

Collaboration from the ground up

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While FERC licensees across the US evaluate whether or not they wish to use the Commission's new licensing procedures, a coalition of stakeholders in North and South Carolina has decided to try to persuade its neighbourhood utility to relicense its projects using the new process. Fred Ayer reports on the effort to establish a collaborative dialogue and talks to members of this ambitious and committed group

In 1992, the US Congress passed the National Energy Policy Act, which provided Federal Energy Regulatory Commission (FERC) licensees with alternatives in the method and timing for the preparation of environmental assessments (EAs) and environmental impact statements (EISs). In late 1996, FERC issued a notice of proposed rulemaking (NOPR) outlining an alternative process. On 29 October 1997 it approved a final rule that allowed licensees, in co-operation with stakeholders, to use alternative approaches to combine pre-filing consultation, 401 water quality certification (a state-issued permit), licence preparation and environmental review into one process. FERC informally allowed some licensees to pursue this approach prior to the final rule. This group included Avista Corporation's Clark Fork relicensing (see IWP&DC January 2001, pp34-7), which began the formal relicensing process in September 1995 – a full two years before issuance of the final rule.

FERC's alternative licensing procedures (ALP) have given FERC licensees a wider range of options in the way they approach licensing and relicensing their hydro projects. The ALP encourages a more collaborative approach than FERC's traditional licensing process and requires the licensee to file with FERC to get permission to use the new procedures. In making its decision to grant permission, FERC must conclude that:

- A reasonable effort has been made by the licensee to contact all resource agencies, Indian tribes, citizens' groups and others affected by the licensing or relicensing.
- That a consensus exists that the use of alternative procedures is appropriate under the circumstances.

Since the institution of the ALP, only one licensee has been denied the use of the new procedures. While many licensees have seen the value of FERC's new procedures, they have created a level of angst among some licensees that at times is hard to understand. This fear of the unknown has prompted some very conservative licensees, apparently concerned about losing control, to create a variety of their own processes which are more open than FERC's traditional licensing process but not as open as the ALP – christening this new breed as 'hybrid-traditional', 'modified traditional,' and so on.

I first heard of the 'stakeholders in search of a collaborative' phenomenon in late 1999, when an acquaintance asked me whether I would consider helping out a coalition of local governments and non-government organisations to collaboratively participate in an upcoming FERC relicensing on the Catawba-Wateree river in North and South Carolina. When I met the group I was intrigued with their interest and commitment and agreed to help them – the catch: the licensee had not decided on an approach for the relicensing.

The project

The Catawba-Wateree project (FERC 2232) is owned by Duke Energy and is located on the Catawba river in the states of North and South Carolina. The project has 13 dams on 330km of the Catawba in a basin which houses 1.5M people. The FERC licence for the Catawba-Wateree project expires on 31 August 2008.

I had a chance to interview some of the members of the group who call themselves the Catawba-Wateree Relicensing Coalition (CWRC) and was interested in what prompted them to form the coalition. Judy Francis, president of CWRC and the director of Burke County Community Development, remembers how the coalition began.

Duke Power called some people who were involved in environmental issues, either from a regulatory or a preservation perspective, and asked what issues they would want considered in a relicensing. 'Of course,' says Francis, 'that prompted us to respond; what the hell is a relicensing?'

Learning more

While Francis' experience in environmental policy had acquainted her with the basics of hydro power regulations, she had not been exposed to anything very specific. Several of the people Duke had called began discussing relicensing amongst themselves. This discussion group consisted of local government staff, local non-government environmental organisations, and members from national organisations. 'We were fortunate to have some higher-ups from Trout Unlimited (TU) that live in our neck of the woods,' Francis remembers.

The TU folks were able to contact their national organisation and have their attorney come down to meet with the group. The attorney gave the group some background on the FERC process and also explained why this particular relicensing was going to be quite an event. This was when the group first heard about the differences between FERC's traditional and collaborative relicensing processes.

Eager to learn more, the fledgling coalition invited FERC to visit the project area and make a presentation to explain the differences between a traditional and collaborative process. Francis suggests that this happened to coincide with the time when FERC was encouraging collaborative relicensing, so it was more than happy to come down and make a presentation. CWRC has been drawing larger crowds each time it meets: FERC staff have visited several times since and the organisation has grown as more people find out what relicensing involves.

I asked Francis, along with two CWRC board members, Vicki Taylor (a communications consultant) and Mike Struve (water quality administrator with the Western Piedmont Council of Governments), what they hoped to achieve with the CWRC?

Taylor expressed a common view among CWRC members. 'I hope we can bring together the best of most minds and points of view up and down the basin. The CWRC should be a platform on which those committed to protect, restore and enhance our river can stand and look out over the whole, understand each other's interests, and build solutions that have integrity and balance,' she says. 'Practically speaking we will facilitate a relicensing process that is fair, efficient and a model for diverse people to deal with each other's values and objectives. Through this process, Duke Power's licence will be renewed with the least amount of litigation, rework, casualties and posturing possible.'

Struve says: 'We hope to assist in developing and implementing a conservation plan that will restore, enhance and protect the multitude of uses and values our region holds dear regarding the Catawba river. To be most effective, such a plan will require flexibility to allow those managing the river and watershed to modify the plan as conditions change over time and as specific goals are achieved under the terms of the new licence.'

Francis also sees the CWRC as 'a vehicle to get different or competing interests together to see how they might approach relicensing when it comes to a particular issue'.

Complexities

But how do CWRC members find the time to participate in the complexities of the relicensing? Not to mention creating a non-profit coalition, building membership, sponsoring training and education, raising operating funds adequate to hire an executive director, and retain consultants.

Taylor explains that it is difficult for her and she has felt the compromise. 'But there is something very rewarding in participating in this process so I am organising my work so I can be available to contribute where I can,' she says. 'I am more fortunate than many volunteers since I am self-employed and can make a living more flexibly than others can.'

Mike Struve thought that 'meeting fatigue' might be more of a challenge than time commitment per se, given the typical lifespan and complexities of most relicensings. His answer to the time commitment question is very straightforward. 'Those of us involved with the Coalition understand the importance of the Catawba river to our region,' he says. 'We all live within the basin, and because our region's identity and economy are dependent on a vibrant river, we cannot afford not to be involved in this process.'

Struve feels that the use of work teams to examine options, weigh alternatives and develop recommendations regarding specific issues, such as public access, will allow individuals to work in areas where they have expertise and thus help spread the workload among members of the CWRC. While Francis feels strongly that that is what makes the organisation of CWRC perfect – 'because we do have other jobs'.

The CWRC now has non-profit tax status and has hired an executive director, Jim Tolliver. 'Jim's doing a lot of the work I was doing. He's taken a load off of me,' says Francis. 'This allows all of us to do our regular jobs, and enables us to participate in what I know is important work.' Tolliver agrees and adds: 'One of the strengths of CWRC is the fact that many participants already deal with issues related to the upcoming relicensing in their day jobs. Many county and regional planners, as well as land conservancy members, work with recreational and development issues every month. For other participants, relicensing issues affect the property their homes are built on, and that makes it a priority for them.'

Duke Power

Duke's Catawba-Wateree relicensing manager declined to comment on the process in detail, on the grounds that this would be speculative, but he did say: 'We intend to continue to provide opportunities for group and individual stakeholder involvement and input during the relicensing process before we file our licence application.'

It seems to me that begs the question: 'What does the CWRC do if Duke decides not to use FERC's ALP?' Francis feels that the CWRC would continue as if Duke were using the ALP, adding that she felt that they would be 'missing an opportunity to work with the CWRC to develop meaningful management strategies for the river'.

Regardless of whether the licensee chooses the traditional relicensing process or FERC's ALP, Struve feels that the Coalition's role will be similar. That role, he feels, will be to provide an organisation where stakeholders throughout the basin can learn about the relicensing process and participate in developing consensus on a variety of Catawba river issues. Under both relicensing scenarios, the coalition will work with the licensee to advance CWRC goals as determined by the basin's stakeholders.

'I believe the ALP offers opportunities to reach an ultimate settlement agreement in less time and more cost-effectively than that afforded under the traditional relicensing process, but we will be prepared to work in either framework based on the licensee's decision,' he says.

Some feel, no matter what, there will still be a coalition. 'The licensee has a process to go through and we are players in that process,' Taylor says. 'The CWRC represents a way of organising some of what they will meet and deal with in that process,' she adds, contending that the stakeholders are the stakeholders — no matter what — but those who choose to participate in the CWRC will have a perspective and possibility not available to others.

'Our spirit is to collaborate rather than fight and if the licensee does not include us in the decision-making process up front, we will enter the decision-making process after the application. The future of the river belongs to many people, and we will work to ensure that they are included in the most equitable way possible. We will respond to what is in front of us,' says Taylor, 'hopefully alongside the licensee.'

An anomaly

Is the CWRC an anomaly? From what I can gather talking to other hydro people, I don't think so. At a recent conference I had the chance to talk with several hydro licensing managers who told me about the emergence of stakeholder groups pushing licensees towards more collaborative relicensings. I guess when you think about it, it makes sense. These are the people who for years have had either a very limited access or virtually no practical access to what is perhaps one of the most Byzantine regulatory processes in the US. FERC's ALP, by promoting a more collaborative process, has converted 'consultation' to public involvement and based on some of the early results, that's a good thing.

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