

construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by that agency, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption or acquiring a license for the project works that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of an exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Energy Projects determines that it is in the public interest to do so.

[Order 413, 50 FR 11688, Mar. 25, 1985, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

§ 4.105 Action on exemption applications.

(a) *Exemption from provisions other than licensing.* An application for exemption of a small hydroelectric power project from provisions of Part I of the Act other than the licensing requirement will be processed and considered as part of the related application for license or amendment of license.

(b)(1) *Consultation.* The Commission will circulate a notice of application for exemption from licensing to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

(2) *Non-standard terms and conditions.* In approving any application for exemption from licensing, the Commission may prescribe terms or conditions in addition to those set forth in § 4.106 in order to:

(i) Protect the quality or quantity of the related water supply;

(ii) Otherwise protect life, health, or property;

(iii) Avoid or mitigate adverse environmental impact; or

(iv) Better conserve, develop, or utilize in the public interest the water resources of the region.

(Energy Security Act of 1980, Pub. L. 96-294, 94 Stat. 611; Federal Power Act, as amended (16 U.S.C. 792-828c); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601-2645); and the Department of Energy Organization Act (42 U.S.C. 7101-7352); E.O. 12009, 3 CFR 142 (1978))

[Order 106, 45 FR 76123, Nov. 18, 1980, as amended by Order 202, 47 FR 4246, Jan. 29, 1982; Order 413, 50 FR 11688, Mar. 25, 1985; Order 533, 56 FR 23154, May 20, 1991]

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

Any case-specific exemption from licensing granted for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife