

## § 45.2

which one or more preliminary conditions, conditions, preliminary prescriptions, or prescriptions have been or are filed with FERC.

(2) If DOI has already filed one or more preliminary conditions, conditions, preliminary prescriptions, or prescriptions as of November 17, 2005, the special applicability provisions of § 45.4 also apply.

### § 45.2 What terms are used in this part?

As used in this part:

*ALJ* means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

*Alternative* means a condition or prescription that a license party other than a bureau or Department develops as an alternative to a preliminary condition or prescription from a bureau or Department, under FPA sec. 33, 16 U.S.C. 823d.

*Bureau* means any of the following organizations within DOI that develops a preliminary condition or prescription: the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, or National Park Service.

*Condition* means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

*Day* means a calendar day.

*Department* means the Department of Agriculture, Department of Commerce, or Department of the Interior.

*Discovery* means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

*DOI* means the Department of the Interior, including any bureau, unit, or office of the Department, whether in Washington, DC, or in the field.

*Ex parte communication* means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

*FERC* means the Federal Energy Regulatory Commission.

*FPA* means the Federal Power Act, 16 U.S.C. 791 *et seq.*

*Hearings Division* means the Departmental Cases Hearings Division, Office

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of Hearings and Appeals, Department of the Interior, 139 E. South Temple, Suite 600, Salt Lake City, Utah 84111, telephone 801–524–5344, facsimile number 801–524–5539.

*Intervention* means a process by which a person who did not request a hearing under § 45.21 can participate as a party to the hearing under § 45.22.

*License party* means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

*License proceeding* means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

*Material fact* means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

*NEPA document* means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

*OEPC* means the Office of Environmental Policy and Compliance, Department of the Interior, 1849 C Street, NW., Mail Stop 2342, Washington, DC 20240, telephone 202–208–3891, facsimile number 202–208–6970.

*Party* means, with respect to DOI's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 45.21; or

(ii) Either 7 CFR 1.621 or 50 CFR 221.21, with respect to a hearing process consolidated under § 45.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 45.22; or

(ii) Either 7 CFR 1.622 or 50 CFR 221.22, with respect to a hearing process consolidated under § 45.23;

(3) Any bureau that has filed a preliminary condition or prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 45.23.

*Person* means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state,

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tribal, county, district, territorial, or local government or agency.

*Preliminary condition or prescription* means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

*Prescription* means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

*Representative* means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 45.10.

*Reservation* has the same meaning as the term “reservations” in FPA sec. 3(2), 16 U.S.C. 796(2).

*Secretary* means the Secretary of the Interior or his or her designee.

*Senior Department employee* has the same meaning as the term “senior employee” in 5 CFR 2637.211(a).

*You* refers to a party other than a Department.

### § 45.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 45.21, a notice of intervention and response under § 45.22, an answer under § 45.24, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 45.35

stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 45.60.

### § 45.4 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which a bureau has filed a preliminary condition, condition, preliminary prescription, or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) *Hearing process.* (1) Any request for a hearing under § 45.21 must be filed with OEPC by December 19, 2005.

(2) Any notice of intervention and response under § 45.22 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, the bureau must do the following by March 17, 2006:

(i) Comply with the requirements of § 45.23;

(ii) Determine jointly with any other bureau or Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for the bureau to file an answer under § 45.24; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for the bureau to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 45.71 must be filed with OEPC by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, the bureau must do the following by February 15, 2006: