Pumped Storage Hydropower Siting Study
PSH Siting Topics: What to Know about PSH State & Federal Permitting and Licensing Processes

Date: 12/4/24

Time: 9:30 AM – 12:00 PM PDT

Location: Zoom online meeting

Study website link: https://www.energy.wsu.edu/CleanFuelsAltEnergy/PSHSiting.aspx

Meeting Objectives

- Regarding PSH, understand key aspects of:
  - Federal licensing and permitting
  - State environmental review process
  - Section 106 requirements of the National Historic Preservation Act (NHPA), which relates to Tribal consultation on lands affected by proposed projects
- Hear from attendees and promote discussion about the above topics
- Provide project update and overview of topics for upcoming PSH study meetings

Meeting Summary

Following an initial welcome, Karen Janowitz, Washington State University (WSU) Energy Program, provided a land acknowledgement, introduced the study project team, and reviewed meeting objectives. Karen then provided a brief overview of the PSH siting study's goals and upcoming meeting plans. Karen emphasized that the study is not promoting any specific projects but aims to gather Tribal, agency, and stakeholder input on siting concerns. The study was requested by the Washington State Legislature to support the state's commitment to 100% renewable or non-emitting electricity by 2045.

At-a-Glance Information

Hosted by Washington State University Energy Program in partnership with the Office of Tribal Relations at Washington State University, Meridian Environmental, and Ross Strategic.

Approximately 58 participants joined the meeting.

Meeting participants represented a broad array of sectors, including Tribal, state and local government, NGOs, and industry.

Meeting slides and a video recording are available on the study website.

Presentations

Aaron Levine, Senior Legal and Regulatory Analyst, National Renewable Energy Laboratory (NREL), described the Federal Energy Regulatory Commission (FERC) licensing process for PSH projects, including the roles of various federal and state agencies in the process. FERC regulates non-federal hydropower projects (projects developed by non-federal entities), providing permits and licenses for projects on private, state, and federal lands.

Aaron stressed the utility of preliminary permits, stating that while they are not necessary, they give the holder priority to study a site and apply for a license. Preliminary permits are especially useful for developers as they can be issued for up to four years, with the potential for extension.

Aaron detailed the three main licensing processes: Integrated Licensing Process (ILP), Traditional Licensing Process (TLP), and Alternative Licensing Process (ALP). ILPs are the default process. They are the most structured and most suitable for projects with complex issues; FERC is involved from the outset of ILPs. TLPs are most common, most flexible, and most suitable for projects that do not have complex issues. With TLPs, FERC is only involved after the final license application. ALPs are the least commonly used process. They are the most collaborative of the three, with stakeholders and developers creating an agreement upfront.

Aaron noted that closed-loop PSH systems may fall outside FERC jurisdiction if they do not use federal lands, surplus water from federal dams, or impact navigable waters. If a project does fall under FERC jurisdiction, stakeholders and Tribes can request studies to understand project impacts, which are considered in the licensing process. Aaron stressed that once a formal proceeding begins, all communications with FERC must include all parties to avoid bias (called ex parte communications). During his presentation, Aaron stressed the importance of stakeholder and Tribal engagement and early consultation during a complex and lengthy process, which can typically take five or more years.

One participant, with a long history of applying for and obtaining permits for projects, added that preliminary permits are not required as part of the FERC process, but that they provide developers with exclusive rights to develop projects on specific sites covered by the preliminary permits.

A participant asked whether Tribes are required to go through FERC if they were to have a PSH project on their reservation (noting that there may be case law that exempts Tribes from doing so). Another participant responded that they were not aware of any precedent for an exemption. Aaron responded that it is an unresolved question.

One participant asked whether industrial-scale solar and wind projects also have to go through FERC licensing, and another participant responded that they do not. Another participant shared that FERC has a role in transmission regardless of energy source (and shared this link: https://www.ferc.gov/electric-transmission-siting). A participant asked how long it takes for FERC approval for a typical project. Another participant responded that it generally takes between five to seven years (and shared this link: https://www.nrel.gov/docs/fy22osti/79242.pdf). Obtaining original licenses for new projects takes longer than relicensing.

Another question asked for clarification of the ex parte rules. Aaron replied that once FERC opens their docket, the process turns into more of a trial type setting. At that point, any communication with FERC regarding the project has to include all party participants. It is designed to prevent bias or collusion by allowing parties to hear what is being discussed.

Following the presentation and discussion, participants were asked to share answers in chat about the following question: *What observations or concerns do you have about federal licensing and permitting for PSH?* Responses were:

- Based on the previous comments, it seems FERC would not be involved in most closed loop systems.
- It seems like this process would be difficult to navigate without staff dedicated to and experienced in regulatory processes.
- It's very difficult to find sites that are exempt from FERC, even closed loop on nonfederal land, due to the water sourcing question. Also, if a transmission line crosses federal land, it puts the entire project under FERC.
- It definitely takes experienced folks to navigate the process. It typically takes four to five years. Some could get by in three years but it has to be a very uncomplicated site from standpoint of environmental concerns, tribal concerns, etc.

Later in the meeting, Aaron chatted that more information on the hydropower licensing process and other required regulatory approvals can be found at the Department of Energy's RAPID Toolkit website: www.rapidtoolkit.org.

Fran Sant, Clean Energy SEPA Review Lead, Washington Department of Ecology, presented on how the State Environmental Policy Act (SEPA) impacts PSH projects. SEPA guides the environmental review process for proposed projects in Washington state. Fran began by clearly stating SEPA's purpose: To inform decision-making by identifying and disclosing environmental impacts before an agency makes a decision. SEPA covers assessment of impacts on both the natural environment (e.g., air, water, plants, animals) and the built environment (e.g., land use, transportation, public services).

Fran emphasized the importance of early and meaningful engagement of stakeholders, Tribes, and interested parties. She emphasized that Tribal governments are sovereign nations with their own priorities and government-to-government relationship with the state and federal government. Early and meaningful engagement includes consideration of all phases of a project, including construction, operation, and decommissioning. Fran also emphasized that SEPA and the federal National Environmental Policy Act (NEPA) are built to work together, noting that SEPA allows the adoption of NEPA documents if they adequately address all environmental elements.

A participant noted that a FERC license typically requires an Environmental Impact Statement (EIS) and asked whether the SEPA EIS would be done in conjunction with the FERC EIS or whether the two would be redundant. Another participant responded that SEPA and NEPA can be coordinated in advance, which Fran also noted in her presentation.

A participant asked whether the term "impacts" means both negative impacts and positive impacts. Fran responded that project proponents can articulate project benefits, but SEPA is about looking at impacts, which it doesn't frame as negative or positive. In SEPA, project benefits are not weighed against impacts.

Another participant asked if a county that is processing a conditional use permit application can use that process to cover SEPA and vice versa. Fran responded that the county would need to wait to process its conditional use permit until the SEPA process is completed.

In chat, a participant noted that usual and accustomed lands for Tribal Nations do not recognize state or other political boundaries. Another noted that assessing cumulative impacts is becoming increasingly important for Tribes.

After a short break, Rob Whitlam, State Archeologist, Washington Department of Archaeology and Historic Preservation, presented on Section 106 of the National Historic Preservation Act. Section 106, requires federal agencies to consider the effects of their undertakings on historic properties. Rob emphasized that projects that are funded, permitted, or approved by federal agencies are subject to Section 106. He also named the parties that federal agencies must consult with regarding Section 106, including State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and others. Rob stressed that all agencies are required to determine an Area of Potential Effect (APE). The APE is the geographic area where a particular project may affect historic properties.

Rob described the assessment of project impacts on historic properties, with possible outcomes being no effect, no adverse effect, or adverse effect. If adverse effects are found, a Memorandum of Agreement is negotiated to outline measures to avoid, minimize, or mitigate impacts. Rob pointed out that one of the best ways to ensure that conflicts don't arise is for developers to engage in early and ongoing consultation with communities, Tribes, and stakeholders. He also pointed out the need for detailed studies and documentation to support decision making.

Rob discussed the policy of ex parte communications practiced by FERC, which can slow or hinder collaboration. After Rob's presentation, one attendee asked questions to clarify the impact of ex parte communications and FERC. Rob indicated that ex parte can be a stumbling block for some parties involved in development.

Breakout Sessions

Participants moved into breakout rooms where they were asked to address the questions,

- *"Where have you seen these processes go well, and where have you seen them not go well? Why?"*
- *"What activities prior to formal environmental review, licensing, and permitting help these processes work best?"*

Key insights from Group 1 included:

- In traditional licensing processes, issues can come up late in the process and result in delays. Integrated licensing processes include earlier consultation, resulting in fewer delays later in the process.

- Project developers often seem to underestimate the amount of Tribal engagement that is necessary to work through the state SEPA process. They need to engage with Tribes very early on. It is important to develop relationships with Tribes, not just consider Tribal engagement a process requirement.
- Developers need to understand the difference between engagement with Tribes and formal government-to-government consultation. Early engagement does not satisfy the required government-to-government consultation.
- Participants also noted concerns with the Goldendale PSH project.

Key insights from Group 2 included:

- Just following the "letter" of the FERC process is insufficient. Developers should emphasize active collaboration with Tribes and communities. Having facilitation support can help.
- Tribal engagement in project development processes often happens too late, putting Tribes in a reactive and adversarial stance. This can drive the perception that Tribes and others bring up issues "late" in the process, when they may only just be hearing about the projects at that time.
- The Governor's Office for Regulatory Innovation and Assistance (ORIA) provides a service to help developers do an early analysis of environmental characteristics and constraints, which can include an analysis of archeological issues. ORIA can also help developers connect with Tribal or stakeholder contacts relevant to their projects.
- Grant County PUD has a process for engaging with Tribes on cultural resources impacted by the Priest Rapids and Wanapum dams on the Columbia River dams (see: https://www.grantpud.org/cultural-resources).

Future Meetings and Wrap-up

Karen wrapped up the meeting by discussing the next upcoming meeting, scheduled for January 23rd, focusing on other types of mechanical and pumped storage systems, such as PSH using abandoned mines and Advanced Rail Energy Storage.

Participants were encouraged to spread the word about the meetings among their networks. Karen provided the project website and contact information a second time. The meeting wrapped up at 12:00 PM.