

157 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 11

[Docket No. RM16-19-000]

Annual Charges for Use of Government Lands in Alaska

(November 17, 2016)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on a narrow question related to its current methodology for calculating annual charges for the use of government lands under Part 11 of the Commission's regulations – whether regional per-acre land values based on data published in the National Agricultural Statistics Service (NASS) Census result in reasonably accurate land valuations for hydropower lands in Alaska. This Notice of Inquiry (NOI) will assist the Commission in evaluating an alternative proposal raised in a petition for rulemaking, which requests that the Commission use a statewide average per-acre land value for the purposes of calculating annual charges for use of government lands for hydropower projects in Alaska.

DATES: Comments on this NOI are due **[INSERT DATE (60) days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by Docket No. RM16-19-000 may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments see the Comment Procedures section of this document

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SUPPLEMENTARY INFORMATION:

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NOTICE OF INQUIRY

(November 17, 2016)

1. The Federal Power Act (FPA) requires hydropower licensees that use federal lands to compensate the United States for the use, occupancy, and enjoyment of its lands.¹ Since 2013, the Federal Energy Regulatory Commission (Commission) has used a fee schedule, based on the U.S. Bureau of Land Management's (BLM) methodology for calculating rental rates for linear rights of way, to calculate annual charges for use of federal lands. The Commission's fee schedule identifies a fee for each county or geographic area, which is the product of four components: a per-acre land value, an encumbrance factor, a rate of return, and an annual adjustment factor. The per-acre land value for a particular county or geographic area is determined using the average per-acre land values published in the National Agricultural Statistics Service (NASS) Census.
2. The Commission is issuing this Notice of Inquiry (NOI) to seek public and agency comment on a narrow question – whether regional per-acre land values based on data

¹ 16 U.S.C. 803(e)(1) (2012).

published in the NASS Census result in reasonably accurate land valuations for hydropower lands in Alaska. In particular, the Commission is interested in receiving input on whether, for the state of Alaska, the use of a statewide average per-acre land value or the use of regional per-acre land values (as is currently used) would be preferable to the use of county or geographic area land values.

I. Background

3. Section 10(e)(1) of the Federal Power Act (FPA) requires Commission hydropower licensees using federal lands to:

pay to the United States reasonable annual charges in an amount to be fixed by the Commission . . . for recompensing [the United States] *for the use, occupancy, and enjoyment of its lands or other property* . . . and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require . . .²

In other words, licensees that use and occupy federal lands for project purposes must compensate the United States through payment of an annual fee, to be established by the Commission.³

² 16 U.S.C. 803(e)(1) (2012) (emphasis added). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of administering Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this NOI.

³ Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2012), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the Treasury of the United States, 50 percent is paid into the federal reclamation fund, and 37.5 percent is paid into the treasuries of the states in which particular projects are located. No part of the fees discussed in this NOI is used to fund the Commission's operations.

4. The Commission has adopted various methods over the years to accomplish this statutory directive.⁴ Currently, the Commission uses a fee schedule method to calculate annual charges for use of government lands. The Commission adopted this approach in a final rule issued on January 12, 2013.⁵

A. Order No. 774

5. In Order No. 774, the Commission adopted a new fee schedule method for calculating annual charges for use of government lands, based on BLM's methodology for calculating rental rates for linear rights of way. Pursuant to section 11.2 of our regulations, the Commission publishes a fee schedule annually, which identifies per-acre rental fees by county or geographic area.⁶ To calculate a licensee's annual charge for use of government lands, the Commission multiplies the applicable county or geographic area fee identified in the fee schedule by the number of federal acres reported by that licensee.

6. The fee schedule identifies a per-acre rental fee broken down by county or geographic area. The per-acre rental fee for a particular county or geographic area is calculated by multiplying four components: (1) an adjusted per-acre land value; (2) an encumbrance factor; (3) a rate of return; and (4) an annual adjustment factor.

⁴ See *Annual Charges for Use of Government Lands*, Order No. 774, FERC Stats. & Regs. ¶ 31,341, at PP 3-20 (2013) (cross-referenced at 142 FERC ¶ 61,045) (examining the myriad methodologies the Commission has used or considered for assessing annual charges for the use of government lands since 1937) (Order No. 774).

⁵ See generally, Order No. 774.

⁶ 18 CFR 11.2 (2016). The fee schedule is published annually as part of Appendix A to Part 11 of the Commission's regulations.

1. Per-Acre Land Value

7. The first component – the adjusted per-acre land value – is based on average per-acre land values published in the NASS Census. Specifically, the per-acre land value is determined by the applicable county or geographic area “land and buildings” category⁷ from the NASS Census. This per-acre value is then adjusted downward using a state-specific reduction to remove the value of irrigated lands, plus a seven percent reduction to remove the value of buildings or other improvements. The end result being the adjusted per-acre land value.

8. The NASS Census is conducted every five years, with an 18-month delay before NASS publishes the Census data. The Commission incorporates another 18-month delay to account for revisions, consistent with BLM’s implementation of its 2008 rule. The Commission’s 2011-2015 fee schedules were based on data from the 2007 NASS Census. The Commission’s 2016-2020 fee schedules will be based on data from the 2012 NASS Census, the 2021-2025 fee schedules will be based on data from the 2017 NASS Census, the 2026-2030 fee schedules will be based on data from the 2022 NASS Census, and so on. State-specific adjustments to the per-acre land value are performed in the first year that data from a new NASS Census are used, and will remain the same until the subsequent NASS Census data.

⁷ The “land and buildings” category is a combination of all land use categories in the NASS Census, including croplands (irrigated and non-irrigated), pastureland/rangeland, woodland, and “other” (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings).

2. Per-Acre Land Values for Alaska

9. Order No. 774 explained that the final rule would adopt BLM's approach to Alaska per-acre land values by designating lands in Alaska as part of one of the five NASS Census geographic area identifiers: the Aleutian Islands Area, the Anchorage Area, the Fairbanks Area, the Juneau Area, and the Kenai Peninsula Area. Several commenters asserted that a per-acre statewide value, a category also reported by the NASS Census, should be assessed for Alaska lands.

10. Order No. 774 considered the arguments raised in support of a statewide per-acre value. In particular, several commenters asserted that regional values for Alaska are inappropriate because Alaska does not use county designations, the number of farms surveyed for the NASS Census in the entire state of Alaska is less than the number of farms surveyed in most counties in the lower-48 states, and certain per-acre land values near Anchorage and Juneau are very high, resulting in a substantial increase in annual charges for the use of government lands by hydropower licensees in these areas.

However, the Commission ultimately concluded that the commenters had not advanced sufficient explanation for why it was more appropriate to use a statewide value for Alaska, rather than the smallest NASS Census defined area for Alaska – the geographic area identifier. Although the Commission rejected the use of a statewide per-acre land value for Alaska in Order No. 774, the Commission clarified that it would not use the Anchorage Area and the Juneau Area to assess annual charges for the use of government lands “because these high, urban-based rates would not reasonably reflect the value of

government lands on which hydropower projects are located.”⁸ Instead, for purposes of determining a per-acre land value, the Commission decided to assess the Kenai Peninsula Area per-acre land value for projects located in the Anchorage Area or the Juneau Area.

B. Fiscal Year 2016 Fee Schedule

11. The Commission used the 2012 NASS Census data to calculate its fee schedule for the first time in Fiscal Year (FY) 2016. Due to per-acre land value increases in the 2012 NASS Census data, land rates for hydropower projects located in certain geographic areas in Alaska experienced a significant increase when compared to the rates assessed in FY 2015.

C. Petition for Rulemaking

12. On June 6, 2016, the Alaska Federal Land Fees Group, comprised of six hydroelectric licensees with projects in Alaska (Alaska Group),⁹ petitioned the Commission to conduct a rulemaking to revise the Commission’s method of calculating federal land use charges for hydropower projects in Alaska.¹⁰ The Alaska Group’s petition focuses solely on the first component of the Commission’s fee schedule – the

⁸ Order No. 774 at P 45.

⁹ Alaska Electric Light and Power, Bradley Lake Project Management Committee (on behalf of licensee Alaska Energy Authority), Chugach Electric Association, the Ketchikan Public Utilities, Copper Valley Electric Association, and Southeast Alaska Power Agency.

¹⁰ The Commission issued its 2016 federal land use bills on April 21, 2016. In accordance with section 11.20 of the Commission’s regulations, 18 CFR 11.20 (2016), the members of the Alaska Group paid their bills under protest, and filed a timely appeal. On June 9, 2016, Commission staff denied the appeal. The Alaska Group requested

(continued ...)

adjusted per-acre land value – and requests that the Commission: (1) calculate an adjusted statewide average per-acre land value for Alaska; and (2) apply this adjusted statewide fee to all projects in Alaska, except those located in the Aleutian Islands area.¹¹

13. In support of this proposal, the Alaska Group states that due to the small number of farms (and associated acreage) that contribute to the data compiled in the NASS Census, there is insufficient data in any individual Alaska area (with the exception of the Aleutian Islands)¹² to produce a fair estimate of land values within that area. Because there are so few farms outside of the Aleutian Islands area, the per-acre land values in the other four areas of Alaska are extremely sensitive to any changes in the voluntary, self-reported farm data compiled by the NASS Census.

14. For these reasons, the Alaska Group recommends that an adjusted statewide average would better reflect the diverse topography of the state and insulate against land value fluctuations caused by individual changes in farm data, resulting in a more accurate estimate of fair market value of federal lands in Alaska.

rehearing of the denial. Concurrent with the issuance of this NOI, the Commission is issuing a separate order denying the Alaska Group's rehearing request.

¹¹ The Alaska Group requests that any project located in the Aleutian Islands Area would continue to be assessed annual charges for use of government lands based on a regional per-acre land value.

¹² The Alaska Group contends that because the Aleutian Islands area contains the greatest amount of farmland in the state (668,016 acres), the NASS Census data for the Aleutian Islands area is "robust, reliable, and an accurate estimate of fair market value." Alaska Group June 6, 2016 Petition for Rulemaking at 18. Therefore, the Alaska Group requests that the proposed adjusted statewide average be applied to all hydropower projects in Alaska, except those projects located in the Aleutian Islands Area.

II. Subject of the Notice of Inquiry

15. The Commission has employed various methodologies over the course of its history to determine annual charges for the use of government lands by hydropower projects. As we previously explained, the touchstone has been to find an administratively practical methodology, which results in reasonably accurate land valuations. In seeking this goal, the methodology has been modified on occasion in response to concerns such as the cost of administering the methodology (e.g., rejecting individual appraisals), the administrative burden on the Commission (e.g., rejecting creation of our own index), and the accurate collection of fair market value (e.g., implementing updates in response to the contention that Commission had been under-collecting). As noted, the Commission currently calculates annual federal land use charges based on a fee schedule that uses per-acre land values published in the NASS Census. By doing so, the Commission avoids the extreme administrative burden of creating its own index of county and geographic area per-acre land values.

16. In response to the petition for rulemaking, the Commission is seeking input on a narrow question related to its current methodology for calculating annual charges for the use of government lands – whether regional per-acre land values based on data published in the NASS Census “land and buildings category” result in reasonably accurate land valuations *for hydropower lands in Alaska*. Specifically, the Commission seeks comments on the alternative proposal advanced in the Alaska Group’s petition for rulemaking by posing the following questions: (1) for the purposes of calculating an adjusted per-acre value for lands in Alaska, should the Commission use a statewide

average per-acre land value rather than a regional per-acre land value; (2) if a statewide average per-acre value is preferred, should the statewide value be applied to (i) all projects in Alaska, or (ii) all projects in Alaska except those located in the Aleutian Islands Area; and (3) based on the response to question (2), which of the five geographic regions of Alaska (the Aleutian Islands Area, the Anchorage Area, the Fairbanks Area, the Juneau Area, and the Kenai Peninsula Area) should be included in the calculation of the adjusted statewide average. Finally, commenters may also submit alternative proposals for determining a reasonably accurate per-acre value for hydropower lands in Alaska for our consideration, as long as the proposed calculation is based on data published in the NASS Census.

17. In addition to the views of entities subject to annual charge assessments, and other interested stakeholders, the Commission invites comments by the federal agencies that manage the lands at issue as to how they would view reductions in annual charges for lands that they administer.

18. During the notice and comment rulemaking that culminated in Order No. 774, the Commission outlined several major objectives that guided our consideration of a new annual charges methodology. These objectives, albeit narrowed in scope to only those hydropower projects in Alaska, continue to guide our consideration during this process.

A. Uniform Applicability

19. Any proposed methodology should be uniformly applicable to all hydropower licensees. This means that the Executive Director should be able to take the information in the Commission's files showing federal acreage occupied by individual projects, apply

the adopted methodology, and create an annual charge for the use of government lands for each licensed project.

B. Cost of Administering Collection of Annual Charges

20. The administration of any proposed methodology must not impose exorbitant costs on the Commission. Collection of annual charges and application of the ultimate methodology should be an annual, routine ministerial process that requires reasonable, but not overly burdensome, staff effort.

C. Methodology Not Subject to Review on an Individual Basis

21. Any proposed methodology, once adopted, should not be subject to review on an individual case-by-case basis. Licensees will have the opportunity to challenge computational errors by the Executive Director in calculating the annual charge or the relevant county land acreage, but case-by-case challenges to the methodology would add significantly to the administrative cost and burden of collecting annual charges.

D. Fair Market Value

22. At times in the Commission's history, it has been determined that the Commission had not been collecting fair market value for the use of government lands, which resulted in a substantial under-collection.¹³ To ensure that the Commission recovers "reasonable

¹³ See *Assessment of Charges under the Hydroelectric Program*, DOE/IG Report No. 0219 (September 3, 1986); see also *More Efforts Needed to Recover Costs and Increase Hydropower Charges*, U.S. General Accounting Office Report No. RCED-87-12 (November 1986).

annual charges,” any proposed methodology must reflect reasonably accurate land valuations.

E. Avoid Increasing Price to Consumers of Power

23. In fixing annual charges, we must seek to avoid increasing the price to consumers of power by such charges. Therefore, any proposed methodology should provide reasonable, but not excessive, compensation to the United States for the use of its lands.

III. Comment Procedures

24. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM16-19-000, and must include the commenter’s name, the organization it represents, if applicable, and its address.

25. To facilitate the Commission’s review of the comments, commenters are requested to provide an executive summary of their position. Commenters are requested to identify each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

26. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word

processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

27. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

IV. Document Availability

29. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

30. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

31. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.