

(A) Would be those described in paragraphs (c)(1)(i) (A) or (B) of this section; and

(B) Would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the new license application filing deadline.

(iii) After a new license is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (e.g., post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(7) of this section, a resource agency, Indian tribe, or member of the public requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis for its request, under paragraphs (b)(5)(i)–(vi) of this section, the potential applicant will promptly initiate the study or explain to the requesting entity why it believes the request is not reasonable or necessary. If the potential applicant declines to obtain the information or conduct the study, the potential applicant, any resource agency, Indian tribe, or consulted member of the public may refer any such request to the Director of the Office of Energy Projects for dispute resolution under the procedures and subject to the other requirements set forth in paragraph (b)(6) of this section.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) of this section merely because the study or information gathering is not complete before the application is filed.

(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, 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 that resource agency, Indian tribe, or consulted member of the public and which were identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measure; and

(iii) A written request for review and comment.

(5) A resource agency, 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 with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold at least one joint meeting with the resource agency, Indian tribe, other agencies, consulted member of the public and other agencies 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's, Indian tribe's, or consulted member of the public's written comments to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures; and

(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 provide the disagreeing resource agency, Indian tribe, consulted member of the public, or other agencies with similar or related areas of interest, expertise, or responsibility, and the Commission with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(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 member of the public, 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) *Resource agency, Indian tribe, or member of the public 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, Indian tribe, or consulted member of the public.

(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.