

should change our rules in this regard.³⁷¹

393. Agencies and NGO commenters opposed this idea.³⁷² HRC and Interior state that this would not achieve the goals of the rulemaking because there would still be no requirement comparable to the ALP or even the integrated process to consult on a study plan or the APEA. Thus, the APEA would reflect only the positions and interests of the applicant, making it highly unlikely that the Commission could adopt it without major revisions. California adds that even if the factual record was satisfactory, the objectivity of the applicant's analysis would be suspect.

394. EEI and NEU favor this idea. EEI states that APEAs work well in the gas pipeline certificates program.

395. We have decided to permit a license applicant to include a draft EA with its application. The agency and NGO commenters may be correct that an APEA prepared under the traditional process is less likely to account for the views of all participants and may require significant revisions pursuant to the Commission's independent review. That however is not the central issue. The adequacy of an APEA for purposes of filing a license application is determined by whether it contains the information required in Exhibit E, the environmental exhibit. If it contains that information, we are not concerned that it appears in a nontraditional format. The parties will retain the same rights they now enjoy to comment on the full application and make any additional information requests. Regardless of whether an applicant includes an APEA or a traditional Exhibit E in its application, the Commission will issue its own independently prepared draft NEPA document or single environmental assessment.

6. ALP—Applicability of Dispute Resolution

396. We proposed to leave the existing, non-mandatory and non-binding dispute resolution procedures applicable to the ALP in place because mandatory, binding dispute resolution appears to be incompatible with the collaborative nature of the ALP. We did however request comments on whether there may be circumstances in which binding dispute resolution could be conducted in a manner that safeguards the collaborative process.³⁷³

397. SCE recommends that the ALP include binding dispute resolution. Most commenters however state that a binding process would be inconsistent with the concept of a collaborative process and would therefore have a chilling effect on participation.³⁷⁴ California and PFMC state that there should be a negotiated dispute resolution mechanism in the communications protocol for each ALP. PFBC recommends that if the existing ALP dispute resolution process³⁷⁵ fails, the proposed formal dispute resolution process for the integrated licensing process should be used, modified to make it available to all parties.³⁷⁶

398. After considering the comments, we have decided not to change the existing ALP dispute resolution provision. Mandatory, binding dispute resolution still seems to us inconsistent with the collaborative process. For the same reason we decline to import into the ALP the formal dispute resolution procedures of the integrated process. The negotiated dispute resolution procedure contemplated by California and PFMC could however be encompassed within a communications protocol, if the participants agreed to request waiver of the process provided for in the regulations.

V. Ancillary Matters

1. Intervention by Federal and State Agencies

399. We proposed to permit Federal agencies that commonly intervene in Commission proceedings, and state fish and wildlife and water quality certification agencies, to intervene by filing a notice instead of the current requirement to file a motion to intervene.³⁷⁷

400. No commenter objected to this proposal. Various commenters request that we clarify that the intervention by notice policy extends to, or will be expanded to include, state water rights agencies³⁷⁸ and Indian tribes with

authority to issue water quality certification.³⁷⁹ These requests are reasonable and will be granted.³⁸⁰

401. NYSDEC requests that late interventions also be allowed by notice unless there is prejudice to others. We deny this request. The best means of determining whether other parties would be prejudiced is for the entity seeking untimely intervention to address that issue and for potentially prejudiced parties to respond. Our regulations on this matter make clear that this is one of the matters the Commission may consider in acting on a late motion to intervene.³⁸¹

402. NOAA Fisheries and Interior renew their request for automatic intervenor status, or for the ability to file one notice of intervention good for all proceedings throughout the term of a license. They advance no arguments that were not considered and rejected in the NOPR.

2. Information Technology

403. In the NOPR we denied requests by a few commenters to require that documents filed in a proceeding or required to be available to the public be served or otherwise made available on the internet. We acknowledged that there are many instances where this is very efficient and more useful for participants than distribution of paper. We also noted that many license applicants and others are taking advantage of these benefits. We concluded however that such a requirement might be an undue cost burden on licensees that are small enterprises, and noted that we have granted waiver of the "licensing library" requirement where the applicant agreed to make all of the information available on the Internet and to provide hard copies by mail on request.³⁸²

404. SCE requests that we reconsider and allow applicants to use Web sites and e-mail to disseminate information and effect service in the ordinary course.³⁸³ The applicant would determine whether and to what extent to employ this means of service and information dissemination. SCE states that entities without access to the internet would be accommodated by service of physical documents. HRC notes in a similar vein that electronic service is critical to the tight deadlines

³⁷⁴ Interior, HRC, NYSDEC, NEU.

³⁷⁵ Under 18 CFR 4.34(i)(6)(vii), participants in an ALP may file a request with the Commission to resolve any disagreement concerning the ALP (*i.e.*, not limited to studies) after reasonable efforts have been made by the participants to resolve the dispute.

³⁷⁶ CSWC recommends that numerous elements of the integrated process be incorporated into ongoing ALP processes. Imposing such requirements would be inconsistent with the collaborative nature of these processes and would upset the settled expectations of the potential applicants and stakeholders who have already established the means by which they will work together.

³⁷⁷ 68 FR at p. 14013; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737, and proposed 18 CFR 385.214.

³⁷⁸ Alaska DNR, EPA.

³⁷⁹ Interior, EPA.

³⁸⁰ See 18 CFR 385.214.

³⁸¹ 18 CFR 385.214(d)(1)(iv).

³⁸² 68 FR at pp. 14013–014; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737–738.

³⁸³ SCE states that oversized documents that are not compatible with e-mail would be served by mail, and that critical energy infrastructure information could be excluded.

³⁷¹ 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,736.

³⁷² HRC, Interior, PFMC, MPRB, NCWRC, California.

³⁷³ 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,735.