

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

OFFICE OF THE CHAIR

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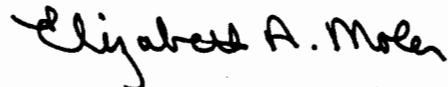
The Honorable Albert Gore, Jr.  
President of the Senate  
Washington, D.C. 20510

Dear Mr. President:

I am pleased to enclose the Federal Energy Regulatory Commission's report on Government dam use charges under Section 10(e)(2) of the Federal Power Act. Section 10(e)(4) of the FPA requires that every five years the Commission review and report to Congress the appropriateness of the statutory limits on the charges.

The report recommends that the limit set by Section 10(e)(2) remain unchanged.

Sincerely,



Elizabeth A. Moler  
Chair

Enclosure

## EXECUTIVE SUMMARY

The Electric Consumers Protection Act of 1986 (ECPA) amended the Federal Power Act (FPA) by placing limits on the fees charged to hydroelectric projects for the use of Government dams or other structures owned by the United States. The Federal Energy Regulatory Commission (Commission), pursuant to Section 10(e)(1) of the FPA, levies and collects the annual charges. Section 10(e)(2) imposes limits on those fees, and Section 10(e)(4) requires that, every five years, the Commission review the appropriateness of these statutory limits and report to Congress its recommendations thereon.

The Commission has reviewed the fees in light of current economic and regulatory trends and in consideration of their statutory purposes. The fees continue to provide reasonable compensation to the Government. While there has been a slight decrease in the number of total projects (constructed and unconstructed) at Government dams in the last five years, there is no indication that this decrease is related to the dam-use fees. Significant structural and regulatory changes affecting electricity markets have occurred since 1995, and will continue to occur, at both the wholesale and retail level. These changes may affect the value of electric energy produced at Government dams and the appropriateness of the Section 10(e)(2) annual charge limitations, but it is too early to ascertain what that effect, if any, will be. This report therefore recommends to Congress that the limits set by Section 10(e)(2) remain at their present levels.

**FEES FOR THE USE OF GOVERNMENT DAMS:  
SECOND REPORT TO CONGRESS  
OF THE FEDERAL ENERGY REGULATORY COMMISSION**

Introduction

The Electric Consumers Protection Act (ECPA) became law on October 16, 1986. ECPA slightly revised the existing provisions of Section 10 of the Federal Power Act (FPA) authorizing the Commission to collect annual charges from hydropower licensees whose projects make use of Government dams or other structures owned by the United States. In 1995, such charges were collected from 70 projects; an additional 28 projects will be subject to charges when they begin to generate power.

Specifically, ECPA added new Sections 10(e)(2) and (e)(4) to the FPA. Section 10(e)(2) states:

In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under [Section 10(e)(1)] for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in [Section 10(f)], such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

Section 10(e)(4) states:

Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in [Section 10(e)(2)] and report to Congress concerning its recommendations thereon.

This is the second five-year report on the appropriateness of the Section 10(e)(2) annual charge limitations. The report consists of four sections: a brief discussion of the history of charges for the use of Government dams, a review of the amounts collected by the Commission for such use, an examination of economic factors bearing on the appropriateness of the charge limitations, and the Commission's recommendations concerning the need for modification of the charges.

### History of Charges for Use of Government Dams

Before 1984, the Commission assessed charges for the use of Government dams on a case-by-case basis, in most cases using the shared net benefit method. In this method, the net benefit was estimated to be the difference between the value of the power (taken as the least expensive alternative power) and the cost of project power (computed from the costs of building and operating the project). The licensee was charged 50 percent of the levelized annual net benefit.

The graduated flat rate approach was adopted in 1984. <sup>1/</sup> The Commission, concerned by the complexity of the shared net benefit method and with relatively large numbers of applications for license at Government dams pending before it, reconsidered its approach. After proposing a generic modification of the shared net benefit method and several possible alternatives, and after reviewing the resulting comments from more than 100 parties, the Commission adopted the graduated values of one mill, one and one-half mills, and two mills per kilowatt-hour of annual generation. The Commission stated that this method:

best balances the statutory goals of providing a reasonable return to the Federal government, encouraging hydropower development, especially small projects, and minimizing costs to consumers. [<sup>2/</sup>]

The Commission also noted the simplicity of the method, which reduces the Commission's administrative effort and which allows hydropower developers to easily predict their costs.

Congress adopted the graduated flat rate method in the ECPA, which fixed in law the graduated values as the maximum which the Commission shall levy. Congress also provided that, for the use of Government dams or structures, this charge shall be the only charge assessed by any agency of the United States. <sup>3/</sup> The

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<sup>1/</sup> Order 379, 49 F.R. 22770 (June 1, 1984).

<sup>2/</sup> Id.

<sup>3/</sup> Pursuant to Section 10(e)(1) of the FPA, the Commission also collects: (a) from major licensees (those with installed capacities greater than 1,500 kilowatts) annual charges for administration of the FPA; and (b) from licensees of projects occupying Government or Indian lands, annual charges for use of those lands. Pursuant to Section 10(f), the Commission collects fees from licensees which enjoy headwater benefits from Government projects. The Government dam charges discussed herein comprised less than seven percent of the Commission's total Section 10 fee collections

Commission currently levies the maximum values, as it has since adopting them in 1984.

Amounts Collected Under Section 10(e)(2)

In 1995, 70 of the 1,019 projects under license 4/ by the Commission were subject to Government dam use charges under Section 10(e)(2) of the FPA. In 1991, 66 projects were subject to the charges. The amounts collected annually from 1991 through 1995 are shown below:

<u>Year</u>	<u>Amount</u>	<u>Number of Projects</u>
1991	\$4,314,500	66
1992	4,675,928	66
1993	6,125,595	70
1994	5,008,263	70
1995	6,692,415	70

In addition, there are presently 28 projects under license at Government dams which are not being charged pending completion of construction and generation of power. 5/

Economic Considerations

Significant structural and regulatory changes affecting electricity markets have occurred since 1995, and will continue to occur, at both the wholesale and retail level. These changes, which will encourage the development of competitively-priced electricity, ultimately may affect the value of electric energy produced at Government dams. 6/ However, the Commission cannot

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for fiscal year 1996.

4/ Another 624 hydroelectric projects are exempted from licensing under Section 30 of the FPA or Section 405(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 2705) and are not subject to Government dam use charges.

5/ In 1991, there were 57 such projects. Four of those projects have become operational, and 25 have surrendered their licenses or had them terminated due to factors such as the licensee's inability to obtain power sales contracts or to finance studies required by the license.

6/ In reviewing the appropriateness of Government dam use charges under Section 10(e)(2), the Commission has thus far used as a benchmark the value of energy produced and has focused on the retail price of electricity to determine

at this time ascertain with any certainty what that effect, if any, will be.

On April 24, 1996, the Commission issued rules that require all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to have on file with the Commission open access non-discriminatory transmission tariffs that contain, at a minimum, the terms and conditions of non-discriminatory service set out by the Commission. The rules also permit public utilities and transmitting utilities to seek the recovery of legitimate, prudent, and verifiable stranded costs associated with providing open access and transmission services under Section 211 of the FPA. The goal is to create a successful transition to more competitive wholesale bulk power markets which, in turn, should lower electricity costs to ultimate consumers. <sup>7/</sup> In addition, regulators in numerous states have begun or are contemplating retail transmission access programs that will permit competitively-priced generation in retail power markets (e.g., California, Massachusetts, New Hampshire, New York, and Illinois).

What effect these events will have on the value of hydroelectric energy produced at Government dams, the appropriateness of our method for determining annual charges, and the appropriateness of the Section 10(e) annual charge limitations, is not yet known. While we believe that overall electricity prices will go down in the future, a variety of factors will influence the development of competitive markets, for example, the development of independent system operators, development of regional transmission groups, existence of generation market power, policies for utility mergers, development of innovative transmission pricing alternatives, and state retail access programs. Therefore, at this time we believe the Section 10(e) (2) annual charge limitations continue to be appropriate.

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changes in the value of power.

<sup>7/</sup> Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), reh'g pending; Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), reh'g pending.

Conclusion

The current fees provide appropriate compensation to the Government similar to that provided at the time ECPA was enacted.

Recommendation

We recommend that the Congress make no change in the annual charge limitations of Section 10(e)(2) of the FPA.