

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections - Atlanta Regional Office
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April 19, 2021

Addressee List Enclosed

Subject: Annual Letter – Reminder of Responsibilities

Dear Licensee/Exemptee:

This letter is intended to remind you of your obligations and responsibilities as the holder of a license or exemption from the Federal Energy Regulatory Commission (FERC) for a hydropower facility. This letter contains new information that may impact your project; although we acknowledge that it also contains many of the same reminders each year. These reminders focus on some of the most important aspects of our dam safety program that require your attention. We strongly encourage you to read it carefully in its entirety, including the enclosures and the referenced FERC website links, in order to understand your dam safety, public safety, and security responsibilities.

This letter will be sent to you each year primarily by email. Please reply to me by email and copy the FERC project engineer(s) assigned to your project(s) to acknowledge you have received and read this letter.

We were unable to perform all our normal dam safety inspections in 2020 due to the Covid-19 Pandemic. During this time, we asked many of our licensees to respond to questionnaires and/or we relied upon licensees and exemptees to perform their own dam safety inspections. For 2021, we are evaluating which projects will be inspected by each Regional Office once Commission staff can resume normal travel. As of the date of this letter, we do not have a schedule for returning to normal operations. Please continue to reach out to your Regional Engineer with any questions about dam safety inspections and/or other dam safety matters. Below, we provide information on how to submit documents and filings with the Commission and with the Regional Offices during this time (*See How to Transmit Dam Safety and Public Safety Documents to the Commission*). We wish to thank all our licensees and exemptees for working with us during this difficult time.

Part 12 Regulation Update. On July 16, 2020, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to amend 18 CFR Part 12 governing the safety of hydropower projects licensed by the Commission under the Federal Power Act. These regulations are intended to promote the safe operation, effective maintenance, and efficient repair of licensed hydropower projects and project works to ensure the protection of life, health, and property in surrounding communities. In general, the NOPR proposes to revise the regulations to: incorporate two tiers of project safety inspections by independent consultants, define the requirements of an independent consultant team, codify existing guidance requiring certain licensees to develop an Owner’s Dam Safety Program and a Public Safety Plan, update existing regulations related to public safety incident reporting, and make various minor revisions. In addition to the proposed regulation changes, the Commission also issued four proposed draft chapters to our Engineering Guidelines. The chapters include:

- Chapter 15 – Supporting Technical Information Document
- Chapter 16 – Part 12D Program
- Chapter 17 – Potential Failure Mode Analysis
- Chapter 18 - Level 2 Risk Analysis

A 60-day public comment period was opened to receive comments on the proposed regulation changes and proposed new Engineering Guideline chapters. The public comment period closed in late September 2020.

The proposed regulation revisions are included in the NOPR as a rulemaking (RM) docket (RM20-9) and are available on FERC’s eLibrary system at www.ferc.gov. Each of the draft chapters of the Engineering Guidelines are also available on eLibrary under separate Advisory Docket (AD) notices (AD20-20 through AD20-23). The NOPR and four AD notices have also been published in the Federal Register. The proposed regulation is not currently in effect. A final rulemaking will need to occur before the proposed regulation can be finalized.

Security Branch. The Security Branch will continue to evaluate physical and cyber security at FERC licensed and exempted projects, in remote and on-site capacities. While the Security Branch has several team members, the Branch utilizes D2SISecurityBranch@ferc.gov for the majority of its correspondence. The Security Branch asks that all inbound and outbound correspondence is encrypted and/or attachments are password protected (with the password provided via telephone call, separate email, or alternate communication) with the subject line referencing the project number(s). As a reminder, security documents **must not be submitted to eLibrary** – those documents required as part of FERC’s *Security Program for Hydropower Projects*, will be reviewed in the field or in an agreed-upon remote capacity. While not an exception to this filing rule, the Annual Security Compliance Certification (required for Security Group 1s & 2s and due December 31st each year) should be emailed to the Security Branch with the appropriate Regional Engineer copied on the email. When submitting dam safety and other

licensing/compliance correspondence to the Commission, do not mix security related information including, but not limited to, security features (e.g., cameras), security procedures (e.g., guards and response), cyber network connectivity, and law enforcement response times.

Annual Emergency Action Plan (EAP) Requirements. There are several annual requirements for EAPs discussed in Enclosure 1 of this letter. Several of these items have historically been handled in face-to-face meetings (i.e., annual seminars, training sessions for drills, and distributing updates/EAP reprints). If face-to-face meetings are not possible due to the pandemic, these items should be handled through virtual meetings to the extent possible.

There may be issues with providing hard copies of documents (e.g., updates, reprints) to certain parties during the pandemic. For EAP submissions to the Commission, see the *How to Transmit Dam Safety and Public Safety Documents to the Commission* section below. At a minimum, documents provided to plan holders should be provided as searchable PDF files and hard copies should be distributed when possible. You should ensure the PDF files are of such quality that the documents are legible, especially the inundation maps. You may also want to confirm the preference for all parties to receive hard copies in addition to the electronic versions. We highlight that hard copies still serve a purpose during emergencies when there is a loss of power.

We note that some licensees use automated notification systems in their EAPs. These systems are also being used to perform the call-down tests during annual drills. The use of these systems during drills should include a procedure for all parties to acknowledge receipt of the message to determine the system's effectiveness. We also recommend that all EAPs, that rely on automated notification systems, include a procedure to ensure responders can confirm the message is accurate; can receive more detailed information if needed; and can ask for additional information soon after receiving the initial notification. This can be done by holding a virtual meeting or phone conference with all parties soon after the initial notifications go out. You should consider testing this procedure during the annual drill.

Employees and Incident Reporting. This is a reminder that Part 12.10(b) requires you to report, *for your employees and contractors under your employ*, any serious injuries and deaths in the same manner those injuries/deaths are reported for the general public. Most such employee incidents, that happen at the project, would be considered project-related and would require a written report describing the cause, location, and any remedial actions taken or proposed to avoid or reduce the chance of similar accidents pursuant to 12.10(b)(1)-(4). This requirement is separate from any reporting obligations to the Occupational Safety and Health Administration.

Change of Ownership. This is a reminder that the new owner of a FERC-regulated hydropower project (or of a Corporation that owns a project) assumes all dam safety responsibilities and liabilities and all non-compliance liabilities from the previous owner.

Before acquiring a project and/or seeking a license or exemption transfer, we advise the prospective buyer to perform all needed due diligence to identify any outstanding dam safety and compliance issues from the current owner. In general, scheduled and required dam safety work must be completed on time with few exceptions made due to a change in ownership. Should you decide to sell and/or transfer one of your projects, please inform the prospective buyer of the above information.

Prior Commission Authorization. Modifications and changes to your projects require prior coordination with the Regional Engineer. Any activities that require engineering analyses, modifications to existing structures, or ground-disturbing activities of any kind (e.g., clearing, grubbing, excavation, or repeated off-road travel) are subject to review for potential dam safety and environmental impacts. Therefore, you are required to coordinate these activities with us prior to performing the work. This does not include replacement in-kind of motors, pumps, or similar items that are considered routine operation and maintenance, unless you are removing or altering potentially historic or culturally significant items. We require a minimum of 60 days to review final plans and specifications for the proposed work, although initial communication with this office will provide a better understanding of what's involved for us to perform our review. See additional information in items No. 11 and 12 in Enclosure 1.

Natural Disasters. Floods, fires, major storm events, and earthquakes often impact projects. If one of your projects is damaged by a natural disaster, we ask you to notify the Regional Engineer immediately, similar to any significant dam safety incident covered under item No. 5 in Enclosure 1.

How to Transmit Dam Safety and Public Safety Documents to the Commission

Electronic Submittal of Documents. All dam safety and public safety documents you submit to the Commission should be filed electronically using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. The one exception is Security related documents which are addressed in the Security Branch section of this letter. Documents should be in a searchable format with a linked Table of Contents to enable navigation to each section of the document. The cover letter or first page of the filing should indicate "Electronically Filed." When eFiling dam safety and public safety documents, including items addressed to the Director of Dam Safety in Washington, DC, always choose Hydro: Regional Office and the regional office that corresponds to your project from the eFiling menu. See No. 15 of Enclosure 1 for additional information regarding document labeling and uploading documents under the correct security classification tab during eFiling. Please refer to our [Hydropower Filing Guide](#) for additional information on filing hydropower documents. For assistance with any of our online systems please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

There are some cases where your submission cannot be eFiled because the file types are not accepted by eFiling, the files cannot be divided into 50 mb or less, or the data package is too large. In these cases, anything that can be eFiled must be eFiled and the remaining parts of the submission can be transmitted using one of four methods: 1) email, 2) file transfer site provided by you, 3) file transfer site (using SharePoint) provided by FERC, or 4) mailing a CD, DVD, or external drive to the Office of Energy Projects in Washington DC. Any transmittal of files that does not occur through eFiling must be coordinated with the project engineer.

What if I cannot Submit Documents Electronically? If you cannot submit documents electronically because you do not have access to the internet, you must notify the project engineer of your submission and send one copy of all dam safety and public safety documents to the Secretary of the Commission's Office to be posted to eLibrary at the appropriate address. NOTE: Address blocks on the letters to the appropriate Commission staff may remain as is.

Packages sent via the U.S. Postal Service must be addressed to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission,
888 First Street NE, Room 1A, Washington, DC 20426.

Packages sent via any other carrier must be addressed to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission,
12225 Wilkins Avenue, Rockville, Maryland 20852.

Hard Copies Are Not Required During 100% Telework. The Commission remains on 100% telework status due to the ongoing Covid-19 Pandemic. Requirements for sending hard copies are suspended during this time.

This guidance for submitting documents to the Commission is valid until FERC reconstitutes and staff returns to offices. We do not have a timeline for when that will occur. When the Commission reconstitutes, we will issue further guidance regarding: 1) any need for hard copies of documents submitted during 100% telework and; 2) any need for hard copies going forward after reconstitution.

Reminder of Responsibilities

In addition to the above, to assist you in ensuring compliance with FERC dam safety regulations, Enclosure 1 includes a summary of common requirements, primarily from Title 18, Parts 8 and 12 of the Code of Federal Regulations, as well as a number of administrative requirements that are often overlooked. Please review Enclosure 1 along with your license or exemption to ensure that your operations comply with all requirements.

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