



Pend Oreille County Public Utility District

Administrative Offices – P.O. Box 190 • Newport, WA 99156 • (509) 447-3137 • FAX (509) 447-5824
Box Canyon Hydro Project – P.O. Box 547 • Ione, WA 99139 • (509) 446-3137 • FAX (509) 447-6790

Testimony Before the Committee on Resources, US House of Representatives The Role of NEPA in the States of Washington, Oregon, Idaho, Montana and Alaska By Bob Geddes, Public Utility District No. 1 of Pend Oreille County

Background:

NEPA is a foundational national environmental statute applicable to nearly all actions taken or approved by federal agencies. NEPA requires that before a federal agency takes a major action it must disclose the environmental impact of the action and evaluate alternatives that would have fewer environmental costs. If the action may have a significant impact on the quality of the human environment, the agency must prepare a detailed environmental impact statement (EIS) in accordance with CEQ regulations. If an EIS is not required, an agency must still prepare an environmental assessment (EA) to support a finding of no significant impact (FONSI).

In relation to a hydroelectric project, obtaining a new license is generally considered to involve the potential for significant environmental impacts, and EIS or EA is typically required. After an agency issues a final EIS or EA, it then issues a “record of decision” (ROD).

Even though not a requirement of NEPA, several agencies have policies that allow an administrative appeal process if a NEPA review is triggered.

Under Section 4(e) of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) is required to accept any license condition issued by a conditioning agency deemed necessary for protection of federal lands. In the case of Box Canyon Dam relicensing those agencies are the Dept. of Interior and the USDA Forest Service.

The very nature of obtaining a new license and the submittal of conditions by the agencies triggers the NEPA process.

In 2003, the USDA Forest Service (Forest Service) changed its policy with respect to NEPA compliance in the hydroelectric relicensing process. Currently, the Forest Service maintains that it is no longer required to prepare its own NEPA document and issue a record of decision because they rely on the FERC EIS.

Their reasoning was that the development of Federal Power Act Section 4(e) conditions does not constitute an independent agency action because the NEPA action regarding licensing of a hydroelectric project is FERC’s responsibility.

The Department of Interior (Interior) has never completed a NEPA document when filing their conditions under the FPA in a hydroelectric license proceeding. They, too, rely on FERC’s EIS.

Our Experience: The Box Canyon Hydroelectric Case

In the FERC relicensing process for the Box Canyon Hydroelectric Project, Interior filed with FERC their final conditions for the project on May 2004 under the FPA Section 4(e).

FERC followed with issuing a final EIS in September 2004.

The Forest Service filed their final conditions January 2005, after the final EIS was completed.

Interestingly, FERC's EIS on the Box Canyon hydroelectric project did not endorse many of the agencies conditions, thus the conditions remain unsupported by a record of decision.

Under CEQ regulations, as alternative to issuing its own NEPA document, the agencies can review and adopt FERC's EIS or become a "cooperating agency" in connection with the preparation of the FERC EIS.

However, there is no indication that they adopted FERC's EIS. In fact, the FS and Interior filed comments noting that they do not support the findings of FERC's EIS.

Also, they are not a cooperating agency; they are party/intervener and FERC has specifically rejected the proposition that an intervener can also act as a cooperating agency because such a stance would violate the Administrative Procedures Act (APA).

Finally, in the conditions filed by the agencies, there is a requirement that a NEPA document be completed for the subsequent implementation of each condition when it involves federal lands. This is in addition to the NEPA process that FERC would conduct prior to issuing the new license or approving the implementation plan under the new license. .

FERC's responsibility under the FPA also includes a developmental analysis, meaning they are required to review not only the environmental issues but also operational costs and socio-economical issues. FERC's EIS did not include the District's rate information and impacts on rates that were shown in a socio- economical report done by a specialist in the field of economics.

Conclusion: What's Broken? Can it be Fix?

- The FS and Interior rely on FERC's NEPA document for their actions but FERC's record of decision does not support their final conditions. There is no accountability and the only recourse for the licensee is court. **Was that what was intended by Congress in adopting the NEPA process?**
- There is a lack of proper NEPA process upfront from the agencies when filing their conditions for the new license but a duplication of the NEPA review afterwards, when the condition is implemented. **Is there any consistency in the NEPA process?**

- Socio- economical consequences of the agency conditions are not a factor in the NEPA process. In our case, we have shown that the implications are enormous on power rates, loss of jobs and overall impact on the community. **Socio-economic impacts should be integrated into the NEPA process.**
- What is needed is better coordination between agencies. When one federal agency relies on another agency's NEPA document, then they should be bound to support the results, or at a minimum, prepare a separate NEPA document to support any decision in conflict with the other agency's conclusions. Clearly, the agencies should be working together for a better decision and not against each other and leave the public left empty handed.
- One coordinated NEPA review by all involved agencies should be enough.
- Socio- economic impacts need to be considered as part of the NEPA analysis.

Attachment A Letter to Department of Interior to Prepare a NEPA Document excerpts Pg. 1-5.
Appendix B Letter to Department of Interior to Prepare a NEPA Document excerpts Pg. 1-4.