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such separable part within the time prescribed or as extended by the Commission.

(Administrative Procedure Act, 5 U.S.C. 551–557 (1976); Federal Power Act, as amended, 16 U.S.C. 291–628 (1976 & Supp. V 1981), Dept. of Energy Organization Act 42 U.S.C. 7101–7352 (Supp. V 1981); E.O. 12009, 3 CFR 142 (1978))

[Order 141, 12 FR 8491, Dec. 19, 1947, as amended by Order 344, 48 FR 49010, Oct. 24, 1983]

§ 6.4 Termination by implied surrender.

If any licensee holding a license subject to the provisions of section 10(i) of the Act shall cause or suffer essential project property to be removed or destroyed, or become unfit for use, without replacement, or shall abandon, or shall discontinue good faith operation of the project for a period of three years, the Commission will deem it to be the intent of the licensee to surrender the license; and not less than 90 days after public notice may in its discretion terminate the license.

[Order 141, 12 FR 8491, Dec. 19, 1947]

§ 6.5 Annual charges.

Annual charges arising under a license surrendered or terminated shall continue until the effective date set forth in the Commission's order with respect to such surrender or termination.

[Order 175, 19 FR 5217, Aug. 18, 1954]

CROSS REFERENCE: For annual charges, see part 11 of this chapter.

PART 7—EXPEDITED LICENSING PROCESS FOR QUALIFYING NON-FEDERAL HYDROPOWER PROJECTS AT EXISTING NON-POWERED DAMS AND FOR CLOSED-LOOP PUMPED STORAGE PROJECTS

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AUTHORITY: 16 U.S.C. 791a–825r; Pub. L. 115–270, 132 Stat. 3765.

SOURCE: Order 858, 84 FR 17078, Apr. 24, 2019, unless otherwise noted.

§ 7.1 Applicability and definitions.

(a) *Applicability of the expedited licensing process.* This part applies to the processing of applications for original licenses for qualifying non-federal hydropower projects at existing nonpowered dams and for closed-loop pumped storage projects pursuant to sections 34 and 35 of the Federal Power Act.

(b) *Applicability of existing regulations.* Except where superseded by the expedited licensing process set forth in this part, the regulations governing license applications under parts 4 and 5 of this chapter, as applicable, also apply to license applications filed under this part.

(c) *Definitions.* The definitions in § 4.30(b) of this chapter apply to this part. In addition, for the purposes of this part—

(1) *Qualifying nonpowered dam* means any dam, dike, embankment, or other barrier—

(i) The construction of which was completed on or before October 23, 2018;

(ii) That is or was operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, drinking water, or flood control purposes; and

(iii) That, as of October 23, 2018, was not generating electricity with hydropower generating works that were licensed under, or exempted from the license requirements contained in, Part I of the Federal Power Act.

(2) *Qualifying facility* means a facility that is determined under section 34 of the Federal Power Act to meet the qualifying criteria for non-federal hydropower projects at existing nonpowered dams.

(3) *Qualifying criteria for closed-loop pumped storage projects* means criteria that a pumped storage project must meet in order to qualify as a closed-loop pumped storage project eligible for the expedited process established under this part. These criteria require that the pumped storage project:

(i) Cause little to no change to existing surface and groundwater flows and uses;

(ii) Is unlikely to adversely affect species listed as a threatened species or endangered species, or designated critical habitat of such species, under the Endangered Species Act of 1973;

(iii) Utilize only reservoirs situated at locations other than natural waterways, lakes, wetlands, and other natural surface water features; and

(iv) Rely only on temporary withdrawals from surface waters or groundwater for the sole purposes of initial fill and periodic recharge needed for project operation.

(d) *Who may file.* Any citizen, association of citizens, domestic corporation, municipality, or state that develops and files a license application under 18 CFR parts 4 and 5, as applicable, may request expedited processing under this part.

(e) *Use of expedited licensing process.* An applicant wishing to use this expedited licensing process must apply for and receive authorization from the Commission under this part. An applicant under this part may elect to use the licensing process provided for in 18 CFR part 5 (*i.e.*, integrated license application process), or as provided under 18 CFR 5.1:

(1) 18 CFR part 4, subparts D–H (*i.e.*, traditional process); or

(2) Section 4.34(i) of this chapter, *Alternative procedures.*

§ 7.2 Use of expedited licensing process.

(a) In order to pursue the expedited licensing process, an applicant must request authorization for the expedited process, as provided for in paragraph (b) of this section. The licensing procedures in this part do not apply to an application for a new or subsequent license.

(b) An application that accompanies a request for authorization to use the expedited licensing process must include the information specified below.

(1) *Section 34 of the Federal Power Act qualification—projects at nonpowered dams.* The application must demonstrate that the proposed facility meets the following qualifications pur-

suant to section 34(e) of the Federal Power Act:

(i) As of October 23, 2018, the proposed hydropower facility was not licensed under or exempted from the license requirements contained in Part I of the Federal Power Act;

(ii) The facility will be associated with a qualifying nonpowered dam;

(iii) The facility will be constructed, operated, and maintained for the generation of electric power;

(iv) The facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and

(v) The operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.

(2) *Section 35 of the Federal Power Act qualification—closed-loop pumped storage projects.* The application must demonstrate that the proposed closed-loop pumped storage project meets the following qualifications pursuant to section 35(g)(2) of the Federal Power Act:

(i) The project will cause little to no change to existing surface and groundwater flows and uses; and

(ii) The project is unlikely to adversely affect species listed as a threatened species or endangered species, or designated critical habitat of such species, under the Endangered Species Act of 1973.

(3) *Section 401 of the Clean Water Act.* The license applicant shall file within 60 days from the filing date of application.

(i) A copy of a request for certification under section 401(a)(1) of the Clean Water Act, including proof of the date on which the certifying authority received the request; or

(ii) A copy of water quality certification or the certifying authority's express waiver.

(4) *Evidence of waiver of water quality certification.* A certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for

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certification. If a certifying authority denies certification, the applicant must file a copy of the denial within 30 days after the applicant receives it.

(5) *Endangered Species Act (ESA)*. The application must include:

(i) A no-effect determination that includes documentation that no listed species or critical habitat are present in the action area;

(ii) Documentation of concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Service(s)), as necessary, that the action is not likely to adversely affect ESA-listed species or critical habitat; or

(iii) A draft Biological Assessment that includes documentation of consultation with the Service(s).

(6) *Section 106 of the National Historic Preservation Act*. Documentation that section 106 consultation has been initiated with the state historic preservation officer(s) and any Indian Tribes identified as having an interest in the project.

(7) *Dam owner documentation*. For projects to be located at existing non-powered dams:

(i) Documentation of consultation with any nonfederal owner of the non-powered dam if the applicant is not the owner and confirmation that the owner is not opposed to a hydropower development at the location; or

(ii) Documentation from the federal entity that non-federal hydropower development is not precluded at the proposed location and confirmation that the federal entity is not opposed to a hydropower development at the location.

(8) *Public parks, recreation areas, and wildlife refuges*. If the project would use any public park, recreation area, or wildlife refuge established under state or local law, documentation from the managing entity indicating it is not opposed to the site's use for hydropower development.

(c) Before it files any application for an original license for a qualifying non-federal hydropower project at an existing nonpowered dam or for a closed-loop pumped storage project pursuant to sections 34 and 35 of the Federal Power Act, a potential applicant must consult with the relevant

Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any federal lands or facilities utilized or occupied by the project, the appropriate State fish and wildlife agencies, the appropriate State water resource management agencies, the certifying authority under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), the agency that administers the Coastal Zone Management Act, 16 U.S.C. 1451–1465, any Indian Tribe that may be affected by the proposed project, and members of the public.

(d) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

[89 FR 96530, Dec. 5, 2024]

§7.3 Adequacy review of application.

(a) *Adequacy review of license applications*. Review of the original license application for which expedited processing under this part is requested will be conducted pursuant to 18 CFR part 4 or 5, as applicable.

(b) *Deficient license applications*. If an original license application for which expedited processing is requested under this part is rejected under 18 CFR parts 4 and 5, as applicable, the request for authorization for the expedited licensing process under this part is deemed rejected.

§7.4 Additional information.

An applicant may be required to submit any additional information or documentation that the Commission considers relevant for an informed decision on the application for authorization under this part. The information or documents must take the form, and must be submitted within the time, that the Commission prescribes. An applicant may also be required to provide

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within a specified time additional copies of the application, or any of the additional information or documents that are filed, to the Commission or to any person, agency, Indian Tribe or other entity that the Commission specifies. If an applicant fails to provide timely additional information, documents, or copies of submitted materials as required, the Director of the Office of Energy Projects (Director) may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

§ 7.5 Decision on request to use expedited licensing process.

When the Commission has determined that the original license application is complete insofar as it meets the Commission's requirements as specified in 18 CFR parts 4, 5, and this part; any deficiencies have been cured; and no other additional information is needed, the Director will make a decision on the request to use the expedited licensing process under this part no later than 180 days after receipt of a request for authorization to use the expedited process. If the Commission cannot deem the application complete within 180 days of application filing, the Director will deny the request to use the expedited licensing process. If the Director denies the request to use the expedited licensing process, the original license application will be processed pursuant to a standard processing schedule under 18 CFR parts 4 and 5, as applicable.

§ 7.6 Notice of acceptance and ready for environmental analysis.

If the Director deems the application complete and approves the request to use the expedited licensing process under § 7.5, the Commission will issue a public notice as required in the Federal Power Act, no later than 180 days after application filing, that:

- (a) Accepts the application for filing and specifies the date upon which the application was accepted for filing;
- (b) Finds the application ready for environmental analysis;
- (c) Requests comments, protests, and interventions;
- (d) Requests recommendations, preliminary terms and conditions, and

preliminary fishway prescriptions, including all supporting documentation; and

(e) Establishes an expedited licensing process schedule, including estimated dates for:

(1) Filing of recommendations, preliminary terms and conditions, and fishway prescriptions;

(2) Issuance of a draft National Environmental Policy Act (NEPA) document, or an environmental assessment not preceded by a draft;

(3) Filing of a response, as applicable, to Commission staff's request for ESA concurrence or request for formal consultation under the ESA, or responding to other Commission staff requests to federal and state agencies, or Indian Tribes pursuant to Federal law, including the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act;

(4) Filing of comments on the draft NEPA document, as applicable;

(5) Filing of modified recommendations, mandatory terms and conditions, and fishway prescriptions in response to a draft NEPA document or environmental assessment, if no draft NEPA document is issued; and

(6) Issuance of a final NEPA document, if any.

§ 7.7 Amendment of application.

(a) Any proposed amendments to the pending license application after issuance of the notice of acceptance and ready for environmental analysis under this section must include updates to all material submitted under § 7.2(c).

(b) If based on the information provided under paragraph (a) of this section, the proposed project under the amended license application no longer meets the requirements for expedited processing under § 7.2 of this part or if the proposed amendment significantly amends the license application, the Director will notify the applicant that the application will no longer be processed under the expedited licensing process under this part and that further processing of the application will proceed under parts 4 and 5 of this chapter, as applicable.

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(c) If the Director approves the continued processing of the amended application under this part and the amendment to the application 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 § 7.6. 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.

(d) *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.

[Order 858, 84 FR 17078, Apr. 24, 2019, as amended at 89 FR 96531, Dec. 5, 2024]

§ 7.8 Other provisions.

(a) Except for provisions required by statute, the Director may waive or modify any of the provisions of this part for good cause.

(b) 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, may be considered by the Commission as cause to remove the application from the expedited licensing process. If the Director determines that late-filed recommendations, terms and conditions, or prescriptions are likely to prevent the Commission from issuing a final licensing decision within two years from application receipt, the Director will notify the applicant that the application will no longer be processed under the expedited licensing process under this part and that further processing of the application will proceed under 18 CFR parts 4 and 5, as applicable.

(c) *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 (b) 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 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 prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

§ 7.9 Transition provision.

This part shall only apply to original license applications filed on or after July 23, 2019.

PART 8—RECREATIONAL OPPORTUNITIES AND DEVELOPMENT AT LICENSED PROJECTS

Sec.

8.1 Publication of license conditions relating to recreation.

8.2 Posting of project lands as to recreational use and availability of information.

8.3 Discrimination prohibited.

AUTHORITY: 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

§ 8.1 Publication of license conditions relating to recreation.

Following the issuance or amendment of a license, the licensee shall make reasonable efforts to keep the public informed of the availability of