

## § 1.670

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be accepted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing;

(2) Prepare a list of all documents that constitute the complete record for the hearing process (including the decision) and certify that the list is complete; and

(3) Forward to FERC the complete record for the hearing process, along with the certified list prepared under paragraph (c)(2) of this section, for inclusion in the record for the license proceeding. Materials received in electronic form, *e.g.*, as attachments to electronic mail, should be transmitted to FERC in electronic form. However, for cases in which a settlement was reached prior to a decision, the entire record need not be transmitted to FERC. In such situations, only the initial pleadings (hearing requests with attachments, any notices of intervention and response, answers, and referral notice) and any dismissal order of the ALJ need be transmitted.

(d) *Finality.* The ALJ's decision under this section with respect to the disputed issues of material fact will not be subject to further administrative review. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825l(b).

## 7 CFR Subtitle A (1–1–23 Edition)

### ALTERNATIVES PROCESS

#### § 1.670 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 1.612(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be delivered or sent to each license party and FERC, using:

(i) One of the methods of service in § 1.613(c); or

(ii) Regular mail.

(2) The provisions of § 1.613(d) regarding a certificate of service apply to service under this subpart.

#### § 1.671 How do I propose an alternative?

(a) *General.* To propose an alternative condition, you must:

(1) Be a license party; and

(2) File a written proposal with NFS, at the appropriate address provided in § 1.612(a)(1):

(i) For a case under § 1.601(d)(1), within 30 days after the Forest Service files its preliminary conditions with FERC; or

(ii) For a case under § 1.601(d)(2), within 60 days after the Forest Service files its proposed conditions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition;

(2) An explanation of how the alternative will provide for the adequate protection and utilization of the reservation;

(3) An explanation of how the alternative, as compared to the preliminary condition, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.*, regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

#### **§ 1.672 May I file a revised proposed alternative?**

(a) Within 20 days after issuance of the ALJ's decision under § 1.660, you may file with NFS, at the appropriate address provided in § 1.612(a)(1), a revised proposed alternative condition if:

(1) You previously filed a proposed alternative that met the requirements of § 1.671; and

(2) Your revised proposed alternative is designed to respond to one or more findings of fact by the ALJ.

(b) Your revised proposed alternative must:

(1) Satisfy the content requirements for a proposed alternative under § 1.671(b); and

(2) Identify the specific ALJ finding(s) to which the revised proposed alternative is designed to respond and how the revised proposed alternative differs from the original alternative.

(c) Filing a revised proposed alternative will constitute a withdrawal of the previously filed proposed alternative.

#### **§ 1.673 When will the Forest Service file its modified condition?**

(a) Except as provided in paragraph (b) of this section, if any license party proposes an alternative to a preliminary condition or prescription under § 1.671, the Forest Service will do the

following within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c):

(1) Analyze under § 1.674 any alternative condition proposed under § 1.671 or 1.672; and

(2) File with FERC:

(i) Any condition the Forest Service adopts as its modified condition; and

(ii) The Forest Service's analysis of the modified condition and any proposed alternative.

(b) If the Forest Service needs additional time to complete the steps set forth in paragraphs (a)(1) and (2) of this section, it will so inform FERC within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c).

#### **§ 1.674 How will the Forest Service analyze a proposed alternative and formulate its modified condition?**

(a) In deciding whether to accept an alternative proposed under § 1.671 or § 1.672, the Forest Service must consider evidence and supporting material provided by any license party or otherwise reasonably available to the Forest Service, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the Forest Service's preliminary condition;

(3) Any ALJ decision on disputed issues of material fact issued under § 1.660 with respect to the preliminary condition;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 1.671 or § 1.672.

(b) The Forest Service must accept a proposed alternative if the Forest Service determines, based on substantial evidence provided by any license party or otherwise available to the Forest Service, that the alternative:

(1) Will, as compared to the Forest Service's preliminary condition:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and