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May 23, 2005

The Honorable Pete V. Domenici
Chairman
Energy and Natural Resource Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Bingaman
Ranking Member
Energy and Natural Resource Committee
U.S. Senate
Washington, D.C. 20510

RE: Energy Bill Provisions that Adversely Affect State Authority in Hydropower Relicensing

Dear Sirs:

During the last ten years our states have participated in relicensing proceedings for many hydropower projects that have allowed continued production of reasonably-priced power while achieving major improvements in our rivers and watersheds. Given the importance of Federal Energy Regulatory Commission ("FERC") relicensing decisions to state economies and river systems, we write to offer comments on the hydropower provisions of the Energy Policy Act of 2005. We urge your opposition to the provisions of this proposed legislation that would upset the balanced process that presently governs hydropower licensing. Specifically, this bill would diminish the role of states while increasing the influence of hydropower license applicants in the process.

Our states are critically interested and play a vital role in the relicensing process. Congress provided states with the authority to participate in relicensing for the purposes of protecting our rivers and streams. In addition to our authority under Section 401 of the Clean Water Act, our fish and wildlife agencies also have authority under Section 10(j) of the Federal Power Act (FPA) to recommend new license conditions to protect fish and wildlife. State agencies work closely with their federal counterparts, which have mandatory fishway authority under Section 18 of the FPA, to ensure that the state's interest in fish passage is reflected in the federal agencies' fishway prescriptions. Likewise many of our natural resource agencies provide recommended license conditions under section 10(a) of the FPA. State agencies also often work collaboratively with federal land management agencies to develop mutually beneficial recommendations under 10(a) and mandatory conditions that the federal agencies proscribe under Section 4(e).

The Energy Policy Act of 2005 grants hydropower license applicants the right to a trial-type hearing of issues of material fact regarding fishways and resources on federal lands prescribed by the Secretaries of Interior and Commerce, and creates a detailed new process by which hydropower license applicants may propose alternative fishway prescriptions and other conditions to the Secretaries. These new rights and procedures are not available to other parties. State and federal fisheries and land protection managers will have far less authority to protect natural resources during licensing under the proposed bill, while at the same time an applicant's influence over the process would be greatly increased. The licensing process should guarantee all parties equivalent procedural rights, as is true under current law.

The process envisioned in the bill would extend, rather than expedite, the current licensing process and also make it less predictable. The trial-type hearing alone would not only increase the cost and length of the licensing process, but would also impose new and likely prohibitive costs on state and federal resource agencies and other stakeholders while also undermining their authority within the process. The proposed procedural changes run counter to recent FERC initiatives to improve, shorten, and add more certainty to the licensing process.

Additionally, the bill's exemption from the National Environmental Policy Act for renewable energy sources, including hydropower, restricts federal agencies to analyzing only the license applicant's proposed alternative or the "no-action" alternative, which is the status quo. Federal agencies are prohibited from identifying or analyzing any other alternatives, even those that better protect public health, safety and the environment. The bill strips the public's right to comment on alternatives other than the one proposed by the project proponent and limits public comment to 20 days. States, municipalities, Indian tribes, local property owners, farmers and irrigators, hunters and anglers, and even competing energy companies, would be prohibited from commenting on any alternatives other than those proposed by the project proponent. Tipping the scales in favor of an applicant at the expense of all other competing interests is directly contrary to the public interest, and we ask that these procedural changes be stricken from the bill.

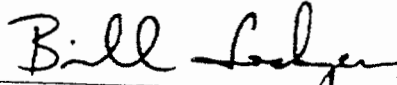
FERC relicensing proceedings over the last ten years have demonstrated that the process need not be protracted in order to achieve broad public support for the result. The current law allows for a process that can be both efficient and fair to all interested parties. Although states are committed to being good partners in hydropower relicensing, we cannot participate effectively unless the process is balanced and equitable. We urge you to reject the provisions of the Energy Policy Act of 2005 which would deprive states and other stakeholders of the meaningful role they have historically played in hydropower relicensing.

Thank you for your consideration.

Sincerely,



Attorney General G. Steven Rowe
Attorney General of Maine



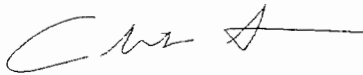
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Attorney General of Connecticut



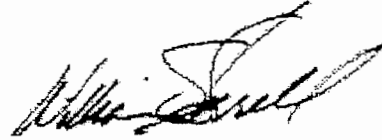
Attorney General Lisa Madigan
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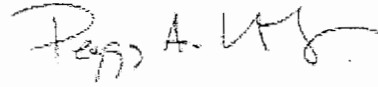
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