

precision, nor do we think our statutory obligation to weigh and balance all public interest considerations is served by trying to reduce it to a mere mathematical exercise. Where the dollar cost of enhancement measures, such as diminished power production, can be reasonably ascertained, we will do so. However, for non-power resources such as aquatic habitat, fish and wildlife, recreation, and cultural and aesthetic values, to name just a few, the public interest cannot be evaluated adequately only by dollars and cents.²²⁰

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In the context of public interest balancing for long-term authorizations, it is inappropriate to rely too heavily on the accuracy of current dollar estimates of non-power resource values, calculated using any number of reasonably disputable assumptions and methods.²²¹

243. AW/FLOW and FWS state that the final application should include projections of project revenues for the purpose of testing applicant assertions that proposed PM&E measures are too costly. That would be inconsistent with the fundamental determination underlying our policy of using current costs to value project power; that is, the futility of attempts to estimate power values on a long-term basis.²²²

244. Long View and PG&E state that Exhibit E (which is in the form of a draft environmental document) which requires an economic analysis of "any other action alternative"²²³ would unreasonably require an applicant to conduct an economic analysis of every PM&E measure recommended by any participant in pre-filing consultation. They would like for the applicant to determine which such measures are reasonable to analyze.

245. The action alternatives typically include PM&E measures proposed by agencies, Indian tribes, and NGOs. If such measures are not provided before the application is filed, the potential applicant has little to work with and a commensurately minor obligation in

this regard. In such cases Exhibit E then will contain an economic analysis of the existing project as it currently operates and the license applicant's proposal. We expect however there will also be cases in which preliminary action alternatives or individual PM&E measures will exist when the application is filed. We share PG&E's concern about license applicants being held responsible for developing cost information about or analyses of PM&E measures of varying specificity and practicality, or those that involve long-term activity not easily translated into current costs. We would only expect a potential applicant to provide an analysis of preliminary PM&E measures if they were sufficiently specific to make that possible.²²⁴ We have modified the regulation text to reflect this view.²²⁵

2. Post-Application Study Requests

246. The proposed rule makes no provision for new information-gathering or study requests after a license application is filed, based on the premise that participants are provided ample opportunity before the application is filed and during the study period to make such requests. Industry commenters agree with this proposal.²²⁶

247. Some agency and NGO commenters do not agree. They appear to concede that if such requests are permitted, the bar should be set high, but assert that to prohibit them entirely would exclude from the record information warranted by unforeseen circumstances. They cite as examples unexpected study results which establish a need for a new study; failure of the applicant to meet document production and disclosure obligations during the pre-filing period or in the application; and material changes in circumstance with respect to the environment, the applicant's license proposal or information contained therein, and applicable laws or regulations.²²⁷

248. The mere fact that study results are unexpected does not indicate that a new study is needed. It is possible for study results to be so different from what was expected that questions arise concerning whether it was properly conducted, but such events are

exceedingly rare in our experience. The failure of an applicant to satisfy the terms of the study plan or filing requirements is not a cause for new study requests. It is rather the cause of a deficiency that must be remedied, and may also raise compliance issues.

249. It is also possible for a material change in circumstances to occur between the completion of the study plan and the conclusion of a licensing proceeding that requires additional information to be provided. That has always been the case, and the Commission has always exercised its authority to require applicants to provide additional information for the record in appropriate cases. We will continue to do so. However, we remain convinced that the multiple opportunities to request information and studies and to resolve any study disputes during the pre-filing phase of the integrated process will ensure that the application will include all information needs.

M. Consultation and Coordination With States

1. General Comments

250. PFMC requests that we clarify the relationship between licensing and other Federal and state processes. The relationships between licensing and state and tribal water quality certification and consistency certification under the Coastal Zone Management Act (CZMA) are discussed in this section.²²⁸

251. Minnesota DNR asks us to affirm that the changes we are adopting are not designed to weaken the authority of state fish and wildlife agencies. We have carefully developed the final rule to ensure that the rights and views of all participants, including all state agencies, are accorded the full consideration to which they are entitled by law, and in many instances have provided procedural rights exceeding any legal requirements.²²⁹ Indeed, our expansive approach to stakeholder participation in this rulemaking, which greatly exceeds the notice and comment requirements of the APA, is indicative of our approach to stakeholder participation in our processes.

252. Long View requests that the Commission designate specific members of staff to be familiar with the water quality certification requirements of

²²⁰ 85 FERC at p. 62,244–245. Interior states that environmental and cultural resource benefits of PM&E measures need to be better articulated by the Commission to counter the cost arguments of applicants, but does not seek to have them translated into dollar values. We agree that it is important to explain the benefits, economic or otherwise, of the PM&E measures we approve, and believe our NEPA documents and orders do so. By the same token, agencies that provide mandatory conditions or recommendations have the same obligation with respect to the PM&E measures they sponsor.

²²¹ 84 FERC at pp. 61,571–72.

²²² See Mead Corporation, Publishing Paper Division., 72 FERC ¶ 61,027 (1995), *order on reh'g*, 76 FERC ¶ 61,352 (1996).

²²³ See proposed 18 CFR 5.17(b)(1)(E).

²²⁴ For instance, the cost of a specific recommendation for instream flows in a bypassed reach can be determined. A fishway prescription, on the other hand, may be too vague, particularly as a preliminary measure, for the costs to be reasonably determined. See the discussion in Section III.O.2.

²²⁵ 18 CFR 5.18(b)(5)(i)(B).

²²⁶ We infer this from the fact that the only industry member to comment on the matter was NHA, which endorsed the proposal.

²²⁷ NYSDEC, HRC, Interior, MPRB, NJDEP.

²²⁸ The relationship of ESA consultation to the licensing process is discussed in Section III.O.3.

²²⁹ Georgia DNR states that all state agencies should receive equal consideration in the licensing process. If, by this, Georgia DNR means each agency should receive the full consideration to which it is entitled by the law and implementing regulations, we agree.