

b. Applicant-Prepared NEPA Documents

212. Some licensees state that the licensing process would be less redundant and more timely if the Commission would permit applicants to include a draft EA or EIS with their application even if they use the traditional process.²⁷⁰ That would clearly be inappropriate under the existing traditional process, because of the limited opportunity for public participation and the all-too-common continuation at the license application stage of study disputes. Such documents would in many cases be less useful to the Commission in fulfilling its NEPA responsibilities than the existing Exhibit E. Increasing public participation and adding binding dispute resolution to the traditional process should alleviate this problem, but we are not certain to what extent. The Commission requests comments on whether the Commission should modify its regulations in this regard.

c. Process Steps in the ALP

213. Some commenters state that the ALP is difficult to work with because the regulations do not clearly define process steps and the roles of the participants. They suggest that this gives applicants too much control over ALP processes, and that the ALP rules should be clarified in this regard.²⁷¹ We do not propose to impose any additional process steps to the ALP. The existing regulations provide the participants great flexibility to devise processes amenable to all participants, within certain general parameters, including a communications protocol, distribution of an initial information package, meetings open to the public, cooperative NEPA scoping and study plan development, and preliminary NEPA documents. The participants also set their own schedule, subject to the few limits established by the FPA and our implementing regulations (*i.e.*, final date for NOI and filing of new license application). The Commission staff, including its DRS, is also available upon request to assist the participants' efforts to resolve issues. We think this consensus-based, flexible approach is in part responsible for making the ALP a success story. Commenters more comfortable with a pre-determined process should find the integrated process more appealing.

214. PFMC states that participation in ALPs is difficult for some entities because it tends to be labor-intensive

and they lack the resources to make the necessary commitment of time. It recommends that the Commission deny applicant requests to use the ALP if stakeholders indicate that they lack the needed resources. The Commission carefully considers each request to use the ALP and will, in appropriate cases, deny requests to use it where there is an absence of sufficient support from stakeholders.²⁷²

G. Ancillary Matters

1. Intervention by Federal and State Agencies

215. Federal agencies have requested that the Commission permit them to file a notice of intervention rather than a motion to intervene in all hydroelectric proceedings, grant them automatic intervenor status in all hydroelectric proceedings, or treat a grant of intervention in a licensing proceeding for any project as a grant of intervention in all subsequent proceedings involving that project. They contend that their mandatory conditioning and fishway prescription authority under FPA sections 4(e) and 18, respectively, responsibilities with respect to providing fish and wildlife recommendations pursuant to FPA section 10(j), and roles and responsibilities under other statutes that directly implicate the licensing process, such as the ESA and NHPA, ensure that they have a basis for intervening in any licensing proceeding.

216. The Commission agrees that the roles and responsibilities of these Federal agencies under the FPA and other applicable law ensure that their timely motions to intervene will be granted. The same consideration applies to the intervention of these Federal agencies in pipeline certificate proceedings under the Natural Gas Act. We therefore propose to permit these agencies to intervene by timely filing a notice of intervention in any proceeding, as is currently permitted for intervention by the Secretary of Energy and State Commissions pursuant to 18 CFR 385.214 (a) and (b). The Federal agencies that would be permitted to intervene by notice are the U.S. Departments of the Interior, Commerce, and Agriculture, and the Advisory Council on Historic Preservation.²⁷³ We

also propose to permit notice by intervention by State fish and wildlife and State water quality certification agencies, in light of their responsibilities under FPA section 10(j) and section 401 of the Clean Water Act, respectively.

217. It is not appropriate to grant automatic intervenor status in all proceedings, or to treat an intervention in any proceeding as an intervention in any other proceeding. The filing of a notice of intervention is at worst a very minor inconvenience. More important, the Commission solicits interventions at the beginning of proceedings in order to ensure that the concerns of all interested entities are timely considered, and known to all other interested entities, in the context of the procedures specific to that proceeding. No interested entity should have the option of remaining silent until the proceeding is well advanced unless it can show, in a late motion to intervene, good cause why it has not previously intervened.

2. Information Technology

218. GLIFWC states that pre-filing consultation and application development can involve many large documents that are not necessarily easily or cheaply obtained or readily searched, and that some tribes and other parties have limited areas of interest. They recommend that applicants be required to put as much information as possible on a website, so that participants can download documents of interest and use document searching capabilities to more easily find information relevant to their area of interest. Long View recommends that the Commission explicitly authorize license applicants to make the data now required to be made available to the public in public libraries or other places available on line instead.

219. The use of websites to disseminate information in licensing proceedings has grown dramatically in the past several years, particularly where applicants are using the ALP. The manner in which the internet is used to disseminate information and documents varies substantially from case to case. Uses range from posting little more than schedules of events, to posting of all documents generated during the licensing process or that existing licensees are required to make public by § 16.7 of our rules, to interactive stakeholder participation. The advantages of using the internet include adding transparency to the process,

the rules for motions to intervene applicable to any person under 18 CFR 385.214(a)(3), including the content requirements of 18 CFR 385.214(b).

²⁷⁰ DM&GLH, Domtar, APT. Applicants who use the ALP are authorized to include a draft NEPA document with their application.

²⁷¹ CRITFC, NYRU, AMC, KCCNY, HRC.

²⁷² For example, the Commission declined to approve one licensee's request to use the ALP where it did not appear that there was sufficient support for the process from critical participants. In that case, the Commission is providing limited support by assigning separate technical and legal staff to assist stakeholders, but who are not active participants in pre-filing consultation.

²⁷³ An eligible Federal agency that does not timely intervene would be required to comply with