

Navigating the FERC Relicensing Process

Introduction: Understanding the Process and FERC Relicensing Letter

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Introduction to the FERC Licensing Process

As the owner of a hydroelectric facility*, chances are that you know about the technical aspects of how a plant produces electricity and what it takes to keep it running. However, are you as familiar with the regulatory oversight required for your dam?

The following portion of Kleinschmidt's forthcoming guidebook, *Best Practices for Navigating the Hydro Relicensing Process*, kicks off a series of articles aimed at helping owners/investors to understand key regulatory processes. This article provides an overview of Federal Energy Regulatory Commission (FERC) licensing requirements and the starting point for relicensing: receipt of the FERC letter.

FERC Jurisdiction and Exemptions

Other than a nuclear power plant, a hydro facility is regulated by some of the most extensive regulations for any type of non-federal facility, and there are numerous regulatory agencies that may have oversight for a hydro project.

Foremost is FERC, which is responsible for ensuring that all non-federal U.S. hydro facilities provide clean, renewable energy; protect fish and wildlife resources; and provide recreation, water supply, and flood control. Under the [Federal Power Act](#) (FPA), FERC has jurisdiction over all facilities that meet one of four criteria:

- Is located on a navigable waterway of the United States
- Occupies U.S. lands
- Uses surplus water or water power from a U.S. government dam
- Is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce

If your hydro facility meets one of four broad criteria, it falls under FERC jurisdiction and likely has an exemption or license to operate. FERC issues licenses for a 30- to 50-year period, and the relicensing process takes approximately 5 to 7 years to complete.

If your facility falls under FERC jurisdiction, it likely has an exemption or a license to operate. Exemption means that for purposes of obtaining a license to operate, the project may not need to go through all processes and procedures necessary for licensing. Exemptions come in two models:

1. Small hydropower projects (10 megawatts or less) that will be built at an existing dam, or projects that use a natural water feature for head or an existing small project that proposes to increase capacity
2. Conduit exemptions that would be issued for constructing a hydropower project on an existing conduit (e.g., irrigation canal)

In general, exemptions are for the life of a project—assuming there are no major changes to operations or facilities. New exemptions are subject to operating conditions imposed by state and federal fish and wildlife agencies and may also be subject to other parts of FERC jurisdiction, such as public safety.

*According to FEMA, most dams in the U.S. are privately owned. In fact, our founder, the late R. Stevens Kleinschmidt, leased a dam to supplement his retirement savings.

FERC Licensing and Review by Other Federal Agencies

If you do not have or are not seeking an exemption, your project is subject to licensing by FERC.

By law, FERC issues licenses for a 30- to 50-year period*. So, even if your project has operated successfully for up to 50 years, operated in the public interest, and provided all the benefits of non-emitting renewable energy (as well as the ancillary benefits of recreation, water supply, flood protection, protection of wildlife resources), you still must obtain a new license to continue providing those benefits.

Even if your project has operated successfully for up to 50 years, operated in the public interest, and provided all the benefits of non-emitting renewable energy, you still must obtain a new license to continue providing those benefits.

Licensing for a new (or original) facility and relicensing an existing facility includes reviews by various federal agencies:

- U.S. Fish and Wildlife Service
- National Marine Fishery Service
- U.S. Forest Service
- U.S. Army Corps of Engineers

State fish and wildlife agencies and state agencies that regulate water quality will also participate. In addition, many Native American tribes and interests, as well as state and federal agencies regulating cultural and historic resources, will get involved.

Contents of the FERC Relicensing Letter

The starting point of the FERC relicensing process is when you receive a letter from FERC approximately seven years before your project's license ends.

The letter, titled "Notice of License Expiration and Request for Information Regarding Process Selection," identifies that your project is up for relicense and you (the licensee) should begin to prepare for the relicensing process. The letter explains that you should contact FERC in the next 12 to 18 months with your decision to file an application for renewal, called a Notice of Intent (NOI).

If you will not be renewing your license, you can apply to surrender your project. Since FERC's goal is to ensure that your project is safe to the surrounding area, it is never advisable to abandon a project, as this may be harmful to nearby populations or the environment.

If you plan to file a NOI, you must also provide a Pre-Application Document (PAD) to FERC and any other appropriate entities that may be interested in your project, such as:

- Federal, state, or interstate agencies
- Native American tribes
- Local governments
- Members of the public

*FERC is currently [reviewing their criteria](#) for setting the term of a license.

The PAD contains your relicensing process plan and schedule, your project location, your project layout, a description of the surrounding environment and any resource impacts, a list of relevant issues and environmental studies, and a list of contacts.

As shown in Step 1 of *Figure 1*, which highlights the five primary steps of the FERC relicensing process, the letter also explains your three licensing process options: integrated (ILP), alternative (ALP), and traditional (TLP).

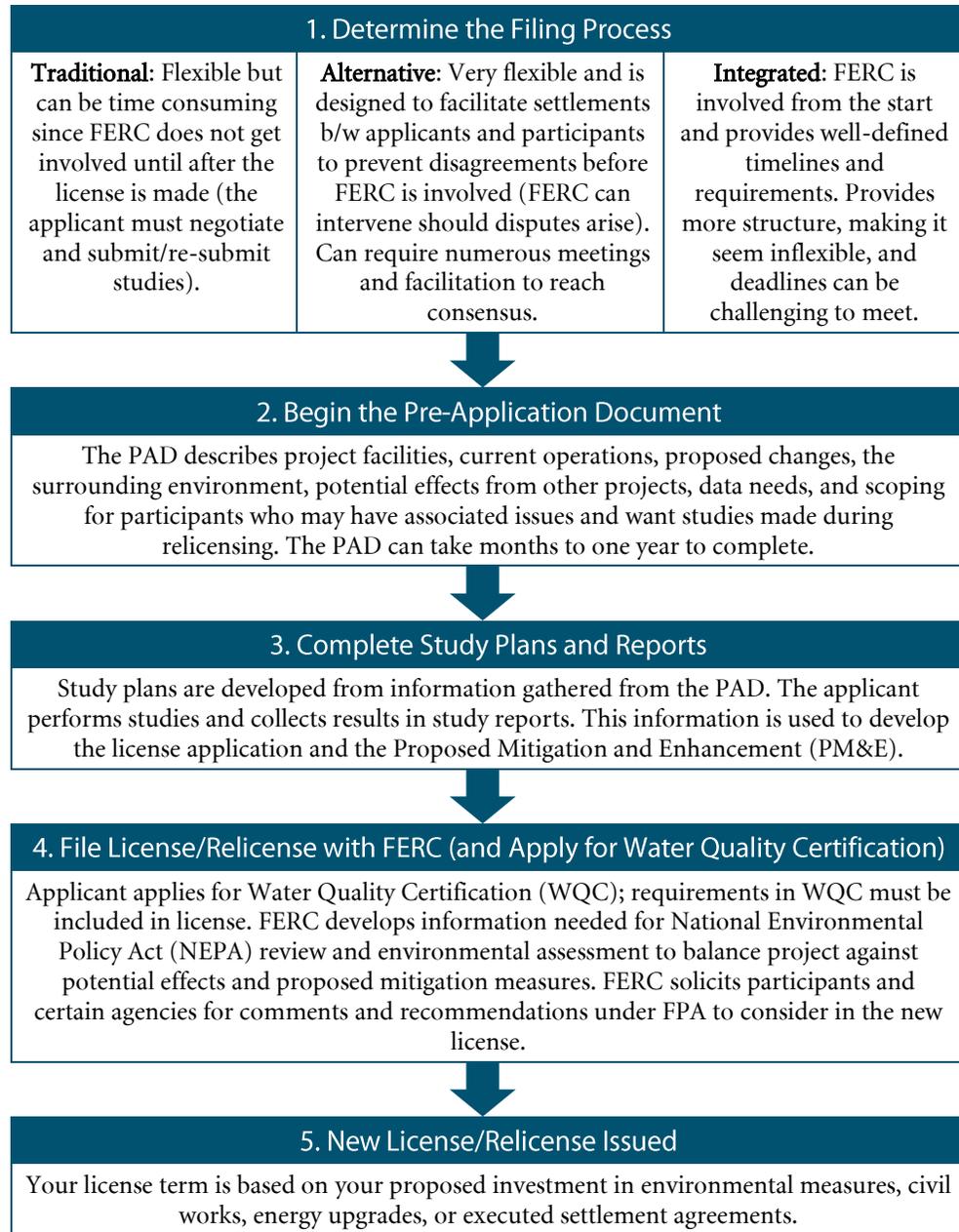


Figure 1. Five Steps of the FERC Relicensing Process

Relicensing Process Steps and Article Structures

Regardless of which of the three options you choose, the FERC relicensing process provides a transparent, open, and collaborative experience for you and your stakeholders.

To help ensure project success, we have developed articles that provide clarity and best practices for each of the five relicensing process steps shown in *Figure 1*. The articles will break down the responsibilities associated with each process step, and they will include a running checklist of key actions for completion.

Ultimately, our goal is to ensure that you are sufficiently prepared to complete your project's lengthy relicensing journey, resulting in licensure for a facility that is safe for the environment and nearby people, achieved by careful planning and effective collaboration.

Stay tuned for our next series article, which will discuss Step 1 of the FERC relicensing process. It will detail each of the three relicensing process options, including the benefits, drawbacks, and key considerations of each.

To ensure your success, this series of articles will clarify and provide best practices for the five relicensing process steps. They will break down the responsibilities associated with each and include a running checklist of key actions for completion.

About Kleinschmidt Associates

Kleinschmidt has completed hundreds of FERC licensing, relicensing, and amendment projects for small hydro, large hydro, and pumped storage projects across North America. From the traditional, three-stage consultation process to applicant-prepared environmental assessments and FERC's current ILP, Kleinschmidt helps owners and investors to successfully license or relicense their hydroelectric projects.

Learn more at www.kleinschmidtgroup.com.

Note: The purpose of this document is to provide general information in layman's terms. It is not intended as legal advice, nor is it meant to be exhaustive of hydro facility licensing regulations. This document is property of Kleinschmidt Associates. No replication of its content is permitted without express permission from Kleinschmidt.