

Federal Energy Regulatory Commission

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AUTHORITY: 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

SOURCE: Order 2002, 68 FR 51121, Aug. 25, 2003, unless otherwise noted.

§ 5.1 Applicability, definitions, and requirement to consult.

(a) This part applies to the filing and processing of an application for an:

- (1) Original license;
- (2) New license for an existing project subject to Sections 14 and 15 of the Federal Power Act; or
- (3) Subsequent license.

(b) *Definitions.* The definitions in § 4.30(b) of this chapter and § 16.2 of this chapter apply to this chapter.

(c) *Who may file.* Any citizen, association of citizens, domestic corporation, municipality, or state may develop and file a license application under this part.

(d) *Requirement to consult.* (1) Before it files any application for an original, new, or subsequent license under this part, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including as appropriate the National Marine Fisheries Service, the United States Fish and Wildlife Service, Bureau of Indian Affairs, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the

project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency or Indian tribe under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1)), the agency that administers the Coastal Zone Management Act, 16 U.S.C. § 1451–1465, any Indian tribe that may be affected by the project, and members of the public. A potential license applicant must file a notification of intent to file a license application pursuant to § 5.5 and a pre-application document pursuant to the provisions of § 5.6.

(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(e) *Purpose.* The purpose of the integrated licensing process provided for in this part is to provide an efficient and timely licensing process that continues to ensure appropriate resource protections through better coordination of the Commission's processes with those of Federal and state agencies and Indian tribes that have authority to condition Commission licenses.

(f) *Default process.* Each potential original, new, or subsequent license applicant must use the license application process provided for in this part unless the potential applicant applies for and receives authorization from the Commission under this part to use the licensing process provided for in:

(1) 18 CFR part 4, Subparts D–H and, as applicable, part 16 (*i.e.*, traditional process), pursuant to paragraph (c) of this section; or

(2) Section 4.34(i) of this chapter, *Alternative procedures.*

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003; 68 FR 69957, Dec. 16, 2003]

§ 5.2 Document availability.

(a) *Pre-application document.* (1) From the date a potential license applicant files a notification of intent to seek a license pursuant to § 5.5 until any related license application proceeding is terminated by the Commission, the potential license applicant must make

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reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, the pre-application document and any materials referenced therein. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible.

(2) The materials specified in paragraph (a)(1) of this section must be made available to the requester at the location specified in paragraph (a)(1) of this section or through the mail, or otherwise. Except as provided in paragraph (a)(3) of this section, copies of the pre-application document and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(3) A potential licensee must make requested copies of the materials specified in paragraph (a)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(b) *License application.* (1) From the date on which a license application is filed under this part until the licensing proceeding for the project is terminated by the Commission, the license applicant must make reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, a copy of the complete application for license, together with all exhibits, appendices, and any amendments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible at the same time as the information is filed with the Commission or required by regulation to be made available.

(2) The applicant must provide a copy of the complete application (as amend-

ed) to a public library or other convenient public office located in each county in which the proposed project is located.

(3) The materials specified in paragraph (b)(1) of this section must be made available to the requester at the location specified in paragraph (b)(1) of this section or through the mail. Except as provided in paragraph (b)(4) of this section, copies of the license application and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(4) A licensee applicant must make requested copies of the materials specified in paragraph (b)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(c) *Confidentiality of cultural information.* A potential applicant must delete from any information made available to the public under paragraphs (a) and (b) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or native American cultural resources or of the site at which the sources are located, or would violate any Federal law, include the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(d) *Access.* Anyone may file a petition with the Commission requesting access to the information specified in paragraphs (a) or (b) of this section if it believes that the potential applicant or applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

§ 5.3 Process selection.

(a)(1) Notwithstanding any other provision of this part or of parts 4 and 16 of this chapter, a potential applicant for a new, subsequent, or original license may until July 23, 2005 elect to use the licensing procedures of this