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CCAP [Climate Change Action Plan] Implementation: Hydro Leading and Issues

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Department of Energy
Washington, DC 20585

DEC 27 1993

Mr. Marc Chupka
White House Office of Environmental Policy
Room 360
Old Executive Office Building
Washington, D.C. 20501

Dear ~~Mr. Chupka~~: Marc

I am pleased to invite you, or your designate, to participate in a workshop on private funding of generation improvements at existing Federal dams. The all-day workshop will be held on January 12, 1994, at the Department of Energy in Washington, D.C.

In *The Climate Change Action Plan* President Clinton directed the Administration to propose legislation to enable investment in environmentally sound upgrades at Federal hydroelectric projects, and to sell the incremental power at market rates. This will:

- Result in about 2 GW of new hydroelectric capacity achieved through powerhouse efficiency improvements,
- Reduce greenhouse gas emissions from projected 2000 levels by 2.0 MMT of carbon equivalent,
- Result in $480 million in receipts from lease payments to the Federal government between 1998 and 2000, and
- Stimulate $1.5 billion in private sector investment through the year 2000 that will yield energy savings worth about $550 million through 2000 (undiscounted 1991 dollars).

The Department wants to solicit your views on issues that need to be addressed as we implement this action and seek to ensure it produces positive, "win-win" results -- good for the environment, power customers, efficiency and the economy. A facilitator will lead discussions following brief presentations on each topic. A current list of invitees and a preliminary agenda and list of issues are enclosed.

We are looking forward to your participation. Please call Paul Carrier at (202) 586-5659 by January 5th to let us know if you will be able to attend.

Sincerely,

Sue

Susan F. Tierney
Assistant Secretary
Office of Policy, Planning
and Program Evaluation

Enclosures

WORKSHOP AGENDA

PRIVATE FUNDING OF GENERATION IMPROVEMENTS AT FEDERAL DAMS

Wednesday, January 12, 1994
Room BE-069
Department of Energy, Washington, D.C.

9:00 - 9:15	Introductions
9:15 - 9:30	Purpose of Workshop - Susan Tierney, Assistant Secretary for Policy, Planning and Program Evaluation
9:30 - 9:45	The Climate Change Action Plan
9:45 - 10:00	Description of Action for Private Funding of Generation Improvements at Existing Federal Water Facilities - Paul Carrier, Department of Energy
10:00 - 10:15	Changes in the Electricity Industry that make this Initiative Possible
10:15 - 11:30	Discussion of Technical and Engineering Issues Presenters: Bureau of Reclamation Edison Electric Institute
11:30 - 12:30	Lunch - Department of Energy Cafeteria
12:30 - 2:00	Discussion of Power Marketing Administration and Current Customer Issues Presenters: Bonneville Power Administration American Public Power Association
2:00 - 2:15	Break
2:15 - 3:45	Discussion of Regulatory and Environmental Issues Presenters: National Wildlife Federation Federal Energy Regulatory Comm.
3:45 - 4:00	Break
4:00 - 5:30	Discussion of Contract and Financial Issues Presenters: Electric Generation Association Chris Hocker, Consolidated Hydro Jim Mietus, Office of Management and Budget
5:30	Adjourn

PRELIMINARY LISTING OF ISSUES

Technical and Engineering

- What type of activities should be included in an upgrade/efficiency improvement?
- What is the potential and how do we identify it?
- How will upgrades fit in with maintenance, rehabilitation and other work going on at projects?
- Who should design and construct the improvements? Should we provide flexibility?
- How do we ensure protection of other uses of the Federal facilities?
- How do we predict and measure upgrade power benefits for delivery to private investors?

Power Marketing Administration and Current Customers

- How do we integrate this initiative with, and protect, existing opportunities for PMAs and current customers to purchase improvements at Federal facilities?
- How do we address the right of first refusal held by the PMAs and their customers?
- How do we protect the PMAs and current customers from changes in power costs and deliveries due to construction and operation of improvements?
- Should the costs of upgrades to private investors include a share of common facility costs that is then credited to the PMAs?
- What requirements should be placed on the PMAs to provide transmission services and at what costs?

Regulatory and Environmental

- What is the most efficient way to comply with all applicable environmental laws and regulations?
- Are existing laws and agreements sufficiently clear to avoid jurisdictional disputes between the Federal Energy Regulatory Commission and the Corps and Reclamation? If not, what changes are needed?

- How will this initiative fit in with the changing electricity industry?
- How will the Commission treat the sale of the increased generation?

Contract and Financial

- Who should be parties to the lease contract and what are their roles?
- How should risk be allocated?
- How should operation and maintenance costs be addressed?
- How should liabilities be addressed and allocated?
- What type of mechanism should be provided for resolution of disputes?
- What guarantees should be provided to the private investor?
- What should be the duration of the lease contract?
- What should be the disposition of the lease payment? What provisions, if any, should be made for funding feasibility and design studies? Should a credit be given to the PMAs for use of common facilities?
- What effect will this initiative have on the Federal budget?

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Dueling Over Dams

The operating licenses of 234 hydroelectric facilities across the nation will expire at the end of 1993. Environmental activists want federal regulators to use the relicensing process to make the facilities more environment-friendly. The hydroelectric industry doesn't like the idea one bit.

BY MARGARET KRIZ

In mid-November, Steve Brooke, the research coordinator of an environmental coalition in Maine, joined federal regulators and electric utility executives on a three-day tour of hydroelectric dam sites along the Kennebec River, which parallels the state's western border from Moosehead Lake in the north to the Atlantic Ocean in the south.

Several of the dams along the 164-mile stretch of river are among 234 hydroelectric facilities in the United States whose operating licenses expire at the end of 1993. The Federal Energy Regulatory Commission (FERC) is granting the dams temporary operating licenses while regulators study their condition and environmental consequences.

Brooke and other environmental activists argue that federal regulators should use the relicensing process to make the hydroelectric plants more environment-friendly.

"In the 19th century and earlier, the rivers up in this part of the country provided the mechanical power that turned the wheels of industry," said Brooke, who works for the Kennebec Coalition, which represents local, state and national environmental organizations. "But that was 150 years ago. We need to look at these dams in the light of the changing priorities in our society."

Specifically, environmental activists want the companies that operate the dams to adopt new conservation measures to protect fish and bird populations, including some endangered species, and to guarantee sufficient water flows for canoeists, rafters and other boaters.

The vast majority of the 234 dams—known in the industry as the "Class of '93"—are sure to be relicensed. But a handful of them, including one on the Kennebec River, have been targeted for elimination.

State officials and environmental activists want to dismantle the Edwards Dam because it prevents a host of commercially desirable fish species, such as salmon and shad, from reaching spawning grounds up the river. Built in 1837, the Edwards Dam has an annual electricity output of only 3.5 megawatts—less than 1 per cent of the state's annual electricity demand.

"I am certainly not anti-hydro," Brooke said. "This is an issue of balance, of assessing what is the best use of this river at this site today."

The 3,500 or so hydroelectric dams in the United States generate roughly 10 per cent of the nation's electricity each year. All other renewable energy sources combined provide only about 2 per cent.

Most of the hydroelectric power comes from federally owned dams, which are not licensed and regulated by FERC.

Earlier in the century, the nation celebrated its hydroelectric dams. Witness Woody Guthrie's folk song "Roll On, Columbia," which praised the virtues of the Grand Coulee Dam.

But the energy source that was long viewed as the nation's most environmentally benign form of electricity is now coming under increased attack from environmental activists and state and federal officials.

"Fifteen years ago, hydro was the darling of the environmentalists," said Alan Richardson, the assistant executive director of the American Public Power Association, which represents municipally owned utilities. "Today, it's the devil."

FERC has ordered extensive environmental impact statements for the 234 dams whose licenses expire at the end of the year. It's also considering two new policies that could radically change the federal oversight of hydroelectric dams.

First, FERC is considering under what circumstances it should decommission a dam rather than renew its license. Officials of the hydroelectric industry contend that the agency doesn't have the authority to shut down a dam.

FERC is also examining ways to assess the cumulative environmental consequences of several dams in a single river basin.

Meanwhile, the Supreme Court has agreed to decide whether the state of Washington can limit the operations of a new hydroelectric dam under the 1972 Clean Water Act or whether that authori-

Chupka — lessons learned & explanations policy to them We have not We called for more hydro — find more efficient more existing hydro!

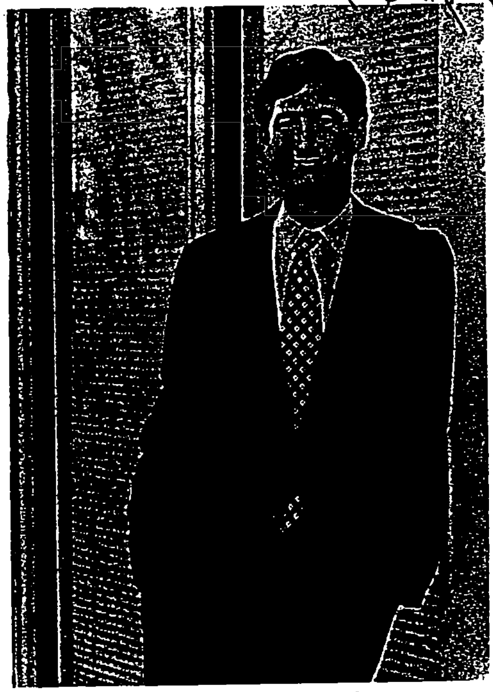
ty lies solely with FERC under the 1920 Federal Power Act.

As the Court considers the jurisdictional tangle, Congress is also considering proposals to clarify the lines of authority as it rewrites the Clean Water Act. Legislation introduced by Max Baucus, D-Mont., the chairman of the Senate Environment and Public Works Committee, and John H. Chafee, R-R.I., the committee's ranking Republican, would allow states to define how a dam should operate. Their bill is expected to be one of the committee's top priorities next year.

can't not fund

Officials of the electric utility industry argue that hydroelectric power is still the most environmentally benign of all major sources of electricity.

"The environmental impacts of hydro are a lot lower than any of the other resources we're using," said James E. Evans, the director of environmental activities for the Edison Electric Institute, a trade association of privately owned utilities. "We're not building new nuclear plants, and the other renewable energy sources are not yet economical. So any hydro we lose is going to be replaced with fossil generation."



John Eisele

Matthew Huntington of American Rivers Hydro isn't a "perfect" energy source anymore.

MIXED SIGNALS

In February 1991, the Bush Administration proposed a national energy strategy that would have reduced the federal oversight of hydroelectric dams and streamlined the relicensing process.

"They had the old line on hydroelectric power that it's good for society no matter where it's built," said Matthew Huntington, the director of hydropower programs for American Rivers, a national conservation organization. "They were of the school of thought that since hydro produces no air pollution, it's a perfect energy source."

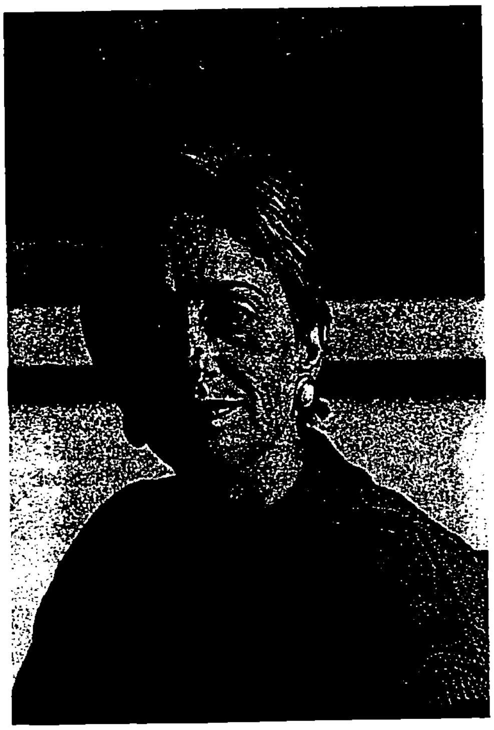
But environmental activists argued that hydroelectric dams destroy river habitats by changing the volume of water that flows through waterways and blocking the passage of migrating fish.

The national environmental groups opposed the Bush Administration's hydropower proposals, which were eventually dropped from the 1992 Energy Policy Act.

Now the Clinton Administration has the difficult job of balancing the new environmental concerns about hydroelectric dams with the nation's increasing energy needs and fiscal worries. In the process, the White House has been sending out mixed signals on hydroelectric policy.

During his first months in office, President Clinton won some Brownie points from the environmental community when he proposed an energy tax that would have applied to hydroelectric power as well as to oil, natural gas and coal. Congress, however, nixed the energy tax.

Clinton also tapped FERC commissioner Elizabeth A. (Betsy) Moler, who's advocated a more environmentally sensitive approach to hydroelectric power, to head the agency. Moler's appointment was a marked change for FERC, which has long been criticized for indifference to the environmental effects of hydroelectric dams.



Richard A. Bloom

FERC chairwoman Elizabeth A. (Betsy) Moler She favors an ecologically gentler approach.

But in October, the White House appeared to switch gears when it recommended the increased use of hydropower as part of its action plan to curb U.S. emissions of global warming gases. The action plan was praised by the hydroelectic industry but drew criticism from several environmental organizations. Trout Unlimited, a Vienna (Va.)-based organization of conservation-minded sports anglers, described Clinton's action as "a stunning reversal of position."

"Hydropower is not going to solve global warming," said Ron Wilson, a lawyer for the Sierra Club Legal Defense Fund, which has brought several lawsuits against hydroelectric power projects. "Most of the good spots on rivers are already taken, particularly ones that could generate any magnitude of electricity."

Sensitive to the rebuke, officials of the Energy Department called in top environmental activists to tell them that the White House isn't advocating any steps that would harm river ecosystems.

What emerges is a picture of a Clinton Administration that isn't of one mind on hydropower.

The Treasury Department supported the hydroelectric energy tax, with Secretary Lloyd Bentsen pointing out in congressional hearings that hydropower, like coal, has environmental consequences.

But officials of the Energy Department opposed the tax and were the architects of the proposals in Clinton's global warming action plan to increase the efficiency of existing hydroelectric dams and to install electric turbines on dams that are now used only for irrigation or flood control.

New interagency turf wars have also sprung up over the hydropower lawsuit pending before the Supreme Court.

In that case, the city of Tacoma, Wash., and the Jefferson County Public Utility District proposed to build a hydroelectric power facility on the Dosewallips River in the western part of the state.

The Washington Ecology Department, using authority that it said it had under the Clean Water Act, reviewed the dam proposal and required the dam operators to keep a steady flow of water over the dam to preserve the local fish habitat.

The hydroelectric project managers, however, wanted to hold much of the water back in a reservoir until it was needed to generate electricity during peak demand periods.

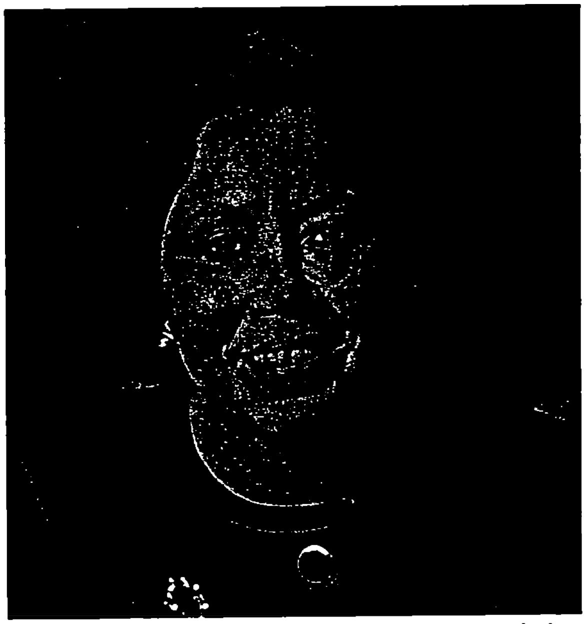
Objecting to the state's interference, the city and county filed suit, arguing that only FERC could set the terms of a hydroelectric contract.

In April, the Washington Supreme Court upheld the state's right to limit the hydropower project. The city and county appealed to the U.S. Supreme Court, which agreed to hear the case but has not scheduled oral arguments.

So far, the Justice Department hasn't taken sides in the lawsuit. FERC, the Energy Department and the hydroelectric industry want the Administration to back Tacoma's contention that FERC has the final authority to set the terms of hydropower licenses under the Federal Power Act.

The Environmental Protection Agency, the Interior Department and the environmental community argue that Justice should support the terms of the Clean Water Act, which allows states to issue water quality certificates for projects that discharge pollutants into state waters. That position also has the support of the Western Governors Association and the Council of Western Attorneys General.

It's a standoff between water regulation, which has traditionally fallen to the states, and electricity regulation, which is primarily a federal regulatory issue, said Linda Church Ciocci, the executive director of the National Hydropower Association. "We're caught in a battle between states' rights and federal preemption," she said. "Our concern is that the Clean Water Act has become a state veto of hydro projects."



John Eisele

Linda Church Ciocci of the National Hydropower Association "The Class of '93 is a test case for the future."

COSTS V. BENEFITS

At Niagara Mohawk Power Corp. in Syracuse, N.Y., hydroelectric dam relicensing has become a full-time task for a large team of employees who have been assigned to conduct studies and fill out government forms for the company's 30 projects that are up for FERC review.

In all, Niagara Mohawk has 74 hydroelectric power plants in the United States, more than any other company in the nation.

Jim Cosgrove, a spokesman for Niagara Mohawk, said that the company has completed thousands of reports on local fish and wildlife populations, land use, water quality, community activities, historical and cultural resources and public recreational demands.

"We anticipated that there would be a more intense concern with regard to the environmental paperwork," Cosgrove said. "But I don't think there have been any real surprises so far."

Ciocci argued that despite the new focus on the environmental problems caused by hydroelectric dams, the Clinton Administration's global warming action plan offered a clear endorsement of hydropower's environmental benefits.

"The global climate initiative was important in the fact that hydropower has been recognized for the important role it can play," she said. "It's a commitment by this Administration to keep what we have."

To further reduce U.S. emissions of global warming gases, Ciocci said, the Clinton Administration should streamline the hydropower relicensing process and help finance research into new hydroelectric turbines that won't chop up fish that travel through dams.

Huntington of American Rivers said Administration officials have assured him that the global warming action plan doesn't mean regulators will ease up on their review of hydroelectric projects. "Their position has not changed that FERC should do a serious environmental review of the dams," he said.

In fact, if the history of hydroelectric relicensing is any guide, dam operators may not gain any new electrical capacity, Evans of the Edison Electric Institute warned. According to his statistics, of the 35 hydroelectric plants that FERC relicensed from 1987-91, 20 were scaled back by regulators to increase the water flow in the rivers to protect fish and wildlife.

And Moler, FERC's new chairwoman, has promised greater public input into the relicensing process, which industry officials fear will greatly slow down the review process. That's a change from the past, when a hydroelectric project's environmental impact statement often wasn't made public until the final license had been granted.

"I don't think industry would disagree that the environmental concerns should be reviewed," Ciocci said. "But when you see the list of all the intervenors this stuff will go out to, the process will become so cumbersome. It slows the process down."

It's not clear, however, that the other four FERC commissioners, all of whom were appointed by Clinton, are as enthusiastic about Moler's environmental policy proposals. Despite pleas from the environmental community that Clinton appoint an environmental activist to FERC, he drew instead from the traditional ranks of the energy industry, state utility regulators and Capitol Hill.

"The other commissioners don't seem to be as environmentally friendly as Moler is," Steve Moyer, Trout Unlimited's director of government affairs, said. "But they haven't got a real track record established yet."

Moyer described Moler's proposals on dam decommissioning and on cumulative environmental consequences as "the most positive signs we've ever seen coming out of the agency."

But Ciocci, calling the proposals "regretful," has launched an industry campaign to kill, or at least dramatically change, them.

She warned that the hydroelectric policy decisions made today will have an important impact beyond the 234 smaller hydroelectric dams that are now up for relicensing.

"The Class of '93 is a test case for the future," Ciocci said. "All of these policy changes will be even more important in the year 2000, when many of the major projects come up for relicensing."

With the new awareness of the downsides of hydroelectric dams, those facilities may be forced to adopt stricter environmental programs or scale back operations. For the hydroelectric industry, the future is certain to bring far more scrutiny—and far fewer accolades—than it has received in the past. ■