Training
Hosted by NorthWestern and DNRC
September 12, 2018 – 10:00 AM to 2:00 PM
NorthWestern Energy Office, Missoula, Montana (North Auditorium)

Notes by Kristi Webb
Attendees Listed at End of Meeting Summary

FERC Re-Licensing Outreach Training provided by FERC
Mike Tust, Peter McBride, David Turner

- Mike Tust – Fisheries Biologist – FERC contact for Thompson Falls Project
- Peter McBride – Terrestrial Biologist – FERC contact for Broadwater Project

PowerPoint presentation provided as handout
Detailed flow charts of each licensing processes provided as handouts (ILP and TLP)

FERC Presentation Outline

- Project Overviews
- Intro to FERC
- Processes for Re-licensing
- ILP Pre and Post-Filing
- TLP Pre and Post-Filing
- Additional Topics (key questions from NorthWestern and DNRC)
- Question and Answers (throughout presentation)

MG – Presentation of Thompson Falls Project

- 1913-1915 original construction
- 1938 – initial license
- 1979 – current license
- Amended in 1990 to allow the addition of new powerhouse
- 2010 amended for fish ladder
- Expires December 31, 2025
- Installed capacity ~92 MW
- Units 1-6: 38 MW
- Unit 7: 53 MW

<u>Environmental stewardship program</u>

- fish ladder
- protection, mitigation and enhancements for bull trout
- monitoring
- recreation enhancements

<u>NorthWestern – Integrated Licensing Process (ILP)</u>

- Requires Pre-Application Document and Notice of Intent to Relicensing in 2020
- Initiating early discussion with stakeholders

- Baseline Environmental Document (BED) – precursor to the PAD
    - Compiles existing data and information
    - Facilities discussions to identify issues
    - BED available November 1 on project website: http://thompsonfallsfishpassage.com
    - Workshop to discuss the BED on December 4 (in Missoula)
        - Discuss data gaps and break out into resource groups.
        - What are issues we are seeing?
    - PowerPoints from NorthWestern, FERC, and DNRC on project website too.

Dave Lofftus – DNRC Broadwater Project Presentation

Toston Dam

- License issued April 23, 1984
- Expires June 30, 2024
- Only hydro owned by State of Montana
- First power production June 1989
- Dam built 1940
- Reservoir storage 4100 ac-ft (original), 1900 ac-ft (2008); reservoir area 327 acres
- 10 MW (avg power 6 MW), max power occurs 6630 cfs
- Highest flows 34,000 cfs observed in 1997. In 2018 over 20,000 cfs
- State owns transmission line and substation
- No physical changes to the Project are being contemplated
- No change in operating policy is being contemplated
    - Updates and modernization planned
- Original purpose of project was for irrigation project
    - Main canal 342 CFS
    - East side canal capacity 262 cfs
    - West side canal capacity 90 cfs
- Toston Irrigation District: 100 cfs
- Irrigation rights pre-date the hydro. Hydro is non-consumptive.
- Broadwater Power Project at Toston Dam. Toston Reservoir, Near Toston, MT, on the Missouri River, in Broadwater County. Broadwater-Missouri Canal and WAU

Release PAD in January 2019

- No Effect
    - Geology, Soils, Wildlife, Botanical Resources, Rare, Threatened… etc.
    - Water resources – run of river… doesn't believe it impacts water quality
    - Existing license has no water quality-related requirements
    - Fish and aquatics – currently have MOU with FWP (Fisheries Mitigation Plan)
        - DNRC believes efforts under current license have mitigated any fisheries effects on Project construction
    - Wetland, riparian, littoral habitat
        - Developed 10 acres wetland (mitigation)… actually larger
    - Recreation and Land Use
        - BLM recreation sites - upper and lower sites
        - Don't anticipate changes

  - Cultural Resources
    - Filed with SHPO
    - Now Dam is eligible as a historic site (over 50 years old)
  - No environmentally sensitive areas
- NOI and PAD - January 2019
  - Public Meeting and Agency – April to May 2019
  - Draft License Application (final study reports) – May 2021 to November 2021
  - Final application… (June 30, 2022)

Broadwater Contacts:

- Dave L. (DNRC) 406-444-6659
- Jenna (HDR) 406-665-3987

Return to FERC Presentation

- Intro to FERC
  - Office of Energy Projects (OEP)
  - One of 12 offices
  - FERC about 1500 employees
  - OEP the largest office
- OEP – 5 divisions
  - 3 divisions address hydropower
    - Division of Hydropower Licensing (DHL)
    - Division of Hydropower Administration and Compliance (DHAC)
    - Division of Dam Safety and Inspection (DDSI)
      - DHL and DDSI broken up geographically
  - DHL – issues license or exemptions
  - DHAC – enforce conditions of each license and conduct environmental inspections and conduit exemptions
  - DDSI – Division of Dam Safety
  - DHL – (USACE and BOR not in FERC jurisdiction)
    - FERC does not authorize operation of the federal facilities, but FERC does license projects that use surplus water from the federal facilities.
- DHL:
  - Process applications, Prepare and issues environmental documents
  - Address agency, tribal and public concerns
  - Analyze recommendations and incorporate reasonable conditions to the license
  - Equal consideration for environmental and developmental concerns
  - Licensing Process
  - Relicensing occurs during an existing license. Goal is to get it accomplished prior to the expiration of existing license. Relicensing begins about 5-5.5 years prior to license expiration
- Pre-filing – info gathering to inform content of application
- Post-filing – FERC evaluation on decision on filed application
- TLP original process in 1980s
- ALP – process developed in the 1990s (reduction in use with introduction of ILP)

- ILP came out in 2003, default FERC process in 2005.
    - ILP has fixed schedule vs. TLP,
    - TLP paper driven process with some defined timeframes
    - Regardless of process, a licensee must file its relicense application 2 years before license expiration.

Question – Don Skaar: is there any opportunity to engage and comment after filing? FERC – review steps of where stakeholders can contribute in consultation. FERC – stakeholders have opportunity to respond and provide feedback to proposed NOI and throughout the process.

Relicensing process – can end with a subsequent or new license (essentially the same thing). Is the NEPA analysis the same? The NEPA analysis is based on proposed federal action. FERC's obligation (federal action is "issue a license") under NEPA. New action requires new NEPA analysis.

Mike Tust – Reviews ILP and TLP

- DNRC Jan 2019 (6 months early)
- NorthWestern due by Dec 2020 – plan to file July 2020 (6 months early)

ILP

- FERC hold daytime and evening meeting (FERC scoping meetings)
- Schedule set (FERC regulations) and no changes made. can file ahead but schedule doesn't change.
- Dates land on weekend or holiday, due date defers to following business day.
- NorthWestern – BED does not impact Pre-filing process for ILP. It is prior and voluntary.
- There is a formal dispute resolution process
- Formal dispute resolution is available to land management agencies like USFS, BLM with conditioning authorities for 4e condition authority, Interior as it relates to its section 18 fishway prescriptions, and DEQ as it relates to its water quality certification. In some case Tribes where a project is located on a tribal reservation or if the tribe as authority to issue a water quality certification. Dispute due 20 days after study plan filed. 3 person panel for dispute. Panel issues findings within 50 days of notice of dispute. OEP Director issues a new study determination considering the panel findings within 20 days. Goal of the ILP is to solve issues on informal basis as much as possible

Study Request Criteria (ILP)

1) Goals and Objectives of Study
2) Relevant Resource Management Goals
3) Relevant Public Interest Considerations
4) Existing information; need for additional information?
5) Nexus to Project operations and effects on resources
6) Methodology; consistent with accepted practice?
7) Estimates of effort and cost

Study or studies help(s) fill in data gaps for FERC analysis requirements

- Can studies include review of existing literature? Or is a study always applied (e.g. field study)? Can be either, depends on the needs an information needed.
- There is a guide for applying the study criteria (FERC has available online and a few copies at meeting)
- Criteria are a guide to help everyone understand how information is obtained to achieve the objectives (avoid the "bring me a rock" game.)

Preliminary Licensing Proposal (PLP) – draft environmental analysis used in the FLA
Draft License Application (DLA) – include PLP plus additional items that would show up in the License Application (ex. A, C, F, G, etc.)

- Applicant may include other elements like draft Biological Assess or Draft Historic Properties Management Plan.
- Benefits of DLA – FERC can provide feedback if any deficiencies that can be addressed prior to Final License Application. 90 day comments, 60 days to address comments (150 days)

Provide intention to file DLA in study report (due 2 years prior to license expiration)

Comment by DEQ – stated DEQ will be intervenor by state law in Thompson Falls (Craig Jones) – MFSA

TLP

Clarification was made by FERC reps that current license standards and terms are still in effect during the relicensing process. FERC DHAC will coordinate with the Division of Hydropower Licensing in cases where efforts overlap.

A comment was made that with the extensive coordination between license applicants and stakeholders, it seems rare that a license would ever be denied. FERC agreed, and added that while it is possible, denial is not as likely with a relicensing situation (versus a new license) because the issues are usually known and can be resolved or mitigated. In some cases, licensees may decide they no longer wish to pursue their application because the new terms are not penciling out. This results in a license surrender proceeding.

The BLM rep asked if there is an opportunity to speak out against a decision once it's been made. FERC replied that as long as the entity is an intervenor they can. Entities interested in being an intervenor have to request that status in response to a notice issued by the Commission after the license application is filed. An intervenor can then request a re-hearing of the License decision. A stakeholder can be anyone interested in the project, but an intervenor carries obligations for serving filings on other intervenors.

License Term Policy

- Issued October 2017
    - Establishes default 40-year license term (min is 30 years, max is 50 years)

    - FERC considers lesser/greater term:
        - Coordinate terms for projects in the same river basin, or for either of the following provided they do not conflict with coordination needs
        - Defer to explicitly-agreed term in a comprehensive settlement agreement
        - For significant measures in new license or voluntarily implemented in existing license

Project boundary

- Project boundary – the geographic extent a licensee must own or control for licensed project proposes
    - Doesn't require land title, but easements etc. must be in place
    - Boundary includes all lands, waters, works, and facilities comprising the license project
    - Project effects can extend beyond the Project Boundary
- FERC point of view – boundary must enclose only those lands necessary for O&M, and other project purposes (shoreline control, resource protection)
    - No more than 200 ft from exterior margin of the reservoir (general rule)
    - "Islands": separate boundaries can enclose satellite sites or facilities (e.g. recreation) that are part of same Project. Project boundary does not have to be continuous. Do not need to own all land in between.
- Under existing Project boundary, do boundaries change during relicensing? Project boundaries do not usually change in relicensing unless new measures are put into place and the lands are needed to accomplish a specific purpose. Many projects included lands that don't serve project purpose and applicants may propose to remove project lands.
- How is project boundary different than project effects? Environmental effects can extend beyond project boundaries, such as instream flows downstream of the project. Project boundaries often define the limits of the Commission jurisdiction and those lands the licensee must have the authority and ability to undertake the requirements of the license. Example, minimum flows can be achieved at Project and so there is no need to include entire downstream area in Project boundary, but FERC does look at environmental effects downstream in analysis.

Environmental Baseline

The baseline is the environment as it exists at the time of relicensing, not pre-project conditions. However, available pre-project conditions may help inform judgement concerning appropriate mitigation and enhancement measures (not with the goal of returning to a pre-project state).

Q: What about effects that came about on an old project before FERC governed… or impacts prior to the license. A: FERC will not ask Licensee or Application to mitigate for "past sins".

Q: What if there are no flows extending downstream, can the license include mitigation for low flows for past 40 years? A: The minimum flows (per existing license terms) is baseline condition which FERC uses to evaluate the need, benefits and costs against. Baseline conditions do not wave future mitigation measurements. For example, higher minimum flows might be justified if a new T&E species is found in the area or if flows are limiting habitat conditions for a population of a blue-ribbon trout fishery

If current conditions continue, how does this impact the environment? What measures would be recommended (proposal) for future? Include continuation of existing mitigation or new or none.

Meeting is Formally Ended – any additional questions?

Q: Expand on the unique role of FERC post-licensing. A: Once a license application is filed, FERC shifts to an evaluative role, and must maintain and demonstrate impartiality. To assure a review process that is both transparent and fair, any communications with FERC about a proposal's merits must include *all* involved parties. However, with regards to communications about *process* (not merit), during this post-licensing phase FERC may continue to freely provide guidance to any interested parties when requested.

MG- thanks and adjourn (1:05PM)

Stakeholders and Team Attendees:

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