

FEDERAL ENERGY REGULATORY COMMISSION

Federal Energy Regulatory Commission (FERC) is a regulatory agency within the Department of Energy which oversees the interstate sale and transportation of natural gas, hydroelectric dams, wholesale transactions of electric transmission, and rates for interstate transportation of petroleum products. Two areas of the FERC's regulatory responsibility commonly involving highway/transportation projects are FERC licenses for hydroelectric dams and natural gas pipelines.

The issuance of a hydroelectric FERC permit is to a nonpublic (private) entity, company or corporation. Licenses are generally issued for a period of 30 to 50 years with exemptions granted in perpetuity. For hydroelectric facilities, the license application must contain a complete engineering analysis involving dam safety, operation, and maintenance, and addresses the economic and financial aspects for developing the project. In addition, all FERC applications must contain an environmental report describing the effects the project would have on fish, water quality, wildlife, botanical resources, geology, soils, recreational, land uses, and socioeconomic values including identifying mitigative, protective and enhancement measures. FERC issued license contain terms and conditions (license articles) which the owner/operator of the facility is required to maintain to keep the license in effect.

Any highway/bridge project that involves FERC licensed facility is treated as an element of Right-of-Way damage, but may necessitate a detailed hydrological evaluation and assessment to determine the potential effects due to loss of impoundment area and reduced flowage. Impacts caused by the highway/bridge project to the licensed facility that results in a change to the conditions of the license may require a submission to FERC by the permit owner for a relicense. As a minimum, coordination with the permittee and FERC will be required to acknowledge no effect to the conditions of the FERC license.

Examples of a licensed facility are the hydroelectric dams along the Connecticut River including the Moore Reservoir in the Town of Littleton. New England Power Company (NEPC) maintains and operates the power plant, and impoundment area through FERC licenses. Their license generally includes the ownership of the land surrounding the impoundment area of the reservoir in addition to many other conditions. The replacement of the Dalton, NH - Lunenburg, VT Bridge Hill Road bridge over the Connecticut River in 1997 resulted in no measurable impacts to loss of headwaters, flowage restrictions or loss of flood control for the downstream facility, however, a fee taking of the protected buffer of land along both sides of the Connecticut River for the approaches of the highway would have resulted in an extensive time consuming relicense application for the facility.

The expense for processing the engineering evaluation and submitting the new application by the owner and operator of the facility would be an element of damages through the right of way relocation assistance. The cost of a relicense application may or may not be cost prohibitive due to the level of potential engineering, but more importantly is the length of time required for FERC relicense process and the potential resulting delays. However, the placement of an easement use versus a fee taking over the licensed property resulted in no change in ownership and maintained compliance with the licensee's permit.

Should highway/bridge projects impact FERC licensed facilities (hydroelectric and/or natural gas pipe lines) and the owner will be required to reapply for a relicense, then early coordination and evaluation will be required during the preliminary design phase to identify the level of impacts and the necessity of the taking. Once the determination is made that a facility would be impacted by a highway/bridge project then the damage is an element of the Right-of-Way process. Through the Right-of-Way abstracting process and/or the environmental resource identification phase, facilities under a FERC permit should be identified and evaluated.