

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Safety of Water Power Projects and Project Works))))	Docket No. RM20-9-000
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**COMMENTS OF
WISCONSIN POWER AND LIGHT COMPANY**

Wisconsin Power and Light Company (“WPL”), a subsidiary of Alliant Energy Corporate Services, Inc. (“AECS”), hereby submits these comments in response to the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“FERC” or the “Commission”) in the above-captioned proceeding on July 16, 2020.¹ While WPL supports the Commission’s promotion of “the safe operation, effective maintenance, and efficient repair of licensed hydropower projects,”² WPL is concerned that the Commission’s proposal to amend the definition of qualified independent consultants is overly burdensome for hydropower project owners, independent consultants, and FERC Staff. Indeed, the proposal may negatively impact public safety as owners and consultants seek compliance. WPL requests that the Commission take these comments into account before adopting changes in a Final Rule.

I. COMMUNICATIONS

WPL requests that all communications, correspondence, documents, and other materials related to this proceeding be addressed to the following persons:

¹ *Notice of Proposed Rulemaking regarding Safety of Water Power Projects and Project Works*, 172 FERC ¶ 61,061 (July 16, 2020) (“Hydro Safety NOPR”).

² *Id.* at p.i, Summary.

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II. BACKGROUND

Since 1965, the Commission has promulgated regulations that, in part, “require licensees to provide complete safety inspections of licensed water power project works by independent consultants at five-year intervals, or more frequently if necessary.”³ In 1981, the Commission consolidated and revised its existing project safety inspection regulations.⁴ The Commission has not revised or amended its regulations since 1981, but it has provided periodic updates to its Engineering Guidelines for the Evaluation of Hydropower Projects (“Engineering Guidelines”).⁵

On February 7, 2017, the Oroville Dam in California experienced water levels that flowed down the emergency spillway and caused extensive damage and erosion to the Oroville Dam’s main spillway and emergency spillway (“the Oroville Spillway Incident”). Nearby communities were evacuated. The Oroville Spillway Incident led FERC to convene a Report⁶ that documented several shortcomings of the Commission’s dam safety program as it was implemented at the

³ Hydro Safety NOPR at P 5 citing *Hydroelectric Licensed Projects-Inspections to Insure Safe Operation*, Order No. 315, 34 FPC 1551 (1965).

⁴ *Water Power Projects and Project Works Safety*, Order No. 122, FERC Stats. & Regs. ¶ 30,225 (1981) (cross-referenced at 14 FERC ¶ 61,041).

⁵ The Commission’s Office of Energy Projects, Division of Dam Safety and Inspections Engineering Guidelines are accessible via the Commission’s website at <https://www.ferc.gov/industries-data/hydropower/dam-safety-andinspections/engineering-guidelines-evaluation-hydropower>.

⁶ See *FERC After Action Panel Assessment of Oroville Spillway Incident Causes and Recommendations to Improve Effectiveness of the FERC Dam Safety Program* (issued November 23, 2018), and accessible via <https://www.ferc.gov/sites/default/files/2020-04/reportdamsafety.pdf>.

Oroville Dam. As a result of that Report, and in light of other failures at Dams in Michigan,⁷ the Commission proposes, under its authority provided by section 10(c) of the Federal Power Act, to revise its part 12 regulations to codify existing dam safety guidance that “protect life, health, and property,”⁸ and make other changes that seek to enhance the public safety of hydropower facilities.

The Commission requested the comments in response to the Hydro Safety NOPR be provided within sixty days of publication in the Federal Register (i.e. September 22, 2020).

III. COMMENTS

A. Comments of the National Hydropower Association (“NHA”)

As an initial matter, Alliant Energy supports the comments NHA submitted in this proceeding.⁹ The NHA Comments provide a broad overview of the challenges dam owners face should the Commission adopt the proposed changes to its regulations governing hydropower facilities and associated Engineering Guidelines, while suggesting changes or requesting additional clarity to the proposals before adoption. WPL recognizes the Commission’s efforts to enhance public safety; however, it supports the NHA Comments’ suggestions for further revision – especially as it relates to identifying and contracting with qualified independent consultants – as some may be overly burdensome to project owners, and, in fact, be contradictory to protecting public safety. WPL requests that the Commission consider the entirety of the NHA Comments,

⁷ Recently, the failures of the Edenville and Sanford Dams in Michigan resulted in substantial hardship and economic damage; however, those failures had no impact on the instant proceeding.

⁸ 18 U.S.C. 803(c).

⁹ See *Comments of the National Hydropower Association*, submitted in Docket Nos. AD20-20-000, AD20-21-000, AD20-22-000, AD20-23-000, and AD20-24-000 (September 14, 2020) (collectively, the “NHA Comments”).

specifically those comments made in response to the Part 12D Program Engineering Guidelines,¹⁰ before issuing a Final Rule.

B. Proposed Definition of an “Independent Consultant”

To assist in the Commission’s analysis of the impact of some of its proposed modifications to its dam safety regulations, WPL provides the following example as to how the Commission’s proposal to revise the requirements of an independent consultant would impact WPL and its operations at its Prairie Du Sac Hydroelectric Project (“PDS Facility”).

1. Commission Proposal

In the Hydropower NOPR, the Commission proposes to amend its definition of “independent consultant” to include three separate requirements: 1) the independent consultant is not an employee of the licensee or its affiliates; 2) the independent consultant has not been an employee of the licensee or its affiliates within two years prior to performing an inspection; and, 3) the independent consultant *has not been an agent acting on behalf of the licensee or its affiliates* before performing the services associated with an inspection.¹¹ The Commission states that the purpose of these requirements is to “ensur[e] that independent consultants are not responsible for reviewing work products to which they contributed substantially.”¹²

¹⁰ See *Engineering Guidelines for the Evaluation of Hydropower Projects, Chapter 16 – Part 12D Program*, Draft for Public Comment, published July 16, 2020, on the Commission’s website. See, specifically, NHA Comments, filed in Docket No. AD20-21-000, section IV.B.

¹¹ Hydropower NOPR at P 26 (emphasis added).

¹² *Id.*

2. WPL Response

WPL owns and operates the PDS Facility, FERC Project No. 11162, located on the Wisconsin River in Sauk and Columbia Counties, Wisconsin. The PDS Facility is over one hundred years old. As dam property owners, WPL is committed to maintaining the dam and its surrounding areas in a way that is safe, efficient, and complies with state and federal regulations. As such, WPL undertakes many maintenance and large capital project investments to keep the facility operating efficiently and safely. For example, over the past five years, WPL has engaged five highly qualified Midwest engineering consulting firms as well as a three-person Board of Consultants to complete various projects at the PDS Facility. These projects included typical Dam Safety Surveillance and Monitoring Plans and Reports (“DSSMPs/DSSMRs”), Supporting Technical Information Documents (“STIDs”), and Part 12 Safety Inspections; as well as more specialized projects including License Amendments, a Powerhouse Tailrace Rehabilitation, a Spillway Upstream Pier Rehabilitation, and a Spillway Foundation Remediation. These projects alone utilized five different independent consulting firms to ensure that the projects were completed safely and cost-effectively. Because these projects required WPL to employ a variety of qualified contractors and consultants, the PDS Facility has already taxed a majority of Midwest engineering firms that employ ICs and with which WPL enjoys a good working relationship.

WPL is concerned that its commitment to dam safety and efficient operations will place it at a disadvantage should the Commission adopt the proposed IC requirements. Specifically, the Commission’s proposed revisions to the requirements for an independent consultant to conduct Part 12 safety assessments will be particularly burdensome to WPL. The proposed guidelines restricting the use of ICs is burdensome and does not provide additional value to the

PDS Facility nor WPL's customers. WPL encourages the Commission to not pursue a one-size-fits-all requirement, as proposed, because it will unnecessarily burden small dam owners like WPL.

The pool of available independent consultants is already limited by FERC's existing experience requirements, and those located in a specific region. The added proposed requirements will require *more* independent consultants to complete the necessary assessments and analyses, shrinking an already-small pool of available independent consultants even further. Another concern is that the proposed rule may also limit the number of consultants and firms available to perform critical engineering design work, if some consultants and firms elect to restrict themselves to no longer take on certain design work for project owners in order to not preclude themselves for future Part 12 work. Finally, the proposed rule could place even greater burden on smaller project owners, such as WPL, whose resources are more limited in securing and scheduling timely Part 12 assessments.

The Commission's proposed requirements for independent consultants who complete future Part 12 assessments would be overly burdensome to WPL. Likely, WPL would be required to seek consultants from outside the Midwest, which would add costs to the inspections. Additionally, working with consultants that *are not* familiar with the PDS Facility is another risk WPL will incur by being forced to utilize consultants unfamiliar with the workings of the dam. WPL argues, contrary to the suggestions of the Commission, that an independent consultant's past experience related to a project could, in fact, make the individual *more* qualified to complete a Part 12 assessment.

In sum, WPL is concerned that the Commission's proposed requirements would

essentially penalize WPL for being a prudent dam owner and steward of public safety. Therefore, WPL requests that the Commission reconsider the three requirements it proposes for independent consultants who conduct Part 12D assessments so that a reasonably-sized pool of independent consultants can be accessed when needed.

IV. CONCLUSION

In closing, Alliant Energy respectfully requests that the Commission take these comments, as well as those submitted by the NHA, into consideration before adopting a Final Rule in this proceeding.

Respectfully submitted,

For Alliant Energy Corporate Services, Inc.

/s/ Cortlandt C. Choate, Jr.

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September 22, 2020

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have, on this 22nd day of September 2020, caused a copy of the foregoing Comments of Alliant Energy Corporate Services, Inc. to be sent to each person designated on the official service list compiled by the Secretary of the Commission in Docket No. RM20-9-000.

/s/ Cortlandt C. Choate, Jr.

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