

granting or denying the license application in question.

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(j) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application required by § 5.3 of this chapter, is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) prior to [insert date three months following issuance date of final rule], are subject to the Commission's regulations as promulgated prior to [insert date three months following issuance date of final rule].

(3) This section shall apply to exemption applications filed on or after [insert date three months following issuance date of final rule]. For exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

5. Amend § 4.38 as follows:

a. Throughout the section, remove the phrase "Office of Hydropower Licensing" and add in its place the phrase "Office of Energy Projects."

b. In paragraph (a)(1), after the phrase 33 U.S.C. 1341(c)(1), remove the phrase "and any Indian tribe that may be affected by the proposed project." and add in its place the following text: "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 § 5.3 and a Pre-Application Document pursuant to the provisions of § 5.4."

c. Paragraph (a)(2) is revised.

d. Paragraph (b) is revised.

e. Paragraph (c) is revised.

f. In paragraph (d)(1), remove the phrase "Indian tribes and other government offices" and add in its place the phrase "Indian tribes, other government offices, and consulted members of the public".

g. In paragraph (d)(2), after the phrase "Indian tribe", add a comma and the following phrase "members of the public".

h. Paragraph (e) is revised.

i. Paragraph (f) is revised.

j. In paragraph (g)(1), remove the phrase "(b)(2)" and add in its place the phrase "(b)(3)".

k. Paragraph (g)(2) is revised.

k. Paragraph (h) is revised.

The revised text reads as follows:

#### § 4.38 Consultation requirements.

(a) \* \* \*

(2) The Director of the 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.

(b) First Stage of Consultation. (1) A potential applicant for an original license must, at the time it files its notification of intent to seek a license pursuant to § 5.2 of this chapter, provide a copy of the Pre-Application Document to the entities specified in § 5.3 of this chapter.

(2) A potential applicant for an exemption must promptly contact each of the appropriate resource agencies, affected Indian tribes, and members of the public likely to be interested in the proceeding; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow

rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(3) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the Pre-Application Document, or information required by paragraph (b)(2) of this section, as applicable, to the agencies, Indian tribes and members of the public under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies, Indian tribes, and members of the public to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies, Indian tribes and members of the public on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(4) The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency, Indian tribe, or member of the public.

(5) Not later than 60 days after the joint meeting held under paragraph