Hydropower Regulatory Efficiency Act of 2013

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The Federal Energy Regulatory Commission (a.k.a., FERC or the Commission) “is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity. FERC also regulates natural gas and hydropower projects.”
Federal Power Act

Gives FERC the authority to grant licenses for hydropower projects:

- located on a navigable waterway of the U.S.;
- occupying U.S. lands;
- utilizing surplus water or water power from a U.S. government dam; or
- located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.
License or Exemption

- **FERC Licenses**
  - Issued for up to 50 years
  - Subject to Mandatory Conditions (Section 4(e) and Section 18)
  - 3-stage Consultation Process
  - NEPA

- **FERC Exemptions**
  - Issued in perpetuity
  - May be subject to Mandatory Conditions (Section 30(c))
  - May be subject to the 3-stage Consultation Process
  - Exempt from EA/EIS process
The Act (HR 267), among other things:

- amends Section 405 of the Public Utility Regulatory Policies Act of 1978 to define "small hydroelectric power projects" as having an installed capacity that does not exceed 10,000 kilowatts (Section 3)
- exempts certain conduit hydropower facilities from the licensing requirements of the Federal Power Act (FPA) (Section 4)
  - Increases the previous “small conduit hydroelectric facility “ capacity limitation to 40 MW
  - Includes new “qualifying conduit hydropower facility” criteria
H.R. 267 – Section 3

- Small Hydro Exemptions
  - Projects up to 10 MW can apply for an exemption under the small hydro project exemption process.
  - Was previously 5 MW.
  - Applies to both new and existing projects.
H.R. 267 – Section 4

- Conduit Exemptions –
  - Projects up to 40 MW can apply for an exemption under the conduit exemption process.
  - Was previously 15 MW (40 MW for municipal projects).
  - Applies to both new and existing projects.
Qualifying Conduit Exemptions -

- Removes new 5MW (and under) conduit projects from FERC licensing and allows for a shortened public review process.
- A qualifying conduit facility that is 5 MW or less will simply submit an NOI.
- FERC will make an initial determination on whether it meets the qualifying criteria within 15 days.
- FERC will publish public notice for 45 days, after which FERC will make its final determination.
- Projects seeking a conduit exemption above 5 MW will still have to proceed with the three-stage exemption process.
Every year the federal government issues a new Code of Federal Regulations (CFR). Title 18 – Conservation of Water Resource – is the portion applicable to hydropower regulations, which provides definition of, among other things:

- Applicable Definitions
- Process procedures
- Consultation Requirements
- Content Requirements of Application for Licenses and Exemptions
Exemptions

Small Hydro Exemption  Site A

Qualifying Conduit Exemption  Site B

Small Conduit Exemption  Site C

Natural Water Body

Reservoir

Dam

Irrigation Use
FERC Process for Small/Low-Impact Hydropower Projects

1. File Preliminary Information
   - Initial Consultation Document

2. Consult Stakeholders
   - Agency Meeting and Site Visit
   - ICD Comments
   - Ongoing Consultation Efforts

3. Gather Information
   - Existing Information from Agencies and Other Sources
   - Studies

4. Prepare Application
   - E-file with FERC
   - Copy to Agencies
   - Public Notice of Application
# FERC Qualifying Conduit Process

## 15 Days

- **You File a Notice of Intent to Construct a Qualifying Conduit Hydropower Facility**
  - **Within 15 Days, FERC Makes an Initial Determination**
    - **Facility Meets the Qualifying Criteria**
    - **Facility Does Not Meet the Qualifying Criteria**
      - **Insufficient Information to Make an Initial Determination**
      - **FERC Issues a Letter Rejecting the Filing**
  - **FERC Issues a Public Notice Providing 30 Days to Intervene, 45 Days to Contest**
  - **FERC Issues a Letter Finding Facility Fails to Meet Qualifying Criteria**

## 45 Days

- **If No One Contest - Facility Deemed to Meet Qualifying Criteria**
- **If Someone Contest - FERC Issues an Order Determining Whether Facility Meets Qualifying Criteria**
- **No Set Timeframe**
  - **You have the Opportunity to Revise and Refile the Notice of Intent**
Questions?