

acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone, or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss section 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes.

(5) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question. If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

* * * * *

(i) * * *

(5)(i) If the potential applicant's request to use the alternative procedures is filed prior to July 23, 2005, the Commission will give public notice in the **Federal Register** inviting comment on the applicant's request to use alternative procedures. The Commission will consider any such comments in determining whether to grant or deny the applicant's request to use alternative procedures. Such a decision will not be subject to interlocutory rehearing or appeal.

(ii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and prior to the deadline date for filing a notification of intent to seek a new or subsequent license required by § 5.5 of this chapter, the Commission will give public notice

and invite comments as provided for in paragraph (i)(5)(i) of this section. Commission approval of the potential applicant's request to use the alternative procedures prior to the deadline date for filing of the notification of intent does not waive the potential applicant's obligation to file the notification of intent required by § 5.5 of this chapter and Pre-Application Document required by § 5.6 of this chapter.

(iii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and is at the same time as the notification of intent to seek a new or subsequent license required by § 5.5, the public notice and comment procedures of part 5 of this chapter shall apply.

* * * * *

§ 4.35 [Amended]

■ 9. Amend § 4.35 as follows:

■ In paragraph (f)(1)(iii) remove the word "or" and add the word "of" in its place.

§ 4.37 [Amended]

■ 10. Amend § 4.37 as follows:

■ a. In the introductory sentence, remove "§ 4.33(f)" and add "§ 4.33(e)" in its place.

■ b. In paragraph (b)(1), remove "If both of two" and add "If both or neither of two" in its place.

■ 11. Amend § 4.38 as follows:

■ a. In § 4.38, remove "Office of Hydropower Licensing" each place it appears and add "Office of Energy Projects" in its place.

■ b. In paragraph (a), redesignate existing paragraphs (a)(2) through (a)(7) as paragraphs (a)(4) through (a)(9), add new paragraphs (a)(2) and (a)(3), and revise newly redesignated paragraph (a)(4).

■ c. Paragraph (b) is revised.

■ d. In paragraph (c)(1), remove "(b)(5)" and add "(b)(6)" in its place.

■ e. In paragraph (c)(1)(ii), remove "(b)(1)" and add "(b)(2)" in its place.

■ f. In paragraph (c)(2): remove "(b)(6)" and add "(b)(7)" in its place; remove "(b)(4)(i)-(vi)" and add "(b)(5)(i)-(vi)" in its place; and remove "(b)(5)" and add "(b)(6)" in its place.

■ g. In paragraph (c)(4)(ii), remove "(b)(1)(vii)" and add "(b)(2)(vii)" in its place.

■ h. In paragraph (d)(1), remove "Indian tribes, and other government offices" and add "Indian tribes, other government offices, and consulted members of the public" in its place.

■ i. In paragraph (d)(2), remove "resource agency and Indian tribe consulted and on other government offices" and add "resource agency, Indian tribes, and member of the public consulted, and on other government offices" in its place.

■ j. In paragraph (e), a new paragraph (e)(4) is added.

■ k. In paragraph (f), paragraph (7) is removed, and paragraphs (8) and (9) are redesignated (7) and (8), respectively, and in newly redesignated paragraph (7), remove "(b)(2)" and add "(b)(3)" in its place.

■ l. In paragraph (g)(1), remove the phrase "(b)(2)" and add the phrase "(b)(3)" in its place.

■ m. In paragraph (g)(1), "(b)(2)" is removed and "(b)(3)" is added in its place.

■ n. Paragraph (g)(2) is revised.

■ o. Paragraph (h) is removed.

The revised and added text reads as follows:

§ 4.38 Consultation requirements.

(a) * * *

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall be construed to require as well that the potential applicant contact or consult with members of the public.

(3) If a potential applicant for an original license commences first stage pre-filing consultation on or after July 23, 2005 it shall file a notification of intent to file a license application pursuant to § 5.5 and a pre-application document pursuant to the provisions of § 5.6.

(4) The Director of the Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

* * * * *

(b) *First stage of consultation.* (1) A potential applicant for an original license that commences pre-filing consultation on or after July 23, 2005 must, at the time it files its notification of intent to seek a license pursuant to § 5.6 of this chapter and a pre-application document pursuant to § 5.6 of this chapter and, at the same time, provide a copy of the pre-application document to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for an original license that commences pre-filing consultation under this part prior to July 23, 2005 or for an exemption must promptly contact each of the appropriate resource agencies, affected Indian tribes, and members of the public likely to be interested in the proceeding; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a