

(iii) The likelihood that a settlement agreement will be filed within the requested suspension period; and

(iv) Whether the requested suspension is likely to cause any new or subsequent license to be issued after the expiration of the existing license.

(2) The Commission reserves the right to terminate any suspension of the procedural schedule if it concludes that insufficient progress is being made toward the filing of a settlement agreement.

(h) *License conditions and required findings.* (1) All licenses shall be issued on the conditions specified in Section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(2) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(3) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(4) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely filed pursuant to section 4(e) of the Federal Power Act.

(5) The Commission will require the construction, maintenance, and operation of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(i) *Standards and factors for issuing a new license.* (1) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(2) If there are only insignificant differences between the final applications of an existing licensee and a competing Applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which Applicant will receive the license after considering:

(i) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(ii) The actions taken by the existing licensee related to the project which affect the public.

(iii) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2) of the Federal Power Act.

(j) *Fees under section 30(e) of the Federal Power Act.* The requirements of 18 CFR part 4, subpart M, of this chapter, fees under section 30(e) of the Federal Power Act, apply to license applications developed under this part.

§ 5.30 Critical energy infrastructure information.

If any action required by this part requires a potential Applicant or Applicant to reveal Critical Energy Infrastructure Information, as defined by § 388.113(c) of this chapter, to the public, the Applicant must follow the procedures set out in § 4.32(k) of this chapter.

§ 5.31 Transition provision.

This part shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application, as required by § 5.5 of this part, is July 23, 2005 or later.

PART 9—TRANSFER OF LICENSE OR LEASE OF PROJECT PROPERTY

■ 27. The authority citation for part 9 continues to read as follows:

Authority: Sec. 8, 41 Stat. 1068, sec. 309, 49 Stat. 858; 16 U.S.C. 801, 825h; Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)

§ 9.1 [Amended]

■ 28. In § 9.1, remove “4.31” and add “4.32” in its place.

§ 9.2 [Amended]

■ 29. In § 9.10, remove “4.31” and add “4.32(b)(1)” in its place.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OR LICENSED PROJECTS

■ 30. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 31. Remove the phrase “Office of Hydropower Licensing” throughout the part and add in its place “Office of Energy Projects”.

■ 32. Amend § 16.1 by adding paragraph (c) to read as follows:

§ 16.1 Applicability.

* * * * *

(c) Any potential applicant for a new or subsequent license for which the deadline for the notice of intent required by § 16.6 falls on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

■ 33. Amend § 16.6 as follows:

■ a. In paragraph (b)(9), remove “16.16” and add “16.7” in its place.

■ b. In paragraph (b)(10)(ii), remove “Indian tribe”.

■ c. In paragraph (b)(10)(iii)(B), remove “and”.

■ d. In paragraph (b)(10)(iv), remove the period after “notification” and add a semi-colon in its place.

■ e. In paragraph (b)(10), add a new paragraph (b)(10)(v).

■ f. Paragraph (d) is revised.

■ The revised text reads as follows:

§ 16.6 Notification procedures under Section 15 of the Federal Power Act.

* * * * *

(b) * * *

(10) * * *

(v) Affected Indian tribes.

* * * * *

(d) *Commission notice.* Upon receipt of the notification required under paragraph (c) of this Section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) If the notification is filed prior to July 23, 2005;

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes by mail.

(2) If the notification is filed on or after July 23, 2005, pursuant to the provisions of § 5.8 of this chapter.

■ 34. Amend § 16.7 as follows:

■ a. Paragraph (d) is revised.

■ b. In paragraph (e)(1), following “section” add “, or the pre-application document, as applicable,”.

■ c. In paragraph (e)(3), after “National Marine Fisheries Service,” add “Indian tribes,”.

■ d. In paragraph (g), remove “16.16(d)(1)(iv)” and add “16.7(d)(1)(iv)” in its place.

■ The revised text reads as follows: