



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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ENERGY AND MINERALS
DIVISION

B-200895

MAY 26, 1981

The Honorable Georgiana Sheldon
Acting Chairman, Federal Energy
Regulatory Commission



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Dear Ms. Sheldon:

Subject: Federal Energy Regulatory Commission's Hydro-
electric Permitting and Licensing Efforts are
Being Hampered by Hybrid Applications and
Staffing (EMD-81-80)

Increases in the price of imported oil have brought re-
newed interest in developing domestic energy resources. One
such resource is hydropower. Hydropower development has in-
creased tremendously over the past few years. Applications
for preliminary permits have increased from 18 to 700 over
the last 4 years, and the Federal Energy Regulatory Commission
(FERC) projects that these will grow to about 1,600 by September
1981.

Even though the number of applications has been esca-
lating, FERC has been able to reduce its processing time by
streamlining the permitting and licensing process. We have
recently noted, however, that the processing time is increas-
ing. Because of this we wanted to analyze what was causing
this increase, and we have identified two problem areas.

The first involves an increasing number of hybrid permit
applications. 1/ At present about 100 hybrid cases are pend-
ing, and FERC has ruled on only one. A review of this area
showed that no policy has been developed to more expeditiously
handle these permits.

1/Hybrid-a private entity and a public body forming a partner-
ship in order to gain preference as a municipality under the
municipal preference clause as set out in section 7(a) of the
Federal Power Act.

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The second area deals with staffing. In two previous GAO reports, 1/ we noted that staffing could be a bottleneck in keeping processing time down. Staffing has remained stable for the past 2 to 3 years, while permit and license applications have increased substantially. In addition, the current budget proposals would reduce existing staff which could cause an increase in processing time.

Our work consisted of reviewing pertinent FERC permitting and staffing records and files; analyzing pertinent sections of the Federal Power Act, specifically pertaining to the municipal preference clause; and discussing the hybrid preliminary permitting and staffing issues with FERC officials.

NO CLEAR POLICY FOR
HYBRID PRELIMINARY
PERMITS

For hydropower developers to develop the power potential at an existing dam, they must obtain a preliminary permit and ultimately a license from FERC. Any citizen, association of citizens, domestic corporation, municipality, or State may file for a preliminary permit to study the feasibility of hydropower development. According to the Federal Power Act, more than one applicant is allowed to file for a preliminary permit on the same hydropower site. When this occurs, FERC must decide which application is best adapted to a comprehensive plan for water resource development. It must also consider section 7(a) of the Federal Power Act which obligates FERC to give preference to States and municipalities when deciding on the issuance of a preliminary permit between competing parties.

With the dramatic increase in the number of preliminary permits pending before the Commission--700 as of January 1981 with a projection towards 1,600 by September 1981--has come a rapid rise in the number of competing applications, especially hybrid preliminary permits. Presently, about 100 hybrids are pending before FERC awaiting a decision on whether they fall under the municipal preference clause.

1/"Hydropower--An Energy Source Whose Time Has Come Again," EMD-80-30, Jan. 11, 1980 and "Are Hydropower Permits and Licenses Being Issued Quicker Due to FERC's Streamlined Procedures?" EMD-81-22, Oct. 24, 1980.

Hybrid preliminary permits

Section 7(a) of the Federal Power Act gives preference to public bodies in awarding preliminary permits. Many private entities have formed partnerships (known as hybrid applications) with public bodies in order to successfully compete with other public bodies for a preliminary permit. The partnerships believe that under this arrangement they should be categorized municipalities and thus be entitled to the municipal preference clause. The partnerships point to the 1949 Fresno Irrigation District vs. Pacific Gas and Electric Co., case as a precedent. In this case, FERC ruled that the Irrigation District was a public entity qualifying for the municipal preference even though it was acting not only on its own behalf but also as a trustee for others, some of whom were private parties.

Currently, FERC has ruled on only one competing hybrid application. This case involved a partnership between the West River Basin Energy Committee (WRBEC), a private entity; and 12 municipalities who were competing against Central Vermont Public Service Corp., a private entity; and Vermont Electric Cooperative, Inc., a public body. Because WRBEC and the municipalities applied "jointly and severally" for the permit, FERC did not have to address the issue of whether a hybrid partnership is entitled to preference under section 7(a). According to FERC, WRBEC was not a real party in interest, but acted only as an agent for the municipalities. FERC left for future consideration whether section 7(a) would apply to a real party in interest in partnership with a municipality. A FERC official stated that the WRBEC ruling did not establish a clear policy that could be used in addressing other competing hybrid applications.

On February 19, 1981, the Commission issued a public notice of inquiry to obtain information on this issue. The inquiry requested comment on the following issues:

1. Should an application for a preliminary permit filed jointly by a municipality and a non-municipal entity be entitled to municipal preference? 1/

1/"Municipal preference" refers to the preference available under section 7(a) of the Federal Power Act to both States and municipalities, as defined in section 3(6) and (7) respectively.

2. If a municipal preference is available to an application filed jointly by a municipality and a non-municipal entity, should such a joint application be required to meet certain criteria? Criteria could, for example, require that the municipality have minimum percentage of power generated (e.g., 50 percent).

A FERC official stated that the amount of time lost in not issuing a preliminary permit on the cases has not been great up until this point since the vast majority of these hybrid preliminary permit applications have been filed since August 1980. But the official did point out that without a policy, these sites could be held up for a long time before being studied for possible power development.

FERC STAFFING MAY BE INADEQUATE
TO HANDLE WORKLOAD

As pointed out previously, we have recognized the possibility that staff shortages could hamper the expeditious processing of preliminary permits pending before FERC. The Division of Licensing, with a staff of 102 people, is responsible for issuing preliminary permits.

According to a Division official, the licensing staff has not increased significantly in the past 3 years. Yet, during this time frame the preliminary permit application workload has increased about 800 percent. These preliminary permits will translate into license applications soon causing the present number of license applications to increase two or three times. License processing is more detailed than permit processing and would probably require more staff time.

FERC streamlined its permit application procedure in an attempt to reduce processing time and, as shown in table 1, has been successful. But this trend is beginning to reverse itself due to the ever increasing number of preliminary permit applications.

A FERC official believes that for the Division of Licensing to adequately handle the present and projected workload, the staffing requirements need to be increased by 20 percent. This translates into about 20 new positions. The official stated that all of these positions are needed in the environmental analysis and engineering studies areas.

It should be noted that FERC has proposed cutting the Division of Licensing's budget by \$3.7 million which a FERC official said would equate into a 25-staff year reduction.

Table 1

<u>Fiscal Year</u>	<u>Permits</u>	<u>Staffing</u>	<u>Time to process permits</u>
77	18	89	17-19 months
78	36	88	17-19 months
79	78	101	12 months
80	404	102	4-6 months
1/13/81	700	102	6-8 months
9/31/81 projected	1,600		

The budget reduction proposal is based on FERC's belief that staffing can be cut by increasing the permit and license exemption from 5 to 15 megawatts. ^{1/} They believe this will reduce the number of applications. We think this may be an erroneous assumption because hydro developers contacted during the course of our work indicated they would still seek a FERC permit and license. The primary reason given is that a FERC license would alleviate developer fears concerning their legitimate ownership over a hydro project. Further, although an exemption removes FERC from the permitting and licensing process, developers still have to satisfy all the requirements of the other Federal and State agencies involved with the permitting and licensing process. For example, developers contacted in the New England region pointed out that the U.S. Fish and Wildlife Service would have final authority over setting minimum stream flow criteria which they believed could be very stringent. Most developers said they felt more comfortable applying for a FERC permit and license, thus, giving FERC the final authority on setting minimum stream flow criteria.

CONCLUSIONS AND RECOMMENDATIONS

Hydropower, as a method to decrease our dependency on imported oil, has received renewed attention. Due to this increased interest in hydropower development, competition for potential sites has become keen. The inability of private entities to successfully compete against public bodies for a preliminary permit, due to the municipal preference clause, has caused many private entities to form partnerships with public bodies. The hybrid preliminary permit issue has presented FERC with questions which need to be resolved.

^{1/}One megawatt = 1,000,000 watts.

A FERC official believes the ruling on one hybrid application does not provide the guidance for decisions on other applications and, thus, applicants are still unsure as to how they will be categorized under the municipal preference clause. Without criteria as to how these applications are to be handled, delays will occur, and developers will remain unsure as to their position.

We, therefore, recommend that the Chairman, FERC, expeditiously develop criteria which would set forth the conditions for awarding preliminary permits under hybrid applications. If upon receiving the information requested by its February 1981 public notice inquiry, the Commission cannot make a decision on the hybrid issue, it may want to seek congressional guidance concerning a clarification of the municipal preference clause.

Over the past few years, the number of applications for preliminary permits has increased dramatically while at the same time staff responsible for granting permits and licenses has remained stable. Although FERC has made efforts to streamline its permitting and licensing process to cut the processing time, these time frames are beginning to lengthen. Preliminary permits are projected to increase to about 1,600 by the end of fiscal year 1981. At the same time FERC is considering raising the license exemption level and reducing the licensing staff. Before proceeding with these actions, we recommend FERC

- evaluate whether increasing the exemption will, in fact, result in fewer applications;
- assess the number of preliminary permits which have a high probability of resulting in license applications; and
- make an assessment of the minimum number of staff to handle the present and projected volume of preliminary permits and licenses.

We believe this evaluation and assessment is necessary because hydropower is an important national renewable resource which could contribute to reductions in imported oil. In addition, FERC has worked diligently to streamline its licensing procedures, but these current problems could counter the streamlining efforts.

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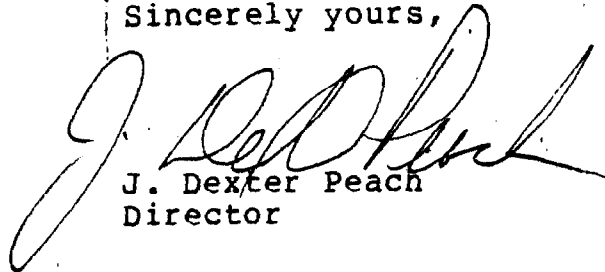
As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations

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to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of your statement when it is provided to the congressional committees and to be informed of any action taken on our recommendations.

We are sending copies of the report to the Director, Office of Management and Budget; and the House and Senate Committees having oversight and appropriation responsibilities over FERC.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Dexter Peach", written in a cursive style. The signature is positioned above the typed name and title.

J. Dexter Peach
Director