

Some commenters in this docket have nonetheless suggested that the Commission should stay out of the picture when a license ends. They implicitly concede that the end of licensing, and of power production, does not necessarily mean the end of impacts on public resources and values. However, they contend, where Federal interests are involved, as with Federal lands and threats to navigation, other Federal authorities can simply take over. Otherwise, they contend, the States can do so.

As the system presently operates, the Commission staff and the licensees work with all of these groups to arrange a comprehensive resolution, and, until this is done, the Commission retains jurisdiction by issuing annual licenses. Overall Commission supervision of the process makes much more sense than a piecemeal approach that raises the chance of both overlaps and gaps in coverage.

The Commission consequently contemplates continuation of the existing procedure. Experience suggests that in nearly all instances the interested parties should be able to reach a resolution of the decommissioning approach among themselves. Where this is not possible, the Commission will impose reasonable terms appropriate to the situation, but this is not the approach the Commission favors.

C. The Role of Other Federal Agencies

Where project works at issue are located on Federal lands, the Commission's surrender regulations have for decades required the licensee to restore the lands to the satisfaction of the responsible agency when the licensee surrenders its license.⁴⁴ Most commonly those agencies are the U.S. Forest Service and the Bureau of Land Management, and both apply analogous principles in permits they grant for use of Federal lands.⁴⁵

Absent specific authority by the Federal agency involved for continued use of Federal lands at the termination of Commission licensing, it is eminently reasonable that the licensee must restore the lands to that agency's satisfaction, at the licensee's expense.⁴⁶ No commenter

presents a persuasive case to the contrary.

The Army Corps of Engineers presumably would sometimes become involved where there are navigable waters. To the extent that new construction in navigable waters is proposed, as where dam removal or modification is in issue, permits are needed from the Corps under the River and Harbor Act.⁴⁷ Moreover, were project works to actually pose a serious threat to navigation, it can be assumed that the Corps would step in to protect that interest.

However, commenters have offered no comprehensive legal analysis of the Corps of Engineers' responsibility outside those relatively narrow contexts. Absent that, or a clear indication from the Corps that it intends to take a leading role in assuming broad responsibility for safety and other aspects of projects previously regulated by the Commission and believes that it has the authority to do so, there is little basis for the Commission to count on the Corps of Engineers' assuming significant additional responsibility.

D. The Role of States and Municipalities

There remains a relatively large gap in coverage left by Commission withdrawal. However, many States (though not all) have fairly comprehensive programs in effect governing dams and similar structures in their waters, especially in the areas of dam safety and the environment. It is thus important that the responsible State agencies be partners in any arrangement that is worked out at the time when Federal licensing ends.

The attitudes of States (and municipalities) towards the prospect of taking over regulation may vary, depending on the circumstances. Where a project has multiple uses, State or municipal authorities may be willing to assume responsibility in order to keep major nonpower elements of the project in operation. Where this is the case, the Commission will entertain the request that it simply require the shut-down of power operations without further actions that could affect those other functions. It is unlikely that a dam or reservoir serving key municipal water needs, for example, is going to be shut down.

noted that the BLM and Forest Service rules (cited in the previous footnote) specifically state that:

If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

⁴⁷ See 33 U.S.C. §§ 401, 403.

There could be other situations, however, where a State (or municipality) would be reticent to have responsibility for a project licensed by the Federal Government now transferred to it. This might include cases where there are presently serious problems associated with the project, and/or the project serves no useful function other than power production (which will be unauthorized once Commission licensing ends). Where a State makes a persuasive case as to why it ought not to have to bear the burden of future regulation, the Commission will consider the appropriateness of requiring the affected project works to be removed, thereby eliminating the need for future oversight.

Many factors would enter into such a decision, of course, including (but not limited to) the costs of removal,⁴⁸ the burdens on the State of continued supervision, what alternative approaches are available, and the environmental consequences of removal. The Commission will also look to whether it authorized the original construction (and thus was directly responsible for the project being there) or simply issued the original license on an existing project.

Where dams or other project works are left in place, the State may effectively be compelled to assume supervisory responsibility over remaining project works, however unwillingly, because the public interest demands that protection. Some State agencies have complained about any approach that leaves the States with the financial burden of dealing with no-longer-useful or abandoned power projects.

It is not clear that the specific examples cited in the comments are in fact under Commission regulation. Rather, it appears that in most, if not all, of these instances, the projects had never been federally licensed. Nonetheless, where the facts indicate that there may be a significant problem in terms of potential financial threat to State finances, it is a matter for the Commission to consider in deciding how far it will take its own

the Commission can initiate a revocation proceeding under sections 26 and 31 of the Act. In other instances, the licensee has security against mid-term surrenders.

⁴⁴ See FPC Order No. 175 (Attachment A p. 28) (1954). See also 18 CFR 6.2.

⁴⁵ See 36 CFR 251.60(j) and 43 CFR 2803.4-1.

⁴⁶ While the Commission's regulation does not expressly state that it will be at the licensee's expense, this is implicit. The Commission has no authority to subsidize the project by itself paying or requiring the other agency to do so. It might be

⁴⁸ In the past, the dam removal projects that have been carried out have generally involved relatively modest expenditures. However, that would not invariably be the case. For example, the projected costs of removing the Glines/Elwha dams and restoring the site and the resources impacted by the projects have ranged up to \$300 million, depending on the scope of the work undertaken and other factors. Dam removal costs alone are estimated at about a quarter of that total. Department of the Interior, *et al.*, The Elwha Report; Restoration of the Elwha River Ecosystem & Native Anadromous Fisheries: A Report Submitted Pursuant to Public Law 102-495, Executive Summary 13 (January 1994).