

any time prior to the statutory limit of five years prior to license expiration, rather than only during a five to five and one-half year window. California recommends moving the deadline date for the NOI forward one year (*i.e.*, 6.5 years before license expiration) based on its belief that more time is needed between the NOI and license application to accommodate information-gathering and studies.⁵¹

42. We conclude that the advance notification concept has merit, and that the notification should be issued regardless of which licensing process may be selected. It would however be inconsistent with our goal of developing a more timely process to compel existing licensees to commence the licensing process in advance of the NOI, and we will not do so. The Commission believes that in the great majority of cases, a license applicant should be able complete consultation, information-gathering and studies, and application development in the three to three and one-half year period provided for in our regulations.

43. We propose to issue an advance notification sufficiently in advance of the deadline date for filing of an NOI with respect to each project to ensure that the existing licensee is alerted to the requirements of the NOI, Pre-Application Document, and any potential request to use the traditional process or ALP.⁵² Because the advance notification will be an administrative measure taken by the Commission which requires no action on the part of any other entity, and which would be undertaken regardless of the process selected, we do not propose to include it in the regulations.

44. Also, as recommended by one of the December 2002 drafting groups, the Commission staff will contact Indian tribes whose resources may be affected by a future relicense proceeding to inform them about the licensing process and how they can participate in it, and

to become aware of concerns the tribes have with respect to potential relicense proceedings. In this regard, we also intend to create a Tribal Liaison position to ensure that tribes have a clearly identified point of access to the Commission staff.⁵³

b. Integrating Pre-Filing Consultation With NEPA Scoping

45. Under the traditional process, pre-filing consultation focuses on development of information and studies by the potential applicant, agencies, and Indian tribes. Public participation is limited.⁵⁴ The Commission staff also has not participated in pre-filing consultation, because under the traditional process there is no proceeding until an application is filed, and, particularly with regard to potential original license applications, the Commission has not been willing to commit its limited resources to a process that may not result in a license application.

46. Nearly all commenters agree that the earlier the Commission's NEPA scoping begins, the earlier issues and information needs will be identified, and the earlier information-gathering and studies will be commenced and completed.⁵⁵ We agree. Accordingly, the proposed integrated process provides for the Commission staff to begin NEPA scoping immediately after the NOI is filed.⁵⁶

47. NEPA scoping will be greatly assisted by the availability to the participants of as much relevant existing information as possible when scoping begins. The current regulations require an existing licensee, at the time it files its NOI, to make available to the public existing information with respect to the project, its operation, and project impacts on various resources.⁵⁷ They also require all potential operating license applicants to provide an initial consultation package to consulted entities during first stage consultation.⁵⁸ We propose to supplant these requirements for all processes by requiring a potential applicant for an operating license to file with its NOI the

above-mentioned Pre-Application Document.⁵⁹

48. The proposed Pre-Application Document is intended to compile and provide to the Commission, Federal and state agencies, Indian tribes, and members of the public engineering, economic, and environmental information available at the time the notification of intent is filed. It would also provide the basis for identifying issues and information needs, developing study requests and study plans, and the Commission's environmental scoping documents under NEPA. Because of its form and content requirements, the Pre-Application Document would be a precursor to Exhibit E, the environmental exhibit, in the license application. For license applicants using the integrated process, the Pre-Application Document would evolve directly into a new Exhibit E. The integrated process Exhibit E would have the form and content requirements of an applicant-prepared draft NEPA document.⁶⁰ Applicants using the traditional process would continue to use the existing Exhibit E, and applicants using the ALP could use the existing Exhibit E or file with their application in lieu thereof an applicant-prepared environmental analysis. The Commission requests comments on the content of the Pre-Application Document.⁶¹

49. Some industry commenters contend that integrating pre-filing consultation with NEPA scoping should be optional for the applicant.⁶² That is, of course, fundamentally inconsistent with the concept of an integrated licensing process. Deferral of NEPA scoping until after the license application is filed should occur where the circumstances are such that use of the traditional process is permitted.⁶³ We also think that requiring all potential operating license applicants to

⁵¹ We disagree with California that the 3 to 3.5-year time frame from NOI to application contemplated by the FPA is insufficient to develop the necessary information and still provide about two years in which to conduct field studies. As discussed above, the principal barrier to success in the early conduct of studies has been the lack of active Commission staff participation early on and lack of effective pre-filing dispute resolution. The proposed integrated process should go a long way toward curing this problem.

⁵² Entities other than the licensee will be able to determine which licenses expire, and when, on the hydroelectric page of the Commission's website. They will likewise have access to the Commission's regulations and Pre-Application Document guidance. These resources should together enable interested members of the public to inform themselves of potential future relicense proceedings.

⁵³ See Section III.D.3.

⁵⁴ Unless the potential applicant voluntarily does more, public participation is limited to attendance at a single, publicly noticed meeting. See 18 CFR 4.38(g).

⁵⁵ *E.g.*, NHA, CDWR, NYSDEC, RAW, Caddo, Menominee, CRITFC, DM&GLH, Domtar, APT, Oregon, SCL, HRC, CRITFC, Oregon, Kleinschmidt, C-WRC, Interior, NMFS, Washington, California, SCE, Salish-Kootenai, HLRTF, PG&E, PCWA, Idaho Power, PacifiCorp, SCDWQ, APT, Michigan DNR, HRC, Wisconsin DNR, EEL, Maryland DNR, NMFS.

⁵⁶ See Section III.E.2.a.

⁵⁷ 18 CFR 16.7(d).

⁵⁸ 18 CFR 4.38(b)(1), 16.8(b)(1).

⁵⁹ Exemption and non-power license applicants would continue to use the traditional process and to distribute the initial consultation package now required by 18 CFR 4.38(b)(1) and 16.8(b)(1).

⁶⁰ See proposed 18 CFR 5.16(b).

⁶¹ The Commission is interested in any comments parties may have on any aspect of the proposed rule; however, there are several aspects on which we are particularly requesting comments. Appendix B is a list of all matters on which the Commission is specifically requesting comments, cross-referenced to the appropriate paragraph in the preamble. Commenters are requested to identify the paragraphs to which their comments respond.

⁶² Xcel, NHA, HLRTF. Under NHA's proposal, an existing licensee would elect to have a pre- or post-application NEPA process when it files its NOI.

⁶³ The ALP generally encompasses pre-filing environmental scoping because it contemplates filing by the applicant of a draft environmental document.