



## FERC Integrated Licensing Process (ILP)

The relicensing of the Conowingo Hydroelectric Project represents a once in a 50-year opportunity to address three issues of great importance to continued Chesapeake restoration efforts: the sediment buildup behind the dam, protection and restoration of key Bay fish species and opening up of new opportunities for conservation/recreation.

The Integrated Licensing Process is intended to streamline the Commission's licensing process by providing a predictable, efficient, and timely licensing process that continues to ensure adequate resource protections. The efficiencies expected to be achieved through the ILP are founded in three fundamental principles:

- Early issue identification and resolution of studies needed to fill information gaps, avoiding studies post-filing;
- Integration of other stakeholder permitting process needs; and
- Established time frames to complete process steps for all stakeholders, including the Commission.

### THE LICENSING PROCESS

The general timeline for the standard licensing process is as follows:

- Five years before its license expires, a utility notifies FERC that it intends to seek a new license. It then develops an application that provides important data on the environmental and recreational impacts of its dam(s) and identifies areas for further study. Extensive research then begins.
- Two years before its license expires, a utility submits a formal application to FERC detailing how the utility proposes to operate its dam(s). Other government agencies and citizens groups can comment on this application and recommend, and in some cases require, conditions for dam operations. The Commission then conducts an environmental impact statement.
- FERC approves the license if it is deemed “in the public interest.” The license must protect fish and wildlife, meet water quality standards, provide fish passage if necessary, protect surrounding lands, and improve recreation opportunities. The final license decision can be appealed to FERC, and then beyond to federal courts.
- **Because FERC licenses are issued for terms between 30-50 years, relicensing is characterized as a “once in a lifetime” opportunity to restore many of the environmental and social values that characterized a river prior to existence of a dam.** The Federal Power Act’s requirements to including consideration of public and environmental values in licensing proceedings has provided river advocates with a major tool for conservation and restoration. Since 1993, more than 400 projects have been relicensed.

### License Decision

The Commission will issue its decision on the license application once it has everything it needs to complete processing (for example, the water quality certification issued by the state pursuant to section 401 of the Clean Water Act, a Biological Opinion, documentation of consistency with the Coastal Zone Management Act). The decision will be based on staff recommendations described in the EA or EIS and any mandatory

conditions issued pursuant to sections 4(e) and 18 of the Federal Power Act (FPA), section 401 of the Clean Water Act, and other relevant law.

Any party (applicant or entity with intervenor status) may file a request for rehearing of the license within 30 days from the date of its issuance.

## **Section 10 of the Federal Power Act (FPA)**

All licenses shall be issued on the recommendations specified in section 10 of the FPA and such other conditions as the Commission determines are lawful and in the public interest. All licenses issued under this Part shall be on the following conditions: the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e); and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

### **Issues Addressed in the Proposed Conowingo Dam Settlement**

License conditions: Fish Passage, Eel Passage, Invasive Species, Flow, Trash and Debris, Dissolved Oxygen Monitoring, Shoreline Management, Turtle Management, Waterfowl Nesting, Sturgeon

Non-license conditions (will not be part of the license as it stands now): Mussel Restoration, Resiliency Initiatives, Funding for Other Water Quality Projects, Eel Passage Research and Projects, Sediment Disposal Study, Tailrace Gage Funding, Hopper Fullness Measurements, Chlorophyll-A Monitoring, Reimbursement of MDE Expenses and Oversight Costs, Cooperation, Access, and Recordkeeping.

### **Other Thoughts**

**The award of licenses to the private sector should only occur after careful consideration of both the socio-economic benefits to the local community and the licensee's full environmental track record in the affected river basin.** Corporate promises of local jobs and related benefits as well as environmental commitments should be monitored over the license term. Severe penalties must be instituted, including possible project recapture, if not achieved.

Given that water is indeed a national security interest, Congress needs to more closely monitor the activities of FERC as its appointed administrator of hydropower licenses under the Federal Power Act.

Experience of other hydropower relicensing projects across the nation suggests that the best outcomes for the environment are achieved when there is a coordinated strategy that involves all the parties -- the State, the Congressional Delegation, the Federal agencies, the state legislators, the stakeholders, interested organizations and the public -- all working toward the same goals

Hydropower licenses generally provide for a 30 to 50-year term to allow the licensee to recover its capital investment in the project. As an ultimate safeguard, the Federal Power Act provides for recapture of a hydropower project by the federal government for due cause or upon license expiration. The 1935 Congress recognized that the recapture provision was necessary to allow for a reevaluation of circumstances in the public interest. In practice, FERC has never recommended recapture of a hydropower project upon license expiration, an action requiring Congressional approval, even when the public interest would be better served.