

affected resource agencies, and Indian tribes.

(e) 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.

§ 5.27 Amendment of application.

(a) *Procedures.* If an Applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35 of this chapter, an agency, Indian tribe, or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to §§ 5.20–5.26. Such modified recommendations, terms and conditions, or prescriptions must be filed no later than the due date specified by the Commission for comments on the amendment.

(b) *Date of acceptance.* The date of acceptance of an amendment of application for an original license filed under this part is governed by the provisions of § 4.35 of this chapter.

(c) *New and subsequent licenses.* The requirements of § 4.35 of this chapter do not apply to an application for a new or subsequent license, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 4.32(d)(2) of this chapter if a material amendment, as that term is used in § 4.35(f) of this chapter, is filed.

(d) *Deadline.* All amendments to an application for a new or subsequent license, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under § 5.23.

§ 5.28 Competing applications.

(a) *Site access for a competing applicant.* The provisions of § 16.5 of this chapter shall govern site access for a potential license application to be filed in competition with an application for a new or subsequent license by an existing licensee pursuant to this part, except that references in § 16.5 to the pre-filing consultation provisions in

parts 4 and 16 of this chapter shall be construed in a manner compatible with the effective administration of this part.

(b) *Competing applications.* The provisions of § 4.36 of this chapter shall apply to competing applications for original, new, or subsequent licenses filed under this part.

(c) *New or subsequent license applications—final amendments; better adapted statement.* Where two or more mutually exclusive competing applications for new or subsequent license have been filed for the same project, the final amendment date and deadlines for complying with provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under § 5.23 will be the same for all such applications.

(d) *Rules of preference among competing applicants.* The Commission will select among competing applications according to the provisions of § 4.37 of this chapter.

§ 5.29 Other provisions.

(a) *Filing requirement.* Unless otherwise provided by statute, regulation or order, all filings in hydropower hearings, except those conducted by trial-type procedures, must conform to the requirements of 18 CFR part 385, subpart T of this chapter.

(b) *Waiver of compliance with consultation requirements.* (1) If an agency, Indian tribe, or member of the public waives in writing compliance with any consultation requirement of this part, an applicant does not have to comply with the requirement as to that agency, Indian tribe, or member of the public.

(2) If an agency, Indian tribe, member of the public fails to timely comply with a provision regarding a requirement of this section, an applicant may proceed to the next sequential requirement of this section without waiting for the agency, Indian tribe, or member of the public.

(c) *Requests for privileged treatment of pre-filing submission.* If a potential Applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in § 5.4), the Commission will treat the request in accordance with the provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(d) *Conditional applications.* Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

(e) *Trial-type hearing.* The Commission may order a trial-type

hearing on an application for a license under this part either upon its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases, the hearings will be conducted by notice and comment procedures.

(f) *Notice and comment hearings.* (1) All comments and reply comments and all other filings described in this part must be served on all persons on the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party submits any written material to the Commission relating to the merits of an issue that may affect the responsibility of particular resource agency, the party must also serve a copy of the submission on that resource agency.

(2) The Director of Energy Projects may waive or modify any of the provisions of this part for good cause. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with § 385.2008 of this chapter.

(3) Late-filed recommendations by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project and late-filed terms and conditions or prescriptions filed pursuant to sections 4(e) and 18 of the Federal Power Act, respectively, will be considered by Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(g) *Settlement negotiations.* (1) The Commission will consider, on a case-by-case basis, requests for a short suspension of the procedural schedule for the purpose of participants conducting settlement negotiations, where it determines that the suspension will not adversely affect timely action on a license application. In acting on such requests, the Commission will consider, among other things:

(i) Whether requests for suspension of the procedural schedule have previously been made or granted;

(ii) Whether the request is supported by a consensus of participants in the proceeding and an explanation of objections to the request expressed by any participant;