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HYDRO

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CLIENT ALERT: FERC ISSUES ORDER ELIMINATING FORM 80 RECREATION REPORT FOR HYDRO LICENSEES AND REVISING PUBLIC NOTICE AND SIGNAGE OBLIGATIONS

FERC issued a Final Rule¹ on December 20, 2018, eliminating the Licensed Hydropower Development Recreation Report (Form 80) that hydro licensees have heretofore been required to submit every six years, and revising requirements related to public notice and signage. The Final Rule will become effective on March 28, 2019.²

Form 80

Current Requirement

Form 80 is a “report on the use and development of recreational facilities at each development contained within a licensed hydropower project.”³ Section 8.11 of FERC’s regulations (18 C.F.R. § 8.11) requires licensees, other than those FERC has exempted from the requirement, to file Form 80 “on April 1 of every sixth year, documenting data compiled during the previous calendar year.”⁴

Final Rule

The Final Rule eliminates Form 80,⁵ and clarifies that “unless recreation use reporting is required by a license condition—including any approved recreation plan or report or mandatory agency condition—licensees will no longer have any specific recreation use reporting obligation once the Form 80 is eliminated.”⁶

In its comments on the Notice of Proposed Rulemaking that preceded the Final Rule, the Forest Service—which has the authority to include mandatory conditions in licenses for projects that use Forest Service land—indicated that it uses the Form 80 data in formulating its mandatory conditions, and that if the form is eliminated, it may use its mandatory conditioning authority to require recreation monitoring.⁷ The Commission acknowledges the Forest Service’s ability to do so, and further states that it “anticipate[s] that Federal land management agencies

¹ *Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects*, Order No. 852, 165 FERC ¶ 61,256 (2018) (“Final Rule”), <https://www.ferc.gov/whats-new/comm-meet/2018/122018/H-1.pdf>.

² 83 Fed. Reg. 67,060, 67,060 (Dec. 28, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-12-28/pdf/2018-28250.pdf>.

³ Final Rule P 6.

⁴ *Id.*

⁵ *Id.* P 1.

⁶ *Id.* P 20.

⁷ *Id.* PP 22-24.

will . . . continue to provide input on the appropriateness of recreation monitoring during individual licensing proceedings.”⁸

Project Information Availability

Current Requirement

Licensees are currently required to “publish notice in a local newspaper once each week for four weeks of any recreation-related license conditions that the Commission may designate in an order issuing or amending a license”⁹ and to post signs identifying “the project name, project owner, project number, directions to project areas available for public recreation, permissible times and activities, and other regulations regarding recreation use,” as well as “notice that project recreation facilities are open to all members of the public without discrimination.”¹⁰ Finally, licensees must keep available for public reference in their “local offices the Commission-approved recreation plan and the entire license order indexed for easy reference to the recreation-related license conditions.”¹¹

Final Rule

In the Final Rule, FERC retains the requirements described above with respect to newspaper publication of recreation-related license conditions and availability of the license in the licensee’s local offices, but adds an additional requirement that the same information be published on any existing project website.¹² FERC does *not* require all licensees to create project websites for this purpose,¹³ and clarifies that a temporary website developed specifically for a relicensing proceeding does not constitute a “project website” for purposes of this requirement.¹⁴

The Final Rule reduces the amount of information that must be displayed on project signs, now requiring only “the project name and number, and a statement that the project is licensed by the Commission; the licensee name and contact information for obtaining additional project recreation information; and permissible times and activities.”¹⁵

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⁸ *Id.* P 26.

⁹ *Id.* P 34.

¹⁰ *Id.* P 43.

¹¹ *Id.*

¹² *Id.* PP 35, 37, 46-47.

¹³ *Id.* P 37.

¹⁴ *Id.* P 42.

¹⁵ *Id.* PP 44-45.