accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair, Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Summary

The Federal Energy Regulatory Commission (Commission) is adopting a policy statement that addresses issues related to relicensing and decommissioning 1 raised in its September 15, 1993 Notice of Inquiry (NOI) in the above-captioned proceeding.² In that Notice, the Commission invited comment on a series of fifteen questions dealing with the relicensing and decommissioning of licensed hydropower projects after the original license has expired. The individual questions, as well as a summary of the commenters' responses, are set forth in Appendix A to this Policy Statement.

There are three major areas of inquiry encompassed in the ensuing analysis and discussion. The first involves relicensing of a project. The second addresses what happens when no new license goes into effect for the project at the time of relicensing, and the project at the time of relicensing, and the project at the discussion addresses preretirement funding of retirement costs that will be incurred upon decommissioning.

Regarding the first issue, generally, when the license for a project expires, the Commission issues a new license to the existing licensee. However, that is not the only option available. After examining the legislative history and the relevant statutory provisions, the Commission concludes that it has the legal authority to deny a new license at the time of relicensing if it determines that, even with ample use of its conditioning authority, no license can be fashioned that will comport with the statutory standard under section 10(a) of the Federal Power Act (the Act) and other applicable law. The Commission anticipates that, where existing projects

are involved, license denial would rarely occur.

At the time a license expires, the Commission will review any application for a new license in terms of current conditions and public interest considerations. There may be instances where a new license can be fashioned, but the terms will not be acceptable to the licensee, and so the license will be rejected. This is most likely to occur where the licensee of an already marginal project is confronted with additional costs at relicensing that render the project uneconomic. The Commission concludes that this possibility will not preclude it from imposing the environmental (and other) conditions it deems appropriate to carrying out its responsibilities under the Act.

In those instances where it has been determined that a project will no longer be licensed, because the licensee either decides not to seek a new license, rejects the license issued, or is denied a new license, the project must be decommissioned. The second subject involves the extent of the Commission's authority over decommissioning and the process to be applied when a project is to be decommissioned. The statutory language does not expressly address, in any comprehensive manner, the Commission's authority over decommissioning and the process to be applied in carrying it out. In such a situation, the Commission has the authority to fill in gaps left by the statute and to ensure that a project is decommissioned in a manner that is consistent with the public interest. The Commission will take a very flexible approach to the carrying out of this process.

Possible forms of decommissioning extend from simply shutting down the power operations to tearing out all parts of the project, including the dam, and restoring the site to its pre-project condition. Multiple concerns must be considered in determining which alternative is appropriate, and the solutions necessarily will vary from one situation to another. Judging from the Commission's experience with project license surrenders, interested parties should generally be able to negotiate the proper approach to decommissioning. The Commission strongly encourages all the interested parties to work together to accomplish a mutually acceptable resolution in each case.

The Commission, however, rejects the notion that it is without statutory power to act where negotiated solutions cannot be arranged. The Commission has concluded that it has the power to take steps necessary to assure that the public interest is suitably protected, including, in the rare case, requiring removal of the project dam. Assuring protection of the public interest may involve the need to coordinate with other government bodies that will succeed to regulatory responsibility over certain aspects of the formerly-licensed projects.

The Commission will not generically impose decommissioning funding requirements on licensees. However, in certain situations, where supported by the record, the Commission may impose license conditions to assure that funds are available to do the job when the time for decommissioning arrives. The Commission will determine whether to impose funding requirements on a caseby-case basis, at the time of relicensing.

Further, even in situations in which the Commission does not impose a funding requirement at the time a project is relicensed, the licensee will ultimately be responsible for meeting a reasonable level of decommissioning costs if and when the project is decommissioned. The licensee should plan accordingly, and the Commission will not accept the lack of adequate preparation as justification for not decommissioning a project. Some provision for mid-course funding may become appropriate for a variety of reasons. The Commission encourages affected parties to develop creative solutions to pre-retirement funding in such situations.

The Commission will be receptive to proposals, concerning pre-planning and pre-funding of decommissioning costs, reached by mutual agreement during the course of individual licensing proceedings or during the term of a license.

Where the Commission includes a decommissioning funding provision in a license it issues. if the licensee is a public utility subject to the Commission's wholesale ratemaking jurisdiction, it may file to include an appropriate share of those costs in its rates. In situations where the Commission has not required preretirement funding in a license, and it is subsequently determined that decommissioning is necessary, a licensee that is a public utility may file to recover an appropriate share of decommissioning costs through wholesale rates, on a prospective basis.

Finally, the Commission is by separate order rescinding the reserved authority over decommissioning matters that routinely has been included in recent relicensing orders because of the pendency of this proceeding. The records in those cases demonstrate no current need to plan for, or expect,

¹ In this document, the term decommissioning is used broadly. Possible forms of decommissioning extend from simply shutting down the power operations to tearing out all parts of the project, including the dam, and restoring the site to its preproject condition.

² Project Decommissioning at Relicensing; Notice of Inquiry, 58 FR 48991 (Sept. 21, 1993), IV Stats. & Regs. ¶ 35,526 (1993).