

the limited time available to review the draft, but the potential applicant nonetheless must revise the draft application to respond to them before it files the application in final form.²⁰³

222. Long View states that if a draft license application contains the potential applicant's specific proposal, then commenting agencies should be required to provide preliminary terms and conditions. This, it states, would allow the potential applicant to refine its proposal and help make Commission action more timely.

223. Agencies and NGOs, on the other hand, recommend that the draft license application continue to follow the format and content of the final application. They wish particularly to have a requirement for a specific operating proposal, and stress the need for a quality Exhibit E.²⁰⁴ They contend that these are essential for a thorough review and opportunity to comment, and emphasize the importance of the potential applicant's response to comments in the final application. One of the few industry proponents of the existing draft license application format, NEU adds that having a consistent format between draft and final license applications will make reading and comprehension of the documents easier than if the draft application is in a different format.

224. Several commenters also state that the draft license application should include all the data and information needed for the state to consider the potential applicant's clean water act certification application.²⁰⁵ Oregon states that its process is complex and iterative, so this requirement would help to expedite the state process. IDEQ states that if a state has specific information requirements for the application, the information should be included in the draft application, or the potential applicant should be required to explain when the information will be supplied.

225. Clearly, there is no meeting of the minds on this issue in the written comments. The Process Group however discussed this issue at length and agreed that, in lieu of a draft license application, an applicant could be permitted to file a document discussing its proposal for operation of the project facilities, a range of PM&E measures under consideration by the potential applicant,²⁰⁶ and a summary of the

environmental analysis of the impacts of the range of PM&E's and proposed project operations. This document would be called the potential applicant's "Preliminary Licensing Proposal."

226. The underlying premise of the Process Group's compromise is that sufficient information is available through the PAD and completion of information gathering and studies under the approved study plan to support development of a range of PM&E measures and a draft environmental document.²⁰⁷ The Process Group further agreed that, if the participants are amenable, this filing could be waived by the Commission. The issue of whether to request a waiver would be initially considered in the development of the study plan and schedule.²⁰⁸ A potential applicant would also have the option to prepare a complete draft license application with the format and contents of the final application.

227. We think the Process Group's agreement is by and large a reasonable attempt to bridge the gap between license applicants and other participants because the proposed document should be less burdensome for potential applicants, yet provide the specificity sought by agencies and NGOs with respect to the potential applicant's proposal and environmental impacts analysis. We have two concerns with this recommendation however. First, a document which contains a "range" of potential PM&E measures will not be very helpful to commenters, who will not know which of the potential PM&E measures the potential applicant is seriously considering. It would also needlessly complicate commenting on the draft environmental analysis. We will therefore require the Preliminary Licensing Proposal to include one set of proposed PM&E measures. Second, the

encompasses measures with respect to each of the affected resources, and could include potential alternative PM&E measures with respect to a particular issue. An example of the latter might be enhancing bypassed reach flows to benefit aquatic resources or, alternatively, providing enhancements to wetlands in the project reservoir.

²⁰⁷ In recognition of the fact that information gathering and studies will not always be complete at this stage of the proceeding, we have moved acceptance of the application to the point where the study plan is completed.

²⁰⁸ The Preliminary Licensing Proposal is issued for comments, which could include requests for new or modified studies. The Process Group's expectation appeared to be that this opportunity would be preserved even if the Preliminary Licensing Proposal were waived. We disagree. Since the purpose of that document is to obtain comments with respect to the potential applicant's proposal, waiver of the requirement to distribute that document should likewise eliminate the opportunity to request new or modified studies at this point.

utility of the Preliminary Licensing Proposal would also be compromised if the potential applicant merely provided a "summary" of its draft environmental analysis. The term "summary" is quite elastic and we do not intend to further complicate the process by trying to specify the contents of the summary. Instead, we will require the Preliminary Licensing Proposal to include the potential applicant's draft environmental analysis of its preliminary licensing proposal.

3. Preliminary Draft Terms and Conditions

228. The NOPR states that in most cases the updated study report should indicate that all of the information required by the approved study plan, or all of the information required to support the filing of FPA Section 10(j) recommendations or mandatory terms and conditions or fishways, has been collected and distributed to the relevant agencies at the draft application stage. We suggested that in such circumstances, it may be appropriate for the parties to file preliminary draft 10(j) recommendations, terms and conditions, or fishway prescriptions, and for the Commission staff to make a preliminary response, including initial 10(j) consistency findings, to those filings. Modified recommendations, and terms and conditions would be filed in response to the Commission's ready for environmental analysis (REA) notice.²⁰⁹ In this regard, we requested comments on whether we should in each case make a determination following the updated study report of whether the record is sufficiently complete to require the filing of preliminary draft recommendations and terms and conditions with comments on the draft license application.²¹⁰

229. A few licensee commenters responded affirmatively. SCE states that under these circumstances we should require draft PM&E measures to be filed 45 days after the license application is filed because the record will be complete. SCE would have final PM&E measures filed 60 days after the REA notice. Idaho Power and EEI suggest that if parties are not required to provide recommendations and terms and conditions when the studies are completed, the goals of the integrated process will not be realized. NEU also supports earlier filing of draft PM&E measures.

²⁰⁹ 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732. The proposed regulation test inadvertently states that the modified PM&E measures would be final.

²¹⁰ 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

²⁰³ Long View, NPS, SCE.

²⁰⁴ HRC, NCWRC, PFBC, Georgia DNR, California, NYSDEC, Interior.

²⁰⁵ Oregon, HRC, PPMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish.

²⁰⁶ As we understand the Process Group's recommendation, a "range" of PM&E measures