

## ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 18: Conservation of Power and Water Resources

[PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS](#)

[Subpart M—Fees Under Section 30\(e\) of the Act](#)

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§4.303 Post-filing procedures.

(a) Submission of cost statement—1) Accepted applications. Within 60 days after the last date for filing mandatory terms and conditions pursuant to §4.32(c)(4) for a new dam or diversion license application seeking PURPA benefits, §4.93(b) for an application for exemption of a small conduit hydroelectric facility, or §4.105(b)(1) for an application for case-specific exemption of a small hydroelectric power project, a fish and wildlife agency must file with the Commission a cost statement of the reasonable costs the agency incurred in setting mandatory terms and conditions for the proposed project. An agency may request, in writing, along with any supporting documentation an extension of this 60-day period.

(2) Rejected, withdrawn or dismissed applications. The Director of the Office of Energy Projects (Director) will, by letter, notify each fish and wildlife agency if a section 30(c) application is rejected, withdrawn or dismissed. Within 60 days from the date of notification, a fish and wildlife agency must file with the Commission a cost statement of the reasonable costs the agency incurred prior to the date the application was rejected, withdrawn, or dismissed. An agency may submit a written request for an extension of this 60-day period along with any supporting documentation.

(b) If an agency has not submitted a cost statement or extension request within the time provided in paragraph (a)(2) of this section, it waives its right to receive fees for that project pursuant to this subpart.

(c) Billing. After the Commission receives a cost statement from all fish and wildlife agencies as required by paragraph (a) of this section, the Commission will bill the section 30(c) applicant. The bill will show:

- (1) The cost statement submitted to the Commission by each fish and wildlife agency;
- (2) Any amounts already paid by the applicant pursuant to §4.302; and

(3)(i) The amount due, if the amount already paid by the applicant pursuant to §4.302 is less than the total of all the cost statements; or

(ii) The amount to be refunded to the applicant, if the amount already paid by the applicant pursuant to §4.302 is more than the total of all the cost statements.

(d) Within 45 days from the date of a bill issued under paragraph (b) of this section, a section 30(c) applicant must pay in full to the Commission any remaining amounts due on the cost statements regardless of whether any of these amounts are in dispute.

(e) Dispute procedures—(1) When to dispute. Any dispute regarding the reasonableness of any fish and wildlife agency cost statement must be made within 45 days from the date of a bill issued under paragraph (b) of this section.

(2) Assessment of disputed cost statements The burden of showing that an agency's cost statement is unreasonable is on the applicant. However, a fish and wildlife agency must supply the disputing applicant and the Commission with the documentation necessary to support its cost statement. The Director of the Office of Energy Projects will determine the reasonableness of a disputed fish and wildlife agency cost statement. The Director's decision will be in writing. The Director will notify the disputing applicant and the fish and wildlife agency of the decision by letter. Any decision of the Director may be appealed by either party pursuant to 18 CFR 385.1902. In deciding whether or not a disputed cost statement is reasonable, the Director will review the application, the disputed cost statement and any other documentation relating to the particular environmental problems associated with the disputing applicant's proposed project. The Director will consider such factors as:

(i) The time the fish and wildlife agency spent reviewing the application;

(ii) The proportion of the cost statement to the time the fish and wildlife agency spent reviewing the application;

(iii) Whether the fish and wildlife agency's expenditures conform to Federal expenditure guidelines for such items as travel, per diem, personnel, and contracting; and

(iv) Whether the studies conducted by the agency, if any, are duplicative, limited to the proposed project area, unnecessary to determine the impacts to or mitigation measures for the particular fish and wildlife resources affected by the proposed project, or otherwise unnecessary to set terms and conditions for the proposed project.

(3) Unreasonable cost statements. If the Director determines that a disputed fish and wildlife agency cost statement is unreasonable, the disputing applicant and the fish and wildlife agency will be afforded 45 days from the date of notification to attempt to reach an agreement regarding the reimbursable costs of the agency. If the disputing applicant and the fish and wildlife agency fail to reach an agreement on the disputed cost statement within 45 days from the date of notification, the Director will determine the costs that the agency should reasonably have incurred.

(f) Refunds. (1) If the amount paid by a section 30(c) applicant under §4.302 exceeds the total amount of the cost statements submitted by fish and wildlife agencies under paragraph (a) of this section, the Commission will notify the Treasury to refund the difference to the applicant within 45 days from the date of the bill issued to the applicant under paragraph (b) of this section.

(2) If the amount paid by a section 30(c) applicant exceeds the amount determined to be reasonable by the Director pursuant to paragraph (d)(2) of this section, the Commission will notify the Treasury to refund the difference to the applicant within 45 days of the resolution of all dispute proceedings.

[Order 487, 52 FR 48404, Dec. 22, 1987, as amended by Order 647, 69 FR 32438, June 10, 2004]

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