United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 22 2011

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM11-02

To: Heads of Bureaus and Offices

From: Director, Office of Environmental Policy and Compliance

Subject: Evaluating Alternative Conditions and Prescriptions in Hydroelectric Power Licensing or Relicensing Proceedings Before the Federal Energy Regulatory Commission (FERC)

Sections 4(e) and 18 of the Federal Power Act (FPA) 16 U.S.C. §§ 797(e), 811, require FERC to include conditions and fishway prescriptions submitted by the Department of the Interior in any hydroelectric power license FERC issues. Section 241 of the Energy Policy Act of 2005 (EPAct), amended the FPA to include Section 33 (16 U.S.C. § 823d) which allows any party to a FERC license proceeding to propose an alternative condition or prescription to those submitted by the Department. Section 33 also sets forth a process that the Department must follow to evaluate whether to adopt or reject a proposed alternative: the Secretary of the relevant resource agency will explain the basis for any condition or prescription the agency adopts, provide a reason for not accepting any alternative condition and demonstrate that it gave equal consideration to the effects of the alternatives on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality). Similarly, the written statement must explain the basis for the modified conditions or prescriptions and, if the Department did not accept an alternative condition or prescription, its reasons for not doing so.

On August 4, 2010, the Government Accountability Office issued a report evaluating the effects of Section 241 of EPAct on hydropower relicensing, which included an evaluation of the Department of the Interior's implementation of Section 33 of the FPA. [*See* http://www.gao.gov/products/GAO-10-770 *HYDROPOWER RELICENSING: Stakeholders' Views on the Energy Policy Act Varied, but More Consistent Information Needed* (GAO-10-770)]. At the conclusion of GAO's report, GAO recommended the Department to direct cognizant officials, where the agency has not adopted a proposed alternative condition or prescription, to include in the written statement filed with the Federal Energy Regulatory Commission (1) its reasons for not doing so, in accordance with the interim rules, and (2) whether a proposed alternative was withdrawn as a result of negotiations and an explanation of what occurred subsequent to the withdrawal. (Page 19, GAO Report)

In response to GAO's recommendation, the Department has committed to "direct its agencies to include the recommended explanations in the written statements filed with FERC." [*See attachment*- Letter from DOI Assistant Secretary for Policy, Management and Budget to Acting Comptroller General of the United States (Nov. 18, 2010)].

Accordingly, this memorandum directs any bureau that has not adopted a proposed alternative condition or prescription submitted by any party to a FERC licensing proceeding to ensure that a written statement is filed with FERC that outlines the rationale for not adopting the proposal. If a proposed alternative is modified or withdrawn as a result of negotiations, then the bureau must file a written explanation of that action with FERC. These statements must be included when the Department submits modified conditions or prescriptions for the project.

Attachment

Letter from Assistant Secretary for Policy, Management and Budget to Acting Comptroller General of the United States (Nov. 18, 2010).

United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

NOV 18 2010

The Honorable Gene Dodaro
Acting Comptroller General of the
United States
Government Accountability Office
Washington, D.C. 20548

Dear Mr. Dodaro:

The Department of the Interior appreciates the Government Accountability Office's work in developing the report titled *"HYDROPOWER RELICENSING: Stakeholders' Views on the Energy Policy Act Varied, but More Consistent Information Needed* (GAO-10-770) and the opportunity to respond to the recommendations it contained. This letter is to inform you of the actions the Department plans to take with regard to those recommendations.

The GAO made two recommendations in the report to encourage transparency in the hydropower relicensing process.

The GAO first recommended that relevant federal resource agencies "[d]irect cognizant officials, where the agency has not adopted a proposed alternative condition or prescription, to include in the written statement filed with the Federal Energy Regulatory Commission its reasons for not doing so, in accordance with the interim rules, and whether a proposed alternative was withdrawn as a result of negotiations and an explanation of what occurred subsequent to the withdrawal." The Department agreed with this recommendation, and will direct its bureaus to include the recommended explanations in the written statements filed with FERC.

The GAO also recommended that resource agencies "[i]ssue final rules governing the use of the section 241 provisions after providing an additional period for notice and an opportunity for public comment and after considering their own lessons learned from their experience with the interim rules." The Department intends to issue revised rules governing the use of the section 241 provisions and will consult with the Departments of Agriculture and Commerce on providing an additional opportunity for public comment.

We are enclosing a summary of actions planned by the Department, the names of the responsible Departmental official, and target dates for implementing the recommendations.

A similar letter is being sent to the Senate Committee on Homeland Security and Governmental Affairs; the Senate and House Committees on Appropriations; the Senate and House Appropriations Subcommittees on Interior, Environment, and Related Agencies; the Senate Committee on Energy and Natural Resources; the House Committee on Natural Resources; the

House Committee on Oversight and Government Reform; the Comptroller General of the GAO; and the Director of the Office of Management and Budget.

If you have any questions about this response or need additional information, please contact Kathy Garrity, Acting Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, at (703) 358-2551.

Sincerely,

Rhea S. Suh
Assistant Secretary
Policy, Management and Budget

Enclosure

Enclosure

Government Accountability Office Report
HYDROPOWER RELICENSING: Stakeholders' Views on the Energy Policy Act Varied, but More Consistent Information Needed
GAO-10-770

To encourage transparency in the process for relicensing hydropower projects, we recommend the Secretary of the Interior take the following two actions:

Recommendation 1: Direct cognizant officials, where the agency has not adopted a proposed alternative condition or prescription, to include in the written statement filed with FERC (1) its reasons for not doing so, in accordance with the interim rules and (2) whether a proposed alternative was withdrawn as a result of negotiations and an explanation of what occurred subsequent to the withdrawal.

Response: The Department will direct its agencies to include the recommended explanations in the written statements filed with FERC.

Target Date: March 31, 2011.

Responsible Official: Director, Office of Environmental Policy and Compliance.

Recommendation 2: Issue final rules governing the use of the section 241 provisions after providing an additional period for notice and an opportunity for public comment and after considering their own lessons learned from their experience with the interim rules.

Response: The Department intends to issue revised rules governing the use of the section 241 provisions and will consult with the Departments of Agriculture and Commerce on providing an additional opportunity for public comment.

Target Date: TBD. Consultations with the Departments of Agriculture and Commerce began on November 8, 2010.

Responsible Official: Director, Office of Hearings and Appeals.

Enclosure 2

IDENTICAL LETTERS SENT TO:

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Susan M. Collins
Ranking Minority Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Daniel Inouye
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Thad Cochran
Ranking Minority Member
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Chairman
Subcommittee on Interior
and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Lamar Alexander
Ranking Minority Member
Subcommittee on Interior
and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Nick J. Rahall II
Chairman
Committee on Natural Resources
House of Representatives
Washington, DC 20515

The Honorable Doc Hastings
Ranking Minority Member
Committee on Natural Resources
House of Representatives
Washington, DC 20515

The Honorable David Obey
Chairman
Committee on Appropriations
House of Representatives
Washington, DC 20515

The Honorable Jerry Lewis
Ranking Minority Member
Committee on Appropriations
House of Representatives
Washington, DC 20515

The Honorable James P. Moran
Chairman
Subcommittee on Interior, Environment
and Related Agencies
Committee on Appropriations
House of Representatives
Washington, DC 20515

The Honorable Michael K. Simpson
Ranking Minority Member
Subcommittee on Interior, Environment,
and Related Agencies
Committee on Appropriations
House of Representatives
Washington, DC 20515

The Honorable Edolphus Towns
Chairman
Committee on Oversight
and Government Reform
House of Representatives
Washington, DC 20515

The Honorable Darrell Issa
Ranking Minority Member
Committee on Oversight
and Government Reform
House of Representatives
Washington, DC 20515

The Honorable Gene Dodaro
Acting Comptroller General
United States Government
Accountability Office
Washington, DC 20548

The Honorable Jeffrey D. Zients
Acting Director
Office of Management and Budget
Old Executive Office Building
Washington, DC 20503

The Honorable Jeff Bingaman
Chairman
Committee on Energy
and Natural Resources
United States Senate
Washington, DC 20510

The Honorable Lisa Murkowski
Ranking Member
Committee on Energy
and Natural Resources
United States Senate
Washington, DC 20510