

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

October 8, 2008

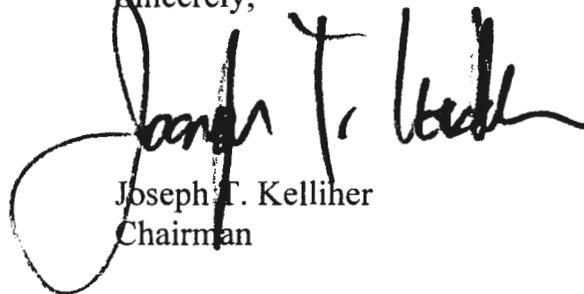
Honorable Richard B. Cheney
President
United States Senate
S-212 Capitol
Washington, D.C. 20510

Dear Mr. President:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph T. Kelliher". The signature is fluid and cursive, with a large loop at the beginning and a long tail at the end.

Joseph T. Kelliher
Chairman

Enclosure

cc: The Honorable Jeff Bingaman
The Honorable Pete Domenici

FEES FOR THE USE OF GOVERNMENT DAMS
FOURTH REPORT TO CONGRESS
OF THE FEDERAL ENERGY REGULATORY COMMISSION

EXECUTIVE SUMMARY

Pursuant to Section 10(e)(1) of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) levies and collects annual charges from the licensees of hydroelectric projects that use Government dams or other structures owned by the United States. FPA Section 10(e)(2) imposes limits on those fees, and FPA Section 10(e)(4) requires that the Commission review the appropriateness of these statutory limits and report to Congress its recommendations thereon.

The Commission has reviewed the fees in consideration of their statutory purposes and in light of current economic and regulatory trends. We conclude that the fees continue to provide reasonable compensation to the Government. While in the last five years some licenses for both constructed and unconstructed projects at Government dams have been surrendered or terminated, there is no indication that the dam-use fees played a role in such outcomes. 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
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Introduction

The Electric Consumers Protection Act (ECPA), which became law on October 16, 1986, amended those portions of Section 10(e) of the Federal Power Act (FPA) that authorize 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 2007, such charges were collected from 63 projects. An additional 11 projects will be subject to charges when they begin to generate power.

As amended by ECPA, Section 10(e)(2) of the FPA 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, 1 1/2 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 fourth 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 and other United States structures (hereinafter, Government dam use charges) on a case-by-case basis, usually charging licensees 50 percent of the shared net benefit. The project's net benefit was defined as 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).

In 1984,¹ the Commission simplified its federal dam use charges by adopting graduated flat rates, concluding 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."²

In ECPA, Congress adopted the method and rate levels of the Commission's new charges, fixed these rates as the maximum allowable, and specified that these rates shall be the only federal dam use charges assessed by any agency of the United States.³ The Commission currently levies these maximum values, as it has since adopting them in 1984.

Amounts Collected Under Section 10(e)(2)

In 2007, 63 of the 1,014 projects under Commission license⁴ were assessed Government dam use charges under Section 10(e)(2) of the FPA. In 2001, 55 projects

¹ *Annual Charges for Use of Government Dams and Other Structures under Part I of the Federal Power Act*, 49 Fed. Reg. 22770 (June 1, 1984), FERC Stats. and Regs., Regulations Preambles (1982-1985) ¶ 30,570 (1984) (Order No. 379).

² *Id.* at 30,947.

³ The Commission also collects: (a) from major licensees (those with installed capacities greater than 1,500 kW) annual charges for administration of Part I of the FPA and for use of Government lands, pursuant to FPA Section 10(e)(1); and, (b) from licensees which enjoy headwater benefits from Government projects, charges pursuant to FPA Section 10(f). The Government dam charges discussed herein constituted about 8.5 percent of the Commission's total Section 10(e) and (f) annual charge collections for fiscal year 2007.

⁴ Projects 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 (2000), are not subject to Government dam use charges because they may not use Government dams.

were assessed such charges. The amounts assessed annually from 2001 through 2007 are shown below:

Year	Amount	Number of Projects ⁵
2001	2,637,642.17	55
2002	2,784,258.99	65
2003	3,066,286.60	66
2004	3,336,364.95	62
2005	3,246,341.20	64
2006	3,633,206.38	67
2007	3,330,769.63	63

In addition, there are currently 11 projects under license at Government dams which are not being charged pending completion of construction and generation of power.⁶

Economic Considerations

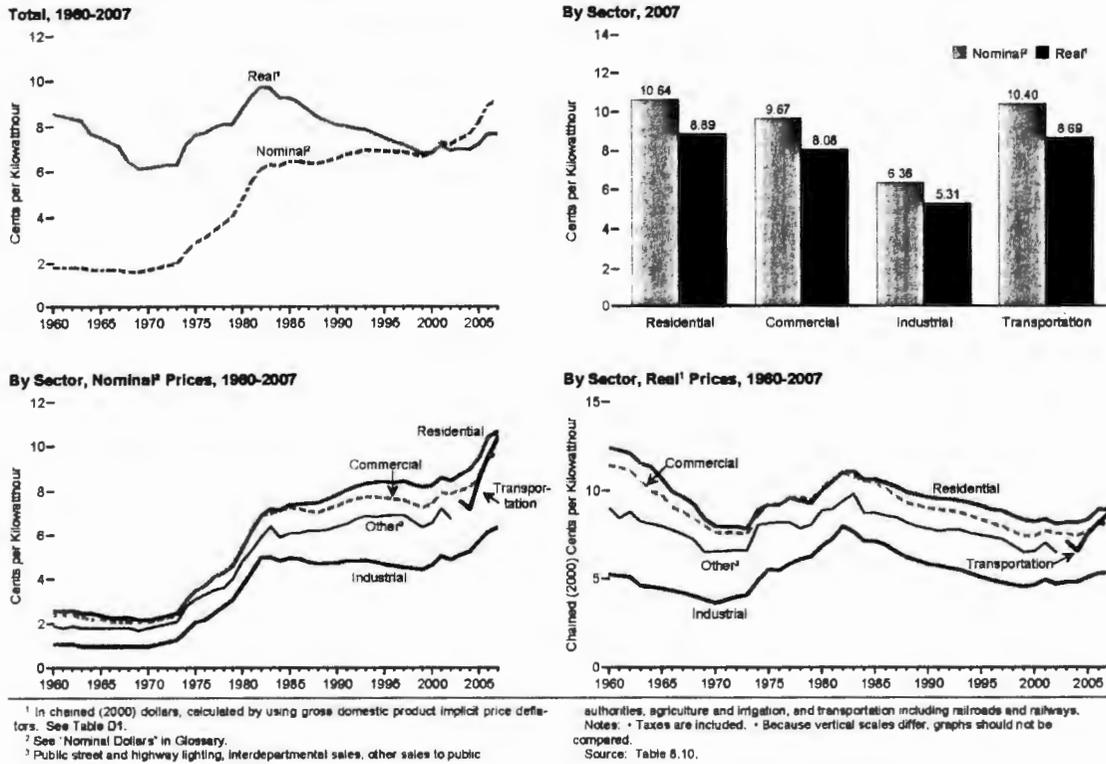
The benefit that a licensee enjoys by use of a Government dam depends primarily upon the value of the energy produced. The twenty-one years since ECPA have seen no appreciable change in the benefit to licensees of using Government dams (see Figure below).⁷ We therefore conclude that the current maximum charges in FPA Section 10(e)(2) continue to provide appropriate compensation to the Government.

⁵ This is the number of projects that were assessed actual annual charges for use of a Government dam for the particular year, but the total number of operational and constructed projects subject to dam charges is 82. Some projects were granted yearly waivers or exemptions from annual charges, while other projects for various reasons had no generation in a particular year.

⁶ In 2001, there were 20 additional projects licensed but not yet operational. Some of these project licenses were subsequently surrendered or terminated due to factors such as inability to obtain power sales contracts or to finance studies required by the license.

⁷ For additional tables and details, visit Department of Energy, Energy Information Administration Web Page, <http://www.eia.doe.gov/fuelelectric.html>.

Figure 8.10 Average Retail Prices of Electricity



Recommendation

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