

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.

§ 5.11 Study plan meeting.

A study plan meeting shall be held within 30 days of the deadline date for filing of information-gathering and study requests for the purpose of clarifying such requests as necessary and resolving any outstanding issues with respect to the proposed study plan.

§ 5.12 Revised study plan and preliminary determination.

(a) Within 30 days following the study plan meeting provided for in § 5.11, the Applicant shall file a revised study plan for Commission approval. The revised study plan shall include the comments on the proposed study plan and a description of the efforts made to resolve differences over study requests. If the applicant does not adopt a requested study, it shall explain why the request was not adopted, with reference to the criteria set forth in § 5.10.

(b) Within 30 days from the date the Applicant files its revised study plan, the Commission will issue a Preliminary Determination with regard to the Applicant's study plan, including any modifications determined to be necessary in light of the record.

(c) If no notice of study dispute is filed pursuant to § 5.13 within 20 days of the Preliminary Determination, the study plan as approved in the Preliminary Determination shall be deemed to be approved and final, and the Commission will issue an order directing the Applicant to proceed with the approved studies.

§ 5.13 Study dispute resolution process.

(a) Within 20 days of the Preliminary Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA section 18, 16 U.S.C. 811, or any state agency or Indian tribe with authority to issue a water quality certification for the project license under section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with regard to the preliminary determination.

(b) The notice of study dispute shall explain how the criteria set forth in section 5.10 of this part have been satisfied.

(c) Studies and portions of study plans approved in the Preliminary Determination that are not the subject of a notice of dispute shall be deemed to be approved and final, and the Applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff or a contractor in the Commission's employ who is not otherwise involved in the proceeding;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. If no third panel member has been selected by the other two panelists within 15 days, those two panel members will carry out the duties of the panel, as described herein.

(e) If more than one agency or tribe files a notice of dispute with respect to the decision in the Preliminary Determination on any information-gathering or study request, the disputing agencies or tribes shall select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's website. Persons willing to serve in this capacity should serve on the Director of the Office of Energy Projects a statement of their qualifications with respect to the resource with which they have applicable expertise. A person on the list who is requested and willing to serve with respect to a specific dispute

will be required to file with the Commission at that time a current statement of their qualifications and a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Tribe which served the notice of dispute will be borne by the Commission or the agency or Tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's web site.

(i) No later than 25 days following the notice of study dispute, the Applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) The panel will make a finding, with respect to each information or study request in dispute, as to whether the criteria set forth in § 5.10 are met or not met, and why, and provide to the Director of the Office of Energy Projects a recommendation based on its findings. No later than 50 days following the notice of study dispute, the panel shall file that recommendation with the Commission, a written recommendation to the Director of Energy Projects with respect to each information or study request in dispute, including all of the materials received by the panel. Any recommendation for the Applicant to provide information or a study shall include the technical specifications, including data acquisition techniques and methodologies.

(k) No later than 70 days from the date of filing of the notice of study dispute, the Director of Energy Projects will review and consider the recommendations of the panel, and will issue a written decision. The Director's decision will be made with reference to the study criteria set forth in § 5.10 and any applicable law or Commission policies and practices. The Director's decision shall constitute an amendment to the approved study plan.

(l) The Commission will, if necessary, issue a Scoping Document 2 within 30 days following the Director's decision or, if no dispute resolution is required, the Preliminary Decision.