

§ 16.7

18 CFR Ch. I (4-1-01 Edition)

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 (b) 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) Publishing notice in the FEDERAL REGISTER;

(2) 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

(3) Notifying appropriate Federal and state resource agencies and Indian tribes by mail.

[Order 496, 53 FR 15810, May 4, 1988. Redesignated and amended by Order 513, 54 FR 23807, June 2, 1989]

§ 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.* A licensee must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(1) The following construction and operation information:

(i) 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

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

(B) Any order issuing amendments or approving exhibits, and

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

(ii) 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;

(iii) 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;

(iv) Any public correspondence relating to the existing project;

(v) 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;

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

(vii) 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

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

(2) The following safety and structural adequacy information:

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

(ii) Any independent consultant's reports required by part 12 of the Commission's regulations and filed on or after January 1, 1981;

(iii) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five

Federal Energy Regulatory Commission

§ 16.7

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;

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

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

(3) The following fish and wildlife resources information:

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

(ii) 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;

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

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

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

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

(ii) 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 Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area;

(iii) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

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

(5) The following cultural resources information:

(i) Except as provided in paragraph (d)(5)(ii) of this section, a licensee must make available:

(A) Any report concerning documented archaeological resources identified in the project area;

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

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

(ii) A licensee must delete from any information made available under paragraph (d)(5)(i) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) 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:

(i) Any plan of the licensee;

(ii) Any public correspondence; and

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

(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 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, 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 § 16.16(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]

§ 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 Indian tribe that may be affected by the project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3)(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 Hydropower Licensing.

(b) *First stage of consultation.* (1) A potential applicant must provide each of the appropriate resource agencies and Indian tribes, 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 a 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, both existing and proposed,