

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.

(e) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a license under this part either upon its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases, the hearings will be conducted by notice and comment procedures.

(f) *Notice and comment hearings.* (1) All comments and reply comments and all other filings described in this part must be served on all persons on the service list prepared by the Commission, in accordance with the requirements of §385.2010 of this chapter. If a party submits any written material to the Commission relating to the merits of an issue that may affect the responsibility of particular resource agency, the party must also serve a copy of the submission on that resource agency.

(2) The Director of Energy Projects may waive or modify any of the provisions of this part for good cause. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with §385.2008 of this chapter.

(3) Late-filed recommendations by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project and late-filed terms and conditions or prescriptions filed pursuant to sections 4(e) and 18 of the Federal Power Act, respectively, will be considered by Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(g) *Settlement negotiations.* (1) The Commission will consider, on a case-by-case basis, requests for a short suspension of the procedural schedule for the purpose of participants conducting settlement negotiations, where it determines that the suspension will not adversely affect timely action on a license application. In acting on such requests, the Commission will consider, among other things:

(i) Whether requests for suspension of the procedural schedule have previously been made or granted;

(ii) Whether the request is supported by a consensus of participants in the proceeding and an explanation of objections to the request expressed by any participant;

(iii) The likelihood that a settlement agreement will be filed within the requested suspension period; and

(iv) Whether the requested suspension is likely to cause any new or subsequent license to be issued after the expiration of the existing license.

(2) The Commission reserves the right to terminate any suspension of the procedural schedule if it concludes that insufficient progress is being made toward the filing of a settlement agreement.

(h) *License conditions and required findings.* (1) All licenses shall be issued on the conditions specified in Section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(2) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(3) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(4) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely filed pursuant to section 4(e) of the Federal Power Act.

(5) The Commission will require the construction, maintenance, and operation of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(i) *Standards and factors for issuing a new license.* (1) 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.

(2) 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:

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

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

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

(j) *Fees under section 30(e) of the Federal Power Act.* The requirements of 18 CFR part 4, subpart M, of this chapter, fees under section 30(e) of the Federal Power Act, apply to license applications developed under this part.

### § 5.30 Critical energy infrastructure information.

If any action required by this part requires a potential Applicant or Applicant to reveal Critical Energy Infrastructure Information, as defined by § 388.113(c) of this chapter, to the public, the Applicant must follow the procedures set out in § 4.32(k) of this chapter.

### § 5.31 Transition provision.

This part shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application, as required by § 5.5 of this part, is July 23, 2005 or later.

## PART 6—SURRENDER OR TERMINATION OF LICENSE

Sec.

6.1 Application for surrender.

6.2 Surrender of license.

6.3 Termination of license.

6.4 Termination by implied surrender.

6.5 Annual charges.

AUTHORITY: Secs. 6, 10(i), 13, 41 Stat. 1067, 1068, 1071, as amended, sec. 309, 49 Stat. 858; 16 U.S.C. 799, 803(i), 806, 825h; Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*), unless otherwise noted.

### § 6.1 Application for surrender.

Every application for surrender of a license shall state the reason therefor; and, except in the case of an application for surrender of a license for a minor project, or for a transmission line only, shall be executed by the licensee and filed in the same form and manner as the application for license, and shall be accompanied by the license and all amendments thereof. Public notice of such application shall be given at least 30 days prior to action upon the application.

(Secs. 308 and 309; 49 Stat. 858, 859 (16 U.S.C. 825g, 825h))

[Order No. 570, 42 FR 40191, Aug. 9, 1977]

CROSS REFERENCES: For application for license, general provisions, see §§ 4.30 to 4.33, inclusive, of this chapter. For application for license for proposed major project or minor part thereof, see §§ 4.40 to 4.41, inclusive, of this chapter. For application for license for constructed major project or minor part thereof, see §§ 4.50 and 4.51 of this chapter.

### § 6.2 Surrender of license.

Licenses may be surrendered only upon the fulfillment by the licensee of such obligations under the license as the Commission may prescribe, and, if the project works authorized under the license have been constructed in whole or in part, upon such conditions with respect to the disposition of such works as may be determined by the Commission. Where project works have been constructed on lands of the United States the licensee will be required to restore the lands to a condition satisfactory to the Department having supervision over such lands and annual charges will continue until such