

and interagency communications relating to licensing process coordination pursuant to this section, shall not—

(1) be considered to be ex parte communications under Commission rules; or

(2) preclude an agency from participating in a licensing proceeding under this subchapter, providing that any agency participating as a party in a licensing proceeding under this subchapter shall, to the extent practicable, demonstrate a separation of staff cooperating with the Commission under the National Environmental Policy Act<sup>1</sup> (42 U.S.C. 4321 et seq.) and staff participating in the applicable proceeding under this subchapter.

**(d) Identification of nonpowered dams for hydropower development**

**(1) In general**

Not later than 12 months after October 23, 2018, the Commission, with the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, shall jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development.

**(2) Considerations**

In developing the list under paragraph (1), the Commission and the Secretaries may consider the following:

(A) The compatibility of hydropower generation with existing purposes of the dam.

(B) The proximity of the dam to existing transmission resources.

(C) The existence of studies to characterize environmental, cultural, and historic resources relating to the dam.

(D) The effects of hydropower development on release or flow operations of the dam.

**(3) Availability**

The Commission shall—

(A) provide the list developed under paragraph (1) to—

(i) the Committee on Energy and Commerce, the Committee on Transportation and Infrastructure, and the Committee on Natural Resources, of the House of Representatives; and

(ii) the Committee on Environment and Public Works, and the Committee on Energy and Natural Resources, of the Senate; and

(B) make such list available to the public.

**(e) Definitions**

For purposes of this section:

**(1) Qualifying criteria**

The term “qualifying criteria” means, with respect to a facility—

(A) as of October 23, 2018, the facility is not licensed under, or exempted from the license requirements contained in, this subchapter;

(B) the facility will be associated with a qualifying nonpowered dam;

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

(D) 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

(E) 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) Qualifying facility**

The term “qualifying facility” means a facility that is determined under this section to meet the qualifying criteria.

**(3) Qualifying nonpowered dam**

The term “qualifying nonpowered dam” means any dam, dike, embankment, or other barrier—

(A) the construction of which was completed on or before October 23, 2018;

(B) 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

(C) that, as of October 23, 2018, is not generating electricity with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this subchapter.

**(f) Savings clause**

Nothing in this section affects—

(1) any authority of the Commission to license a facility at a nonpowered dam under this subchapter; and

(2) any authority of the Commission to issue an exemption to a small hydroelectric power project under the Public Utility Regulatory Policies Act of 1978.

(June 10, 1920, ch. 285, pt. I, § 34, as added Pub. L. 115-270, title III, § 3003, Oct. 23, 2018, 132 Stat. 3863.)

**Editorial Notes**

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (f)(2), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

**§ 823f. Closed-loop pumped storage projects**

**(a) Expedited licensing process for closed-loop pumped storage projects**

**(1) In general**

As provided in this section, the Commission may issue and amend licenses, as appropriate, for closed-loop pumped storage projects.

**(2) Rule**

Not later than 180 days after October 23, 2018, the Commission shall issue a rule establishing

<sup>1</sup> So in original. Probably should be followed by “of 1969”.

an expedited process for issuing and amending licenses for closed-loop pumped storage projects under this section.

**(3) Interagency task force**

In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate closed-loop pumped storage projects.

**(4) Length of process**

The Commission shall seek to ensure that the expedited process under this section will result in final decision on an application for a license by not later than 2 years after receipt of a completed application for such license.

**(b) Dam safety**

Before issuing any license for a closed-loop pumped storage project, the Commission shall assess the safety of existing dams and other structures related to the project (including possible consequences associated with failure of such structures).

**(c) Exceptions from other requirements**

**(1) In general**

In issuing or amending a license for a closed-loop pumped storage project pursuant to the expedited process established under this section, the Commission may grant an exception from any other requirement of this subchapter with respect to any part of the closed-loop pumped storage project (not including any dam or other impoundment).

**(2) Consultation**

In granting an exception under paragraph (1), the Commission shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State in which the closed-loop pumped storage project is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

**(3) Terms and conditions**

In granting an exception under paragraph (1), the Commission shall include in any such exception—

(A) such terms and conditions as the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency described in paragraph (2) each determine are appropriate to prevent loss of, or damage to, fish and wildlife resources and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act; and

(B) such terms and conditions as the Commission deems appropriate to ensure that such closed-loop pumped storage project continues to comply with the provisions of this section and terms and conditions included in any such exception.

**(4) Fees**

The Commission, in addition to the requirements of section 803(e) of this title, shall es-

tablish fees which shall be paid by an applicant for a license for a closed-loop pumped storage project that is required to meet terms and conditions set by fish and wildlife agencies under paragraph (3). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in paragraph (3) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

**(d) Transfers**

Notwithstanding section 798 of this title, and regardless of whether the holder of a preliminary permit for a closed-loop pumped storage project claimed municipal preference under section 800(a) of this title when obtaining the permit, on request by a municipality, the Commission may, to facilitate development of a closed-loop pumped storage project—

(1) add entities as joint permittees following issuance of a preliminary permit; and

(2) transfer a license in part to one or more nonmunicipal entities as co-licensees with a municipality, if the municipality retains majority ownership of the project for which the license was issued.

**(e) Interagency communications**

Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a closed-loop pumped storage project submitted pursuant to this section, and interagency communications relating to licensing process coordination pursuant to this section, shall not—

(1) be considered to be ex parte communications under Commission rules; or

(2) preclude an agency from participating in a licensing proceeding under this subchapter, providing that any agency participating as a party in a licensing proceeding under this subchapter shall, to the extent practicable, demonstrate a separation of staff cooperating with the Commission under the National Environmental Policy Act<sup>1</sup> (42 U.S.C. 4321 et seq.) and staff participating in the applicable proceeding under this subchapter.

**(f) Developing abandoned mines for pumped storage**

**(1) Workshop**

Not later than 6 months after October 23, 2018, the Commission shall hold a workshop to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites.

**(2) Guidance**

Not later than 1 year after October 23, 2018, the Commission shall issue guidance to assist applicants for licenses or preliminary permits for closed-loop pumped storage projects at abandoned mine sites.

<sup>1</sup> So in original. Probably should be followed by "of 1969".

**(g) Qualifying criteria for closed-loop pumped storage projects**

**(1) In general**

The Commission shall establish criteria that a pumped storage project shall meet in order to qualify as a closed-loop pumped storage project eligible for the expedited process established under this section.

**(2) Inclusions**

In establishing the criteria under paragraph (1), the Commission shall include criteria requiring that the pumped storage project—

(A) cause little to no change to existing surface and ground water flows and uses; and

(B) is unlikely to adversely affect species listed as a threatened species or endangered species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.].

**(h) Savings clause**

Nothing in this section affects any authority of the Commission to license a closed-loop pumped storage project under this subchapter.

(June 10, 1920, ch. 285, pt. I, §35, as added Pub. L. 115–270, title III, §3004, Oct. 23, 2018, 132 Stat. 3865.)

**Editorial Notes**

REFERENCES IN TEXT

The Fish and Wildlife Coordination Act, referred to in subsec. (c)(2), (3)(A), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, which is classified generally to sections 661 to 666c-1 of this title. For complete classification of this Act to the Code, see section 661(a) of this title, Short Title note set out under section 661 of this title, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsec. (g)(2)(B), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

**§ 823g. Considerations for relicensing terms**

**(a) In general**

In determining the term of a new license issued when an existing license under this subchapter expires, the Commission shall take into consideration, among other things—

(1) project-related investments by the licensee under the new license; and

(2) project-related investments by the licensee over the term of the existing license.

**(b) Equal weight**

The determination of the Commission under subsection (a) shall give equal weight to—

(1) investments by the licensee to implement the new license under this subchapter, including investments relating to redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or

environmental, recreation, or other protection, mitigation, or enhancement measures required or authorized by the new license; and

(2) investments by the licensee over the term of the existing license (including any terms under annual licenses) that—

(A) resulted in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures conducted over the term of the existing license; and

(B) were not expressly considered by the Commission as contributing to the length of the existing license term in any order establishing or extending the existing license term.

**(c) Commission determination**

At the request of the licensee, the Commission shall make a determination as to whether any planned, ongoing, or completed investment meets the criteria under subsection (b)(2). Any determination under this subsection shall be issued within 60 days following receipt of the licensee's request. When issuing its determination under this subsection, the Commission shall not assess the incremental number of years that the investment may add to the new license term. All such assessment shall occur only as provided in subsection (a).

(June 10, 1920, ch. 285, pt. I, §36, as added Pub. L. 115–270, title III, §3005, Oct. 23, 2018, 132 Stat. 3867.)

**SUBCHAPTER II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE**

**§ 824. Declaration of policy; application of subchapter**

**(a) Federal regulation of transmission and sale of electric energy**

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

**(b) Use or sale of electric energy in interstate commerce**

(1) The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted