

that it is important for the integrated process to be coordinated with the issuance of preliminary permits, and offer specific proposals for doing so.

347. NHA's proposal is detailed. An applicant for a permit for a project at an existing non-federal dam would be required to demonstrate ownership of the dam or evidence of authorization from the existing dam owner to evaluate the dam for potential generation. If the permit applicant could not satisfy this requirement, the Commission would issue an order to show cause why the permit application should not be dismissed. If good cause to issue the permit was not shown, the permit application would be declared patently deficient and dismissed. This, states NHA, would prevent the issuance of permits to entities that do not own the site or who lack real intent to construct a project.

348. Under NHA's proposal, six months before expiration of a first permit, the permit holder would have to file its NOI,³³⁰ but would not have to file a PAD. A public notice of the NOI would be issued inviting potential competitors to also file an NOI. Thereafter, the permittee and any potential competitors would have to file a skeletal PAD, with both documents due on the same day in order to prevent either party from copying the other's PAD. The Commission would also bar the competitor from using the permittee's materials in any subsequent filings.³³¹ A PAD that did not meet minimum content standards would be declared patently deficient and rejected, with no opportunity to remedy the deficiency. The new permittee would have a specified period of time to file a new NOI and the same PAD required of all other potential license applicants. Thereafter the same integrated process applicable to relicenses would apply.

349. NHA's proposal would impede development applications at existing dams by entities other than the dam owner. That would be fundamentally inconsistent with Congress' intent to promote competition in hydropower development.³³²

350. California and NOAA Fisheries make much simpler proposals.

California would have us require each new permittee to begin pre-filing consultation within 30 days from issuance of the preliminary permit and to file an NOI and PAD within 60 days. NOAA Fisheries would require permit applicants to simultaneously file the NOI and PAD.

351. The California and NOAA Fisheries recommendations do not account for the many uncertainties associated with developing an unconstructed project, a lack of existing project-specific information and studies, or the need to obtain other permits, such as a dredge and fill permit under Section 404 of the Clean Water Act. These factors can add significant time to the period needed to prepare a new development application, or even an original license application for a project at an existing dam. For this reason, successive permits are typical in such circumstances. Other commenters recognize this,³³³ and some suggest that the labor-intensive and time-sensitive integrated process may be incompatible with original licenses.

352. We affirm our proposal to apply the integrated process to original license applications. We conclude that the existing preliminary permit program and the integrated process can exist side-by-side and do not need any special provisions for coordination. There is no need for the permit term and pre-filing consultation to begin contemporaneously because a permit holder can file a license application any time during the term of the permit, and pre-filing consultation can and does go forward regardless of whether the potential applicant has a preliminary permit.

S. Competition for New Licenses

353. The FPA requires an existing licensee that is a potential applicant for a new license to file an NOI.³³⁴ Neither the FPA nor our regulations require a non-licensee that is a potential competitor for a new license to file an NOI. In the NOPR we rejected requests from some licensees to require a potential non-licensee competitor to file an NOI.³³⁵

354. PG&E and NHA state that they are not concerned about this, as long as

we require a potential non-licensee competitor to file its PAD no later than five years prior to license expiration. In effect, this would ensure that the potential non-licensee competitor must show its hand no later than the existing licensee. Likewise, an existing licensee concerned about potential competitors could ensure that any potential competitor may not copy its PAD by also issuing its NOI and PAD at the statutory deadline.³³⁶

355. Upon further reflection, we have decided that it is appropriate for a potential non-licensee competitor to file both the NOI and the PAD. We previously rejected the NOI requirement for non-licensee potential competitors in order to encourage competition on relicensing.³³⁷ Over two hundred new license applications have been filed since the current rules were promulgated in 1989, but just a few applications have been filed by a non-licensee in competition with a timely-filed application by an existing licensee. It is clear that relieving non-licensee potential applicants of the NOI requirement has not had any effect or competition.

356. More important, the existing policy was developed when only the traditional licensing process existed. The adoption of the integrated process and the requirement for Commission approval to use the traditional process change the landscape considerably. The integrated process is based on clearly delineated steps designed to be completed before the license application is filed. The traditional process is much less prescriptive. If there were competing applications, it is mostly likely that we would require them to be developed using the same process in the same time frame. In any event, we would want to ensure that stakeholders have the same opportunity to comment on both potential applicants' process proposals, and the process proposal is required to be included with the PAD.³³⁸

357. The remaining question is whether a non-licensee potential competitor should be required to file its NOI and PAD within the same six month window applicable to existing licensees. The importance of process selection to efficient processing, discussed above, persuades us that a potential non-licensee competitor should also be required to file its NOI

³³⁰ NHA states that the permit regulations would have to be modified to permit this.

³³¹ We have previously held that an application will not be rejected because it contains materials duplicated from another application, even if the material is copyrighted. *WV Hydro, Inc. and City of St. Mary's, WV*, 45 FERC ¶ 61,220 (1988).

³³² Order No. 496, Information to be Made Available by Hydroelectric Licenses under Section 4(c) of the Electric Consumers Protection Act of 1986, 53 FR 15804 (May 4, 1989), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,812 at p. 31,105 (Apr. 28, 1988).

³³³ Long View, Troutman, ADK, Wisconsin DNR.

³³⁴ 16 U.S.C. 15(b)(1).

³³⁵ 68 FR at p. 14009; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,729. PG&E notes that the text of proposed 18 CFR 5.3(a) is consistent with the body of the NOPR in this regard, but that proposed 18 CFR 5.3(c) appears to require any potential applicant, whether or not an existing licensee, to file an NOI. We are modifying the language concerning this requirement in accordance with our decision here to require any potential applicant for a new license to file an NOI.

³³⁶ This would if adopted, take care of Long View's concern that a competing non-licensee applicant could photocopy an existing licensee's PAD.

³³⁷ Order No. 513, IV FERC Stats. & Regs. ¶ 30,854 at p. 31,415.

³³⁸ 18 CFR 5.6(d)(1).