

each state for the purpose of coordinating with the state at various milestones in the process to ensure that its information needs are being met. Long View expects that this would minimize post-application requests by states for additional information. We decline to adopt this recommendation. State or tribal officials are the persons responsible for administering water quality certification programs, and the integrated process we are establishing includes opportunities and inducements for them to participate in the licensing process and make their information gathering and study needs known early. We also expect the water quality certification process will be coordinated with the licensing process through the development of the process plan and schedule.<sup>230</sup>

## 2. Timing of Water Quality Certification Application

253. The existing regulations require license applicants to file an application for a water quality certification for both the traditional process and ALP no later than the date on which the application is filed.<sup>231</sup> In the NOPR, we noted that this assumes that the potential applicant has consulted with the water quality certification agency, determined what data is required, and obtained that data before the license application is filed.<sup>232</sup> This premise however frequently does not reflect reality.

254. We proposed to make the license application date the deadline date for filing the water quality certification application in the integrated process because the integrated process is designed to better ensure that water quality certification data needs are timely identified and met.<sup>233</sup> We proposed to change the deadline date for the traditional process from the license application date to 60 days after the REA notice is issued because there is less assurance under the traditional process that water quality certification matters will be resolved when the application is filed. We requested comments on that proposal and on an appropriate deadline date for this filing in the ALP.<sup>234</sup>

255. Commenters on this issue seldom distinguished between processes, and opined that it would be confusing for participants to have a different deadline

date depending on the process selection. They recommended a deadline date for all processes based on their views of how the Commission's processes should be coordinated with state water quality certification processes.

256. Only PFMC, NEU, and NJDEP recommended that the deadline date continue to be the filing date of the license application. Several commenters recommended that the deadline for filing of the water quality certification application should be 30–60 days following the Commission's REA notice.<sup>235</sup> The rationale for this recommendation is that the REA notice establishes that the record is complete, so there is sufficient data to support the water quality certification application, and the state should be able to act on the application within one year. NHA also suggests that allowing additional time after the license application is filed would afford time for the state and the applicant to work together in ways that may lead to earlier issuance of water quality certification.

257. In this connection, the Process Group agreed that the integrated process will work best when states and Indian tribes recognize and are actively involved throughout the pre-filing process, and that the Commission, state or Indian tribe, and applicant should discuss schedules and procedures for their respective processes early on. We wholeheartedly agree, and if this is done the integrated process should result in all parties knowing what water quality-related data the Commission will require the potential applicant to produce when the study plan determination is issued or, at the latest, the conclusion of any relevant formal dispute resolution process. This should leave ample time before the license application is filed, about two and one-half years, for the potential applicant to consult with the state regarding what, if any, additional data is required for certification, and to collect that data. If the potential applicant and the state or Indian tribe are diligent in this regard, the potential applicant should be able to file the water quality certification application by the time the license application is filed.<sup>236</sup>

258. There may however be instances where the license application is required to be filed, but some information required by the Commission-approved study plan or by

the water quality certification agency has not yet been obtained. In these circumstances, the REA notice will not be issued until the study plan is completed, so using the REA notice as the triggering date to file the water quality certification application allows an additional increment of time past the license application date in case there is also outstanding water quality data.<sup>237</sup>

259. California, VANR, and the Process Group propose that the deadline date be negotiated by the state or Tribe and the license applicant. As a default in the event there is no agreement, California proposes a deadline of 60 days following issuance of the Commission's draft NEPA document.<sup>238</sup> EPA thinks there may be merit in California's proposal. This recommendation is based on the concept that one environmental document should serve for all Federal and state authorizations; e.g., water quality certification, CZMA consistency certification, and Clean Water Act Section 404.<sup>239</sup> dredge and fill permits issued by the U.S. Army Corps of Engineers. California explains that it must prepare an environmental document akin to the Federal NEPA document after an opportunity for public notice and comment (SEQA analysis). It does not consider a water quality certification application to be complete until its SEQA analysis is complete, and it would prefer that the SEQA analysis be the same document as the Commission's NEPA document. It states that by waiting until after the Commission's draft NEPA document is issued, it may be able to use the comments filed on that document to satisfy its own public notice and comment requirements, and still have sufficient time to take substantive action on the water quality certification application within a one-year period.<sup>240</sup> Although VANR supports the single environmental document concept, it

<sup>237</sup> The Process Group agreed that the license application should include the information required by the water quality certification agency. That would of course be desirable, but we cannot impose such a requirement since new license applications must be filed on a schedule determined by the FPA, and we cannot control the timing of the state's process. We likewise decline to tie issuance of the REA notice to a state's determination that the record in its separate process is complete. The Commission cannot delegate its procedural or substantive responsibilities to other entities.

<sup>238</sup> Alaska suggests that for projects in that state an even later time may be appropriate if at some time it exercises water quality certification authority, because a CZMA consistency certification in that state would have to precede issuance of water quality certification.

<sup>239</sup> 33 U.S.C. 1344.

<sup>240</sup> California, WGA, EPA.

<sup>230</sup> See 18 CFR 5.8(d)(4).

<sup>231</sup> 18 CFR 4.38(f)(7) and 16.8(f)(7).

<sup>232</sup> 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

<sup>233</sup> Proposed 18 CFR 5.17(f) and 68 FR at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

<sup>234</sup> Proposed 18 CFR 4.34(b)(5) and 68 FR 13988 at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

<sup>235</sup> NHA, PG&E, MDEP, SCE, EPA, NYSDEC.

<sup>236</sup> We hasten to add that this is a minimum time. We are aware of no reason why a potential applicant cannot consult with the water quality certification agency when the NOI and PAD are filed and begin collecting required data before the Commission's study plan determination is issued.