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§4.23 Time for filing protest.

Thirty days after service thereof will be allowed to such licensee within which to file a protest to such reports. If no protest is filed within the time allowed, the Commission will issue such order as may be appropriate. If a protest is filed, a public hearing will be ordered in accordance with subpart E of part 385 of this chapter.

[Order 141, 12 FR 8485, Dec. 19, 1947, as amended by Order 225, 47 FR 19056, May 3, 1982]

§4.24 Determination of cost.

The Commission, after receipt of the reports, or after the conclusion of the hearing if one is held, will determine the amounts to be included in the electric plant accounts of the licensee as the cost of the property and the accrued depreciation thereon.

§4.25 Findings.

(a) *Commission determination.* Final action by the Commission will be in the form of an order served upon all parties to the proceeding. One copy of the order shall be furnished to the Secretary of Treasury by the Commission.

(b) *Adjustment to licensee's books.* The licensee's books of account for the project shall be adjusted to conform to the actual legitimate cost as revised by the order of the Commission. These adjustments and the project may be audited by Commission representatives, as scheduled.

[Order 53, 44 FR 61949, Oct. 29, 1979]

Subpart D—Application for Preliminary Permit, License or Exemption: General Provisions

AUTHORITY: Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

§4.30 Applicability and definitions.

(a) (1) This subpart applies to applications for preliminary permit, license, or exemption from licensing.

(2) Any potential applicant for an original license for which prefiling consultation begins 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.

(b) For the purposes of this part—

(1)(i) *Competing development application* means any application for a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved, and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(ii) *Competing preliminary permit application* means any application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(2) *Conduit* means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. The term *not primarily for the generation of electricity* includes but is not limited to a conduit:

(i) Which was built for the distribution of water for agricultural, municipal, or industrial consumption and is operated for such a purpose; and

(ii) To which a hydroelectric facility has been or is proposed to be added.

(3) *Construction of a dam,* for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any construction, repair, reconstruction, or modification of a dam that creates a new impoundment or increases the normal maximum surface elevation or the normal maximum surface area of an existing impoundment.

(4)(i) *Dam,* for the purposes of provisions governing application for license

of a major project—existing dam, means any structure for impounding or diverting water.

(ii) *Dam*, for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any structure that impounds water.

(iii) *Dam*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any structure for impounding water, including any diversion structure that is designed to obstruct all or substantially all of the flow of a natural body of water.

(5) *Development application* means any application for either a license or exemption from licensing for a proposed water power project.

(6)(i) *Existing dam*, for the purposes of provisions governing application for license of a major project—existing dam, means any dam (as defined in paragraph (b)(4)(i) of this section) that has already been constructed and which does not require any construction or enlargement of impoundment structures other than repairs or reconstruction.

(ii) *Existing dam*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any dam, the construction of which was completed on or before July 22, 2005, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project.

(7) *Existing impoundment*, for the purposes of provisions governing application for license of a major project—existing dam, means any body of water that an existing dam impounds.

(8) *Federal lands*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, means any lands to which the United States holds fee title.

(9)(i) *Fish and wildlife agencies* means the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency in charge of administrative management over fish and wildlife resources of the state in which a proposed hydropower project is located.

(ii) *Fish and wildlife recommendation* means any recommendation designed to protect, mitigate damages to, or enhance any wild member of the animal kingdom, including any migratory or nonmigratory mammal, fish, bird, amphibian, reptile, mollusk, crustacean, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any egg or offspring thereof, related breeding or spawning grounds, and habitat. A ''fish and wildlife recommendation'' includes a request for a study which cannot be completed prior to licensing, but does not include a request that the proposed project not be constructed or operated, a request for additional pre-licensing studies or analysis or, as the term is used in §§ 4.34(e)(1) and 4.34(f)(3), a recommendation for facilities, programs, or other measures to benefit recreation or tourism.

(10) *Indian tribe* means, in reference to a proposal to apply for a license or exemption for a hydropower project, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the FEDERAL REGISTER in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the development and operation of the hydropower project proposed (as where the operation of the proposed project could interfere with the management and harvest of anadromous fish or where the project works would be located within the tribe's reservation).

(11)(i) *Initial development application* means any acceptable application for either a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, water resources for which no other acceptable application for a license or exemption from licensing has been submitted for filing and is pending before the Commission.

(ii) *Initial preliminary permit application* means any acceptable application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or

in part, water resources for which no other acceptable preliminary permit application has been submitted for filing and is pending before the Commission.

(12) *Install or increase*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, means to add new generating capacity at a site that has no existing generating units, to replace or rehabilitate an abandoned or unused existing generating unit, or to increase the generating capacity of any existing power plant by installing an additional generating unit or by rehabilitating an operable generating unit in a way that increases its rated electric power output.

(13) *Licensed water power project* means a project, as defined in section 3(11) of the Federal Power Act, that is licensed under Part I of the Federal Power Act.

(14) *Major modified project* means any major project—existing dam, as defined in paragraph (b)(16) of this section, that would include:

(i) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or the normal maximum surface elevation of an existing impoundment; or

(ii) Any change in existing project works or operations that would result in a significant environmental impact.

(15) *Major unconstructed project* means any unlicensed water power project that would:

(i) Have a total installed generating capacity of more than 1.5 MW; and

(ii) Use the water power potential of a dam and impoundment which, at the time application is filed, have not been constructed.

(16) *Major project—existing dam* means a licensed or unlicensed, existing or proposed water power project that would:

(i) Have a total installed generating capacity or more than 2,000 horsepower (1.5 MW); and

(ii) Not use the water power potential provided by any dam except an existing dam.

(17) *Minor water power project* means any licensed or unlicensed, existing or proposed water power project that would have a total installed generation capacity of 2,000 horsepower (1.5 MW), or less.

(18) *New development*, for the purposes of provisions governing application for license of a major project—existing dam, means any construction, installation, repair, reconstruction, or other change in the existing state of project works or appurtenant facilities, including any dredging and filling in project waters.

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

(20)(i) *Non-Federal lands*, for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility, means any lands except lands to which the United States holds fee title.

(ii) *Non-Federal lands*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, mean any lands other than Federal lands defined in paragraph (b)(8) of this section.

(21) *Person* means any individual and, as defined in section 3 of the Federal Power Act, any corporation, municipality, or state.

(22) *Project*, for the purposes of provisions governing application for exemption of a small hydroelectric power project, means:

(i) The impoundment and any associated dam, intake, water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a lake or similar natural impoundment or a manmade impoundment is used for power generation; or

(ii) Any diversion structure other than a dam and any associated water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a natural water feature other than a lake or similar natural impoundment is used for power generation.

(23) *Qualified exemption applicant* means any person who meets the requirements specified in §4.31(b)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

(24) *Qualified license applicant* means any person to whom the Commission may issue a license, as specified in section 4(e) of the Federal Power Act.

(25) *Ready for environmental analysis* means the point in the processing of an application for an original or new license or exemption from licensing which has been accepted for filing, where substantially all additional information requested by the Commission has been filed and found adequate.

(26) *Real property interests*, for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project, includes ownership in fee, rights-of-way, easements, or leaseholds.

(27) *Resource agency* means a Federal, state, or interstate agency exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management (including water rights), or cultural or other relevant resources of the state or states in which a project is or will be located.

(28) *Small conduit hydroelectric facility* means an existing or proposed hydroelectric facility that is constructed, operated, or maintained for the generation of electric power, and includes all structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the hydroelectric facility, but excludes the conduit on which the hydroelectric facility is located or the transmission lines associated with the hydroelectric facility and which:

(i) Utilizes for electric power generation the hydroelectric potential of a conduit;

(ii) Is located entirely on non-Federal lands, as defined in paragraph (b)(20)(i) of this section;

(iii) Has an installed generating capacity of 15 MW or less (40 MW in the case of a municipal water supply project);

(iv) Is not an integral part of a dam;

(v) Discharges the water it uses for power generation either:

(A) Into a conduit;

(B) Directly to a point of agricultural, municipal, or industrial consumption; or

(C) Into a natural water body if a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located; and

(vi) Does not rely upon construction of a dam, which construction will create any portion of the hydrostatic head that the facility uses for power generation unless that construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(29) *Small hydroelectric power project* means any project in which capacity will be installed or increased after the date of notice of exemption or application under subpart K of this chapter, which will have a total installed capacity of not more than 5 MW, and which:

(i) Would utilize for electric power generation the water power potential of an existing dam that is not owned or operated by the United States or by an instrumentality of the Federal Government, including the Tennessee Valley Authority; or

(ii)(A) Would utilize for the generation of electricity a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for a dam or man-made impoundment; and

(B) Would not retain water behind any structure for the purpose of a storage and release operation.

(30) *PURPA benefits* means benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 210(a) of PURPA requires electric utilities to purchase electricity from, and to sell electricity to, qualifying facilities.

[Order 413, 50 FR 11676, Mar. 25, 1985, as amended by Order 487, 52 FR 48404, Dec. 22, 1987; Order 499, 53 FR 27001, July 18, 1988; Order 503, 53 FR 36567, Sept. 21, 1988; Order 533, 56 FR 23146, May 20, 1991; 56 FR 61154, Dec. 2, 1991; Order 533–A, 57 FR 10809, Mar. 31, 1992; 59 FR 10577, Mar. 7, 1994; Order 2002, 68 FR 51115, Aug. 25, 2003; Order 699, 72 FR 45323, Aug. 14, 2007]