

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Parts 4, 5, 16, and 385****[Docket No. RM02-16-000]****Hydroelectric Licensing Under the Federal Power Act**

February 20, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations pertaining to hydroelectric licensing under the Federal Power Act. The proposed revisions would create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) would be conducted concurrently, rather than sequentially. The proposed rules also provide for increased public participation in pre-filing consultation; development by the potential applicant of a Commission-approved study plan; better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies with authority to require conditions for Commission-issued licenses; encouragement to informal resolution of any study disagreements, followed by mandatory, binding study dispute resolution; and schedules and deadlines.

DATES: Comments are due April 21, 2003.

ADDRESSES: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM02-16-000. Comments may be filed electronically or by paper (an original and 14 copies, with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Room 101-57, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202-502-8070.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Background
 - A. Current Licensing Procedures
 - B. Reform Efforts

- C. The Instant Proceeding
- III. Discussion
 - A. Need for a New Integrated Process
 - B. Traditional Process and ALP to be Retained
 - D. Key Issues and Goals for an Integrated Licensing Process
 - 1. Early Identification of Issues and Study Needs
 - a. Advance Notification of License Expiration
 - b. Integrating Pre-Filing Consultation with NEPA Scoping
 - c. Study Plan Development
 - d. Study Dispute Resolution Process
 - e. Other Recommended Uses for Dispute Resolution
 - 2. Consultation and Coordination with States
 - a. Timing of Water Quality Certification Application
 - 3. Consultation with Indian Tribes
 - 4. Environmental Document Preparation
 - a. Cooperating Agencies Policy
 - b. NRG Cooperating Agency Proposal
 - c. Non-Decisional NEPA Documents
 - d. Draft License Articles
 - e. Endangered Species Act Consultation
 - f. Fish and Wildlife Agency Recommendations
 - g. National Historic Preservation Act Consultation
 - 5. Public Participation
 - 6. Processing Schedules and Deadlines
 - 7. Settlement Agreements
 - a. Flexibility in Processing Schedules
 - b. Timing and Conduct of Settlement Negotiations
 - c. Guidance on the Content of Settlement Agreements
 - E. Description of Integrated Licensing Process
 - 1. Applicability
 - a. New and Original Licenses
 - b. Competition for New Licenses
 - 2. Process Steps
 - a. NOI, Process Schedule, and Study Plan Development
 - b. Conduct of Studies
 - c. Draft Application to License Order
 - F. Improvements to Traditional Process and ALP
 - 1. Increased Public Participation
 - 2. Mandatory, Binding Study Dispute Resolution
 - 3. Recommendations not Adopted
 - a. Waiver of Pre-Filing Consultation
 - b. Applicant-Prepared NEPA Documents
 - c. Process Steps in the ALP
 - G. Ancillary Matters
 - 1. Intervention by Federal and State Agencies
 - 2. Information Technology
 - 3. Project Boundaries and Maps
 - 4. Miscellaneous Filing Requirements
 - H. Transition Provisions
- IV. Environmental Analysis
- V. Regulatory Flexibility Act
- VI. Information Collection Statement
- VII. Public Comment Procedures
- VIII. Document Availability
- Appendix A
- Appendix B
- Appendix C

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing the process for licensing of hydroelectric power projects by establishing a new licensing process. The proposed amendments are the culmination of many actions by the Commission, other Federal and state agencies, Indian tribes, licensees, and members of the public to develop a more efficient and timely licensing process, while ensuring that licenses provide appropriate resource protections required by the Federal Power Act (FPA) and other applicable laws.

2. The proposed new licensing process is designed to create efficiencies by integrating a potential license applicant's pre-filing consultation with the Commission's scoping pursuant to the National Environmental Policy Act (NEPA).¹ Highlights of this "integrated" process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;
- Better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by mandatory, binding study dispute resolution;
- Elimination of the need for post-application study requests; and
- Issuance of public schedules and enforcement of deadlines.

3. We believe that the proposed changes will significantly improve the licensing process. During the development of this proposed rule, many commenters have raised issues beyond the scope of this rulemaking and, in fact, beyond the scope of this Commission's jurisdiction, such as concerns about the content of license conditions imposed by various federal land and resource management agencies with authority to require conditions for Commission-issued licenses. We acknowledge that the changes proposed in this rulemaking are largely procedural in nature and would amend only the regulations of this Commission,

¹ 42 U.S.C. 4321, *et seq.*