

230. One state agency, IDFG also supports this idea, at least with respect to fish and wildlife agency recommendations made pursuant to FPA Section 10(j).²¹¹ Under IDFG's proposal, the Commission staff would not respond to the preliminary 10(j) recommendations. IDFG states that this would enable potential applicants to consider the preliminary 10(j) measures without being influenced by the Commission staff's preliminary response. IDFG thinks this might provide an incentive to the parties to enter into settlement negotiations.

231. Nearly all respondents however opposed this idea for various reasons. Wisconsin DNR and NCWRC state that the potential applicant needs to make its licensing proposal, at least in draft, in order for agencies to assess the potential impacts so that they can develop mitigation measures or craft water quality certification conditions.²¹² NCWRC adds that the time frames provided in the proposed rule are already too tight, and it would be unreasonable to require another document from the commenters in the same overall time frame.²¹³

232. NOAA Fisheries and HRC indicate that completion of the study plan does not complete the record because, at a minimum, the license application including the applicant's proposal needs to be filed.²¹⁴ NOAA Fisheries indicates that the lack of complete information would require it to file prescriptions and recommendations based on a worst case scenario. California and PG&E agree that it would be unproductive for parties to file anything before the Commission declares that the application is ready for environmental analysis. California adds that, in any event, if the studies are complete, parties will soon be making the same filing in response to an REA notice and after the Commission has reviewed the application.²¹⁵ NHA

²¹¹ 16 U.S.C. 803(j).

²¹² Wisconsin DNR, NOAA Fisheries, and HRC also indicate that this would needlessly create an additional step in the process, and Wisconsin DNR states that it does not have the necessary resources.

²¹³ PFMC suggests that the Commission and the agencies should negotiate dates for filing of PM&E measures. That would be inconsistent with a central goal of the integrated process, reducing the time required to process license applications.

²¹⁴ HRC adds that if preliminary PM&E measures are required, then the record should also be complete enough for the Commission staff to provide draft license articles. Draft license articles are however based on the Commission's evaluation of the reasonable alternatives, which may consist largely of the alternatives recommended by agencies, Indian tribes, and NGOs.

²¹⁵ California adds that in the context of its water quality certification, state law requires a final environmental document before its final

similarly indicates that agencies would need to respond on a case-by-case basis, depending on their view of whether the record is complete.

233. GLIFWC and Skokomish state that preliminary draft conditions before the REA notice would not afford Indian tribes sufficient time to consult with Federal agencies that have authority pursuant to FPA Section 4(e) to require mandatory conditions for projects located on Indian reservations.

234. Among agencies and NGOs, only NYSDEC and Oregon do not object to filing preliminary draft PM&E measures. Oregon's tentative assent however assumes a period of one year between the draft and final license applications, in contrast to the approximate period of 150 days in the proposed rule.²¹⁶ We are not inclined, particularly in light of our decision to adopt the Preliminary Licensing Proposal, to extend the comment period.

235. Finally, Interior states that this might be acceptable, but only at the option of the entity filing the PM&E measures. Interior also questions the purpose of this proposal on the ground that the Commission's draft environmental document is likely to provide significant information and analysis not found in the studies or applicant's proposal. Interior adds that filing preliminary PM&E measures before the REA notice is pointless since modified PM&E measures are not due until 60 days after the comments are due on the draft NEPA document.²¹⁷

236. We conclude that the arguments against requiring preliminary draft PM&E measures are persuasive and will not require them to be filed.

L. License Applications

1. Contents

237. Only a few comments were filed on the contents of the final license application. Long View seeks clarification that Exhibit C (proposed construction schedule) applies only to proposed construction, and need not discuss any previous construction. Long View's understanding is correct.

238. Long View requests an explanation of why the maps required in Exhibit G need to be stamped by a Registered Land Surveyor. This ensures accuracy in the maps because Registered

certification conditions can be issued, and that it would have to repeat the entire water quality certification process. We did not however suggest that the state should issue water quality certification at this juncture.

²¹⁶ 90 days to comment on the Preliminary Licensing Proposal or draft license application, followed by 60 days for the applicant to file the final application.

²¹⁷ Proposed 18 CFR 5.22.

Land Surveyors are accountable for the accuracy of their work.

239. Nez Perce indicates that the license application should include a map showing the political boundaries of any Indian reservation that may be affected, and identifying ceded and non-ceded territories where treaty rights apply. In our view, this is information that can best be provided to a potential applicant by the Indian tribe itself or with the assistance of Interior.

240. Nez Perce also states that the Exhibit E should be prepared after consultation with affected Indian tribes on the scope of cumulative environmental impacts, and should be prepared on a watershed basis. The integrated process provides ample opportunity for Indian tribes to participate in pre-filing consultation and NEPA scoping. In addition, the Commission staff's Scoping Document 1 will state what the Commission staff considers to be the geographical and temporal scope of the analysis.

241. Some commenters requested changes to the license application requirements that touch on economic analysis. Nez Perce and NOAA Fisheries request that Exhibit E include, in addition to discussion of the cost of PM&E measures, a dollar valuation of the benefits of environmental and cultural resources PM&E measures. This analysis would include, among others things, potential increases in revenues from commercial and sport fishing, increased non-fishing recreation, and potential property value increases resulting from better environmental protection.

242. Our views concerning the attachment of dollar values to natural and cultural resource benefits are set forth in *Great Northern Paper, Inc.*²¹⁸ and *City of Tacoma, Washington*.²¹⁹

The public-interest balancing of environmental and economic impacts cannot be done with mathematical

²¹⁸ 85 FERC ¶ 61,316 (1998), *reconsideration denied*, 86 FERC ¶ 61,184 (1999), *aff'd*, *Conservation Law Foundation v. FERC*, 216 F.3d 41 (DC Cir. 2000) (nothing in the FPA requires the Commission to place a dollar value on nonpower benefits; nor does the fact that the Commission assigned dollar figures to the licensee's economic costs require it to do the same for nonpower benefits.). *See also*, *Namekegon Hydro Co.*, 12 FPC 203, 206 (1953), *aff'd*, *Namekegon Hydro Co. v. FPC*, 216 F.2d 509 (7th Cir. 1954) (when unique recreational or other environmental values are present such as here, the public interest cannot be evaluated adequately only by dollars and cents); and *Eugene Water & Electric Board*, 81 FERC ¶ 61,270 (1997) *aff'd*, *American Rivers v. FERC*, 187 F.3d 1007 (9th Cir. 1999) (rejecting request for economic valuation of environmental resources that were the subject of 10(j) recommendations).

²¹⁹ 84 FERC ¶ 61,107 (1998), *order on reh'g*, 86 FERC ¶ 61,311 (1999), *appeal pending*, *City of Tacoma v. FERC*, DC Cir. No. 99-1143, *et al.*