

(4) A potential applicant must provide each resource agency, Indian tribe, and consulted member of the public with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency, Indian tribe, or consulted member of the public either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency, and Indian tribe, or consulted member of the public in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to the resource agency, Indian tribe, or consulted member of the public and which were identified by the potential applicant pursuant to paragraph (b)(2)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency, and Indian tribe, or consulted member of the public will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) of this section information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency, Indian tribe, or consulted member of the public has a substantive disagreement a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the resource agency, Indian tribe, other agencies, and consulted members of the public with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency, Indian tribe, or consulted member of the public to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency, Indian tribe, other agencies with similar or related areas of interest, expertise, and responsibility, and consulted member of the public on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the 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.

(7) The potential applicant and any disagreeing resource agency, Indian tribe, or consulted member of the public may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency, Indian tribe, or consulted member of the public on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency, Indian tribe, and consulted non-governmental organization, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in case where a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

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(e) *Waiver of compliance with consultation requirements.* (1) If a resource agency, Indian tribe, or consulted member of the public waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency, Indian tribe, or consulted member of the public fails

to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency, Indian tribe, or consulted member of the public to comply.

(3) The failure of a resource agency, Indian tribe, or consulted member of the public to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(4) Following [insert issuance date of final rule], a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's, Indian tribe's, or consulted member of the public letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreements with a resource agency, Indian tribe, or consulted member of the public on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement;

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency, Indian tribe, or