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REPORT TO THE CONGRESS

094906



BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

Problems In Licensing Hydroelectric Projects

Federal Power Commission

The large backlog of hydroelectric license applications with the Federal Power Commission for approval and the slow rate at which applications are being acted upon dramatize the problems in the licensing program.

Most of the time needed to license a project is outside the control of the Commission, but, to the extent practicable, delays should be eliminated because licensing projects offer considerable public benefits.

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SEPT. 23, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-115398

To the President of the Senate and the
Speaker of the House of Representatives

This report points out that the Federal Power Commission's backlog of hydroelectric project license applications has grown steadily and recommends ways to speed up the processing of such applications and insure that all projects under the Commission's jurisdiction are licensed. c. 178

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget; the Chairman, Federal Power Commission; and the Secretary of the Interior.

A handwritten signature in black ink, appearing to read "James R. Stacks".

Comptroller General
of the United States

C O N T E N T S

	<u>Page</u>
DIGEST	i
CHAPTER	
I INTRODUCTION	1
Hydroelectric project licensing	1
II PROBLEMS IN LICENSING HYDROELECTRIC PROJECTS	4
Growth of FPC's backlog of applications	4
Agency comments and our evaluation	6
Need to determine extent of jurisdiction	7
Recommendation to the Chairman, FPC	8
Agency comments and our evaluation	8
Need for more effective followup action	8
Constructed projects	9
New projects	10
Need to reassess enforcement policies	11
Recommendations to the Chairman, FPC	12
Agency comments and our evaluation	13
Need to assess applicants for FPC-incurred costs	13
Recommendation to the Chairman, FPC	14
Agency comments and our evaluation	15
Need to improve coordination with Federal agencies	15
Recommendation to the Chairman, FPC	18
Agency comments and our evaluation	18
III SCOPE OF REVIEW	20
APPENDIX	
I Letter dated July 10, 1975, from the Chairman, Federal Power Commission, to GAO	21
II Letter dated July 14, 1975, from the Deputy Assistant Secretary of the Department of the Interior to GAO	30
III Principal officials of FPC and the Department of the Interior responsible for administering activities discussed in this report	32

ABBREVIATIONS

FPC Federal Power Commission

GAO General Accounting Office

D I G E S T

GAO has recommended to the Chairman of the Federal Power Commission measures to reduce delays in the Commission's processing of applications for hydroelectric project licenses and license amendments. The Chairman generally agreed with the recommendations and is planning to implement them.

Licensing hydroelectric projects offers the prospect of considerable public benefits, such as increased electric power and recreation facilities.

The Commission's licensing program is aimed at insuring that the Nation's water resources are used for the maximum public benefit. Its backlog of applications, however, has grown steadily--from 219 at June 30, 1963, to 502 at December 31, 1974.

The age of the applications and the slow rate they are being acted upon are matters for concern. The 502 pending applications have been on hand an average of 60 months. (See p. 5.)

GAO recommends that, to speed up applications processing for hydroelectric projects, the Chairman of the Commission:

- Establish followup procedures and standards insuring that information needed to process applications is pursued aggressively. (See p. 12.)
- Establish a realistic program for prosecuting those delaying the licensing program. (See p. 13.)
- Formalize the role of other Federal agencies in the licensing process by entering into interagency agreements. (See p. 18.)
- Ask the Congress to amend the Federal Power Act to require (1) applicants for licenses

to pay reasonable annual charges for administering the licensing program and (2) applicants for previously constructed projects to pay retroactive charges when applications are filed. (See p. 14.)

Applicants are currently exempt from paying such charges, and this exemption may provide an incentive for them to delay the licensing process.

In addition, GAO recommends that the Commission systematically evaluate constructed projects to insure that all projects under the Commission's jurisdiction are licensed. (See p. 8.)

Most of the time needed to license a project is outside the Commission's control because of the many statutes affecting the process. However, some of the time within the Commission's control can be characterized as delay.

The Commission should not automatically extend reporting deadlines after allowing applicants 30 to 90 days to comply with requests for needed information. (See p. 8.)

The Commission has never attempted to prosecute those who have failed to provide needed information because it feels that any attempt to enforce the act would be ineffective and only cause further delay. GAO is not convinced of this.

In any event, it appears that the Commission cannot meet its statutory responsibilities for licensing without using its enforcement powers. (See p. 11.)

The required process of obtaining comments from other Federal agencies is often lengthy and time consuming. Sometimes, agencies have taken as many as 200 days to provide comments on applications.

GAO believes formal agreements could elicit specific commitments from agencies and thereby speed up the licensing process. (See p. 15.)

CHAPTER 1

INTRODUCTION

The Federal Power Commission (FPC) regulates the interstate aspects of the natural gas and electric utility industries. Its regulation of the natural gas industry includes pipeline construction and the rates gas producers and pipelines charge for gas sold in interstate commerce for resale.

FPC's regulation of the electric utility industry includes

- the rates and services of public utilities selling electricity in interstate commerce at wholesale,
- the voluntary interconnection of electric transmission facilities, and
- the licensing of non-Federal hydroelectric projects.

HYDROELECTRIC PROJECT LICENSING

Hydroelectric generating plants--both Federal and non-Federal--have historically provided a considerable part of the Nation's total electric power supply. Hydroelectric plants accounted for about 15 percent of the total U.S. electric generating capacity as of June 30, 1974, and FPC has estimated that hydroelectric generating capacity will more than double by 1990.

Federal licensing of hydroelectric projects began with passage of the Federal Water Power Act of 1920. This act was later incorporated as part I of the Federal Power Act of 1935 (16 U.S.C. 791 et seq.), the basic statute under which the licensing program is conducted. FPC licenses non-Federal hydroelectric projects constructed on navigable waterways, public lands, or reservations of the United States, or on any stream over which the Congress has jurisdiction through its authority to regulate interstate and foreign commerce.

FPC's hydroelectric project licensing program has the broad goal of insuring that the Nation's water resources are used for the maximum public benefit. Hydroelectric project site development is seldom permitted solely for electric power generation. Impounding water in a river basin often results in many other social and economic benefits, such as recreation, fish and wildlife enhancement, flood control, irrigation, improved water supply, water

quality control, and navigation. As a result, the Federal Power Act requires that, to be licensed, a hydroelectric project must be compatible with the comprehensive plan of river basin development for all beneficial public uses.

The licensing program has evolved into a highly complex decisionmaking process with a large number of participants. Many laws 1/ place constraints on FPC or require it to evaluate a proposed project not only from the electric power perspective but also from a multiple-use standpoint--recreation, water quality, irrigation, fish and wildlife enhancement, and so on--and overall environmental effect.

Each license application must be supported by detailed data covering the full range of the project's uses and impact. As part of the licensing process, FPC seeks the views of Federal, State, and local agencies having jurisdiction over water resources development or expertise in a subject area affected by a proposed project. Moreover, construction of a hydroelectric project is often controversial, which leads to citizen group participation in the decisionmaking process and often to challenges of FPC's decisions in the courts.

FPC issues hydroelectric project licenses authorizing the construction and operation of projects for up to 50 years. When licenses expire, FPC may (1) relicense the project to either the original licensee or another party, (2) recommend Federal takeover of the project to the Congress, or (3) authorize abandonment of the project. Relicense applications are subjected to the same detailed critical analysis as proposed new projects.

Non-Federal hydroelectric projects account for about one-half of the generating capacity of all hydroelectric projects, including those built by the Army Corps of Engineers and the Bureau of Reclamation, Department of the Interior. As of June 30, 1974, 459 non-Federal hydroelectric project licenses were in effect, representing about 34

1/ Federal Water Pollution Control Act (33 U.S.C. 1151), Fish and Wildlife Coordination Act (16 U.S.C. 661), Wild and Scenic Rivers Act (16 U.S.C. 1271), National Trails System Act (16 U.S.C. 1241), Wilderness Act (16 U.S.C. 1131), Anadromous Fish Act (16 U.S.C. 756), National Environmental Policy Act (42 U.S.C. 4321), National Historic Preservation Act (16 U.S.C. 470), National Forest Multiple Use Act (16 U.S.C. 528), Water Resource Planning Act (42 U.S.C. 1962), and Bureau of Outdoor Recreation Organic Act (16 U.S.C. 460L).

million kilowatts of generating capacity. This accounts for about 8 percent of the Nation's total capacity from all sources of electric generators, including steam, nuclear, and other sources. In addition, FPC had applications on file at June 30, 1974, which, if approved, would add about 10 million kilowatts of generating capacity to the existing capacity.

CHAPTER 2

PROBLEMS IN LICENSING HYDROELECTRIC PROJECTS

The benefits and destruction potential of hydroelectric projects and their long-term impact on an area dictate a complex and lengthy process leading to an FPC decision to deny or grant a license or to permit license amendments. The complexity of the process, however, does not relieve FPC from the responsibility for licensing non-Federal hydroelectric projects and approving or denying amendments to licenses as specified by the Federal Power Act.

FPC has taken an average of more than 5 years to make the difficult decision to deny or grant a license, and it has an accumulated backlog of 500 pending applications for licenses and license amendments. It appears that FPC is not fulfilling its responsibilities as the decisionmaker. Moreover, owners have not filed applications for an additional 200 projects and FPC has not determined whether it has jurisdiction over these projects.

Most of the time required to license a project is outside FPC's control because many statutes affect the process. However, some of the time within FPC's control can be characterized as delay. To the extent that licensing hydroelectric projects offers many public benefits, such as increased electric power and recreational facilities, any unnecessary delays in project licensing adversely affect public interest.

FPC needs to reevaluate its policies and procedures to accelerate the processing of applications. Without major improvements in the time required to issue licenses, FPC has little chance to eliminate its large backlog of applications or to fully realize its objective of contributing to the best use of the Nation's water resources. In addition, FPC should determine whether any projects need to be licensed when they have been constructed but have not been determined to be under FPC jurisdiction.

GROWTH OF FPC'S BACKLOG OF APPLICATIONS

The table below shows the growth in the total backlog of applications over the past several years.

Applications Pending Before FPC

<u>Fiscal year</u>	<u>Applications pending at the beginning of the fiscal year</u>	<u>Applications received during the fiscal year</u>	<u>Applications disposed of during the fiscal year</u>	<u>Applications pending at end of the fiscal year (note a)</u>
1960	130	95	95	130
1961	130	145	121	154
1962	154	108	102	160
1963	160	167	108	219
1964	219	179	131	267
1965	267	170	149	288
1966	288	207	133	362
1967	362	208	165	405
1968	408	149	160	397
1969	396	190	163	423
1970	423	193	163	453
1971	453	145	150	448
1972	448	137	82	503
1973	503	116	90	529
1974	529	111	120	520
1975-- first half	520	48	66	502

a/ In some instances the beginning balance does not agree with the ending balance from the previous year. FPC could not determine the reason for the difference without large manpower expenditures.

Although the total number of pending applications gradually increased in the years before fiscal year 1963, the number of applications filed with FPC increased considerably during fiscal year 1963 without a corresponding increase in the number of applications disposed of for that year. This began the rapid growth in the backlog over the past 13 years.

The age of the pending applications and the slow rate at which they are acted upon are matters for concern. At the end of calendar year 1974, 502 applications had been on hand an average of 60 months. Over 100 of the 502 applications have been on hand for more than 8 years.

From July 1969 through December 1974, FPC acted on 671 applications. Most of these, however, were amendments to existing licenses or other minor matters, and only 89, or about 16 a year, were new applications or project renewals.

At this rate, FPC would take about 15 years to complete action on the existing backlog of 244 major applications or project renewals.

For internal management purposes, the Bureau of Power had estimated the time the various types of applications should take to process. The following analysis of applications backlogged at the end of calendar year 1974 shows the average time each type of application was on hand. The times far exceeded the FPC estimates.

<u>Application</u>	<u>Number</u>	<u>Average time on hand</u>	<u>FPC estimated processing time</u>
		----- (months) -----	
Preliminary permits	9	17	6 to 9
License for new projects	18	78	17 to 24
License for previously constructed projects	133	94	17 to 24
License renewals	84	45	17 to 24
License amendments	175	56	3 to 12
Miscellaneous	<u>83</u>	30	3 to 12
Total	<u>502</u>		

Although most of the applications in FPC's backlog had been on hand for a long time, most were far from final action. Thus there is little prospect for near-term improvement.

Agency comments and our evaluation

In his July 10, 1975, letter, the Chairman, FPC, said that eliminating delays in processing individual applications could only be done if FPC focused more staff resources on each case, which he claims would necessitate slighting other cases that would then move more slowly. Although FPC may have a staffing problem, we believe nevertheless that applications could be processed with greater speed with changes in FPC's method of operation.

We are encouraged by the recent trend of reducing the backlog and agree that the trend must be continued because of the need for electric generating capacity as well as the social and economic benefits that can be derived from licensed projects.

NEED TO DETERMINE EXTENT OF JURISDICTION

The applications on hand do not fully represent the potential FPC work backlog.

Many operators of hydroelectric projects built before passage of the Federal Power Act of 1935 have continued to operate without a license after passage of the act. For many years FPC did not attempt to enforce general compliance with the law because of a lack of funds and manpower.

In an opinion issued in April 1962, the Commission attempted to resolve the legal question of whether projects built before passage of the act needed to be licensed. The Commission stated that:

"any uncertainty there might have been as to the legal status of an unlicensed power project occupying a navigable stream vanished with the adoption of Section 23(b) [of the Federal Power Act] in 1935. From that point on, if not earlier, a license from this Commission was clearly mandatory."

"Unfortunately, the Commission has lacked sufficient funds and manpower to enforce general compliance with the statute, and as a result a large number of projects * * * have continued to operate without licenses."

In May and October 1962, FPC requested the voluntary cooperation of owners of unlicensed projects and asked them to come forward with license applications. FPC sent letters of inquiry to operators of about 500 major unlicensed hydroelectric projects.

In response to this appeal, FPC received a large number of applications. However, the success of the effort cannot be readily determined because many operators failed to respond or claimed FPC lacked jurisdiction over their projects. FPC did not independently determine whether the operators of these projects were subject to Federal jurisdiction.

A 1965 U.S. Supreme Court decision gave FPC jurisdiction over hydroelectric projects constructed on the nonnavigable headwaters of a navigable river. In July 1965 FPC sent letters to operators of projects that had not filed applications in response to its 1962 solicitation. FPC informed them of the requirement to obtain a license if their project was located on the nonnavigable portion of a navigable river.

In response to the 1962 and 1965 solicitations, FPC received over 300 applications covering over 400 hydroelectric projects. However, some 200 additional projects have been constructed and no determination has been made as to whether the projects are subject to Federal jurisdiction.

Recommendation to the Chairman, FPC

Because constructed hydroelectric projects should be licensed to insure that the projects are operated consistently with a plan for optimizing the use of water resources, we recommend that the Chairman, FPC, establish a program for systematically determining which of the constructed projects are subject to its licensing requirements and initiate action to have these projects licensed.

Agency comments and our evaluation

In his July 10, 1975, letter, the Chairman agreed that FPC has the responsibility to license all those hydroelectric projects within its jurisdiction and agreed to implement our recommendation.

A point of contention is the number of projects where a determination needs to be made. The Chairman maintains that "there are 143 constructed major projects (i.e., projects of more than 2,000 horsepower each)" that may be subject to FPC jurisdiction but for which applications have not been filed. We do not disagree with this figure but maintain that there are also other projects where no determination has been made and where no application has been filed. FPC should include jurisdictional determinations for all unlicensed projects in its program to systematically license all projects required by the act.

NEED FOR MORE EFFECTIVE FOLLOWUP ACTION

When the initial review of an application shows it to be deficient, FPC writes to the applicant detailing the additional information needed. The applicant is usually given 30 to 90 days to provide the information.

If an applicant fails to respond within the time allowed, the staff is supposed to issue a followup letter within 2 weeks after the deadline. When followups are made, the reporting date is automatically extended for 30 to 90 days.

As of April 5, 1974, 53 applications were on hand for which FPC had requested additional information from the applicant. Our analysis of the files on these applications

showed that, for 23 of the 53 applications, FPC received no response to its most recent request for additional information even though an average of 10 months had elapsed. For 30 of the 53 applications, the applicants had either additional time to respond or had submitted additional information which FPC had not reviewed for adequacy.

The following example of an application for a license for a constructed project illustrates the problem. On March 31, 1971, FPC suggested to an applicant that the application it had filed be revised and requested it to comment on FPC's suggestions. FPC issued a followup letter 8 months later on December 1, 1971, informing the applicant that a response to FPC's March 31 letter was required to continue processing the application. In addition, the letter requested that other exhibits and an elaboration of certain parts of the applicant's environmental impact statements be filed. Another followup letter was issued 10 months later on September 25, 1972, and again 4 months later on February 2, 1973.

The two followup letters requested that the needed information be submitted within 30 days and reminded the applicant that, if this material was not received, FPC could not process the application. As of February 28, 1975, or about 24 months after the latest deficiency letter of February 1973, we found no record of any response from the applicant. Thus, after 4 years FPC still did not have enough data to begin processing the application.

FPC's inability to obtain needed information from applicants is caused, in part, by the lack of incentives to obtain a license. By delaying the licensing process, operators of constructed projects receive many benefits. In certain cases an applicant for a new project may also benefit from delaying the process.

Constructed projects

Over 600 non-Federal hydroelectric projects that have been constructed do not have FPC licenses because the waterways on which they were constructed were originally assumed outside Federal jurisdiction.

Normally, the ability to withhold a license to operate would give FPC the leverage needed to obtain maximum public benefits from those desiring to construct a hydroelectric project. However, it loses this leverage when the project is constructed and operating before a license is sought.

From a project operator's point of view, little benefit can be gained by obtaining a license; in fact, it can be

costly. Often a project operator must make capital expenditures for fish and wildlife enhancement, public recreational facilities, and the like to bring the project up to the standards expected of a modern multipurpose water resources project. Also, FPC may, as part of the license, impose conditions that affect the way the project can be operated to generate electricity, such as requiring the maintenance of minimum water flows in the stream or river to protect fish and wildlife.

New projects

An applicant for the license of a new hydroelectric project may have incentives to delay the licensing process. If an application was filed deficient, the applicant could impede others' development of the project site and, in effect, reserve the site for the applicant's development at a future date. Another person wanting to develop the site would have to file a competing application which would then involve a lengthy process to determine which proposed development was in the public's best interest. The time and cost involved, coupled with the uncertainty as to the final outcome usually was sufficient to inhibit filing competing applications.

We identified 10 applications to construct new projects pending before FPC as of June 30, 1973, in which the applicant did not appear to seriously attempt to obtain a license. These applications had been on file with FPC an average of 11 years. According to an FPC official, the staff would have to initiate any dismissal of an application and would require FPC to issue an order.

After our discussions, the FPC staff sought dismissal of the 10 applications. As of June 30, 1974, FPC had dismissed seven applications, the applicant had withdrawn one, and the remaining two applicants had shown renewed interest in obtaining licenses.

In January 1974 FPC issued order 501 which provided that only when all required information had been submitted would FPC treat a filing as an application and process it. This action should eliminate the incentive for new project applicants to file incomplete applications. However, FPC also needs to develop a more vigorous followup system to obtain the information it needs while the application is being processed.

Need to reassess enforcement policies

The Federal Power Act appears to give FPC enforcement powers capable of dealing with applicants who seek to delay the licensing process. The act makes it unlawful for anyone to construct or operate a hydroelectric project on a waterway subject to Federal jurisdiction without an FPC-granted license, and provides monetary penalties for failure of applicants to provide information. In addition, FPC can recommend Federal takeover of a project or issue a license for a project to a different operator when a license expires. FPC has declined to use these enforcement powers.

Monetary penalties

Sections 315 and 316 of the Federal Power Act give FPC authority to (1) enforce the act's provisions and any rules, regulations, or orders included under it and (2) provide monetary penalties which can be imposed upon any person violating the act.

Section 315(a) provides, among other things, that any licensee or public utility which willfully fails, within the time prescribed by FPC to (1) comply with any FPC order, (2) file any report required under the act or any rule or regulation thereunder, of FPC, or (3) submit any information or document required by FPC in an investigation under the act will forfeit to the United States an amount not exceeding \$1,000, to be fixed by FPC after notice and opportunity for hearing.

Section 316(a) provides that any person who willfully and knowingly (1) does or causes or suffers to be done any act prohibited or declared unlawful by the act or (2) omits or fails to do any act required to be done or (3) suffers or causes such omission or failure, will be punished upon conviction by a fine of not more than \$5,000 or by imprisonment for not more than 2 years, or both.

Section 316(b) provides, among other things, that any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by FPC under authority of the act, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine not exceeding \$500 for each and every day during which such offense occurs.

We found no record of any monetary penalties being imposed on applicants for not responding to FPC requests for needed information. When we discussed with FPC officials the absence of any penalties imposed on applicants failing to respond to

requests for information, they told us that the time and funds that would be required to enforce penalties against applicants could not be justified by the results obtained and would only add more delays to the licensing process.

Other remedies

Section 23(b) of part I of the act makes it unlawful for anyone to construct or operate a hydroelectric project on a waterway subject to Federal jurisdiction without an FPC license.

Section 314(a) provides that FPC may, in its discretion, bring action in the proper U.S. district court to obtain compliance with the act whenever it appears that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of the act, or any rule, regulation, or order thereunder. Also, FPC may, at the expiration of a license, recommend Federal takeover of a project or license the project to a new licensee.

FPC officials said that court action seeking to have an unlicensed project cease operation merely has an adverse effect on the public it serves at a time when energy is in short supply. We were told that some project operators had threatened to shut down their projects if pressed by the Government to make changes they deemed unnecessary or undesirable.

The exercise of FPC's enforcement powers could be a time-consuming process. For example, although we are not aware of any instance when FPC recommended Federal takeover, such an action would require finding a Federal agency willing to operate the project; obtaining appropriated funds to compensate the existing operator; and determining, through a lengthy administrative proceeding, whether Federal takeover is in the public's interest. On the other hand, establishing a system of penalties under section 315 of the act to enforce the timely submission of needed information would not be a time-consuming procedure. On the basis of its large backlog of unresolved cases and the apparent unwillingness of some operators to voluntarily comply, it appears that FPC cannot meet its statutory responsibilities for licensing without using its enforcement powers.

Recommendations to the Chairman, FPC

FPC's inability to obtain needed information from applicants greatly contributed to delays in the licensing process. Therefore, we recommend that the Chairman, FPC, require the

Chief, Bureau of Power, to establish followup procedures and standards insuring that information needed to process applications is pursued aggressively. The procedures established should specifically eliminate automatically extending reporting deadlines when followups are made. Moreover, the procedures should provide the staff with guidelines to identify situations warranting enforcement action.

We also recommend that the Chairman reassess FPC's enforcement policies to establish a program for prosecuting those delaying the licensing program.

Agency comments and our evaluation

In commenting on our proposed report, the Chairman, FPC, agreed with the recommendations stating that FPC will "undertake to follow-up more vigorously and will give renewed consideration to the possibility of monetary penalties."

The Chairman agreed that some applicants for constructed projects have engaged in dilatory tactics and have incentives to do so. He believed it untrue for most applicants for new and unconstructed projects. We agreed that most applicants for new or unconstructed projects do not delay the licensing process but that, where applicants are purposely delaying the licensing process, the incentive to delay should be eliminated.

NEED TO ASSESS APPLICANTS FOR FPC-INCURRED COSTS

Most of the FPC-incurred costs for administering the licensing program are attributable to the application processing. However, under the Federal Power Act, applicants are exempt from the annual charges. Determining precisely how the exemption from annual charges has affected applicants' dealings with FPC and contributed to the delays in the licensing process is impossible. However, the exemption is inequitable to the licensees who must bear the costs, and it may provide added incentive to delay the licensing process to those applicants who have no real desire to obtain a license.

Section 10(e) of part I of the Federal Power Act states:

"That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; * * *."

During the past several years, the annual charges assessed licensees have averaged about \$3 million. Much of the amount was incurred in processing applications rather than administering a program involving those already licensed. Thus, licensees are required to reimburse the Government for large amounts incurred for the benefit of others.

After an applicant is awarded a license, he is assessed annually a prorated share of the FPC-incurred costs for administering part I of the act. If the license is for a project already constructed, the licensee is also assessed for the fees he should have paid in previous years. In one case the lump-sum retroactive charges amounted to more than \$80,000.

The extent that exemption from payment of annual and retroactive charges contributes to some applicants' tendency to delay the licensing process cannot be determined. However, all incentives for delay need to be eliminated if FPC is to cope with its backlog of applications.

We discussed with the Chairman in November 1974 the desirability of assessing applicants their fair share of the FPC-incurred costs. He agreed that applicants should be assessed for costs attributable to them. He also indicated that an amendment to the act to achieve this end would be included in FPC's legislative proposals submitted to the Office of Management and Budget. As of May 1975, this had not been done.

Recommendation to the Chairman, FPC

Because the exemption from annual and retroactive charges may be an added incentive to some applicants to delay the licensing process, we recommend that the Chairman, FPC, include in FPC's legislative proposals an amendment to the Federal Power Act to require:

- Applicants for hydroelectric project licenses to pay reasonable annual charges to reimburse the Government for the costs of administering the licensing program.
- Applicants for previously constructed projects to pay retroactive charges when the application is filed or as soon as determined by FPC after the application is filed. Refunds can be made in those few instances where FPC may later find that projects are not subject to Federal regulation.

Agency comments and our evaluation

The Chairman, in commenting on our report, said that the Commission is considering seeking legislation consistent with our recommendation. According to the Chairman, the Commission is hesitant because:

- The atmosphere of cooperation to develop the Nation's water power resources would not be enhanced by the potential for annual charges.
- A licensee has revenue from his licensed project to pay annual charges, whereas an applicant does not.
- It does not seem inequitable to have a licensee share the cost to process applications because the licensee had his application processed by FPC without cost.
- There is no evidence that the absence of annual charges has caused delays.
- Applicants for constructed projects would have reason to resist jurisdiction.

Although the above reasons are valid, the reasons contained in this report are also valid. Also, it is important to recognize that applicants who are earnest about obtaining a license will not be deterred by paying annual charges while their applications are being processed, because the annual charges will be minimal compared to the cost of obtaining a license.

NEED TO IMPROVE COORDINATION WITH FEDERAL AGENCIES

Obtaining comments from interested Federal agencies is often lengthy and time-consuming. Long delays sometimes occur in obtaining comments and in resolving disputes between Federal agencies and the applicant as to how to best develop the water resources affected.

Sometimes agencies make studies before commenting on a proposed development or constructed project. In one instance an agency simply did not have adequate staff to respond promptly to FPC's requests.

The procedures of FPC and the Federal agencies regularly called upon to comment on hydroelectric projects have evolved gradually. FPC has not entered into formal interagency agreements with these other agencies. Such agreements could improve the existing situation by (1) defining the scope and

character of the assistance Federal agencies give to FPC and (2) serving as a vehicle for obtaining top management's commitment to the task.

Because of the broad impact of proposed hydroelectric projects, FPC requests comments on such proposals, including the applicant's environmental report, from Federal, State, and local agencies having interests and responsibilities for resource development and conservation.

FPC typically requests comments and recommendations from 20 to 35 Federal, State, and local agencies for each application. The Federal agencies most actively involved in this work include the Corps of Engineers; the several bureaus and services of the Department of the Interior; the Forest Service, Department of Agriculture; the Department of Health, Education, and Welfare; and the Environmental Protection Agency. Other Federal agencies are consulted whenever their responsibilities are affected by or relate to a project proposal.

As of June 30, 1973, 43 applications had been circulated to various Federal agencies for comment. Often Federal agencies had not responded within FPC's 60- to 90-day time limits established.

For example:

- Interior provided comments on 29 of 34 applications FPC submitted to it after an average of 185 days. The other five applications had been outstanding for an average of 399 days as of November 20, 1973.
- The Corps of Engineers commented on 26 of 27 applications FPC submitted to it in an average of 95 days. As of November 20, 1973, the other application had been outstanding for 209 days.
- The Forest Service commented on 17 of the 25 applications FPC submitted to it after an average of 278 days. The other eight applications had been outstanding for an average of 418 days.
- The Department of Health, Education, and Welfare commented on 25 of the 28 applications FPC submitted to it after an average of 87 days. As of November 20, 1973, the other three applications had been outstanding an average of 232 days.

Although we were unable to identify the particular agencies not responding to recent requests for comments, statistics available for December 31, 1974, showed 27

applications had been with other agencies for comments an average of 12 months.

Typically, a Federal agency unable to respond within FPC's time limits would so advise FPC and seek additional time. We found no instance in which FPC denied an extension. Thereafter, the Bureau of Power staff would contact the agency, often resulting in agency requests for additional time.

Our review of FPC records and discussions with FPC and other agency officials showed that much of the time agencies needed was to conduct extensive studies of the proposed development, including onsite inspections. In one case--Interior--responses were delayed because the agency did not have adequate staff to assign to the task.

In another case an agency required additional time to respond because applicants made inadequate studies to support applications.

FPC regulations require an applicant to explain the extent to which he has coordinated his project planning with Federal and State agencies having jurisdiction over water resources development. The intent of these regulations is to eliminate informally as many disagreements as possible over how to best develop the water resources. Many applicants, however, do not coordinate their planning as intended and as a result some agencies delay preparing their responses to FPC.

For example, an FPC official cited as a major problem delays in receiving comments from Federal agencies on applicants' plans for public recreational use and protection of fish and wildlife--a major concern to the Department of the Interior.

Although FPC reviews the studies and data supporting an application for adequacy before circulating the application for comment, an official of the Bureau of Outdoor Recreation, Department of the Interior, said that many recreation plans FPC submitted to them were inadequate.

When the applicant has not coordinated with the agency the way water resources are to be used, resolving disputes is more difficult and consequently takes longer. This is unfortunate because both FPC and Bureau officials believe that disputes could be resolved satisfactorily if the Federal agency and the applicant communicated directly, particularly during the planning stage.

FPC needs to reach a better understanding on their respective roles with the Federal agencies it regularly relies on if the licensing process is to be improved.

Recommendation to the Chairman, FPC

Formal agreements could elicit specific agency commitments on their participation in the licensing process and, in so doing, speed up that process. Therefore, we recommend that the Chairman, FPC, seek to formalize other Federal agencies' roles in the licensing process by entering into interagency agreements with the regularly relied-upon agencies. As a minimum these agreements should cover the scope of the agency work, the time frame in which it is to be done, and notification procedures to be followed when comments cannot be offered promptly. To the extent practicable, the agreements should include annual assessments to enable agencies to know how many requests for comments they are apt to receive and to enable FPC to know the limits of assistance it can expect to receive, and, if necessary, develop alternative methods for processing applications to minimize delays.

Agency comments and our evaluation

In commenting on our report, the Chairman, FPC, said that there was no objection to seeking formalized agreements with those agencies which FPC primarily deals with to try to eliminate some delays in processing applications by having more definite understandings as to preferred time schedules, time extensions, and foreseen requests.

In commenting on this section of the proposed report in his July 14, 1975, letter the Deputy Assistant Secretary of the Interior said that the working relationship between FPC and the Department of the Interior had been improving in recent years and that further improvement in the timeliness of reviewing applications was expected.

The Deputy Assistant Secretary agreed that a formalized agreement might help improve the review process, but said "a more productive course of action would be for the Commission to refuse to accept any incomplete application for a license." We agree that future applications may be processed more quickly if incomplete applications were not accepted, but about 500 applications remain on hand, many of which must be coordinated among Federal agencies. The timeliness of such coordination could be enhanced by formalizing agreements.

The Department of the Interior comments said that our report exaggerated the length of time Interior takes to review applications sent to them for comment but agreed that for those projects included in our review, Interior had exceeded the scheduled response time by an average of 82 days. This does not appear to be out of line with our report, considering the scheduled response time in most cases was 90 days.

CHAPTER 3

SCOPE OF REVIEW

We made our examination of FPC's administration of the hydroelectric licensing program at FPC's and Department of the Interior's headquarters offices in Washington, D.C.

At FPC we reviewed legislation, records, regulations, policies, and procedures pertaining to the program. We reviewed the Department of the Interior's interaction with FPC in commenting on hydroelectric project applications.

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

Mr. Henry Eschwege
Director
Resources and Economic Development
Division
United States General Accounting Office
Washington, D. C. 20548

JUL 10 1975

Dear Mr. Eschwege:

We appreciate the opportunity afforded to us by your letter of June 10 to comment on the GAO draft report entitled "Problems in Licensing Hydroelectric Projects." We particularly appreciate the recognition given in the draft report to the importance of our hydroelectric licensing program, for as the report indicates, hydroelectric projects not only account for 15 percent of the total electric generating capacity of the United States, but they also provide additional social and economic benefits, such as recreation, fish and wildlife enhancement, flood control, and improved water supplies.

On balance the draft report seems to us to be both fair and accurate, but we believe it would be improved if the information set forth below were also reflected in it. The draft report discusses six major problems, with recommendations to the Chairman of the Commission following in most instances. I will discuss those six subjects in turn. There are, in addition, a few particular errors or misconceptions in the text, and these I have set forth in an attachment to this letter.

The report first points out that our backlog of hydroelectric applications has grown tremendously. It provides statistics to illustrate the point; it states that many applications are of great age; and it predicts that at the rate at which we are currently attacking the backlog, it will be 1990 before we have disposed of the 244 major applications now pending. We are unable to quarrel with any of the foregoing. We do, however, quarrel with the statement (at page 5) that "some of the time within the control of FPC can accurately be characterized as delay." While we would concede that almost

Mr. Henry Eschwege

-2-

any case pending before us could be moved forward more rapidly than has occurred, that could only be achieved if we focussed more of our Staff resources on that case, thereby necessarily slighting other cases that would then move more slowly. Differently stated, a gain in expedition in some cases could only be achieved by incurring a loss in others.

Thus, given the limitations upon us and the realities before us, we cannot realistically hope in the short term to move the bulk of our pending cases substantially faster than we are now doing. There are many reasons why this is so, the most important of which are personnel and funding constraints, added statutory responsibilities, and the increase not just of cases but of contested cases. As to the first of these, while our hydroelectric case backlog was growing from 448 to 520 between the fiscal years 1971 and 1974, the number of Staff positions devoted to hydroelectric work grew only from 194 to 200. Recent efforts to increase that figure substantially (to 299) were unsuccessful, but we may be able to achieve a total of 219 by the end of fiscal year 1976. But at the same time, the number of FPC lawyers in hydroelectric work has lately been reduced, having moved from 22 in January, of this year to 16 at this time.

Your draft report of course recognizes the added statutory responsibilities that have been placed upon us. The National Environmental Policy Act, since its enactment in 1970, has particularly increased our workload, because the preparation of environmental impact statements is a major and time-consuming task, typically requiring several months of work from 5 to 12 FPC employees, and consuming 1 to 2 years in preparation, circularization, and revision.

Finally, the number of contested hydroelectric applications has soared. At the end of 1972 we had five applications in hearing, but we had 47 in hearing at the end of 1974. Hearings often require as many as a dozen Staff witnesses, whose time is then spent in preparing their testimony and defending it in hearings.

Thus, not only have the number of applications filed with us increased, but their complexity has also increased, and at the same time our tasks with respect to them have multiplied. Notwithstanding these difficulties, your draft report correctly

Mr. Henry Eschwege

-3-

shows that our backlog of 520 pending applications as of June 30, 1974, was reduced to 503 as of December 31, 1974, and I am glad to be able to tell you that the trend has continued. The figure of 502 as of last December was further reduced to 485 as of March 31, 1975. Of course we are not satisfied with that figure, and we shall undertake diligently to perpetuate the trend, and with greater speed. In the circumstances, however, we cannot represent that the hydroelectric backlog will be eliminated at any early date.

Secondly, the report indicates that many hydroelectric projects already constructed -- perhaps as many as 200 -- may be subject to FPC jurisdiction, but that we have not yet concluded which of these are jurisdictional, and license applications have not been filed for them. As will appear below, the figure of 200 should be modified, preferably by reducing it to 143, to represent major constructed projects for which applications are not on file.

Our problem in this area, too, arises from insufficient personnel to undertake the investigations necessary to establish whether FPC jurisdiction does or does not exist. The owners of the constructed projects now in question claim, with few exceptions, that the Commission lacks jurisdiction. We can assess that claim only after rather sophisticated engineering studies and extensive historical research for each project have been completed. At the present time we have two Staff members in our Bureau of Power who are engaged in this work. To put more Staff members on this job would necessarily mean diverting them from other work, and in general we have considered applications for new projects to be the more important.

Our records show that there are 143 constructed major projects (i.e., projects of more than 2,000 horsepower each) that may be subject to our licensing jurisdiction but for which license applications have not been filed. In the case of 126 of the 143 projects, the owners contend that they will not file because they believe the Commission is without jurisdiction; in the remaining 17, the owners have stated that they will file but they have not yet done so. In addition to these 143 projects, there are 130 other constructed projects for which applications have been filed (although the applicants do not in all 130 concede jurisdiction), and of these, 12 are now at various stages of the hearing process.

Mr. Henry Eschwege

-4-

The total capacity of the 143 projects above described is 1,829,426 kilowatts. By way of comparison, there are applications pending before us for new projects that individually involve more capacity than that total for all 143. We do not suggest that these figures, which indicate that the 143 projects are small, relieve us of the responsibility of investigating them and licensing those that are within our jurisdiction. But given the number of applications for new projects with substantial new capacity (and we here note that your draft report correctly states that applications on file for new capacity as of June 30, 1974, involved 10 million kilowatts, and we further note that as of June 30, 1975, the figure has risen to 14.5 million kilowatts), we think a choice, if it must be made, should be to concentrate on new projects rather than on licensing ones that are already constructed and in operation.

I accept your recommendation that we "establish a program for systematically determining which of the constructed projects are subject to...[Commission] licensing requirements and initiate action to have these projects licensed" (page 11). But, given the circumstances I have described above, I cannot attach a priority to this program that surpasses that attached to applications for unconstructed projects.

Third, the report discusses the need for more effective follow-up action and it indicates that the addressees of Staff requests for further information often delay for long periods of time in providing it. The report further suggests that the applicants have incentives for delay: applicants for licenses for constructed projects typically anticipate that the licenses actually issued will place unwelcome responsibilities upon them; applicants for new projects can, in effect, almost preempt the site while the application is pending.

As to these incentives, we agree that applicants for licenses for constructed projects are not usually eager to receive licenses. Undoubtedly some have engaged in dilatory tactics. We do not believe this to be true, however, with respect to most applicants for new and unconstructed projects. An application for a new hydroelectric project is a massive document, often representing an investment of millions of dollars. These applications are not filed lightly, and they are customarily pursued by the applicant very vigorously. But because the licensing process is often a very long one, the applicant's circumstances obviously can change while the

Mr. Henry Eschwege

-5-

application is pending, and for this reason applications are sometimes withdrawn, and if they are not, sometimes we are required to dismiss them. The draft report indicates several recent dismissals. Since June 1974, we have dismissed five others.

As to our follow-up procedures, generally it is the Staff's policy, as the draft report states, to follow up on requests two weeks after the deadline, if applicants fail to respond. Follow-up procedures may not be consistent for all projects, however, because priorities may dictate the degree of Staff effort on any particular project. The specific instances cited in the report are for applications to license constructed projects and, as I have explained earlier, such applications have not received priority attention by the Staff. A factor not noted in the draft report is that many license applicants are small municipalities or small companies with limited resources and with an incomplete understanding of the Commission's Rules and Regulations. We think it appropriate not to hold them to a rigid procedural standard. With respect to applications to construct new projects, only two are now pending before the Commission that can be characterized as inactive or pending for an excessive period of time. Staff Counsel has moved for dismissal in one case. The other project has been pending for six years, but the Staff is assisting the applicant in resolving a number of problems associated with perfection of the application.

Fourth, the draft report refers to a need for us to reassess our enforcement policies, and it describes the sections of the Federal Power Act that provide for monetary penalties and for other remedies for violation of the Act, our Rules, Regulations, and orders (Secs. 23(b), 314-316). On the premise that our "inability...to obtain needed information from applicants contributed significantly to delays in the licensing process", the report particularly recommends that we "establish follow-up procedures and standards that will insure that information needed to process applications is pursued aggressively"; and it also recommends that I reassess our enforcement policies "with a view to establishing a program for prosecuting those delaying the licensing program" (page 18).

I accept these recommendations and will act upon them. From the comments earlier in this letter, you will understand that we would question whether applicants who do not cooperate in providing information contribute "significantly" to delays

Mr. Henry Eschwege

-6-

in the licensing process. More significant reasons for delay in my view are our personnel limitations, the growth of our statutory responsibilities, and the increasing complexity of hydroelectric cases and the consequently growing period of time required for consideration and disposition of them.

We shall, however, undertake to follow up more vigorously in connection with our requests for further information. We shall also give renewed consideration to the possibility of monetary penalties, and particularly those available under Section 315(a) of the Federal Power Act (as discussed on page 17 of the draft report). Preliminarily, I would observe with respect to the latter that the processes required might be excessive when compared to the result to be obtained. That is to say, I am initially inclined to believe that the view ascribed to us on page 16 of the report is correct:

When we discussed with FPC officials the absence of any penalties imposed on applicants failing to respond to requests for information they told us that the time and funds that would be required to enforce penalties against applicants could not be justified by the results obtained and would only add additional delays to the licensing process.

If a system of penalties were to be established under Section 315, approximately the following steps would be required for implementation: first, an order by the Commission would be required, directing that the necessary information be supplied by a date certain (thereby requiring action by the Commission, which is not now necessary because information requests are handled at the Staff level); notice would be required to be issued, and a hearing before an Administrative Law Judge, as to the willful failure to comply with the order, would follow; if willful failure were found following the hearing, then the Commission could then require the forfeiture of an amount up to \$1,000; and in the event that the forfeiture is not paid, the Department of Justice would then be asked to prosecute for the recovery of the forfeiture. Even assuming that the forfeiture is paid without recourse to the courts, the earlier steps would consume several months at best, and the manpower required would be considerable. It is in light of these circumstances that we question the usefulness of a penalty program to reduce delay.

Mr. Henry Eschwege

-7-

Fifth, the draft report recommends that legislation be sent forward to amend the Federal Power Act so that applicants for licenses would be assessed annual charges (as licensees now are) for the costs of administration of Part I of the Power Act. The draft report also states that in November 1974, the Chairman agreed that this should and would be done.

It was not then my intention to commit the Commission to particular legislation, but instead to commit myself and the Commission to the serious consideration of it. At my direction, a proposed bill to implement the recommendation contained in the draft report was drafted promptly, and it has been formally before the Commission, but we have not yet concluded that we should endorse it.

On the one hand, because much of the work done within the Commission involving Part I of the Power Act consists of processing applications for preliminary permits and licenses, it follows that a significant portion of the billing to licensees is for work not generated by the licenses held by them.

On the other hand, we believe it is desirable to provide incentives for potential applicants to come forward with plans to develop the nation's water power resources. The absence of annual charges seems to us to represent such an incentive, although doubtless not a major one. Moreover, an applicant may spend a large sum of money (in some cases, as I have noted above, several million dollars), in preparing and pursuing an application, with no assurance of receiving a license. A licensee, on the other hand, already has authorization to use a natural resource and derive revenues from it. Also, the successful licensee had its license application processed without payment of annual charges and it does not seem inequitable for that licensee to bear its proportionate share of the total cost of administering Part I.

The foregoing are among the considerations that have given the Commission pause. We are also in doubt as to whether the legislation would have the effect the draft report supposes, i.e., that of providing an incentive for applicants to refrain from delaying the licensing process. We know of no evidence that the absence of annual charges has caused delay, and we think it might contribute to even greater delay in the case of applicants for licenses for constructed projects. They would have a further reason to resist our jurisdiction.

Mr. Henry Eschwege

-8-

Finally, the draft report discusses the need for improved coordination with other Federal agencies, pointing to the long delays we sometimes experience in receiving their comments on licensing proposals and environmental impact statements. It recommends that the Commission enter into formal agreements with other agencies so as to speed up the licensing process. The report suggests that these agreements should cover "the scope of the work to be performed by the agency, the timeframe in which it is to be accomplished, and notification procedures to be followed when comments cannot be offered in a timely manner" (page 25).

We would have no objection to such agreements, and we will in fact discuss the possibility with the agencies with which we principally deal, but we question whether they would serve to expedite appreciably the licensing process.

You will understand that in dealing with other Federal agencies, and in requesting their comments, we customarily are not in the usual sense requesting their services. Rather, we are in most cases asking them to perform duties that have been conferred upon them either by Federal statutes, or by regulations required to be issued pursuant to Federal statutes. The Corps of Engineers, for example, is called upon by Section 4(e) of the Federal Power Act to approve project plans affecting navigable waters. When Indian reservations or lands of the United States are to be occupied by a project, then under Section 4(e) the Commission must consult with the responsible Department, commonly the Department of the Interior (and more particularly the Bureau of Land Management or the Bureau of Indian Affairs) or the Department of Agriculture (particularly the Forest Service). Under Section 18 of the Power Act, the Coast Guard, the Interior Department, and the Department of Commerce must be afforded an opportunity to offer recommendations on certain projects. In addition, numerous other statutes require that we consult with various Federal and State agencies on matters involving, for example, fish and wildlife (P.L. 85-624 and P.L. 93-205), water quality (P.L. 92-500), historic and cultural sites (P.L. 89-665), and outdoor recreation (P.L. 88-29), as they may be affected by our licensing actions. The National Environmental Policy Act requires, of course, our consultation with many agencies at all levels of government on each major Federal action significantly affecting the quality of the human environment. These are only some of the examples of the requirements that the law imposes for our consultation with other agencies.

Mr. Henry Eschwege

-9-

In these circumstances, in our view we cannot determine the scope or timing of the action to be taken by the other agencies -- although we can, as we do, importune and cajole. We must defer to their judgments as to what is required to permit them to reach their own conclusions. That is not to say, however, that we cannot eliminate some lags by having more definite understandings as to our preferred time schedules, extensions of time, and foreseen FPC requests. We shall attempt to do so.

We are glad to have been asked to comment on the draft report. We have found it a helpful document, and we look forward to having the final report.

Sincerely yours,

A handwritten signature in black ink that reads "John N. Nassikas". The signature is written in a cursive style with a large initial "J".

John N. Nassikas
Chairman



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 14 1975

Dear Mr. Staats:

The Department of the Interior has completed its review of the draft report to the Congress of the United States entitled "Problems in Licensing Hydroelectric Projects - Federal Power Commission."

The report evaluates the licensing procedures of the Federal Power Commission (FPC) and recommends measures designed to improve the efficiency of licensing hydroelectric projects. This Department took special interest in the evaluation and recommendations in the section of the report dealing with improving coordination among Federal agencies. We have two observations that should be considered in finalizing this section of the report:

- a. We believe that an application for a license and the supporting documents should be substantially completed before they are submitted to the Federal Power Commission for action. During the timeframe used for the analysis in the draft report many applicants submitted supporting documents that were not properly coordinated with the appropriate Federal, State and local interests and coordination began after the license application was submitted. This was especially true for two exhibits to the license application of interest to this Department, Exhibit R and Exhibit S, the recreation and fish and wildlife plans respectively. This breakdown in the applicants planning process certainly contributed to the delay in developing a satisfactory license application. The problem has been recognized and is being resolved by the Commission as they are insisting that the applicant complete his coordination before the license is processed (see enclosures 1 and 2). Your draft report indicates that a memorandum of agreement between the Commission and other Federal agencies would lead to a more timely review. While this agreement might help improve the review process we believe a more productive course of action would be for the Commission to refuse to accept any incomplete application for a license.



- b. We believe that the report exaggerates Interior's timeliness in reviewing FPC license applications. Of particular interest was the finding that Interior averaged 185 days to comment on a license application and that as of November 20, 1973, Interior had five license applications where the review time was 399 days and comments still outstanding. We have reviewed the basic material used by your staff in this evaluation and do not agree with the results. For example, our analysis of the array of projects used in your study indicates that our responses were forwarded to the Commission 82 days after the scheduled response date. For all projects in 1973, the average response time exceeded that which was scheduled for a license review by 37 days. In 1974 we further reduced the slippage in our scheduled response date to 27 days. If this information you have developed for Interior reviews is essential to your study findings we suggest a meeting with your staff to reconcile our differences.

In summary, we believe that our working relationship with the Federal Power Commission has been improving in recent years, and considering the action of the Commission to improve the quality of license applications, we expect to further improve the timeliness of our review of licensed projects.

Thank you for the opportunity to review this draft report.

Sincerely yours,



Deputy Assistant Secretary of the Interior

Mr. Elmer B. Staats
General Accounting Office
Washington, D. C. 20548

PRINCIPAL OFFICIALS OF FPC AND
THE DEPARTMENT OF THE INTERIOR RESPONSIBLE
FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>FPC</u>		
CHAIRMAN:		
John N. Nassikas	Aug. 1969	Present
EXECUTIVE DIRECTOR:		
Joseph N. DiMarino (acting)	Apr. 1975	Present
Webster P. Maxson	Oct. 1969	Mar. 1975
GENERAL COUNSEL:		
Drexel D. Journey	Dec. 1974	Present
Drexel D. Journey (acting)	Sept. 1974	Dec. 1974
Leo E. Forquer	Nov. 1972	Sept. 1974
CHIEF, BUREAU OF POWER:		
T. A. Phillips	Nov. 1970	Present

DEPARTMENT OF THE INTERIOR

SECRETARY OF THE INTERIOR:		
Kent Frizzell (acting)	July 1975	Present
Stanley K. Hathaway	June 1975	July 1975
Kent Frizzell (acting)	May 1975	June 1975
Rogers C. B. Morton	Jan. 1971	May 1975