

articles to establish a decommissioning reserve fund.¹⁹⁶

Kennebec recommends issuance of a policy statement clarifying the Commission's authority to mandate decommissioning, removal of project works, and "returning the site to its natural state." Kennebec also suggests the possibility of new regulations, or of new license articles, but in such a manner as to avoid restricting the Commission's flexibility to mandate decommissioning even absent such articles in the license.¹⁹⁷

The U.S. Forest Service supports adoption of regulations on decommissioning, but believes that new legislation may be needed to clarify the Commission's legal authority. In particular, the Forest Service seeks clarification as to its own responsibilities, and that of other federal land management agencies, in the event that a licensee "abandons" a project but can't afford to remove project facilities. The Forest Service suggests that the Commission ascertain, during the licensing process, what it will cost to decommission such projects; require a trust fund for that purpose; and clarify these procedures and requirements in new regulations.

Commenters

Federal Agencies

National Marine Fisheries Service (NMFS)
U.S. Department of the Interior (Interior)
U.S. Department of the Interior, Bureau of
Mines, Western Field Operations Center
(Mines)
U.S. Environmental Protection Agency (EPA)
U.S. Forest Service

State Agencies

Kentucky Department for Environmental
Protection (Kentucky)
Michigan Department of Natural Resources
(Michigan)
New York Department of Environmental
Conservation (New York)
State of Oregon (Oregon)
State of Vermont (Vermont)
Washington Department of Wildlife
(Washington Department)
Wisconsin Department of Natural Resources
(Wisconsin Department)

Associations

American Forest and Paper Association
(Paper)
American Public Power Association and
Certain Public Systems (APPA)¹⁹⁸
American Whitewater Affiliation
(Whitewater)
Appalachian Mountain Club (Appalachian)
Edison Electric Institute (EEI)¹⁴³
Elwha S'Klallam Tribe (S'Klallam)

Friends of the Earth (Earth)
Hydropower Reform Coalition (Reform)¹⁴³
Industrial Licensee Group (Industrial)
Izaak Walton League (Walton)
Kennebec Coalition (Kennebec)
Natural Hydropower Association (NHA)¹⁴³
Northwest Hydroelectric Association
(Northwest)
Pacific Rivers Council (Pacific)
Public Generating Pool (Public Pool)
Public Power Council (Public Power)
Trout Unlimited (Trout)
Western Urban Water Coalition (Water)

Municipal Licensees

Brazos River Authority (Brazos)
City of Centralia, Washington (Centralia)
City of New Martinsville, West Virginia (New
Martinsville)
City of Saint Cloud, Minnesota (Saint Cloud)
City of Seattle, Washington (Seattle)¹⁴³
Nebraska Public Power District (Nebraska)
Ketchikan Public Utilities (Ketchikan)
Oroville-Wyandotte Irrigation District, Friant
Power Authority, and Tri-Dam Project
(Oroville-Wyandotte)
Public Utility District No. 1 of Chelan
County, Washington (Chelan)
Public Utility District No. 2 of Grant County,
Washington (Grant)

Non-Municipal Licensees

Alabama Power Company and Georgia Power
Company (Alabama Power)¹⁴³
Allegheny Power System (Allegheny)
Bangor Hydroelectric Company (Bangor)
Central Maine Power Company (Central
Maine)
Consolidated Hydro, Inc. (Consolidated)
Duke Power Company (Duke)¹⁴³
Idaho Power Company (Idaho Power)
James River Corporation (James)¹⁴³
Montana Power Company (Montana Power)
Mt. Hope Hydro Inc., United Energy
Corporation, and Liberty Power
Corporation (Mt. Hope)
New England Power Company (New
England)
Northern States Power Company (Northern)
Pacific Gas and Electric Company (PG&E)¹⁴³
PacifiCorp
Pennsylvania Electric Company and York
Haven Power Company (Penelec)
Public Service Company of Colorado
(Colorado Company)
Puget Sound Power & Light Company (Puget)
Simpson Paper (Vermont) Company
(Simpson)
Southern California Edison Company
(California Edison)
Susquehanna Electric Company
(Susquehanna)
Union Electric Company (Union)
Upper Peninsula Power Company
(Peninsula)
Washington Water Power Company
(Washington Water)
Wisconsin Electric Company (Wisconsin
Electric)
Wisconsin Valley Improvement Company,
Wisconsin Public Service Corporation,
Weyerhaeuser Company, Consolidated
Water Power Company, Neekosa Papers
Inc., and Wisconsin River Power Company
(Wisconsin Companies)

Other Organizations and Individuals

A great number of local organizations and private citizens, including many local and regional environmental groups and many licensees of small hydropower projects, submitted comments in letter form of one to several pages in length.

BAILEY, Commissioner, *dissenting*

I respectfully dissent from the views expressed in this policy statement. I will admit that as a regulator, both here and formerly as a State Commissioner, I am sympathetic to the analysis that an agency that has been vested with the authority to implement a particular statute must, of necessity, fill in certain specifics as changing circumstances warrant. In this case, an argument can be made that inherent in the authority to grant a relicensing application is the ability to deny that application and to oversee the process of decommissioning the project.

But I pull away from the majority after a review of the record in this proceeding. I cannot concur in the decision that the Federal Power Act authorizes this Commission to require the decommissioning of a hydroelectric project. While someone drafting the Federal Power Act today may very well write it differently, the provisions of the statute as they currently stand, read together with the legislative history, do not support, in my view, the conclusion that the Commission has the authority to order dam removal.

The whole tone of the legislative history is the encouragement of development. And in order to encourage development, the drafters strove to give investors certain assurances that their investments would be secure. Thus, they set out the specific scenario that would occur at the time of license renewal.

That scenario is reflected today in sections 14 and 15 of the Federal Power Act: the Commission may issue a new license, either to the original licensee or a third party, issue a license for the nonpower use of the project, or recommend Federal takeover. The extensive legal analysis supporting this conclusion is articulated in detail in numerous comments filed in response to the Notice of Inquiry, and I will not begin to repeat those arguments here.

In addition, I find the passage of Public Law No. 83-278 in 1953 to be a strong indicator that, even 30 years after passage of the Federal Water Power Act, no one envisioned dam decommissioning as being part of the Commission's authority. By enacting that law, Congress exempted municipal licensees from the possibility of Federal takeover at the end of the license term. This legislation was intended to facilitate the financing of project expansions through the sale of revenue bonds with amortization schedules extending well beyond the term of the initial license.

Clearly, the legislation anticipated that these municipally-owned projects would continue to operate and provide sufficient revenue to meet debt service obligations. The threat that a municipal licensee might not only lose its license at the end of the term, but also have to fund the project's decommissioning or removal, would

¹⁹⁶ Commerce at 15.

¹⁹⁷ Kennebec at 48-49.

¹⁹⁸ All of the commenters filed initial comments. Commenters identified by this footnote also filed reply comments.