

(4) Review, discuss, and finalize the process plan and schedule for pre-filing activity that incorporates the time periods provided for in this part and, to the extent reasonably possible, maximizes coordination of Federal, state, and tribal permitting and certification processes, including consultation under section 7 of the Endangered Species Act and water quality certification or waiver thereof under section 401 of the Clean Water Act; and

(5) Discuss the appropriateness of any Federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document pursuant to the National Environmental Policy Act.

(e) *Method of notice.* The public notice provided for in this section will be given by:

(1) Publishing notice in the FEDERAL REGISTER;

(2) Publishing notice 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, as appropriate, tribal newspapers;

(3) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

[Order 2002, 68 FR 51121, Aug. 25, 2003, as amended by Order 653, 70 FR 8724, Feb. 23, 2005]

§ 5.9 Comments and information or study requests.

(a) *Comments and study requests.* Comments on the pre-application document and the Commission staff's Scoping Document 1 must be filed with the Commission within 60 days following the Commission's notice of consultation procedures issued pursuant to § 5.8. Comments, including those by Commission staff, must be accompanied by any information gathering and study requests, and should include information and studies needed for consultation under section 7 of the Endangered Species Act and water quality certification under Section 401 of the Clean Water Act.

(b) *Content of study request.* Any information or study request must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and

(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

(c) *Applicant seeking PURPA benefits; estimate of fees.* If a potential applicant has stated that it intends to seek PURPA benefits, comments on the pre-application document by a fish and wildlife agency must provide the potential applicant with a reasonable estimate of the total costs the agency anticipates it will incur in order to set mandatory terms and conditions for the proposed project. An agency may provide a potential applicant with an updated estimate as it deems necessary. If any agency believes that its most recent estimate will be exceeded by more than 25 percent, it must supply the potential applicant with a new

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estimate and submit a copy to the Commission.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003; 68 FR 69957, Dec. 16, 2003, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

§ 5.10 Scoping Document 2.

Within 45 days following the deadline for filing of comments on Scoping Document 1, the Commission staff shall, if necessary, issue Scoping Document 2.

§ 5.11 Potential Applicant's proposed study plan and study plan meetings.

(a) Within 45 days following the deadline for filing of comments on the pre-application document, including information and study requests, the potential applicant must file with the Commission a proposed study plan.

(b) The potential applicant's proposed study plan must include with respect to each proposed study:

(1) A detailed description of the study and the methodology to be used;

(2) A schedule for conducting the study;

(3) Provisions for periodic progress reports, including the manner and extent to which information will be shared; and sufficient time for technical review of the analysis and results; and

(4) If the potential applicant does not adopt a requested study, an explanation of why the request was not adopted, with reference to the criteria set forth in § 5.9(b).

(c) The potential applicant's proposed study plan must also include provisions for the initial and updated study reports and meetings provided for in § 5.15.

(d) The applicant's proposed study plan must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) Address any known resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(4) Explain any nexus between project operations and effects (direct,

indirect, and/or cumulative) on the resource to be studied;

(5) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers any known tribal interests;

(6) Describe considerations of level of effort and cost, as applicable.

(e) The potential applicant's proposed study plan must be accompanied by a proposal for conducting a study plan meeting or meetings during the 90-day period provided for in § 5.12 for the purpose of clarifying the potential applicant's proposed study plan and any initial information gathering or study requests, and to resolve any outstanding issues with respect to the proposed study plan. The initial study plan meeting must be held no later than 30 days after the deadline date for filing of the potential applicant's proposed study plan.

§ 5.12 Comments on proposed study plan.

Comments on the potential applicant's proposed study plan, including any revised information or study requests, must be filed within 90 days after the proposed study plan is filed. This filing must also include an explanation of any study plan concerns and any accommodations reached with the potential applicant regarding those concerns. Any proposed modifications to the potential applicant's proposed study plan must address the criteria in § 5.9(b).

§ 5.13 Revised study plan and study plan determination.

(a) Within 30 days following the deadline for filing comments on the potential applicant's proposed study plan, as provided for in § 5.12, the potential applicant must file a revised study plan for Commission approval. The revised study plan shall include the comments on the proposed study plan and a description of the efforts made to resolve differences over study requests. If the