

plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant. The review, comment, and disagreement resolution provisions of paragraphs (c)(2)–(7) of this section shall apply to the updated study report. Any proposal to modify an ongoing study must be accompanied by a showing of good cause why the proposal should be approved as set forth in paragraph (d) of this section. Any proposal for new information gathering or studies is subject to paragraph (e) of this section except that the proponent must demonstrate extraordinary circumstances warranting approval. The applicant must promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and must proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's resolution of the disagreement.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003]

§ 5.16 Preliminary licensing proposal.

(a) No later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal.

(b) The preliminary licensing proposal must:

(1) Clearly describe, as applicable, the existing and proposed project facilities, including project lands and waters;

(2) Clearly describe, as applicable, the existing and proposed project operation and maintenance plan, to include measures for protection, mitigation, and enhancement measures with respect to each resource affected by the project proposal; and

(3) Include the potential applicant's draft environmental analysis by resource area of the continuing and incremental impacts, if any, of its preliminary licensing proposal, including the results of its studies conducted under the approved study plan.

(c) A potential applicant may elect to file a draft license application which includes the contents of a license application required by § 5.18 instead of the Preliminary Licensing Proposal. A potential applicant that elects to file a draft license application must include notice of its intent to do so in the updated study report required by § 5.15(f).

(d) A potential applicant that has been designated as the Commission's non-Federal representative may include a draft Biological Assessment, draft Essential Fish Habitat Assessment, and draft Historic Properties Management Plan with its Preliminary Licensing Proposal or draft license application.

(e) Within 90 days of the date the potential applicant files the Preliminary Licensing Proposal or draft license application, participants and the Commission staff may file comments on the Preliminary Licensing Proposal or draft application, which may include recommendations on whether the Commission should prepare an Environmental Assessment (with or without a draft Environmental Assessment) or an Environmental Impact Statement. Any participant whose comments request new information, studies, or other amendments to the approved study plan must include a demonstration of extraordinary circumstances, pursuant to the requirements of § 5.15(f).

(f) A waiver of the requirement to file the Preliminary Licensing Proposal or draft license application may be requested, based on a consensus of the participants in favor of such waiver.

§ 5.17 Filing of application.

(a) *Deadline—new or subsequent license application.* An application for a new or subsequent license must be filed no later than 24 months before the existing license expires.

(b) *Subsequent licenses.* An applicant for a subsequent license must file its application under part I of the Federal Power Act. The provisions of section 7(a) of the Federal Power Act do not apply to licensing proceedings involving a subsequent license.

(c) *Rejection or dismissal of application.* If the Commission rejects or dismisses an application for a new or subsequent license filed under this part pursuant