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DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RM26-7-000]

18 CFR Part 380

**Categorical Exclusion under the National Environmental Policy Act for Certain
Terminations or Revocations of Water Power Licenses and Exemptions**

The Federal Energy Regulatory Commission (FERC) is seeking public comment on its proposal to amend section 380.4 of its regulations implementing the National Environmental Policy Act (NEPA) to expand an existing categorical exclusion (CE). Through this Notice of Proposed Rulemaking (NOPR), the Commission proposes to include certain terminations or revocations of hydropower licenses and exemptions where the action will result in minor or no ground-disturbing activity and minor or no changes in reservoir conditions and downstream flows.

This proposal reflects the framework for categorical exclusions under 40 CFR § 1508.4, which are intended to apply to categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on its experience and prior environmental reviews, the Commission is evaluating whether these types of actions normally do not result in significant environmental effects and therefore are appropriate for categorical exclusion, allowing for more efficient regulatory review while still maintaining appropriate environmental protections.

American Dams

American Dams (<https://americandams.org>) is a non-profit dedicated to educating the public on the benefits of dams and providing information on regulatory and operational matters. Dam safety is a priority for American Dams, and it shares common goals with state and federal safety organizations that dams should be properly designed, constructed, operated, and maintained in a manner that protects public safety and the environment.

American Dams Response

American Dams supports the Commission's proposed revisions to 18 CFR § 380.4(a)(13), which includes the expansion of the categorical exclusion to cover: (i) amendments or surrenders of preliminary permits; (ii) amendments to water power licenses and exemptions that do not require ground-disturbing activity or changes to project works or operation; (iii) surrenders of water power licenses and exemptions where no project works exist or ground-disturbing activity has occurred; and (iv) terminations or revocations of hydropower licenses and exemptions that will

result in minor or no ground-disturbing activity and minor or no changes in reservoir conditions and downstream flows.

American Dams agrees that these categories of actions, based on Commission experience and their limited and well-understood impacts, do not normally result in significant environmental effects and are therefore appropriate for categorical exclusion under NEPA. American Dams further supports the Commission's effort to reduce unnecessary administrative burden in situations where environmental impacts are minimal and agrees that regulatory review should be proportional to the scale of potential environmental impact. This proposed rulemaking provides a useful model for applying that principle more broadly across the hydropower licensing process.

The Commission has already demonstrated this proportional approach in other regulatory contexts. For example, conduit hydropower exemptions under 18 CFR Part 4, Subpart J (§§ 4.90-4.96) allow projects utilizing existing water conveyance infrastructure to proceed through an expedited review process where no new impoundments or significant alterations to natural flows are required. Similarly, regulations governing project-related transmission facilities under 18 CFR § 4.70 scale application requirements based on project scope which simplifies filing requirements for smaller or previously constructed transmission lines by separating them from the more comprehensive licensing process required for power generation facilities. Together, these frameworks reflect a longstanding Commission practice of tailoring regulatory requirements to the anticipated level of environmental impact.

Building on these established approaches, the Commission could apply similar proportional review principles to other aspects of the licensing and post-licensing process, including certain licensing and non-capacity amendments, minor project modifications, license transfers, and the approval of temporary operational measures that do not materially alter environmental conditions. Aligning the level of review with the anticipated level of impact in these areas would improve regulatory efficiency, reduce unnecessary delays, and allow Commission resources to be focused on actions with greater potential environmental consequences, while continuing to ensure appropriate environmental protection and dam safety oversight.

Hydropower facilities being licensed today are typically at existing dams or closed-loop pumped storage facilities. Adding hydropower to existing dams generally results in relatively localized effects in areas within the impoundment and downstream reach. While the extent of influence varies by site, impacts are generally confined in geographic scope. Hydropower at many existing dams could be expeditiously licensed because the impacts are generally understood and limited. Experience and project data at many existing dams where hydropower is being added and reservoir conditions and flow are not being altered, have shown that the effects extend upstream only approximately 1,000 feet and less than a mile downstream. Environmental impacts in the zone of effect are limited to the following: potential dissolved oxygen changes, entrainment, aquatic habitat and endangered species, navigation, recreation, and historic resources if the site is

over 50 years of age or was historically used as a canal. Within a larger geographic area, there could be worker and goods transportation concerns and socio-economic changes which are typically positive. The transportation issues are readily resolvable using best practices. Transmission lines are generally short (typically only a few miles long) and can be addressed separately as part of the project or separately under 18 CFR § 4.70. Combined with best management practices to protect water quality and environmental resources, the Commission could expeditiously license such projects once these issues are addressed in the license application. Having Commission staff participation early with other participants could also streamline the process.

Real-world project experience shows the importance of efficient and proportionate regulatory pathways. For example, the Scott's Mill Hydroelectric Project has been in the FERC licensing process since approximately 2013. The applicant signed a comprehensive Settlement Agreement on August 9, 2022, in coordination with the U.S. Fish and Wildlife Service and the Virginia Department of Wildlife Resources. The Settlement Agreement included a range of environmental protection measures, including run-of-release operation, continuous minimum flows, installation of upstream and downstream fish passage facilities, development of monitoring and management plans, and commitments to post-licensing studies addressing fish passage, water quality, and flow conditions. Despite these agreed-upon measures, the Commission did not issue its Notice of Application Ready for Environmental Analysis (REA) and solicitation of comments until March 2025, and the Environmental Assessment is not scheduled to be completed until later this year (i.e., it is taking more than a year and a half to issue the Environmental Assessment from the REA). This example demonstrates how even projects with defined environmental protections and limited, well-understood impacts can be subject to lengthy review processes. The Commission must reflect on why such projects take more than a decade to complete when the parties generally agree with the proposed plan and far more than the 6-month period required if Section 112 of the One Big Beautiful Bill Act is applicable.

Conclusion

The proposed expansion of the categorical exclusion represents a practical first step toward aligning regulatory review with the scale of environmental impact. This rulemaking reflects a broader opportunity to modernize and streamline hydropower licensing processes, as is seen with conduit exemptions and scaled requirements for project-related transmission lines. Applying similar proportional review principles to the broader licensing framework would improve efficiency, reduce unnecessary delays, and allow the Commission to focus its resources on projects with greater potential environmental effects, while still upholding environmental protection and dam safety standards.