

install and maintain any monitoring devices and instruments that may be required by the Regional Engineer or other authorized Commission representative to monitor that condition.

**§ 12.42 Warning and safety devices.**

To the satisfaction of, and within a time specified by, the Regional Engineer, an applicant or licensee must install, operate, and maintain any signs, lights, sirens, barriers, or other safety devices that may reasonably be necessary or desirable to warn the public of fluctuations in flow from the project or otherwise to protect the public in the use of project lands and waters.

**§ 12.43 Power and communication lines and gas pipelines.**

(a) A licensee must take all reasonable precautions, and comply with all reasonable specifications that may be provided by the Regional Engineer, to ensure that any power or communication line or gas pipeline that is located over, under, or in project waters does not obstruct navigation for recreational or commercial purposes or otherwise endanger public safety.

(b) Clearances between any power or communication line constructed after March 1, 1981 and any vessels using project waters must be at least sufficient to conform to any applicable requirements of the National Electrical Safety Code in effect at the time the power or communication line is constructed.

(c) The Regional Engineer may require a licensee or applicant to provide signs at or near power or communication lines to advise the public of the clearances for any power or communication lines located over, under, or in project waters.

**§ 12.44 Testing spillway gates.**

(a) *General requirement.* An applicant or licensee must make adequate provision, to the satisfaction of the Regional Engineer or other authorized Commission representative, to ensure that all spillway gates are operable at all times, particularly during adverse weather conditions.

(b) *Annual test.* (1) At least once each year, each spillway gate at a project must be operated to spill water, either

during regular project operation or on a test basis.

(2) If an applicant or licensee does not operate each spillway gate on a test basis during the periodic inspection by the Commission staff, the applicant or licensee must submit to the Regional Engineer at least once each year a written statement, verified in accordance with § 12.13, that each spillway has been operated at least once during the twelve months preceding the inspection.

(c) *Load-test of standby power.* (1) An applicant or licensee must load-test the standby emergency power for spillway gate operation at regular intervals, but not less than once during each year, and submit to the Regional Engineer, at least once each year, a written statement, verified in accordance with § 12.13, describing the intervals at which the standby emergency power was load-tested during the year preceding the inspection.

(2) The Commission staff may direct that a spillway gate be operated using standby emergency power during the periodic inspection.

**PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS**

**Subpart A—General Provisions**

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- 16.1 Applicability.
- 16.2 Definitions.
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**Subpart B—Applications for Projects Subject to Sections 14 and 15 of the Federal Power Act**

- 16.6 Notification procedures under section 15 of the Federal Power Act.
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### Subpart F—Procedural Matters

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AUTHORITY: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

SOURCE: Order 513, 54 FR 23806, June 2, 1989, unless otherwise noted.

## Subpart A—General Provisions

### § 16.1 Applicability.

This part applies to the filing and processing of an application for:

(a) A new license, a nonpower license, or an exemption from licensing for a hydroelectric project with an existing license subject to the provisions of sections 14 and 15 of the Federal Power Act.

(b) A subsequent license or an exemption from licensing for a hydroelectric project with an existing minor license or minor part license not subject to the provisions of sections 14 and 15 of the Federal Power Act because those sections were waived pursuant to section 10(i) of the Federal Power Act.

(c) Any potential applicant for a new or subsequent license for which the deadline for the notice of intent required by § 16.6 falls on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51139, Aug. 25, 2003]

### § 16.2 Definitions.

For purposes of this part:

(a) *New license* means a license, except an annual license, for a water power project that is issued under section 15(a) of the Federal Power Act after an original license expires.

(b) *New license application filing deadline*, as provided in section 15(c)(1) of the Federal Power Act, is the date 24 months before the expiration of an existing license.

(c) *Nonpower license* means a license for a nonpower project issued under section 15(b) of the Federal Power Act.

(d) *Subsequent license* means a license for a water power project issued under Part I of the Federal Power Act after a minor or minor part license that is not

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subject to sections 14 and 15 of the Federal Power Act expires.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 513-A, 55 FR 15, Jan. 2, 1990; Order 533, 56 FR 23154, May 20, 1991]

### § 16.3 Public notice of projects under expiring licenses.

In addition to the notice of a licensee's intent to file or not to file an application for a new license provided in § 16.6(d), the Commission will publish, in its annual report and annually in the FEDERAL REGISTER, a table showing the projects whose licenses will expire during the succeeding six years. The table will:

(a) List the licenses according to their expiration dates; and

(b) Contain the following information: license expiration date; licensee's name; project number; type of principal project works licensed, *e.g.*, dam and reservoir, powerhouse, transmission lines; location by state, county, and stream; location by city or nearby city when appropriate; whether the existing license is subject to sections 14 and 15 of the Federal Power Act; and plant installed capacity.

### § 16.4 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) A licensee may file with the Commission, in accordance with the formal filing requirements in subpart T of part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b) and a detailed explanation of the basis for the acceleration request.

(2) If the Commission grants the request for acceleration pursuant to paragraph (c), the Commission will deem the request for acceleration to be a notice of intent under § 16.6 and, unless the Commission directs otherwise, the licensee shall make available the information specified in § 16.7 no later than 90 days from the date that the Commission grants the request for acceleration.

(b) *Notice of request for acceleration.* (1) Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a

45-day period for comments by interested persons by:

(i) Publishing notice in the FEDERAL REGISTER;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes by mail.

(2) The notice issued pursuant to paragraphs (1) (i) and (ii) and the written notice given pursuant to paragraph (1)(iii) will be considered as fulfilling the notice provisions of § 16.6(d) should the Commission grant the acceleration request and will include an explanation of the basis for the licensee's acceleration request.

(c) *Commission order.* If the Commission determines it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to not less than five years and 90 days from the date of the Commission order.

### § 16.5 Site access for a competing applicant.

(a) *Access.* If a potential applicant for a new license, subsequent license, or nonpower license for a project has complied with the first stage consultation provisions of § 16.8(b)(1) and has notified the existing licensee in writing of the need for and extent of the access required, the existing licensee must allow the potential applicant to enter upon or into designated land, buildings, or other property in the project area at a reasonable time and under reasonable conditions, including, but not limited to, reasonable liability conditions, conditions for compensation to the existing licensee for all reasonable costs incurred in providing access, including energy generation lost as a result of modification of project operations that may be necessary to provide access, and in a manner that will not adversely affect the environment, for the purposes of:

(1) Conducting a study or gathering information required by a resource agency under § 16.8 or by the Commission pursuant to § 4.32 of this chapter;

(2) Conducting a study or gathering information not covered by paragraph (a)(1) but necessary to prepare an application for new license, subsequent license, or nonpower license; or

(3) Holding a site visit for a resource agency under § 16.8.

(b)(1) *Disputes.* Except as specified by paragraph (b)(2), disputes regarding the timing and conditions of access for the purposes specified in paragraphs (a) (1), (2), or (3) of this section and the need for the studies or information specified in paragraph (a)(2) may be referred to the Director of the Office of Energy Projects for resolution in the manner specified in § 16.8(b)(5) prior to the providing of access.

(2) Disputes regarding the amount of compensation to be paid the existing licensee for access may be referred to the Director of the Office of Energy Projects for resolution in the manner specified in § 16.8(b)(5) after the access has been provided.

**Subpart B—Applications for Projects Subject to Sections 14 and 15 of the Federal Power Act**

**§ 16.6 Notification procedures under section 15 of the Federal Power Act.**

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to notify.* In order to notify the Commission under section 15 of the Federal Power Act whether a licensee intends to file or not to file an application for new license, the licensee must file with the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov> a letter, that contains the following information:

- (1) The licensee's name and address.
- (2) The project number.
- (3) The license expiration date.
- (4) An unequivocal statement of the licensee's intention to file or not to file an application for a new license.
- (5) The type of principal project works licensed, such as dam and reservoir, powerhouse, or transmission lines.

(6) Whether the application is for a power or nonpower license.

(7) The location of the project by state, county and stream, and, when appropriate, by city or nearby city.

(8) The installed plant capacity.

(9) The location or locations of all the sites where the information required under § 16.7 is available to the public.

(10) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used by the project is located;

(ii) Every city, town, or similar local political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam,

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would be likely to be interested in, or affected by, the notification;

(v) Affected Indian tribes.

(c) *When to notify.* (1) Except as provided in paragraph (c)(2) of this section, if a license expires on or after October 17, 1992, the licensee must notify the Commission as required in paragraph (b) of this section at least five years, but no more than five and one-half years, before the existing license expires.

(2) The requirement in paragraph (c)(1) of this section does not apply if a licensee filed notice more than five and one-half years before its existing license expired and before the effective date of this rule.

(d) *Commission notice.* Upon receipt of the notification required under paragraph (c) of this Section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) If the notification is filed prior to July 23, 2005;

(i) Publishing notice in the FEDERAL REGISTER;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes, by electronic means if practical, otherwise by mail.

(2) If the notification is filed on or after July 23, 2005, pursuant to the provisions of § 5.8 of this chapter.

[Order 496, 53 FR 15810, May 4, 1988. Redesignated and amended by Order 513, 54 FR 23807, June 2, 1989; Order 2002, 68 FR 51139, Aug. 25, 2003; Order 653, 70 FR 8724, Feb. 23, 2005; Order 737, 75 FR 43403, July 26, 2010]

**§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.**

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to make information available.* A licensee must make the information specified in paragraph (d) of this section reasonably available to the public for inspection and reproduction, from the date on which the licensee notifies the Commission pursuant to § 16.6(b) of this part until the date any relicensing proceeding for the project is terminated.

(c) *Requirement to supplement information.* A licensee must supplement the information it is required to make available under the provisions of paragraph (d) with any additional information developed after the filing of a notice of intent.

(d) *Information to be made available.* (1) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is on or after

July 23, 2005 must, at the time it files a notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chapter to the entities specified in that paragraph.

(2) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is prior to July 23, 2005, and which elects to seek a license pursuant to this part must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(i) The following construction and operation information:

(A) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(1) Approved Exhibit drawings, including as-built exhibits,

(2) Any order issuing amendments or approving exhibits,

(3) Any order issuing annual licenses for the existing project;

(B) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(C) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(D) Any public correspondence related to the existing project;

(E) Any report on the total actual annual generation and annual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(F) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(G) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

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(H) Any bill issued to the existing licensee for annual charges under Section 10(e) of the Federal Power Act.

(ii) The following safety and structural adequacy information:

(A) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(B) Any independent consultant's reports required by part 12 of this chapter and filed on or after January 1, 1981;

(C) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(D) Any construction report for the existing project; and

(E) Any public correspondence relating to the safety and structural adequacy of the existing project.

(iii) The following fish and wildlife resources information:

(A) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(B) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(C) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(D) Any public correspondence relating to the fish and wildlife resources within the project area.

(iv) The following recreation and land use resources information:

(A) Any report on past and current recreational uses of the project area;

(B) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area; Land and Water Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area.

(C) Any documentation listing the entity responsible for operating and

maintaining any existing recreational facilities in the project area; and

(D) Any public correspondence relating to recreation and land use resources within the project area.

(v) The following cultural resources information:

(A) Except as provided in paragraph (d)(2)(v)(B) of this section, a licensee must make available:

(1) Any report concerning documented archeological resources identified in the project area;

(2) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(3) Any public correspondence relating to cultural resources within the project area.

(B) A licensee must delete from any information made available under paragraph (d)(2)(v)(A) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(vi) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(A) Any plan of the licensee;

(B) Any public correspondence; and

(C) Any other pertinent information relating to a conservation plan.

(3)-(6) [Reserved]

(7)(i) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in §388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(A) A statement that CEII is being withheld;

(B) A brief description of the omitted information that does not reveal any CEII; and

(C) This statement: “Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission’s CEII Coordinator.”

(ii) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(iii) The procedures contained in §§388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(iv) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

(e) *Form, place, and hours of availability, and cost of reproduction.* (1) A licensee must make the information specified in paragraph (d) of this section, or the pre-application document, as applicable, available to the public for inspection:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, provided that all of the information is available in at least one location;

(ii) During regular business hours; and

(iii) In a form that is readily accessible, reviewable, and reproducible.

(2) Except as provided in paragraph (d)(3) of this section, a licensee must make requested copies of the information specified in paragraph (c) of this section available either:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(ii) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(3) A licensee must make requested copies of the information specified in paragraph (d) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, Indian tribes, and the state agency responsible for fish and wildlife resources without charge for the costs of reproduction or postage.

(f) *Unavailability of required information.* Anyone may file a petition with the Commission requesting access to the information specified in paragraph (d) of this section if it believes that a licensee is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner’s belief.

(g) *Public correspondence.* A licensee may compile and make available in one file all the public correspondence required to be made available for inspection and reproduction by §16.7(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(iv), and (d)(6)(ii).

[Order 496, 53 FR 15810, May 4, 1988. Redesignated by Order 513, 54 FR 23807, June 2, 1989; Order 513-C, 55 FR 10768, Mar. 23, 1990; Order 2002, 68 FR 51139, Aug. 25, 2003; Order 643, 68 FR 52095, Sept. 2, 2003]

#### § 16.8 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files any application for a new license, a nonpower license, an exemption from licensing, or, pursuant to §16.25 or §16.26 of this part, a surrender of a project, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate State water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), and any

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Indian tribe that may be affected by the project.

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall require as well that the potential Applicant contact or consult with members of the public.

(3) If the potential applicant for a new or subsequent license commences first stages pre-filing consultation under this part on or after July 23, 2005, it must file a notification of intent to file a license application pursuant to § 5.5 of this chapter and a pre-application document pursuant to the provisions of § 5.6 of this chapter.

(4) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(5)(i) Before it files an amendment that would be considered as material under § 4.35 of this part, to any application subject to this section, an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section and allow such agencies and tribes at least 60 days to comment on a draft of the proposed amendment and to submit recommendations and conditions to the applicant. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment and respond to any obligations, recommendations or conditions submitted by the agencies or Indian tribes.

(ii) If an applicant has any doubt as to whether a particular amendment would be subject to the pre-filing consultation requirements of this section, the applicant may file a written request for clarification with the Director, Office of Energy Projects.

(b) *First stage of consultation.* (1) A potential Applicant for a new or subsequent license must, at the time it files its notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chap-

ter to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for a nonpower license or exemption or a potential applicant which elects to use the licensing procedures of Parts 4 or 16 of this chapter prior to July 23, 2005, must promptly contact each of the appropriate resource agencies, Indian tribes, and members of the public listed in paragraph (a)(1) of this section, and the Commission with the following information:

(i) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(vii) Any statement required by § 4.301(a) of this chapter.

(3)(i) A potential applicant for an exemption, a new or subsequent license



for which the deadline for filing a notification of intent to seek a license is prior to July 23, 2005 and which elects to commence pre-filing consultation under this part, or a new or subsequent license for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005 and which receives Commission approval to use the license application procedures of this part must:

(A) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies, Indian tribes and members of the public to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(B) Consult with the resource agencies, Indian tribes and members of the public on the scheduling of the joint meeting; and provide each resource agency, Indian tribe, member of the public, and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(ii) The joint meeting must be held no earlier than 30 days, and no later than 60 days from, as applicable:

(A) The date of the potential applicant's letter transmitting the information required by paragraph (b)(2) of this section, in the case of a potential exemption applicant or a potential license applicant that commences pre-filing consultation under this part prior to July 23, 2005; or

(B) The date of the Commission's approval of the potential license applicant's request to use the license application procedures of this part pursuant to the provisions of part 5, in the case of a potential license applicant for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005.

(4) Members of the public are invited to attend the joint meeting held pursuant to paragraph (b)(3) of this section. Members of the public attending the meeting are entitled to participate fully in the meeting and to express their views regarding resource issues that should be addressed in any application for a new license that may be filed by the potential applicant. At-

tendance of the public at any site visit held pursuant to paragraph (b)(3) of this section shall be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency and Indian tribe.

(5) Unless otherwise extended by the Director of Office of Energy Projects pursuant to paragraph (b)(6) of this section, not later than 60 days after the joint meeting held under paragraph (b)(3) of this section each interested resource agency, and Indian tribe, and member of the public must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives.

(6)(i) If a potential applicant and a resource agency, Indian tribe, or member of the public disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, or Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

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(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Energy Projects pursuant to § 16.8(b)(6).

(iv) The Director will resolve disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) Unless otherwise extended by the Director pursuant to paragraph (b)(6) of this section, the first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined otherwise by the Director of the Office of Energy Projects pursuant to paragraph (b)(6) of this section, a potential applicant must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by re-

source agencies and Indian tribes under paragraph (b):

(i) Prior to filing the application, if the results:

(A) Would influence the financial (e.g., instream flow study) or technical feasibility of the project (e.g., study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (e.g., resource surveys), suitable mitigation or enhancement measures, or to minimize impact on significant resources (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before license issuance, if the applicant complied with the provisions of paragraph (b)(1) or (b)(2) of this section, as applicable, no later than four years prior to the expiration date of the existing license and the results:

(A) Would be those described in paragraphs (c)(1)(i) (A) or (B) of this section; and

(B) Would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the new license application filing deadline.

(iii) After a new license is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (e.g., post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(7) of this section, a resource agency, Indian tribe, or member of the public requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis for its request, under paragraphs (b)(5)(i)–(vi) of this section, the potential applicant will promptly initiate the study or gather the information, unless the Director of the Office of Energy Projects determines under paragraph (b)(5) of this section either

that the study or information is unreasonable or unnecessary or that use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice.

(3) (i) The results of studies and information gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) of this chapter merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency or Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertains to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measure; and

(iii) A written request for review and comment.

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) of this section information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section

indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold at least one joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the disagreeing agency's or Indian tribe's written comments to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures; and

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting and provide the disagreeing resource agency or Indian tribe, other agencies with similar or related areas of interest, expertise, or responsibility, and the Commission with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the

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deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section if any resource agency or Indian tribe has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a new license, nonpower license, exemption from licensing, or surrender of license, accompanied by a transmittal letter certifying that at the same time copies of the application are being distributed to the resource agencies, Indian tribes, and other government offices specified in paragraph (d)(2) of this section and § 16.10(f) of this part, if applicable.

(2) As soon as an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, as the Commission may direct, the applicant must serve on every resource agency and Indian tribe consulted, on other government offices, and, in the case of applications for surrender or nonpower license, any state, municipal, interstate, or Federal agency which is authorized to assume regulatory supervision over the land, waterways, and facilities covered by the application for surrender or nonpower license, copies of:

(i) Its application for a new license, a nonpower license, an exemption from licensing, or a surrender of the project;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the

correction of deficiencies or the submittal of additional information.

(e) *Resource agency or Indian tribe waiver of compliance with consultation requirement.* (1) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or Indian tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(4) Following July 23, 2003 a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the potential applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

(f) *Application requirements documenting consultation and any disagreements with resource agencies or Indian tribes.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) of this section, and § 16.8(i), and must include:

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency or Indian tribe.

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in §2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7) A description of how the applicant's proposal addresses the significant resource issues raised by members of the public during the joint meeting held pursuant to paragraph (b)(2) of this section.

(g) *Requests for privileged or Critical Energy Infrastructure Information treatment of pre-filing submission.* If a potential applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in paragraph (b)(1) of this section), the Commission will treat the request in accordance with the provisions in §388.112 of this chapter until the date the application is filed with the Commission.

(h) *Other meetings.* Prior to holding a meeting with a resource agency or Indian tribe, other than a joint meeting pursuant to paragraph (b)(3)(i) or (c)(6)(i) of this section, a potential applicant must provide the Commission and each resource agency or Indian

tribe (with an area of interest, expertise, or responsibility similar or related to that of the resource agency or Indian tribe with which the potential applicant is to meet) with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(i) *Public participation.* (1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(3), the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in the county or counties in which the existing project or any part thereof or the lands affected thereby are situated. The notice shall include a copy of the written agenda of the issues to be discussed at the joint meeting prepared pursuant to paragraph (b)(3)(ii) of this section.

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (i)(1) of this section is first published until a final order is issued on the license application.

(ii) The provisions of §16.7(e) shall govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(3) of this section the information specified in paragraph (b)(2) of this section.

(j) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by §388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in §16.7(d)(7).

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 513-A, 55 FR 16, Jan. 2, 1990; Order 533, 56 FR 23154, May 20, 1991; 56 FR 61156, Dec. 2, 1991; Order 2002, 68 FR 51140, Aug. 25, 2003; Order 643, 68 FR 52095, Sept. 2, 2003; 68 FR 61743, Oct. 30, 2003; Order 769, 77 FR 65475, Oct. 29, 2012]

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### § 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an applicant for a new license or nonpower license for a project subject to sections 14 and 15 of the Federal Power Act.

(b) *Filing requirement.* (1) An applicant for a license under this section must file its application at least 24 months before the existing license expires.

(2) An application for a license under this section must meet the requirements of § 4.32 (except that the Director of the Office of Energy Projects may provide more than 90 days in which to correct deficiencies in applications) and, as appropriate, §§ 4.41, 4.51, or 4.61 of this chapter.

(3) The requirements of § 4.35 of this chapter do not apply to an application under this section, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 16.9(d)(1) if an amendment described in § 4.35(f) of this chapter is filed.

(4) If the Commission rejects or dismisses an application pursuant to the provisions of § 4.32 of this chapter, the application may not be refiled after the new license application filing deadline specified in § 16.9(b)(1).

(c) *Final amendments.* All amendments to an application, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under paragraph (d)(2).

(d) *Commission notice.* (1) Upon acceptance of an application for a new license or a nonpower license, the Commission will give notice of the application and of the dates for comment, intervention, and protests by:

(i) Publishing notice in the FEDERAL REGISTER;

(ii) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies, Indian tribes, and non-governmental

organizations, by electronic means if practical, otherwise by mail.

(2) Within 60 days after the new license application filing deadline, the Commission will issue a notice on the processing deadlines established under § 4.32 of this chapter, estimated dates for further processing deadlines under § 4.32 of this chapter, deadlines for complying with the provisions of § 4.36(d)(2) (ii) and (iii) of this chapter in cases where competing applications are filed, and the date for final amendments and will:

(i) Publish the notice in the FEDERAL REGISTER;

(ii) Provide the notice to appropriate Federal, state, and interstate resource agencies and Indian tribes, by electronic means if practical, otherwise by mail; and

(iii) Serve the notice on all parties to the proceedings pursuant to § 385.2010 of this chapter.

(3) Where two or more mutually exclusive competing applications have been filed for the same project, the final amendment date and deadlines for complying with the provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under paragraph (d)(2) of this section will be the same for all such applications.

(4) The provisions of § 4.36(d)(2)(i) of this chapter will not be applicable to applications filed pursuant to this section.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51142, Aug. 25, 2003; Order 653, 70 FR 8724, Feb. 23, 2005]

### § 16.10 Information to be provided by an applicant for new license: Filing requirements.

(a) *Information to be supplied by all applicants.* All applicants for a new license under this part must file the following information with the Commission:

(1) A discussion of the plans and ability of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(i) Increase capacity or generation at the project;

(ii) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(iii) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(2) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(i) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers, including wholesale customers, if the applicant is not granted a license for the project;

(ii) A discussion of the increase in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project;

(iii) The effect of each alternative source of power on:

(A) The applicant's customers, including wholesale customers;

(B) The applicant's operating and load characteristics; and

(C) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(3) The following data showing need and the reasonable cost and availability of alternative sources of power:

(i) The average annual cost of the power produced by the project, including the basis for that calculation;

(ii) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(A) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(B) A resource analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(C) If load management measures are not viewed as resources, the effects of such measures on the projected capac-

ity and energy requirements indicated separately;

(iii) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation:

(A) The total annual cost of each alternative source of power to replace project power;

(B) The basis for the determination of projected annual cost; and

(C) A discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and other system operating characteristics; and

(iv) The effect on the direct providers (and their immediate customers) of alternate sources of power.

(4) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(5) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation.

(6) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(i) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(ii) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

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(iii) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(7) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(8) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(9) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license, including specific information to demonstrate that the applicant's personnel are adequate in number and training to operate and maintain the project in accordance with the provisions of the license.

(10) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(11) The applicant's electricity consumption efficiency improvement program, as defined under section

10(a)(2)(C) of the Federal Power Act, including:

(i) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(ii) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(12) The names and mailing addresses of every Indian tribe with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

(b) *Information to be provided by an applicant who is an existing licensee.* An existing licensee that applies for a new license must provide:

(1) The information specified in paragraph (a).

(2) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(i) A description of existing and planned operation of the project during flood conditions;

(ii) A discussion of any warning devices used to ensure downstream public safety;

(iii) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in subpart C of part 12 of this chapter, on file with the Commission;

(iv) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(v) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.



(3) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(4) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(5) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(6) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of non-compliance, their disposition, and any documentation relating to each incident.

(7) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(8) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(9) A statement of annual fees paid under Part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(c) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(1) The information specified in paragraph (a).

(2) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(i) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(ii) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in subpart C of part 12 of this chapter, and any proposed changes;

(iii) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(iv) A statement indicating whether or not the applicant is requesting the licensee to provide transmission serv-

ices under section 15(d) of the Federal Power Act.

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 533, 56 FR 23154, May 20, 1991; 56 FR 61156, Dec. 2, 1991; Order 2002, 68 FR 51142, Aug. 25, 2003]

#### § 16.11 Nonpower licenses.

(a) *Information to be provided by all applicants for nonpower licenses.* (1) An applicant for a nonpower license must provide the following information in its application:

(i) The information required by §§ 4.51 or 4.61 of this chapter, as appropriate;

(ii) A description of the nonpower purpose for which the project is to be used;

(iii) A showing of how the nonpower use conforms with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act;

(iv) A statement of any impact that converting the project to nonpower use may have on the power supply of the system served by the project, including the additional cost of power if an alternative generating source is used to offset the loss of the project's generation;

(v) A statement identifying the state, municipal, interstate, or Federal agency, which is authorized and willing to assume regulatory supervision over the land, waterways, and facilities to be included within the nonpower project;

(vi) Copies of written communication and documentation of oral communication that the applicant may have had with any jurisdictional agency or governmental unit authorized and willing to assume regulatory control over the project and the point of time at which the agency or unit would assume regulatory control;

(vii) A statement that demonstrates that the applicant has complied with the requirements of § 16.8(d)(2);

(viii) A proposal that shows the manner in which the applicant plans to remove or otherwise dispose of the project's power facilities;

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(ix) Any proposal to repair or rehabilitate any nonpower facilities;

(x) A statement of the costs associated with removing the project's power facilities and with any necessary restoration and rehabilitation work; and

(xi) A statement that demonstrates that the applicant has resources to ensure the integrity and safety of the remaining project facilities and to maintain the nonpower functions of the project until the governmental unit or agency assumes regulatory control over the project.

(2) [Reserved]

(b) *Termination of a proceeding for a nonpower license.* The Commission may deny an application for a nonpower license and turn the project over to any agency that has jurisdiction over the land or reservations if:

(1) An existing project is located on public lands or reservations of the United States;

(2) Neither the existing licensee nor any other entity has filed an application for a new license for the project;

(3) No one has filed a recommendation to take over the project pursuant to § 16.14; and

(4) The agency that has jurisdiction over the land or reservations demonstrates that it is able and willing to:

(i) Accept immediate responsibility for the nonpower use of the project; and

(ii) Pay the existing licensee for its net investment in the project and any severance damages specified in section 14(a) of the Federal Power Act.

(c) *Termination of nonpower license.* A nonpower license will be terminated by Commission order when the Commission determines that a state, municipal, interstate, or Federal agency has jurisdiction over, and is willing to assume regulatory responsibility for, the land, waterways, and facilities included within the nonpower license.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51142, Aug. 25, 2003]

### **§ 16.12 Application for exemption from licensing by a licensee whose license is subject to sections 14 and 15 of the Federal Power Act.**

(a) An existing licensee whose license is subject to sections 14 and 15 of the

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Federal Power Act may apply for an exemption for the project.

(b) An applicant for an exemption under paragraph (a) must meet the requirements of subpart K or subpart J of part 4 of this chapter, and §§ 16.5, 16.6, 16.7, 16.8, 16.9(b) (1), (2) (except the requirement to comply with §§ 4.41, 4.51, or 4.61 of this chapter), 16.9(c), 16.10(a), 16.10(b), and 16.10(d).

(c) The Commission will process an application by an existing licensee for an exemption for the project in accordance with §§ 16.9(b)(3), 16.9(b)(4), and 16.9(d).

(d) If a license application is filed in competition with an application for exemption filed by the existing licensee, the Commission will decide among the competing applications in accordance with the standards of § 16.13 and not in accordance with the provisions of § 4.37(d)(2) of this chapter.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

### **§ 16.13 Standards and factors for issuing a new license.**

(a) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(b) If there are only insignificant differences between the final applications of an existing licensee and a competing applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which applicant will receive the license after considering:

(1) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(2) The actions taken by the existing licensee related to the project which affect the public.

(c) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences

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provision of section 15(a)(2) of the Federal Power Act.

### Subpart C—Takeover Provisions for Projects Subject to Sections 14 and 15 of the Federal Power Act

#### § 16.14 Departmental recommendation for takeover.

(a) A Federal department or agency may file a recommendation that the United States exercise its right to take over a hydroelectric power project with a license that is subject to sections 14 and 15 of the Federal Power Act. The recommendation must:

(1) Be filed no earlier than five years before the license expires and no later than the end of the comment period specified by the Commission in:

(i) A notice of application for a new license, a nonpower license, or an exemption for the project; or

(ii) A notice of an amendment to an application for a new license, a nonpower license, or an exemption;

(2) Be filed in accordance with the formal requirements for filings in subpart T of part 385 of the Commission's regulations and be served on each relevant Federal and state resource agency, all applicants for new license, nonpower license or exemption, and any other party to the proceeding;

(3) Specify the project works that would be taken over by the United States;

(4) Describe the proposed Federal operation of the project, including any plans for its redevelopment, and discuss the manner in which takeover would serve the public interest as fully as non-Federal development and operation;

(5) State whether the agency intends to undertake the operation of the project; and

(6) Include the information required by §§ 4.41, 4.51, or 4.61 of this chapter, as appropriate.

(b) A department or agency that files a takeover recommendation becomes a party to the proceeding.

(c) An applicant or potential applicant for a new license, a nonpower license, or an exemption that involves a takeover recommendation may file a reply to the recommendation, within

120 days from the date the takeover recommendation is filed with the Commission. The reply must be filed with the Commission in accordance with part 385 of the Commission's regulations and a copy of such a reply must be served on the agency recommending the takeover and on any other party to the proceeding.

#### § 16.15 Commission recommendation to Congress.

Upon receipt of a recommendation from any Federal department or agency, a proposal of any party, or on the Commission's own motion, and after notice and opportunity for hearing, the Commission may determine that a project may be taken over by the United States, issue an order on its findings and recommendations, and forward a copy to Congress.

#### § 16.16 Motion for stay by Federal department or agency.

(a) Within 30 days of the date on which an order granting a new license or exemption is issued, a Federal department or agency that has filed a takeover recommendation under § 16.14 may file a motion under § 385.212 of this chapter to request a stay of the effective date of the license or exemption order.

(b)(1) If a Federal department or agency files a motion under paragraph (a), the Commission will stay the effective date of the order issuing the license or exemption for two years.

(2) The stay issued under paragraph (b)(1) of this section may be terminated either:

(i) Upon motion of the department or agency that requested the stay; or

(ii) By action of Congress.

(c) The Commission will notify Congress if:

(1) An order granting a stay under paragraph (b)(1) of this section is issued;

(2) Any license or exemption order becomes effective by reason of the termination of a stay; or

(3) Any license or exemption order becomes effective by reason of the expiration of a stay.

(d) The Commission's order granting the license or exemption will automatically become effective:

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(1) Thirty days after issuance, if no request for stay is filed, provided that no appeal or rehearing is filed;

(2) When the period of the stay expires; or

(3) When the stay is terminated under paragraph (b)(2) of this section.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

### § 16.17 Procedures upon Congressional authorization of takeover.

If Congress authorizes the takeover of a hydroelectric power project as provided under section 14 of the Federal Power Act:

(a) The Commission or the Director of the Office of Energy Projects will notify the existing licensee in writing of the authorization at least two years before the takeover occurs; and

(b) The licensee must present any claim for compensation to the Commission:

(1) Within six months of issuance of the notice of takeover; and

(2) As provided in section 14 of the Federal Power Act.

### Subpart D—Annual Licenses for Projects Subject to Sections 14 and 15 of the Federal Power Act

#### § 16.18 Annual licenses for projects subject to sections 14 and 15 of the Federal Power Act.

(a) This section applies to projects with licenses subject to sections 14 and 15 of the Federal Power Act.

(b) The Commission will issue an annual license to an existing licensee under the terms and conditions of the existing license upon expiration of its existing license to allow:

(1) The licensee to continue to operate the project while the Commission reviews any applications for a new license, a nonpower license, an exemption, or a surrender;

(2) The orderly removal of a project, if the United States does not take over a project and no new power or nonpower license or exemption will be issued; or

(3) The orderly transfer of a project to:

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(i) The United States, if takeover is elected; or

(ii) A new licensee, if a new power or nonpower license is issued to that licensee.

(c) An annual license issued under this section will be considered renewed automatically without further order of the Commission, unless the Commission orders otherwise.

(d) In issuing an annual license, the Commission may incorporate additional or revised interim conditions if necessary and practical to limit adverse impacts on the environment.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 513-A, 55 FR 18, Jan. 2, 1990; Order 540, 57 FR 21738, May 22, 1992]

### Subpart E—Projects With Minor and Minor Part Licenses Not Subject to Sections 14 and 15 of the Federal Power Act

#### § 16.19 Procedures for an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Notification procedures.* (1) An existing licensee with a minor license or a license for a minor part of a hydroelectric project must file a notice of intent pursuant to § 16.6(b).

(2) If the license of an existing licensee expires on or after October 17, 1994, the licensee must notify the Commission as required under § 16.6(b) at least five years before the expiration of the existing license.

(3) The Commission will give notice of a licensee's intent to file or not to file an application for a subsequent license in accordance with § 16.6(d).

(c) *Requirement to make information available.* (1) Except as provided in paragraph (c)(2) of this section, a licensee must make the information described in § 16.7 available to the public for inspection and reproduction when it gives notice to the Commission under paragraph (b).

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(2) The requirement of paragraph (c)(1) of this section does not apply if an applicant filed an application for a subsequent license on or before July 3, 1989.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51142, Aug. 25, 2003; Order 699, 72 FR 45324, Aug. 14, 2007]

### **§ 16.20 Applications for subsequent license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act.**

(a) *Applicability.* This section applies to an application for subsequent license for a project with an expiring license that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Licensing proceeding.* (1) An applicant for a license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act must file its application under Part I of the Federal Power Act.

(2) The provisions of section 7(a) of the Federal Power Act do not apply to licensing proceedings involving an application described in paragraph (b)(1).

(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

(d) *Requirements for and processing of applications.* An application for subsequent license must meet the requirements of, and will be processed in accordance with, §§ 16.5, 16.8, 16.9(b)(2), 16.9(b)(3), 16.9(b)(4), 16.9(c), and 16.9(d).

(e) *Applicant notice.* An applicant for subsequent license or exemption that proposes to expand an existing project to encompass additional lands must include in its application a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51142, Aug. 25, 2003]

### **§ 16.21 Operation of projects with a minor or minor part license not subject to sections 14 and 15 of the Federal Power Act after expiration of a license.**

(a) A licensee of a minor or minor part project not subject to sections 14 and 15 of the Federal Power Act that has filed an application for a subsequent license or exemption may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires until the Commission acts on its application.

(b) If the licensee of a minor or minor part project not subject to sections 14 and 15 of the Federal Power Act has not filed an application for a subsequent license or exemption, the Commission may issue an order requiring the licensee to continue to operate its project in accordance with the terms and conditions of the license until the Commission either acts on any applications for subsequent license timely filed by another entity or takes action pursuant to §§ 16.25 or 16.26.

### **§ 16.22 Application for an exemption by a licensee with a minor or minor part license for a project not subject to sections 14 and 15 of the Federal Power Act.**

(a) *Applicability.* This section applies to an existing licensee with a license for a project not subject to sections 14 and 15 of the Federal Power Act.

(b) *Information requirements.* An applicant for an exemption must meet the requirements of, and will be processed in accordance with, subpart K or subpart J of part 4 of this chapter, and §§ 16.5, 16.8, 16.9(b)(2) (except the requirement to comply with §§ 4.41, 4.51, or 4.61 of this chapter), §§ 16.9(b)(3), 16.9(b)(4), 16.9(c), and 16.9(d).

(c) *Standard of comparison.* If an application for subsequent license is filed in competition with an application for exemption by an existing licensee, the Commission will decide among competing applications in accordance with the standards of § 16.13 and not in accordance with the provisions of § 4.37(d)(2) of this chapter.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

**Subpart F—Procedural Matters****§ 16.23 Failure to file timely notices of intent.**

(a) An existing licensee of a water power project with a license subject to sections 14 and 15 of the Federal Power Act that fails to file a notice of intent pursuant to §16.6(b) by the deadlines specified in §16.6(c) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for new license, nonpower license, or exemption.

(b) An existing licensee of a water power project with a license not subject to sections 14 and 15 of the Federal Power Act that fails to file a notice of intent pursuant to §16.6(b) by the deadlines specified in §16.20(c) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for subsequent license or exemption.

**§ 16.24 Prohibitions against filing applications for new license, nonpower license, exemption, or subsequent license.**

(a) *Licenses subject to sections 14 and 15 of the Federal Power Act.* (1) An existing licensee with a license subject to sections 14 and 15 of the Federal Power Act that informs the Commission that it does not intend to file an application for new license, nonpower license, or exemption for a project, as required by §16.6, may not file an application for new license, nonpower license, or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(2) An existing licensee with a license subject to sections 14 and 15 of the Federal Power Act that fails to file an application for new license, nonpower license, or exemption for a project at least 24 months before the expiration of the existing license for the project may not file an application for new license, nonpower license, or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(b) *Licenses not subject to sections 14 and 15 of the Federal Power Act.* (1) An existing licensee with a license not

subject to sections 14 and 15 of the Federal Power Act that informs the Commission that it does not intend to file an application for subsequent license or exemption for a project, as required by §16.6, may not file an application for subsequent license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(2) An existing licensee with a license not subject to sections 14 and 15 of the Federal Power Act that fails to file an application for subsequent license or exemption for a project by the deadlines specified in §16.20(c) may not file an application for subsequent license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

**§ 16.25 Disposition of a project for which no timely application is filed following a notice of intent to file.**

(a) If an existing licensee that indicates in the notice filed pursuant to §16.6 that it will file an application for new license, nonpower license, subsequent license, or an exemption does not file its application individually or in conjunction with an entity or entities that are not currently licensees of the project at least 24 months before its existing license expires in the case of licenses subject to sections 14 and 15 of the Federal Power Act, or by the deadlines specified in §16.20(c) in the case of licenses not subject to sections 14 and 15 of the Federal Power Act, and no other applicant files an application within the appropriate time or all pending applications filed before the applicable filing deadline are subsequently rejected or dismissed pursuant to §4.32 of this chapter, the Commission will publish in the FEDERAL REGISTER and once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, notice soliciting applications from potential applicants other than the existing licensee.

(b) A potential applicant that files a notice of intent within 90 days from the date of the public notice issued pursuant to paragraph (a):

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(1) May apply for a license under Part I of the Federal Power Act and part 4 of this chapter (except § 4.38) within 18 months of the date on which it files its notice; and

(2) Must comply with the requirements of § 16.8 and, if the project would have a total installed capacity of over 2,000 horsepower, § 16.10.

(c) The existing licensee must file a schedule for the filing of a surrender application for the project, for the approval of the Director of the Office of Energy Projects, 90 days:

(1) After the due date established for any notice of intent issued under paragraph (a), if no notices of intent were received; or

(2) After the due date for any application filed under paragraph (b)(1), if no application has been filed.

(d) Any application for surrender must be filed according to the approved schedule, must comply with the requirements of § 16.8 and part 6 of this chapter, and must provide for disposition of any project facility.

### **§ 16.26 Disposition of a project for which no timely application is filed following a notice of intent not to file.**

(a) If an existing licensee indicates in the notice filed pursuant to § 16.6 that it will not file an application for new license, nonpower license, subsequent license, or exemption and no other applicant files an application at least 24 months before the existing license expires in the case of licenses subject to sections 14 and 15 of the Federal Power Act, or by the deadlines specified in § 16.20(c) in the case of licenses not subject to sections 14 and 15 of the Federal Power Act, the Director of the Office of Energy Projects will provide the existing licensee with written notice that no timely applications for the project have been filed.

(b) The existing licensee, within 90 days from the date of the written notice provided in paragraph (a), must file a schedule for the filing of a surrender application for the project for the approval of the Director of the Office of Energy Projects.

(c) Any application for surrender must be filed according to the approved schedule, must comply with the re-

quirements of § 16.8 and part 6 of this chapter, and must provide for disposition of any project facility.

## **PART 20—AUTHORIZATION OF THE ISSUANCE OF SECURITIES BY LICENSEES AND COMPANIES SUBJECT TO SECTIONS 19 AND 20 OF THE FEDERAL POWER ACT**

Sec.

20.1 Applicability.

20.2 Regulation of issuance of securities.

AUTHORITY: Secs. 3(16), 19, 20, 41 Stat. 1063, 1073; secs. 201, 309, 49 Stat. 838, 858; 16 U.S.C. 796 (16), 812, 813, 825k.

SOURCE: Order 170, 19 FR 1203, Apr. 8, 1954, unless otherwise noted.

### **§ 20.1 Applicability.**

(a) *Without special proceeding for regulation.* Every security issue within the scope of the jurisdiction conferred upon the Commission by sections 19 and 20 of the Federal Power Act shall be subject to the provisions of § 20.2, except a security issue by a person organized and operating in a State under the laws of which its security issues are regulated by a State commission, or by any one described in subsection 201(f) of the act. No other security issue within the scope of sections 19 and 20 shall be subject to § 20.2 except as provided in paragraph (b) of this section.

(b) *Reservation of possibility of regulation in other cases.* Not later than 10 days prior to any proposed security issuance which is within the scope of section 19 or section 20 of the act, but excepted by paragraph (a) of this section, any person or state entitled to do so under section 19 or section 20, may file a complaint or request in accordance with the applicable rules of the Commission, or the Commission upon its own motion may by order initiate a proceeding, raising the question whether issuance of such security should be subjected by Commission order to the provisions of § 20.2. After notice of such filing or order, and until such request or complaint is denied or dismissed or the proceeding initiated by such order is terminated without subjecting the issuance of the security to the provisions of § 20.2, the security in question shall not be issued except it be issued