

## Federal Energy Regulatory Commission

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an application for an original license, or, in the case of an existing licensee, to file or not to file an application for a new or subsequent license.

(5) The type of principal project works licensed, if any, such as dam and reservoir, powerhouse, or transmission lines.

(6) The location of the project by state, county, and stream, and, when appropriate, by city or nearby city.

(7) The installed plant capacity, if any.

(8) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used or to be used by the project is located;

(ii) Every city, town, or similar political subdivision;

(A) In which any part of the project is or is to be located and any Federal facility that is or is to be used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the existing or proposed project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is or is proposed to be located and any Federal facility that is or is proposed to be used by the project is located; or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is or is proposed to be used by the project;

(iv) Every other political subdivision in the general area of the project or proposed project that there is reason to believe would be likely to be interested in, or affected by, the notification; and

(v) Affected Indian tribes.

(c) *Requirement to distribute.* Before it files any application for an original, new, or subsequent license, a potential license applicant proposing to file a license application pursuant to this part or to request to file a license application pursuant to part 4 of this chapter and, as appropriate, part 16 of this chapter (*i.e.*, the “traditional process”), including an application pursuant to § 4.34(i) *alternative procedures* of this chapter must distribute to appropriate Federal, state, and interstate re-

source agencies, Indian tribes, local governments, and members of the public likely to be interested in the proceeding the notification of intent provided for in paragraph (a) of this section.

(d) *When to notify.* An existing licensee or non-licensee potential applicant must notify the Commission as required in paragraph (b) of this section at least five years, but not more than five and one-half years, before the existing license expires.

(e) *Non-Federal representatives.* A potential license applicant may at the same time it files its notification of intent and distributes its pre-application document, request to be designated as the Commission’s non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920. A potential license applicant may at the same time request authorization to initiate consultation under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2(c)(4).

(f) *Procedural matters.* The provisions of subpart F of part 16 of this chapter apply to projects to which this part applies.

(g) *Construction of regulations.* The provisions of this part and parts 4 and 16 shall be construed in a manner that best implements the purposes of each part and gives full effect to applicable provisions of the Federal Power Act.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 69957, Dec. 16, 2003, as amended by Order 737, 75 FR 43402, July 26, 2010]

### § 5.6 Pre-application document.

(a) *Pre-application document.* (1) Simultaneously with the filing of its notification of intent to seek a license as provided for in § 5.5, and before it files any application for an original, new, or subsequent license, a potential applicant for a license to be filed pursuant to this part or part 4 of this chapter and, as appropriate, part 16 of this chapter, must file with the Secretary of the Commission in accordance with

filing procedures posted on the Commission's Web site at <http://www.ferc.gov> and distribute to the appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in the proceeding, the pre-application document provided for in this section.

(2) The agencies referred to in paragraph (a)(1) of this section include: Any state agency with responsibility for fish, wildlife, and botanical resources, water quality, coastal zone management plan consistency certification, shoreline management, and water resources; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; Environmental Protection Agency; State Historic Preservation Officer; Tribal Historic Preservation Officer; National Park Service; local, state, and regional recreation agencies and planning commissions; local and state zoning agencies; and any other state or Federal agency or Indian tribe with managerial authority over any part of project lands and waters.

(b) *Purpose of pre-application document.* (1) The pre-application document provides the Commission and the entities identified in paragraph (a) of this section with existing information relevant to the project proposal that is in the potential applicant's possession or that the potential applicant can obtain with the exercise of due diligence. This existing, relevant, and reasonably available information is distributed to these entities to enable them to identify issues and related information needs, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. It is also a precursor to the environmental analysis section of the Preliminary Licensing Proposal or draft license application provided for in §5.16, Exhibit E of the final license application, and the Commission's scoping document(s) and environmental impact statement or environmental assessment under the National Environmental Policy Act (NEPA).

(2) A potential applicant is not required to conduct studies in order to generate information for inclusion in the pre-application document. Rather, a potential applicant must exercise due

diligence in determining what information exists that is relevant to describing the existing environment and potential impacts of the project proposal (including cumulative impacts), obtaining that information if the potential applicant does not already possess it, and describing or summarizing it as provided for in paragraph (d) of this section. Due diligence includes, but is not limited to, contacting appropriate agencies and Indian tribes that may have relevant information and review of Federal and state comprehensive plans filed with the Commission and listed on the Commission's Web site at <http://www.ferc.gov>.

(c) *Form and distribution protocol*—(1) *General requirements.* As specifically provided for in the content requirements of paragraph (d) of this section, the pre-application document must describe the existing and proposed (if any) project facilities and operations, provide information on the existing environment, and existing data or studies relevant to the existing environment, and any known and potential impacts of the proposed project on the specified resources.

(2) *Availability of source information and studies.* The sources of information on the existing environment and known or potential resource impacts included in the descriptions and summaries must be referenced in the relevant section of the document, and in an appendix to the document. The information must be provided upon request to recipients of the pre-application document. A potential applicant must provide the requested information within 20 days from receipt of the request. Potential applicants and requesters are strongly encouraged to use electronic means or compact disks to distribute studies and other forms of information, but a potential applicant must, upon request, provide the information in hard copy form. The potential applicant is also strongly encouraged to include with the pre-application document any written protocol for distribution consistent with this paragraph to which it has agreed with agencies, Indian tribes, or other entities.

(d) *Content requirements*—(1) *Process plan and schedule.* The pre-application document must include a plan and

schedule for all pre-application activity that incorporates the time frames for pre-filing consultation, information gathering, and studies set forth in this part. The plan and schedule must include a proposed location and date for the scoping meeting and site visit required by § 5.8(b)(3)(viii).

(2) *Project location, facilities, and operations.* The potential applicant must include in the pre-application document:

(i) The exact name and business address, and telephone number of each person authorized to act as agent for the applicant;

(ii) Detailed maps showing lands and waters within the project boundary by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of any Federal and tribal lands, and the location of proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(iii) A detailed description of all existing and proposed project facilities and components, including:

(A) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, canals, powerhouses, tailraces, and other structures proposed to be included as part of the project or connected directly to it;

(B) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments;

(C) The number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of any proposed turbines or generators to be included as part of the project;

(D) The number, length, voltage, and interconnections of any primary transmission lines proposed to be included as part of the project, including a single-line diagram showing the transfer of electricity from the project to the transmission grid or point of use; and

(E) An estimate of the dependable capacity, average annual, and average monthly energy production in kilowatt hours (or mechanical equivalent);

(iv) A description of the current (if applicable) and proposed operation of the project, including any daily or seasonal

ramping rates, flushing flows, reservoir operations, and flood control operations.

(v) In the case of an existing licensed project;

(A) A complete description of the current license requirements; *i.e.*, the requirements of the original license as amended during the license term;

(B) A summary of project generation and outflow records for the five years preceding filing of the pre-application document;

(C) Current net investment; and

(D) A summary of the compliance history of the project, if applicable, including a description of any recurring situations of non-compliance.

(vi) A description of any new facilities or components to be constructed, plans for future development or rehabilitation of the project, and changes in project operation.

(3) *Description of existing environment and resource impacts*—(i) *General requirements.* A potential applicant must, based on the existing, relevant, and reasonably available information, include a discussion with respect to each resource that includes:

(A) A description of the existing environment as required by paragraphs (d)(3)(ii)–(xiii) of this section;

(B) Summaries (with references to sources of information or studies) of existing data or studies regarding the resource;

(C) A description of any known or potential adverse impacts and issues associated with the construction, operation or maintenance of the proposed project, including continuing and cumulative impacts; and

(D) A description of any existing or proposed project facilities or operations, and management activities undertaken for the purpose of protecting, mitigating impacts to, or enhancing resources affected by the project, including a statement of whether such measures are required by the project license, or were undertaken for other reasons. The type and amount of the information included in the discussion must be commensurate with the scope and level of resource impacts caused or potentially caused by the proposed project. Potential license applicants are encouraged to provide photographs

or other visual aids, as appropriate, to supplement text, charts, and graphs included in the discussion.

(ii) *Geology and soils.* Descriptions and maps showing the existing geology, topography, and soils of the proposed project and surrounding area. Components of the description must include:

(A) A description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources at the project site;

(B) A description of the soils, including the types, occurrence, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description of reservoir shorelines and streambanks, including:

(1) Steepness, composition (bedrock and unconsolidated deposits), and vegetative cover; and

(2) Existing erosion, mass soil movement, slumping, or other forms of instability, including identification of project facilities or operations that are known to or may cause these conditions.

(iii) *Water resources.* A description of the water resources of the proposed project and surrounding area. This must address the quantity and quality (chemical/physical parameters) of all waters affected by the project, including but not limited to the project reservoir(s) and tributaries thereto, bypassed reach, and tailrace. Components of the description must include:

(A) Drainage area;

(B) The monthly minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, specifying any adjustments made for evaporation, leakage, minimum flow releases, or other reductions in available flow;

(C) A monthly flow duration curve indicating the period of record and the location of gauging station(s), including identification number(s), used in deriving the curve; and a specification of the critical streamflow used to determine the project's dependable capacity;

(D) Existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other pur-

poses, including any upstream or downstream requirements or constraints to accommodate those purposes;

(E) Existing instream flow uses of streams in the project area that would be affected by project construction and operation; information on existing water rights and water rights applications potentially affecting or affected by the project;

(F) Any federally-approved water quality standards applicable to project waters;

(G) Seasonal variation of existing water quality data for any stream, lake, or reservoir that would be affected by the proposed project, including information on:

(1) Water temperature and dissolved oxygen, including seasonal vertical profiles in the reservoir;

(2) Other physical and chemical parameters to include, as appropriate for the project; total dissolved gas, pH, total hardness, specific conductance, chlorophyll a, suspended sediment concentrations, total nitrogen (mg/L as N), total phosphorus (mg/L as P), and fecal coliform (*E. Coli*) concentrations;

(H) The following data with respect to any existing or proposed lake or reservoir associated with the proposed project; surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate composition; and

(I) Gradient for downstream reaches directly affected by the proposed project.

(iv) *Fish and aquatic resources.* A description of the fish and other aquatic resources, including invasive species, in the project vicinity. This section must discuss the existing fish and macroinvertebrate communities, including the presence or absence of anadromous, catadromous, or migratory fish, and any known or potential upstream or downstream impacts of the project on the aquatic community. Components of the description must include:

(A) Identification of existing fish and aquatic communities;

(B) Identification of any essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and established

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by the National Marine Fisheries Service; and

(C) Temporal and spacial distribution of fish and aquatic communities and any associated trends with respect to:

(1) Species and life stage composition;

(2) Standing crop;

(3) Age and growth data;

(4) Spawning run timing; and

(5) The extent and location of spawning, rearing, feeding, and wintering habitat.

(v) *Wildlife and botanical resources.* A description of the wildlife and botanical resources, including invasive species, in the project vicinity. Components of this description must include:

(A) Upland habitat(s) in the project vicinity, including the project's transmission line corridor or right-of-way and a listing of plant and animal species that use the habitat(s); and

(B) Temporal or spacial distribution of species considered important because of their commercial, recreational, or cultural value.

(vi) *Wetlands, riparian, and littoral habitat.* A description of the floodplain, wetlands, riparian habitats, and littoral in the project vicinity. Components of this description must include:

(A) A list of plant and animal species, including invasive species, that use the wetland, littoral, and riparian habitat;

(B) A map delineating the wetlands, riparian, and littoral habitat; and

(C) Estimates of acreage for each type of wetland, riparian, or littoral habitat, including variability in such availability as a function of storage at a project that is not operated in run-of-river mode.

(vii) *Rare, threatened and endangered species.* A description of any listed rare, threatened and endangered, candidate, or special status species that may be present in the project vicinity. Components of this description must include:

(A) A list of Federal- and state-listed, or proposed to be listed, threatened and endangered species known to be present in the project vicinity;

(B) Identification of habitat requirements;

(C) References to any known biological opinion, status reports, or recovery plan pertaining to a listed species;

(D) Extent and location of any federally-designated critical habitat, or other habitat for listed species in the project area; and

(E) Temporal and spatial distribution of the listed species within the project vicinity.

(viii) *Recreation and land use.* A description of the existing recreational and land uses and opportunities within the project boundary. The components of this description include:

(A) Text description illustrated by maps of existing recreational facilities, type of activity supported, location, capacity, ownership and management;

(B) Current recreational use of project lands and waters compared to facility or resource capacity;

(C) Existing shoreline buffer zones within the project boundary;

(D) Current and future recreation needs identified in current State Comprehensive Outdoor Recreation Plans, other applicable plans on file with the Commission, or other relevant local, state, or regional conservation and recreation plans;

(E) If the potential applicant is an existing licensee, its current shoreline management plan or policy, if any, with regard to permitting development of piers, boat docks and landings, bulkheads, and other shoreline facilities on project lands and waters;

(F) A discussion of whether the project is located within or adjacent to a:

(1) River segment that is designated as part of, or under study for inclusion in, the National Wild and Scenic River System; or

(2) State-protected river segment;

(G) Whether any project lands are under study for inclusion in the National Trails System or designated as, or under study for inclusion as, a Wilderness Area.

(H) Any regionally or nationally important recreation areas in the project vicinity;

(I) Non-recreational land use and management within the project boundary; and

(J) Recreational and non-recreational land use and management adjacent to the project boundary.

(ix) *Aesthetic resources.* A description of the visual characteristics of the

lands and waters affected by the project. Components of this description include a description of the dam, natural water features, and other scenic attractions of the project and surrounding vicinity. Potential applicants are encouraged to supplement the text description with visual aids.

(x) *Cultural resources.* A description of the known cultural or historical resources of the proposed project and surrounding area. Components of this description include:

(A) Identification of any historic or archaeological site in the proposed project vicinity, with particular emphasis on sites or properties either listed in, or recommended by the State Historic Preservation Officer or Tribal Historic Preservation Officer for inclusion in, the National Register of Historic Places;

(B) Existing discovery measures, such as surveys, inventories, and limited subsurface testing work, for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that have been undertaken within or adjacent to the project boundary; and

(C) Identification of Indian tribes that may attach religious and cultural significance to historic properties within the project boundary or in the project vicinity; as well as available information on Indian traditional cultural and religious properties, whether on or off of any federally-recognized Indian reservation (A potential applicant must delete from any information made available under this section specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh).

(xi) *Socio-economic resources.* A general description of socio-economic conditions in the vicinity of the project. Components of this description include general land use patterns (*e.g.*, urban, agricultural, forested), population pat-

terns, and sources of employment in the project vicinity.

(xii) *Tribal resources.* A description of Indian tribes, tribal lands, and interests that may be affected by the project. Components of this description include:

(A) Identification of information on resources specified in paragraphs (d)(2)(ii)–(xi) of this section to the extent that existing project construction and operation affecting those resources may impact tribal cultural or economic interests, *e.g.*, impacts of project-induced soil erosion on tribal cultural sites; and

(B) Identification of impacts on Indian tribes of existing project construction and operation that may affect tribal interests not necessarily associated with resources specified in paragraphs (d)(3)(ii)–(xi) of this Section, *e.g.*, tribal fishing practices or agreements between the Indian tribe and other entities other than the potential applicant that have a connection to project construction and operation.

(xiii) *River basin description.* A general description of the river basin or sub-basin, as appropriate, in which the proposed project is located, including information on:

(A) The area of the river basin or sub-basin and length of stream reaches therein;

(B) Major land and water uses in the project area;

(C) All dams and diversion structures in the basin or sub-basin, regardless of function; and

(D) Tributary rivers and streams, the resources of which are or may be affected by project operations;

(4) *Preliminary issues and studies list.* Based on the resource description and impacts discussion required by paragraph (d)(3) of this section; the pre-application document must include with respect to each resource area identified above, a list of:

(i) Issues pertaining to the identified resources;

(ii) Potential studies or information gathering requirements associated with the identified issues;

(iii) Relevant qualifying Federal and state or tribal comprehensive waterway plans; and

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(iv) Relevant resource management plans.

(5) *Summary of contacts.* An appendix summarizing contacts with Federal, state, and interstate resource agencies, Indian tribes, non-governmental organizations, or other members of the public made in connection with preparing the pre-application document sufficient to enable the Commission to determine if due diligence has been exercised in obtaining relevant information.

(e) If applicable, the applicant must also provide a statement of whether or not it will seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by satisfying the requirements for qualifying hydroelectric small power production facilities in §292.203 of this chapter. If benefits under section 210 of PURPA are sought, a statement of whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in §292.202(p) of this chapter), and a request for the agencies' view on that belief, if any.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 69957, Dec. 16, 2003, as amended by Order 737, 75 FR 43402, July 26, 2010]

### § 5.7 Tribal consultation.

A meeting shall be held no later than 30 days following filing of the notification of intent required by §5.5 between each Indian tribe likely to be affected by the potential license application and the Commission staff if the affected Indian tribe agrees to such meeting.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003]

### § 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

(a) *Notice.* Within 60 days of the notification of intent required under §5.5, filing of the pre-application document pursuant to §5.6, and filing of any request to use the traditional licensing process or alternative procedures, the Commission will issue a notice of commencement of proceeding and scoping document or of approval of a request to

use the traditional licensing process or alternative procedures.

(b) *Notice contents.* The notice shall include:

(1) The decision of the Director of the Office of Energy Projects on any request to use the traditional licensing process or alternative procedures.

(2) If appropriate, a request by the Commission to initiate informal consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920, or section 106 of the National Historic Preservation Act and implementing regulations at 36 CFR 800.2, and, if applicable, designation of the potential applicant as the Commission's non-federal representative.

(3) If the potential license application is to be developed and filed pursuant to this part, notice of:

(i) The applicant's intent to file a license application;

(ii) The filing of the pre-application document;

(iii) Commencement of the proceeding;

(iv) A request for comments on the pre-application document (including the proposed process plan and schedule);

(v) A statement that all communications to or from the Commission staff related to the merits of the potential application must be filed with the Commission;

(vi) The request for other Federal or state agencies or Indian tribes to be co-operating agencies for purposes of developing an environmental document;

(vii) The Commission's intent with respect to preparation of an environmental impact statement; and

(viii) A public scoping meeting and site visit to be held within 30 days of the notice.

(c) *Scoping Document 1.* At the same time the Commission issues the notice provided for in paragraph (a) of this Section, the Commission staff will issue Scoping Document 1. Scoping Document 1 will include: