

proposed plans of development, as provided in § 4.35 of this chapter, an agency, Indian tribe, or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to §§ 5.20–5.26. Such modified recommendations, terms and conditions, or prescriptions must be filed no later than the due date specified by the Commission for comments on the amendment.

(b) *Date of acceptance.* The date of acceptance of an amendment of application for an original license filed under this part is governed by the provisions of § 4.35 of this chapter.

(c) *New and subsequent licenses.* The requirements of § 4.35 of this chapter do not apply to an application for a new or subsequent license, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 4.32(d)(2) of this chapter if a material amendment, as that term is used in § 4.35(f) of this chapter, is filed.

(d) *Deadline.* All amendments to an application for a new or subsequent license, 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 § 5.22.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61743, Oct. 30, 2003]

#### § 5.28 Competing applications.

(a) *Site access for a competing applicant.* The provisions of § 16.5 of this chapter shall govern site access for a potential license application to be filed in competition with an application for a new or subsequent license by an existing licensee pursuant to this part, except that references in § 16.5 to the pre-filing consultation provisions in parts 4 and 16 of this chapter shall be construed in a manner compatible with the effective administration of this part.

(b) *Competing applications.* The provisions of § 4.36 of this chapter shall apply to competing applications for original, new, or subsequent licenses filed under this part.

(c) *New or subsequent license applications—final amendments; better adapted statement.* Where two or more mutually

exclusive competing applications for new or subsequent license have been filed for the same project, the final amendment date and deadlines for complying with provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under § 5.22 will be the same for all such applications.

(d) *Rules of preference among competing applicants.* The Commission will select among competing applications according to the provisions of § 4.37 of this chapter.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61743, Oct. 30, 2003]

#### § 5.29 Other provisions.

(a) *Filing requirement.* Unless otherwise provided by statute, regulation or order, all filings in hydropower hearings, except those conducted by trial-type procedures, must conform to the requirements of 18 CFR part 385, subpart T of this chapter.

(b) *Waiver of compliance with consultation requirements.* (1) If an agency, Indian tribe, or member of the public waives in writing compliance with any consultation requirement of this part, an applicant does not have to comply with the requirement as to that agency, Indian tribe, or member of the public.

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

(c) *Requests for privileged 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 § 5.4), 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.

(d) *Conditional applications.* Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.