

consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, or Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Energy Projects pursuant to § 16.8(b)(6).

(iv) The Director will resolve disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) Unless otherwise extended by the Director pursuant to paragraph (b)(6) of this section, the first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first.

* * * * *

(e) * * *

(4) Following July 23, 2003 a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation

any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the potential applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

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§ 16.9 [Amended]

■ 36. Amend § 16.9 by removing "agencies and Indian tribes by mail" from paragraph (d)(1)(iii) and adding "agencies, Indian tribes, and non-governmental organizations" in its place.

§ 16.10 [Amended]

■ 37. Amend § 16.10 as follows:

■ a. Paragraph (d) is removed.

■ b. Paragraph (e) is redesignated as paragraph (d) and newly redesignated paragraph (d) is revised.

■ c. Paragraph (f) is removed.

■ The revised text reads as follows:

§ 16.10 Information to be provided by an Applicant for new license: Filing requirements.

* * * * *

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

§ 16.11 [Amended]

■ 38. Amend § 16.11 by removing paragraph (a)(2).

§ 16.19 [Amended]

■ 39. Amend § 16.19 by removing paragraphs (b)(3) and (b)(4) and by redesignating paragraph (b)(5) as paragraph (b)(3).

§ 16.20 [Amended]

■ 40. In § 16.20, paragraph (c) is revised. The revised text reads as follows:

§ 16.20 Applications for subsequent license for a project with an expiring license subject to Section 14 and 15 of the Federal Power Act.

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(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

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PART 375—THE COMMISSION

■ 41. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 42. Amend § 375.308 as follows:

■ a. In paragraph (c)(11), remove "4.303(d)" and add "4.303(e)" in its place.

■ b. In paragraph (k)(1), remove "4.32(d)(2)(i)" and add "4.32(e)(2)(i)" in its place.

■ c. In paragraph (k)(2)(ii), remove "4.32(d)(1)" and add "4.32(e)(1)(iii)" in its place.

■ d. In paragraph (k)(3), remove "4.32(f)" and add "4.32(g)" in its place.

■ e. Add a new section (aa):

■ The added text reads as follows.

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(aa) Take the following actions to implement part 5 of this chapter on or after October 23, 2003:

(1) Act on requests for approval to use the application procedures of parts 4 or 16, pursuant to § 5.3 of this chapter;

(2) Approve a potential license applicant's proposed study plan with appropriate modifications pursuant to § 5.13 of this chapter;

(3) Resolve formal study disputes pursuant to § 5.14 of this chapter; and

(4) Resolve disagreements brought pursuant to § 5.15 of this chapter.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 43. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 44. In § 385.214, revise paragraphs (a)(2) and (a)(3).

■ The revised text reads as follows.

§ 385.214 Intervention (Rule 214).

(a) * * *

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under