leakage. If any exhaust system component is cracked or otherwise damaged, remove the exhaust system and repair/replace damaged parts in accordance with FAA Advisory Circular 43.13–1A.

3. Loosen exhaust port stud nuts several turns; check bead clamps for tightness such that the clamps cannot rotate on the exhaust system with hand pressure. The riser flanges (1) must have equal spacing to the exhaust port pad at both studs (a small amount of flange bow is acceptable), (2) must be free to move up and down on the exhaust port studs without binding and (3) must all contact the exhaust port pads together.

4. If any of the alignment checks are unsatisfactory, determine the cause for the misalignment and repair or replace the part as required.

5. Assemble exhaust system and install on engine with loose exhaust port stud nuts and bead clamp bolts. Torque exhaust port stud nuts to the correct value. Tighten bead clamp bolts until clamps secure risers to exhaust system but allow clamps to rotate with hand pressure; the bead clamps *should not be rigidly clamped to the tubes* but should be able to rotate on the tubes with moderate hand pressure on the clamp assembly.

Note.—Torque all exhaust port stud nuts evenly and tighten bead clamp bolts evenly to insure uniform loads within the exhaust system parts; torquing bolts individually can cause very large stresses.

6. Inspect exhaust system for proper clearance between ducts, wiring, controls, etc. before reinstallation of the cowling. Install lower cowling and inspect for proper clearance between exhaust outlet and cowl.

7. Reinstall the lower and upper engine cowling.

Bellanca Service Letter Number C–138 covers this same subject.

Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Great Lakes Region.

This amendment becomes effective October 29, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to C. Biemond, Engineering and Manufacturing Branch, AGL–217, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Issued in Des Plaines, Illinois on October 12, 1979.

Wayne J. Barlow,

Director.

[FR Doc. 79–32713 Filed 10–24–79; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 79–SO–60; Amdt. No. 39–3595]

Airworthiness Directives; Piper Model PA–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the modification of the fuel tank vents and the replacement of the fuel tank vent connector hoses on certain Piper Model PA–28 series airplanes. The AD is prompted by reports of broken fuel tank vent hoses which has resulted in fuel leakage and the presence of fuel vapors in the cabin causing a possible fire hazard.

DATE: Effective October 26, 1979. Compliance required within the next 50 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

A copy of the Service Bulletin is also contained in Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Gil Carter, ASO–214, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763–7435.

SUPPLEMENTARY INFORMATION: There have been reports of broken fuel vent connector hoses which resulted in fuel leaking in the wing and draining to the wing root on certain Piper Model PA–28 series airplanes. This condition causes fuel fumes in the cabin and results in a potential fire hazard. Since this condition is likely to exist or develop in other airplanes of the same type design, an Airworthiness Directive is being issued which requires the modification of the fuel tank vent line and the replacement of the fuel vent connector hoses with an improved hose on certain Piper Model PA–28 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive (AD):

Piper Aircraft Corporation: Applies to Model PA–28–161, serial numbers 28–7816024 through 28–7916475; Model PA–28–181, serial numbers 28–7890023 through 28–7990493, Model PA–28–201T, serial numbers 28–7921001 through 28–7921068; Model PA–28R–201, serial numbers 28R–7737135 through 28R–7837317; Model PA–28RT–201, serial numbers 28R–7918001 through 28R–7918172; Model PA–28R–201T, serial numbers 28R–7703309 through 28R–7803373; Model PA–28RT–201T, serial numbers 28R–7931001 through 28R–7931222; Model PA–28–235, serial numbers 28–7710079 through 28–7710089; and Model PA–28–236, serial numbers 28–7911001 through 28–7911204 airplanes certificated in all categories.

Compliance required within the next 50 hours' time in service after the effective date of this AD unless already accomplished.

To prevent possible fuel leakage and potential fire hazard, accomplish the following:

a. De-fuel the aircraft in accordance with the Piper Service or Maintenance Manual, for the appropriate model aircraft.

b. Remove the right hand and left hand fuel tanks in accordance with the Piper Service or Maintenance Manual for the appropriate model aircraft.

c. Modify the fuel tank vent system in accordance with the instructions listed in the "Fuel Tank Vent Modification and Vent Hose Replacement" Kit, Piper part number 763 934V.

d. Reinstall the fuel tanks in accordance with instruction in the appropriate Piper Service or Maintenance Manual.

Caution

Do not allow lines or hoses to rotate during installation and tightening when attaching the fuel lines to the tank fittings to prevent fuel flow obstruction due to hose twisting.

e. Refuel the aircraft and check for leaks and fuel quantity gauge function.

f. Make an appropriate maintenance record entry.

g. An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

Note.—Piper Service Bulletin 646 pertains to this subject. This amendment is effective October 26, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in East Point, Georgia, on October 12, 1979.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 79-32876 Filed 10-24-79; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Setting of Hearing Date in Certain Cases

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has amended Rule 10.3 of its Rules of Practice to incorporate those provisions of section 6(b) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 (1976), which concern the setting of a hearing in administrative proceedings. In a proceeding instituted pursuant to section 6(b), the Commission may require a person to show cause why an order should not be entered against such person at a hearing held not less than three days after the service of the Commission's notice of hearing.

EFFECTIVE DATE: October 25, 1979.

ADDRESS: Commodity Futures Trading Commission, 2033 K St., NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Joan Loizeaux, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-5543.

SUPPLEMENTARY INFORMATION: Section 6(b) of the Act provides that, if the Commission has reason to believe that any person is violating or has violated any provision of the Act or the rules or regulations thereunder, the Commission "may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof," requiring such person to show cause why sanctions should not be imposed.[1]

In order that the Commission's procedural rules will reflect this provision of the Act and thereby be more complete, the Commission has determined to amend its Rules of Practice in order to incorporate expressly the hearing provisions of section 6(b). The Commission wishes to make clear that this amendment does not affect its general power to expedite proceedings under Rule 10.3(b). Rule 10.3(b) will continue to set forth the standards under which the commission may adopt expedited procedures in an adjudicatory proceeding commenced under the Act.[2]

Because this amendment codifies existing law and deals with rules of internal agency practice, the Commission is satisfied that the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(d) do not apply to this amendment.

This notice of amendment is issued under the authority of sections 2(a), 6(b) and 8(a) of the Commodity Exchange Act, 7 U.S.C. 4a, 9 and 12a (1976).

Based upon the foregoing, the Commission hereby amends Rule 10.3 of Part 10 of Chapter I of Title 17 of the Code of Federal Regulations by adding a new paragraph (d) to read as follows:

§ 10.3 Suspension, amendment, revocation and waiver of rules.

* * * * *

(d) Notwithstanding any provision of this part, the Commission may in any proceeding commenced pursuant to section 6(b) of the Act require a respondent to show cause why an order should not be entered against the respondent and may specify a day and place for the hearing not less than three days after service upon the respondent of the Commission's complaint and notice of hearing in such proceeding.

(Secs. 2(a), 6(b) and 8a, 42 Stat. 1001, as amended, 49 Stat. 1498, 1499, as amended 88 Stat.; 49 Stat. 1500, as amended, 88 Stat. 1392; 88 Stat. 1389, 1391; 7 U.S.C. 4a, 9 and 12a.)

Issued in Washington, D.C. on October 22, 1979.

By the Commission,

Jane Stuckey,

Secretary,

Commodity Futures Trading Commission.

[FR Doc. 79-32960 Filed 10-24-79; 8:45 am]

BILLING CODE 6351-01-M

[1] Pursuant to section 6(b), the Commission has the authority to suspend up to six months or revoke the registration of a futures commission merchant, floor broker, associated person, commodity trading advisor or commodity pool operator. In addition, the Commission may issue an order prohibiting a person from trading on or subject to the rules of any contract market and requiring all contract markets to refuse any person all trading privileges for a period specified in the order and may assess civil penalties of not more than $100,000 for each violation which the Commission finds occurred.

[2] Rule 10.3(b) currently provides that the Commission may order the adoption of expedited procedures and waive any rule contained in the Rules of Practice upon a determination that "no party will be prejudiced and that the ends of justice will be served."

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 271

[Dockets Nos. RM79-19 and RM79-12; Orders Nos. 45 and 31-A]

Treatment of Certain Production-Related Costs for Natural Gas To Be Sold and Transported Through the Alaska Natural Gas Transportation System; Statement of Policy; Order Granting Rehearing for the Purpose of Further Consideration and Order Staying Effective Dates

October 19, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order staying effective dates.

SUMMARY: On August 24, 1979 the Commission issued two orders, both to be effective on October 23, 1979. The first, Order No. 45 (issued under Docket No. RM79-19) (44 FR 51554, September 4, 1979) amended Commission regulations under the Natural Gas Policy Act and provided a policy statement under the Natural Gas Act. Both regulations and policy statement addressed the issue of producer responsibility for production-related costs incurred in first sales of natural gas produced at Prudhoe Bay, Alaska for transport through the Alaska Natural Gas Transportation System. The second, Order No. 31-A (issued under Docket No. RM79-12) (44 FR 41681, September 4, 1979) implemented the policy of Order No. 45. Petitions to rehear both orders have been received. In addition, the Secretary of Energy has requested rehearing to permit certain actions by the Department of Energy which will relate to Order No. 45. For these reasons, the effective date of both orders is stayed.

DATE: Effective dates of Order No. 45 and Order No. 31-A stayed until December 5, 1979.

FOR FURTHER INFORMATION CONTACT: John Conway, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8100K, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8150.

SUPPLEMENTARY INFORMATION: Treatment of certain production-related costs for natural gas to be sold and transported through the Alaska Natural Gas Transportation system, Docket No. RM79-19; Determination of incentive rate of return, tariff and related issues, Docket No. R78-12.

On September 21, 1979, the Altantic Richfield Company, the Sohio Natural Resources Company, and the Phillips Petroleum Company filed separate applications for rehearing of Order No. 45, issued on August 24, 1979, under Docket No. RM79-19 and Order No. 31-A issued on August 24, 1979 under Docket No. RM78-12. On September 24, 1979, the State of Alaska and the Exxon Corporation also filed separate applications for rehearing of Order No. 45 and Order No. 31-A. The applications for rehearing raise various issues regarding the lawfulness and appropriateness of the actions taken by the Commission in Order No. 45 and Order No. 31-A.

On October 15, 1979, The Commission was informed by letter from the Secretary of Energy, that the Secretary is holding discussions with North Slope producers for the purpose of involving them in the financing of the Alaska Natural Gas Transportation System (ANGTS). That letter stated that a formal filing by the Department of Energy reflecting the impact of producer financing commitments on Order No. 45 will be made in Docket No. RM79-19 and requested rehearing to reconsider Order No. 45.

In response to the request of the Secretary of Energy and to conclude deliberations of the issues raised in the applications for rehearing, the Commission finds good cause to grant rehearing of Orders 45 and 31-A for the purpose of further consideration. Given the statutory directive of section 9(a) of the Alaska Natural Gas Transportation Act, 15 U.S.C. 719g(a), that actions necessary or related to the construction and initial operation of the ANGTS must be accomplished at the earliest practicable date, the Commission further finds it appropriate to stay the effective date of Ordering Paragraph (1) of Order No. 45 and the effective date of Ordering Paragraph (B) of Order No. 31-A until a fixed date, December 5, 1979.[1]

The Commission orders: (A) The applications for rehearing filed by Atlantic Richfield Company, Sohio Natural Resources Company, Phillips Petroleum Company, the State of Alaska, and Exxon Corporation are hereby granted for the limited purpose of further consideration. As provided by Section 1.34(d) of the Commissions's Regulations, no answer to the applications will be entertained by the Commission since this order does not grant rehearing on any substantive issues.

(B) Ordering Paragraph (1) of Order No. 45, issued August 24, 1979, under Docket No. RM79-19 and Ordering Paragraph (B) of Order No. 31-A, issued on August 24, 1979, under Docket No. RM78-12 are stayed until December 5, 1979.

[1] This order does not apply to Orders 31 and 31-B, issued under Docket No. RM78-12. Orders 31 and 31-B are final orders not in effect.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33069 Filed 10-24-79; 8:45 am]

BILLING CODE 6450-01-M

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18 CFR Parts 4, 16, and 131

[Docket No. RM79-23; Order No. 54]

Water Power Projects; Final Regulations Prescribing General Provisions for Preliminary Permit and License Applications and Final Regulations Governing Applications for, Amendments to, and Cancellation of Preliminary Permits

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending parts of its regulations governing preliminary permits and licenses under Part I of the Federal Power Act. The regulations amended in this docket prescribe technical filing requirements and evaluation procedures applicable to both preliminary permits and license applications for water power projects. The amendments also affect regulations pertaining to the content of preliminary permits, amendments to preliminary permits, and cancellation of preliminary permits. This rulemaking is part of the Commission's reform of water power project licensing and extends the benefit of section 405 of the Public Utility Regulatory Policies Act of 1978, requiring simple and expeditious licensing procedures for small (15 MW of installed capacity or less) hydroelectric power projects, to all such projects within the Commission's jurisdiction.

The amended regulations reorganize and clarify the permit and license application procedures and thereby help to ease the burden of compliance. The changes will therefore facilitate hydroelectric development.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: James Hoecker, Office of Regulatory Development, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8161.

SUPPLEMENTARY INFORMATION: Regulations Prescribing General Provisions for Preliminary Permit and License Applications; Regulations Governing Applications for, Amendments to, and Cancellation of Preliminary Permits; Final Rule.

Issued: October 22, 1979.

Notice is hereby given that the Federal Energy Regulatory Commission (Commission) is amending certain of its regulations concerning preliminary permits and licenses for water power projects under Part I of the Federal Power Act (Act). The amended regulations prescribe technical filing requirements and evaluation procedures applicable to both preliminary permit and license applications. The amendments also affect the regulations pertaining specifically to the content of preliminary permit applications, amendments to preliminary permits, and cancellation of preliminary permits.

I. Background

Seeking to respond and lend encouragement to the recent heightened interest in hydroelectric development, Congress provided in Title IV of the Public Utility Regulatory Policies Act (PURPA) component of the National Energy Act for a program whereby the Secretary of Energy will grant loans for feasibility studies and for construction of small hydroelectric projects (installed capacity of 15 MW or less) located at existing dams. The Commission is charged under section 405 of PURPA with establishing simple and expeditious licensing procedures for projects eligible under the PURPA provisions.

In the interest of acting more promptly on all license applications, and in anticipation of the enactment of PURPA, the Commission determined in 1978 to carry out a thorough reform of its requirements and procedures for license applications. The first phase of this reform was instituted in September 1978, with issuance of a rulemaking on the so-called "short-form" license procedures applicable to all "minor" projects (installed capacity of 1.5 MW or less). [See Order No. 11, Docket No. RM78-3, 43 FR 40215 (September 11, 1978).]

The second phase of the reform covers all "major" projects (installed capacity greater than 1.5 MW) where at least a dam and reservoir are in existence at the time of the application. The Commission issued a Notice of Proposed Rulemaking on this phase on April 19, 1979 [44 FR 24095, April 25, 1979]. A third and final phase will cover all major projects which include new dams and reservoirs.

The revisions contemplated in this three-stage reform pertain primarily to the content of license applications. Maximum efficiency cannot be attained, however, unless the uncertainty regarding such technical and procedural matters as form, subscription and verification, service, number of copies, correction of deficiencies, and evaluation of competing applications is eliminated. Therefore, the Commission issued a Notice of Proposed Rulemaking in this docket to clarify and streamline the general provisions governing these requirements and procedures for all preliminary permit and license applications. [44 FR 12432, March 7, 1979.]

These regulations make the Commission's technical filing requirements and procedures easier to identify and comprehend. The regulations also make clear that diligence is expected of initial applicants and those who would file competing applications, as well.

A well-rounded program of licensing reform must also reach the specific requirements governing preliminary permits. As enunciated in sections 4(f) and 5 of the Act, 16 U.S.C. 797(f) and 798, the purpose of a preliminary permit is to secure for the permittee priority of application for a license for a project while the permittee obtains the data and performs the acts required to determine the feasibility of the project and support an application for a license. A preliminary permit is not a prerequisite to a license, and therefore is sought on a voluntary basis. The protections afforded by permits result in frequent permit applications, however. In view of the relationship between preliminary permits and licenses, this docket also covers revised regulations concerning the substance of preliminary permit applications, amendments to preliminary permits, and cancellation of preliminary permits.

The revised regulations require sufficient information to enable the Commission to carry out its responsibilities under the Act. The regulations also make clear the purpose of a permit and the consequences of failure to carry out that purpose. These changes should further facilitate ultimate licensing of small hydroelectric projects at existing dams, in accordance with section 405 of PURPA.

II. Comment Analysis

This rulemaking was commented on by five agencies of Federal, State, or local government, two environmental organizations, five utilities or trade associations, and one supplier of hydroelectric equipment. The commenters expressed overall support for the simplified procedures for applying for preliminary permits and licenses. Comments and suggestions regarding specific provisions and the Commission's treatment of the comments are as follows:

"Minor part" licenses that were issued in the past had been based upon an erroneous conclusion of law concerning Commission jurisdiction, which the Commission had repudiated. [*See, e.g., Pacific Gas and Electric Co.*, Project No. 2310, 29 F.P.C. 1265 (1963).] To the extent that an application is now filed for only a part of a whole project, of "complete unit of development," (*e.g.*, a power plant to be added to a Corps of Engineers' dam), it would be filed according to its category under our application regulations. Since the application regulations depend on the installed capacity of the facilities proposed to be licensed and on whether any new dam or significantly larger impoundment would be created—not on whether only a part of the whole project need be licensed—references to "minor part" licenses in the application requirements are unnecessary. Therefore, "minor part" language will not be added to § 4.31(a)(2) as requested in the comment of the Power Authority of the State of New York (PASNY).

It was suggested that § 4.31(c)(4) of the proposed regulation, which describes one of the steps to be taken by the Commission upon receipt of an acceptable application for preliminary permit of license, be made more specific in terms of notification and effective date requirements for reserving Federal lands. The Commission believes that greater detail in explaining procedures which are essentially matters of internal agency management, such as details on notification of withdrawal of Federal land or inclusion of processing flowcharts in the rule, would only serve to lengthen and complicate the regulation with no significant benefit to applicants, intervenors, or the public.[1] Related comments state that since the regulations impose filing deadlines for deficient and competing applications, the Commission should likewise impose deadlines on its staff to assure that an applicant does not lose a priority status or a chance to compete for a project license because of staff inaction. Since these are regulations primarily informing applicants of their rights and responsibilities, those kinds of directions to the Commission staff are beyond their scope. The Commission has adopted, and will continue to seek to develop, internal procedures for more expeditious handling of applications. In any event, it is important to remember that time constraints imposed on applicants, such as that in § 4.31(d), do not run until the applicant is notified of deficiencies in an application. The time expended in reviewing an application for deficiencies will not, therefore, adversely affect the applicant's time to cure deficiencies. If deficiencies are cured within the prescribed time, § 4.31 provides that the application will be deemed accepted for filing as of the original date the application was submitted.

Some commenters suggested that applicants could be prejudiced by greater use of "summary rejection" by the Commission's delegate, without an explanation of the reason for rejection. The regulations were not intended to call for greater use of summary rejection than before. Moreover, when an application is rejected, an applicant is always provided with the reasons for such action, as suggested. The proposed regulation has been revised to make these points clear. In addition, an applicant may request extensions of time under § 1.13(d) of the regulations or appeal actions of the staff to the Commission under § 1.7(d). These procedural safeguards help assure that the burden on the applicant is no greater than necessary for a thorough disposition of each case.

Section 4.31(d) provides a 90-day period for correcting deficiencies in license applications (45 days for permit applications). Many commenters thought that this period should be extendable for good cause. We point to § 1.13(d) as providing this flexibility. In answer to other comments, pending applications that meet the requirements of our prior regulations, but not those of the new rule, will not be rejected. The new regulatory scheme anticipates requests for added information and provides procedures in § 4.31(f) for securing remaining data required for such pending applications. American Electric Power Service Corporation expressed a desire that the regulations more clearly spell out the criteria for an acceptable application. We think that the regulations as presented provide sufficient guidance and information for the applicant in terms of content, format,

[1] Any person who desires information on the nature of the Commission review processes may consult the critical Projects Status Reports ("Orange Books") available at the Commission's Office of Public Information which show, among other things, typical processing flowcharts for license applications. Copies of these Reports may also be purchased from the Government Printing Office.

and submittal requirements. Where a prospective applicant has questions, it may seek guidance from the staff under § 4.31(g).

The proposed § 4.31(f) provided that the Commission may request additional information deemed "necessary or desirable to process the application." This provision had no subject matter limit. Commenters found fault with the provision because it was too vague or because mere desirability appeared to be too broad a standard. Although it cannot be indicated with any specificity what the additional information might consist of in any single instance, the language has been changed to clarify that the Commission may require additional information considered "relevant for an informed decision on the application."

Minnesota Mining and Manufacturing Company proposed various technical changes in § 4.32, regarding specifications for maps and drawings. Three proposals were adopted in the final rule. In § 4.32, originals of maps and drawings must be prints on silver "or gelatin" 35mm microfilm mounted on Type D aperture cards, the measurements of which are corrected to 3¼ inches x 7⅜ inches. The commenter suggested a different range of sizes for full-sized prints and the incorporation of other specifications according to certain documents of the American National Standards Institute. The Commission will retain the sizes expressed in the proposed rule because they have become standard for applicants and consultants. However, waiver may be obtained pursuant to § 1.7(b) of the regulations in appropriate circumstances. Other suggested specifications may prove to be too technical for small developers. In § 4.32(d), the reduction standard to 10.5 inch prints is changed to 11 inches, as suggested.

PASNY suggested that the § 4.32 map scale of 1 inch equals 1,000 feet is unrealistic and should be at least 1":2000'. Experience shows that maps of project works require varying degrees of detail, depending on the facilities being described. Paragraph (b) is revised to provide that maps of transmission lines, roads, or other linear features may be drawn on a scale not smaller than 1 inch equals one-half mile. This enables the applicant to use, without enlargement, Forest Service or Bureau of Land Management maps, as well as United States Geological Survey maps, for the less detailed features of a project. Maps covering the other project features, however, must be no smaller than 1 inch equals 1,000 feet. A smaller scale would not be sufficiently detailed for proper evaluation of the non-linear features. In instances where maps at these scales do not show sufficient detail, larger scale maps may be required as an additional submission. Section 4.81(e) provides that maps for preliminary permits need not adhere to the scale required by § 4.32(b) if they are legible at a smaller scale.

The Rural Electrification Administration (USDA) proposed that § 4.33(a) specify that notices of an application state the time allowed for filing competing applications. Such notices will include such information, but it is not necessary that § 4.33(a) so state. The suggestion that rural electric cooperatives and appropriate non-profit organizations be given the same preferential status as that accorded municipalities or states in § 4.33(f) must be left for Congressional action, because the state/municipal preference is embodied in section 7 of the Act. Similarly, the proposal by Allis-Chalmers corporation that the Commission not accept an application by a U.S. corporation if a majority of the stock is foreign-owned would narrow section 4(e) of the Act and must be left for Congressional action.

Pacific Gas and Electric Company (PG&E) advocates changing the "reasonable period of time" that would be provided under § 4.33(f)(4) for a state or municipality to make its plans as well adapted as a non-preference applicant's plans. Instead, PG&E proposes a specific maximum of 90 days plus one extension for good cause. Although the PG&E proposal has some merit, a suitable period for adapting plans may vary from case to case, and even less than 90 days may be reasonable in many instances. Accordingly, the Commission believes it preferable to retain the case-by-case approach reflected in the proposed regulation.

In accordance with the comments of the American Electric Power Service Corporation (AEP) and Santa Clara, California, § 4.33(c) has been altered to provide more time (120 days) for the filing of competing license applications. This recognizes the greater complexity of license, as opposed to preliminary permit, applications and the difference in time required for suitable preparation as a consequence.

Both the Sierra Club and the American Electric Power Service Corporation believe that § 4.34 permits too much Commission discretion in ordering hearings on preliminary permits. The former suggests that the rules specify that hearings be held anytime there is a substantial environmental controversy, while the latter views competing applications as the only valid ground for hearing. The Act does not require hearings on preliminary permit applications, and the purpose of an evidentiary hearing would be to explore material issues of fact that might arise in a proceeding. Since there is no way to delimit in advance the material issues of fact that might arise with respect to any particular permit application, the Commission will retain the provision as stated in the proposed rule.

Several environmental concerns were expressed by the Sierra Club and the National Wildlife Federation (NWF). Sierra Club recommends that this rule be integrated with the Commission's regulations under the National Environmental Policy Act because of the close relationship between processing of preliminary permits and licenses and the environmental review process. The Commission's proposed regulations implementing NEPA were issued in Docket No. RM79-69 on August 20, 1979. That rulemaking was drafted with specific attention to this rulemaking and related water power project licensing reforms. In carrying out the objectives of NEPA, the Commission has taken steps to assure that relevant environmental considerations are reviewed during the appropriate stages of the permitting and licensing processes. However, environmental issues are only a portion of the concerns addressed in these processes. The proposed NEPA regulations apply so broadly to Commission functions and activities of regulated entities that incorporation of related substantive provisions would result in an unnecessarily complicated package. Therefore, the regulations are being promulgated separately.

NWF expressed the opinion that the issuance of a permit commits an applicant to the chosen site and creates an inexorable momentum toward licensing that will undermine environmentally preferable options. We do not believe that the grant of a permit and the financing of feasibility studies commits an applicant—and certainly not the Commission—to a specific site, to the exclusion of alternative sites. Moreover, the investments and studies made by a permittee could be made even without a permit. (However, the Commission agrees that examination of possible alternative project sites must begin early in the overall processes, while the permit is in effect, as discussed below.) The permit mechanism allows early monitoring of applicants' activities, which would not be possible if a prospective license applicant did not seek a permit. Review of alternatives is more properly part of the licensing process, after a permittee has determined whether it will even pursue a specific project.[2]

The comments of the Sierra Club reflect a view similar to that of NWF, that permit applications should contain an explication of alternatives, including discussion of environmental costs and conservation alternatives. While the studies conducted under a permit and reported under § 4.81 would be used to support any license application, it is the license application itself that must supply the substantive economic and environmental information upon which the Commission decides to approve or disapprove a project. Section 4.81 does not, therefore, require the kind of detailed presentation of alternatives which the commenter desires. Under § 4.81, an applicant is required to describe the studies it proposes and, where new dam construction is involved, a work plan and schedule. The permits themselves contain standard conditions which require permittees to assess the impact of each project and feasible alternatives and to prescribe the types of studies to be conducted under the permit. The conditions imposed on permittees may vary, but the following Article 7 has essentially become standard in preliminary permits, in addition to the Articles in Form P-1 (revised October 1975):

Article 7. Permittee, in the interest of protecting and developing the natural resources and other environmental values of the project area, shall consult with the appropriate federal, state, and local agencies in their fields of responsibility and expertise, shall conduct its project investigations in a manner which protects the environmental integrity of the area, *and shall fully explore all feasible alternatives to the project, and alternative project designs, taking into account impacts on natural resources and other environmental values.* These resources and values include, but are not limited to: forests; land management and treatment; fish; wildlife; recreation and public use; water and air quality (including water supply, ground water, waste treatment and disposal); public health and safety; archeology; historic and cultural sites; threatened or endangered species of flora and fauna; potential wild, scenic, or recreational river designation; and scenic and aesthetic values. The permittee shall initiate and conduct or have conducted such studies as may be necessary to determine the impact of the construction and operation of the proposed project on these natural resources and values and measures needed to protect and develop them or to provide for their mitigation or replacement, including alternative designs and operational measures, and shall utilize the results of such studies in the preparation of Exhibits, H, R, S, V, and W to accompany any application for a license to construct and operate the project. In connection with studies pertaining to archeological, historic, and cultural sites, the permittee shall consult with the State Historic Preservation Officer and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior. (Emphasis added)

The Sierra Club advocates promulgation of such conditions in this rulemaking. This rulemaking, however, encompasses application requirements and processing of preliminary permits, not the proper standard permit conditions. However, the standard conditions in Form P-1 are a matter of public record, as are other conditions typically included in permits. Compliance with the permit conditions enables the permittee to supply more detailed environmental information to the Commission when applying for a license. Foresighted permittees would, of course, assess alternatives as early as possible, even before applying for a permit. But it would go far beyond the purpose and usefulness of preliminary permits to require examination or specification of a specified number of alternatives before the permit is filed or granted.[3] The permit stage is not intended to serve as a forum for resolving all questions relating to the appropriateness of a project. Indeed, such requirements could simply induce developers to avoid seeking permits.

Although we believe that environmental reporting requirements should not become unrealistically burdensome at the preliminary permit stage, particularly for developers of small hydroelectric projects, the concern expressed by the Sierra Club that certain information be elicited regarding the potential environmental impacts of activities conducted under the permit is well-founded. Exhibit 2 (§ 4.81(c)) has been revised to distinguish between those projects or developments within projects that would invove dam construction that will necessitate such geological exploration as test pits or boring and those that will not. Applicants for projects that would require new dam construction must file, in addition to a study plan, a work plan and schedule of proposed field studies, and measures to be taken to minimize any environmental disturbances or to restore altered or disturbed areas. This requirement may be waived under specified circumstances.

The extent of the information required of permit applicants—descriptions of the projects, study plans, work plans, and work schedules—should always be commensurate with the scope of any proposed new development. The Commission also retains discretion under § 4.31(f) to require additional necessary information relevant to the activities to be undertaken under the permit, including the environmental impact. Information on the environmental impact of actually constructing and operating a project is premature at the preliminary permit stage and belongs in the license application, assuming that the permittee decides to seek a license.

At the suggestion of NWF, Exhibit 4 has been revised to require application maps to show areas being included or studied for inclusion in the National Wild and Scenic Rivers System and the National Wilderness Preservation System.

Edison Electric Institute indicated that the regulations fail to specify when preliminary site investigation ends and construction begins. Construction may not occur during the permit period, and may not begin until the actual license is issued. The ban on construction prior to the issuance of a license is mandated by section 23(b) of the Act.

AEP, citing the *Pacific Northwest Company* case, 31 F.P.C. 247, 265, points out that the developer's conception of a project may change during the permit period as studies proceed. AEP appears to believe that the proposed rule would narrow the scope of the permit and affect the resulting priority. Moreover, AEP and some other commenters believe that the proposed rule requires applicants to provide too much detailed information that is unavailable at the time one applies for a permit. These regulations, however, affect the content of a permit application and not the scope of the permit. Preliminary permit applications should be prepared broadly enough to accommodate some variations in the original concept of the project. If necessary, the permittee may seek an amendment of the permit under § 4.82. In any event, there are two basic principles for providing information in applications: the permit applicant must inform the Commission of project details "to the extent possible" and commensurate with the scope of the project. While applicants are hopefully not dissuaded from availing themselves of new ideas developed during the permit period, they should also be encouraged to refine their ideas before applying for a permit. The maximum

[2] Studies under permits have often found projects infeasible for environmental, technical, or economic reasons. *E.g.*, Marble Valley Project No. 2679, Stony Creek Project No. 2719, and Canaan Mountain Project No. 2708.

[3] An applicant that knows of a reasonable alternate site before filing for a preliminary permit and seeks no permit for the alternative site runs the risk of having no priority for what may prove to be the better site.

three-year term of a permit should not be viewed as a time for random experimentation.[4] The exhibits in § 4.81 therefore require an applicant to file sufficient information to demonstrate the credibility of its proposal before a priority status is granted.

The information on proposed power sales required at the permit stage in § 4.81(d)(3) [Exhibit 3] was alternately called too general or unnecessary. A general idea of the available market for the new power is basic even to the preliminary consideration of a project and should be available by the time a permit application is filed. On the other hand, it would be premature to provide, and unreasonable to expect, such information in great detail this early in the consideration of a project.

Southern California Edison Company contends that the provisions of § 4.33(f)(4), giving states and municipalities an opportunity to make their plans as well adapted as the plans of a non-public applicant, contravenes section 7 of the Act. On the contrary, section 7(a) itself requires that the Commission fix a reasonable time for a state or municipal applicant to make its plans "equally well adapted" as those in an application filed for the same site by a non-public applicant. We do not believe that a state or municipal applicant can have a realistic opportunity to render its plans "equally well adapted" until the Commission has first found that those plans are not as well adapted and has stated why.

The provision in existing § 4.31(a) allowing incorporation of Exhibit A by reference under certain circumstances was not included in the proposed rule. At the suggestion of PASNY, that provision is being retained for major unconstructed projects, and appears in § 4.41.[5]

III. Section-by-Section Analysis

§ *4.30 Who may file.*

Section 4.30 specifies who may file an application for a preliminary permit or a license, paraphrasing, in somewhat streamlined form, the provisions of section 4(e) of the Act, 16 U.S.C. 797(e), that specify who may obtain a license. Paragraph (b) of § 4.30 has been revised to provide additional guidance, specifying that the Commission will not accept an application for a preliminary permit for project works that are already licensed or are authorized for Federal development or that would conflict with a project for which a preliminary permit is outstanding or for which there is an accepted license application. Nor will the Commission entertain an application for a license for project works that are already licensed or are authorized for Federal development or that would conflict with a project for which there is an unexpired preliminary permit, until the permittee submits an application for a license.

§ *4.31 Acceptance for filing or rejection.*

Section 4.31 governs acceptance and rejection of preliminary permit and license applications. Section 4.31(a) provides references to the specific minimum requirements which an application must meet. Besides incorporating certain provisions of the Commission's rules of practice and procedure by reference, the section requires conformance with specific subsequent provisions governing the substance of an application, according to its type.

Section 4.31(b) requires that an original and eleven copies of the application be filed with the Secretary. The treatment of maps and drawings included in license applications is also prescribed.

Section 4.31(c) prescribes the actions which the Commission or its delegate will take upon receipt of a conforming application, including issuance of public notice and, in the event that lands of the United States are affected, notification of the appropriate Federal office under section 24 of the Act, 16 U.S.C. § 818.

Under § 4.31(d), a patently deficient application may be rejected outright. Any applicant may be afforded additional time, not to exceed 45 days in the case of a preliminary permit application or 90 days in the case of a license application, to correct application deficiencies. if the deficiencies are not corrected within the time provided, then the application will be rejected. Moreover, § 4.31(e) provides that an application will be deemed "accepted for filing" as of the time of the initial submittal, but only if it is corrected within the time prescribed by the Commission or its delegate. Rejections based on deficiencies would be without prejudice to refiling.

Section 4.31(f) provides that an applicant may be required to provide any additional information or documents which are relevant to an informed decision on the application. These materials would go beyond the threshold requirements for a conforming application, and their absence from the initial application would therefore not prevent acceptance of the application for filing. Failure to provide the information requested, however, would be sufficient ground for holding the proceeding in abeyance, dismissing the application, or taking other appropriate action. In certain instances, an applicant may also be requested to provide copies of the complete application to specified persons or agencies.

Finally, § 4.31(g) provides that a prospective applicant may submit preliminary copies of its application to the Director, Division of Licensed Projects, for the purpose of obtaining staff advice concerning the sufficiency of the application. Conferences between applicants and the staff regarding deficiencies or other application-related matters are also permitted.

§ *4.32 Specifications for maps and drawings.*

Section 4.32 provides the specifications which must be followed in preparing all maps and drawings filed with applications, except as otherwise prescribed. This section supplants the existing § 4.42. All references to § 4.42 elsewhere in the regulations are therefore being amended to refer to § 4.32. A parenthetical explanation of the use of public land surveys is added to the mapping requirements in § 4.32(b)(3). This was done to facilitate more accurate withdrawal of public lands and reservations under section 24 of the Act.

§ *4.33 Disposition of conflicting applications.*

Section 4.33 governs conflicting applications for preliminary permits and licenses. Section 4.33(a) permits the filing of a competing application, but requires that the application, or a notice of intent to file such an application, be submitted prior to the end of the period prescribed in the public notice of the initial application for preliminary permit or license for filing of protests and petitions to intervene. Section 4.33(b) prescribes the content of a notice of intent to file a competing application. Under § 4.33(c), if a timely notice of intent is submitted, the prospective applicant will be afforded an additional 60 days beyond the end of the public notice period to submit a competing application for a preliminary permit, or 120 days to submit a competing application for a license.

Section 4.33(d) has been revised to require a competing applicant to provide an analysis of how its plans are equally

[4] In the interest of more expeditious licensing procedures for water power projects, the Commission will consider a proposed rulemaking or statement of policy that will limit the term of preliminary permit for certain projects, based on the size of the project or the kind of construction involved. The Commission has descretion to issue permits less than three years in duration, under section 5 of the Act.

[5] Reformed application requirements proposed for major projects at existing dams in Docket No. RM79-36 will obviate this provision except for major unconstructed projects.

well (if a municipality or a state) or better adapted to conserve and utilize the water resources of the region in the public interest. Section 4.33(e) provides the initial applicant an opportunity to rebut statements made pursuant to § 4.33(d).

Under § 4.33(f), if an accepted application for a preliminary permit conflicts with an accepted application for a license, and the applicant for a license has demonstrated its ability to carry out its plans, the Commission will favor the applicant for a license. This situation would arise where the Commission has accepted a permit application and, before issuance of permit, a license application is filed and accepted.

Section 4.33(g) sets forth the bases for selection among competing applicants when there are two or more applications for a preliminary permit, or two or more applications for a license by applicants who did not hold an outstanding preliminary permit at the time the license application is filed. These provisions reflect the provisions of section 7(a) of the Act, 16 U.S.C. § 800(a), including the concept of state or municipal preference and the concept that, where the preference does not apply, the applicant whose plan is "best adapted" will prevail. The regulation injects the additional concept that, all other things being equal, the principle "first in time, first in right" will apply. (Whether the state or municipal preference under section 7(a) applies in a relicensing proceeding under section 15(a) of the Act, 16 U.S.C. § 800(a), is the subject of a pending proceeding on a petition for a declaratory order, Docket No. EL78-43.)

Finally, § 4.33(h) provides the bases for selection among competing applicants when there are two or more applications for a license, and one of the applications was filed by a permittee holding an outstanding preliminary permit. The latter applicant is entitled to priority status, all other things being equal, and an opportunity to make its plans as well adapted as any competing applicant's.

§ *4.34 Hearings on applications.*

Section 4.34 provides that the Commission may order a hearing on an application on its own motion or the motion of any party in interest. Hearings are to be limited to the issues prescribed by order of the Commission.

§ *4.80 Applicability and purpose.*

This section states that §§ 4.80 through 4.83 pertain to preliminary permits under Part I of the Act. This section also enunciates the purpose of a preliminary permit, as provided in section 5 of the Act.

§ *4.81 Contents of application.*

Section 4.81 prescribes the information and documents which must be included in an application for a preliminary permit. Section 4.81(a) calls for an initial statement providing the identity and nature of the applicant, the name and location of the proposed project, and the proposed term of the permit.

The remainder of the information is to be provided in four numbered exhibits. Exhibit 1 (§ 4.81(b)) must include a description of the proposed project, including its principal structures and features and any lands of the United States that are affected. While the information need only be provided "to the extent possible," the degree of specificity and completeness of the description could have a bearing on the Commission's assessment of the applicant's ability to complete its studies and license application during the term of the permit, and on a comparison by the Commission of competing applications.

Exhibit 2 (§ 4.81(c)) must consist of a study plan and identification of any related new roads for any proposed project and a detailed work plan and schedule for any project development which would involve new dam construction, meaning that the projects are of such magnitude as to require feasibility studies which include test pits, borings or other geological exploration. The study plan must specify and describe the studies, tests, and plans that have already been carried out or prepared, as well as those projected for completion during the term of the proposed permit. For projects or developments involving new dam construction, a timetable for the projected activities must be submitted. For projects or developments involving new dam construction, Exhibit 2 must also contain information about how environmental disturbances from studies and related activities, including any impact on floodplains or wetlands,[6] will be minimized and the means by which disturbed areas will be restroed. Early consideration of these issues can prevent delay in processing. The study plan and the work plan and schedule will help the Commission monitor the progress of its permittees and hold them accountable, and could also be relevant in assessing competing applications. A new waiver provision pertaining only to the more detailed reporting requirements for developments involving new dam construction is included in Exhibit 2.

Exhibit 3 (§ 4.81(d)) must contain a statement of costs and financing. An applicant would have to estimate the costs of carrying out or preparing the studies, tests, and plans identified in Exhibit 2, and state the expected sources and extent of financing for those activities. The exhibit also calls for an applicant to provide, to the extent possible, a description of the proposed market for the power generated at the project, including any available information concerning the revenues to be derived from sale of the power.

Exhibit 4 (§ 4.81(e)) must include a map or series of maps showing the location of the proposed project, the physical interrelationships of its principal features, a proposed project boundary, any lands of the United States that would be affected by the project, and any areas in the project vicinity included, or designated for study for inclusion, in the National Wild and Scenic Rivers System or National Wilderness Preservation System. The maps must be based on U.S.G.S. topographic quadrangle sheets or similar topographic maps of a state agency, if available. Section 4.81(e)(3)(ii) is revised to include information on public lands required in clause (iii) of the proposed rule. Mapping of those project lands included in such lands must be accurate to the smallest subdivision of a public land survey, if available, in order to facilitate proper withdrawal of public lands and reservations under section 24 of the Act.

§ *4.82 Amendments.*

Section 4.82 allows permittees to file applications for amendment of their permits. Amendments may include any extension of the term of the permit that does not cause the total term to exceed three years. If an application for an amendment requests a material change in the project, public notice of the application will be given.

§ *4.83 Cancellation and loss of priority.*

Section 4.83 makes clear that a permit may be cancelled for failure of the permittee to comply with the specific terms and conditions of the permit or for "other good cause shown, after notice and opportunity for hearing." Such cancellation, or expiration of the permit before a license application is filed, will result in loss of the permittee's priority of application for a license for the project.

[6] This information on floodplains and wetlands reflects the policy enunciated in the Notice of Proposed Rulemaking in Docket No. RM79-70, issued August 20, 1979, 44 *Fed. Reg.* 49466.

Besides revising, consolidating, and adding to the pertinent existing regulations, this rulemaking would eliminate certain of the regulations altogether. Sections 4.33 and 4.85 governing "issuance and acknowledgment of acceptance" of licenses and preliminary permits, respectively, have been deleted.

Section 4.86, which purported to allow some construction work on a proposed project during the term of the preliminary permit, has also been eliminated. Section 131.10, which prescribes a format for preliminary permit applications, has been deleted as superfluous.

Finally, the incorporation by reference of a certain exhibit has been retained and transferred to § 4.41, pending a rewriting of the licensing procedures for major unconstructed projects.

Effective Date

These amendments to Part 4 of the Commission's regulations become effective November 26, 1979 after publication in the **Federal Register.**

(Federal Power Act, as amended, 16 U.S.C. §§ 792–828c; Department of Energy Organization Act, 42 U.S.C. § 7101–7352; Executive Order No. 12009, 42 *Fed. Reg.* 46267; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601–2645)

In consideration of the foregoing, the Commission amends Parts 4 and 16 of Subchapter B and Part 131 of Subchapter D, Chapter I, Title 13 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, AND DETERMINATION OF PROJECT COSTS

1. Part 4, Subchapter B of Chapter 1, Title 18 of the Code of Federal Regulations is amended in the Table of Contents to read as follows:

Subpart A—Determination of Cost of Projects Constructed Under License

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Subpart B—Determination of Fair Value of Constructed Projects, Under Section 23(a) of the Act

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Subpart C—Determination of Cost of Constructed Projects Not Subject to Section 23(a) of the Act

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Subpart D—Application for Preliminary Permit or License: General Provisions

Subpart E—Application for License for Proposed Unconstructed Major Project

* * * * *

Subpart F—Application for License for Major Project—Existing Dam

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Subpart G—Application for License for Minor Project

* * * * *

Subpart H—Application for License for Transmission Line Only

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Subpart I—Application for Preliminary Permit; Amendment and Cancellation of Preliminary Permit

2. Subpart D (§§ 4.30 through 4.33) is amended by deleting the subpart in its entirety and substituting the following in lieu thereof:

Subpart D—Application for Preliminary Permit of License: General Provisions

§ 4.30 Who may file.

(a) Any citizen, association of citizens, domestic corporation, municipality, or state may apply for a preliminary permit or a license for a water power project under Part I of the Federal Power Act.

(b) The Commission will not accept an application for a preliminary permit for project works that:

(1) Are licensed at the time of the application or are authorized by law for Federal development; or

(2) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved and utilized by a project for which there is either an unexpired preliminary permit or an accepted application for license.

(c) The Commission will not accept an application for a license for project works that:

(1) Are licensed at the time of the application or are authorized by law for Federal development; or

(2) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which there is an unexpired preliminary permit, unless the permittee has submitted an application for license or has notified the Commission that it has determined not to seek a license.

§ 4.31 Acceptance for filing or rejection.

(a) Each application for a preliminary permit or a license must:

(1) Conform to the requirements of §§ 1.5, 1.14, 1.15, 1.16, and 1.17 of this chapter, except as otherwise prescribed in this part; and

(2) Contain the information and documents prescribed in the following sections of this chapter, according to the type of application:

(i) Preliminary permit: § 4.81;

(ii) License for a minor project: § 4.60;

(iii) License for a proposed unconstructed major project: §§ 4.40 and 4.41;

(iv) License for a major project-existing dam: §§ 4.50 and 4.51;

(v) License for a transmission line only: §§ 4.70 and 4.71

(vi) New license for a licensed project: § 16.6; or

(vii) Nonpower license for a licensed project: § 16.7.

(b) Each applicant for a preliminary permit or a license must submit to the Secretary for filing an original and eleven copies of the application, each accompanied by full-sized prints of all required maps and drawings. The application may also include reduced prints of maps and drawings conforming to § 4.32(d). The originals (microfilm) of maps and drawings included in a license application under § 4.32(a) are not to be filed initially, but will be requested pursuant to paragraph (c) of this section.

(c) When an application for a preliminary permit or a license is found to conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will:

(1) Notify the applicant that the application has been accepted for filing, specifying the project number assigned and the date upon which the application was accepted for filing, and for a license application, direct the filing of the originals (microfilm) of required maps and drawings;

(2) Issue public notice of the application as required in the Federal Power Act; and

(3) If the project affects lands of the United States, notify the appropriate Federal office of the application and the specific lands affected, pursuant to section 24 of the Federal Power Act.

(d) Any application for a preliminary permit or a license that patently fails to conform to the requirements of paragraphs (a) and (b) of this section may be rejected, with a specification of deficiencies. An applicant submitting an application that fails in any respect to conform to the requirements of paragraphs (a) and (b) of this section may be afforded additional time to correct the deficiencies, not to exceed 45 days from the date of the notification in the case of an application for a preliminary permit, or 90 days from the date of the notification in the case of an application for a license. The deficiencies to be corrected will be specified. Deficiencies must be corrected by submitting an original and eleven copies of the specified materials to the Secretary for filing within the additional time provided. If the application is then found to conform to the requirements of paragraphs (a) and (b) of this section, action will be taken in accordance with paragraph (c) of this section. If the application is found not to conform, it will be rejected.

(e) Any application for a preliminary permit or a license will be considered "accepted for filing" as of the time of the initial submittal to the Secretary if the Secretary receives all of the information and documents necessary to conform to the requirements of paragraphs (a) and (b) of this section within the time prescribed by the Commission or its delegate under paragraph (d) of this section.

(f) An applicant for a preliminary permit or a license may be required to submit any additional information or documents that the Commission or its delegate considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission or its delegate prescribes. An applicant may also be required to provide additional copies of the complete application, or any of the additional information or documents that are filed, to the Commission or any person, agency, or other entity that the Commission or its delegate specifies. If an applicant fails to provide additional information or documents or copies of submitted materials, as required, the Commission or its delegate may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

(g) A prospective applicant for a preliminary permit or a license may, prior to submitting its application for filing, seek advice from the Commission staff regarding the sufficiency of the application. For this purpose, five copies of the draft application should be submitted to the Director, Division of Licensed Projects. An applicant or prospective applicant may confer with the Commission staff at any time regarding deficiencies or other matters related to its application. All conferences are subject to the requirements of § 1.4(d) of this chapter governing *ex parte* communications. The opinions or advise of the staff will not bind the Commission or any person delegated authority to act on its behalf.

§ 4.32 Specifications for maps and drawings.

All required maps and drawings must conform to the following specifications, except as otherwise prescribed in this chapter:

(a) Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3¼" by 7⅜") aperture cards. Two duplicates must be made of each original. Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches. A space five inches high by seven inches wide must be provided in the lower right corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear. If the drawing size specified in this paragraph limits the scale of drawings described in paragraph (c) of this section, a smaller scale may be used for those drawings.

(b) Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features and no smaller than one inch equals 1,000 feet for other project features. Where maps at these scales do not show sufficient detail, larger scale maps may be required under § 4.31(f). Each map must show:

(1) True and magnetic meridians;

(2) State, county, and town lines; and

(3) Boundaries of public lands and reservations of the United States [see 16 U.S.C. 796 (1) and (2)], if any. If a public land survey is available, the maps must show all lines of that survey crossing the project area and all official subdivisions of sections for the public lands and reservations, including lots and irregular tracts, as designated on the official plats of survey that may be obtained from the Bureau of Land Management, Washington, D.C., or examined in the local land survey office; to the extent that a public land survey is not available for public lands and reservations of the United States, the maps must show the protractions of townships and section lines, which, if possible, must be those recognized by the Federal agency administering those lands.

(c) Drawings depicting details of project structures must have a scale in full-sized prints no smaller than:

(1) One inch equals 50 feet for plans, elevations, and profiles; and

(2) One inch equals 10 feet for sections.

(d) Each map or drawing must be drawn and lettered to be legible when it is reduced to a print that is 11 inches on its shorter side. Following notification to the applicant that the application has been accepted for filing [see § 4.31(c)], prints reduced to that size must be bound in each copy of the application which is required to be submitted to the Commission or provided to any person, agency, or other entity.

§ 4.33 Filing and disposition of conflicting applications.

(a) Any citizen, association of citizens, domestic corporation, municipality, or state may submit for filing an application for a preliminary permit or a license for project works which would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by project works, for which a preliminary permit or license application has already been accepted ("initial application"). Such an application ("competing application"), or a notice of intent to submit an application, must be submitted for filing on or before the last date for the filing of protests or petitions to intervene prescribed in the public notice issued under § 4.31(c)(3) of this chapter for the initial application.

(b) Any notice of intent to submit a competing application for a preliminary permit or a license that is filed under paragraph (a) of this section must conform to the requirements of §§ 1.14, 1.15, 1.16, and 1.17 of this chapter, and must include:

(1) The exact name and business address of the prospective applicant; and

(2) An unequivocal statement of intent to submit an application for a preliminary permit or a license, as appropriate.

(c) Any prospective applicant who has filed a notice of intent which conforms to the requirements of paragraphs (a) and (b) of this section may submit for filing a competing application for a preliminary permit, not later than 60 days, or a competing application for a license, not later than 120 days, beyond the last date for the filing of protests or petitions to intervene prescribed in the public notice of the initial application.

(d) Any competing application must:

(1) Be self-contained and conform to the requirements of paragraphs (a) and (b) of § 4.31;

(2) Include a detailed and complete statement of how the plans reflected in the competing application are as well adapted as or better adapted than the

plans reflected in the initial application to develop, conserve, and utilize in the public interest the water resources of the region; and

(3) Include proof of service of a copy of the competing application on the person designated in the public notice of the initial application for service of pleadings, documents, or communications concerning the initial application.

(e) No later than 30 days from the date of service of a copy of a competing application, the applicant that filed the initial application for the site in question may file a response that:

(1) Rebuts the competing applicant's statement that it has equally well adapted or better adapted plans; and

(2) Provides a detailed and complete counter-statement of how the plans reflected in the initial application are equally well adapted or better adapted to develop, conserve, and utilize in the public interest the water resources of the region.

(f) If an accepted application for a preliminary permit and an accepted application for a license propose projects works which would develop, conserve, and utilize, in whole or in part, the same water resources, and the applicant for a license has demonstrated its ability to carry out its plans, the Commission will favor the applicant for a license.

(g) If two or more applications for preliminary permits, or two or more applications for licenses (not including applications for a new license under section 15 of the Federal Power Act) by applicants none of whom was a preliminary permittee whose application for license was accepted for filing within the permit period, are filed for project works which would develop, conserve, and utilize, in whole or in part, the same water resources, the Commission will select between or among the applicants on the following bases:

(1) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans;

(2) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, and the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the applicant whose application was first accepted for filing [*see* § 4.31(e)];

(3) If one of two applicants is a municipality or a state, and the other is not, and the plans of the municipality or state are at least as well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the commission will favor the municipality or state; or

(4) if one of two applicants is a municipality or a state, and the other is not, and the plans of the applicant who is not a municipality or a state are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will inform the municipality or state of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the municipality or state to render its plans at least as well adapted as the other plans. If the plans of the municipality or state are rendered at least as well adapted within the time allowed, the Commission will favor the municipality or state.

(h) If two or more applications for licenses are filed for project works which would develop, conserve, and utilize, in whole or in part, the same water resources, and one of the applicants was a preliminary permittee whose application was accepted for filing within the permit period ("priority applicant"), the Commission will select between or among the applicants on the following bases:

(1) If the plans of the priority applicant are at least as will adapted as the plans of each other applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the priority applicant;

(2) If the plans of an applicant who is not a priority applicant are better adapted than the plans of the priority applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the commission will inform the priority applicant of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the priority applicant to render its plans at least as well adapted as the other plans. If the plans of the priority applicant are rendered at least as well adapted within the time allowed, then the Commission will favor the priority applicant.

(3) The criteria specified in paragraph (g) of this section will govern selection among applicants other than the priority applicant.

§ 4.34 Hearings on applications.

The Commission may order a hearing on an application for a preliminary permit or a license, upon either its own motion or the motion of any party in interest. Any hearings will be limited to the issues prescribed by order of the Commission.

§ 4.41 [Amended]

3. In § 4.41, the initial unnumbered paragraph is revised to read to follows:

The following exhibits must be filed as part of the application for a license. Any exhibit not incorporated as a part of the application shall be certified in conformity with § 131.4 of this chapter. Exhibit A may be incorporated in an application by reference where an applicant files applications for several projects one of which already contains an Exhibit A or, in any case, where an applicant has filed an Exhibit A within 10 years preceding the filing of the application. * * *

§ 4.42 [Revoked]

4. Section 4.42 is revoked.

§§ 4.41 and 4.51 [Amended]

5. In § 4.41, Exhibit J, Exhibit K, and Exhibit R, and in § 4.51, the phrase "§ 4.42" is deleted and the phrase "§ 4.32" is inserted in lieu thereof.

§§ 4.50 and 4.71 [Amended]

6. In § 4.50, the initial unnumbered paragraph and cross reference, and in § 4.71, Exhibits A, B, C, and D, Exhibits J and K, and Exhibit V, the phrase "§§ 4.40 to 4.42, inclusive" is deleted and the phrase "§§ 4.32, 4.40, and 4.41" is inserted in lieu thereof.

7. Subpart I (§§ 4.80 through 4.86) is amended by deleting the subpart in its entirety and substituting the following in lieu thereof:

Subpart I—Application for Preliminary Permit; Amendment and Cancellation of Preliminary Permit

§ 4.80 Applicability and purpose.

Sections 4.80 through 4.83 pertain to preliminary permits under Part I of the Federal Power Act. The sole purpose of a preliminary permit is to secure priority of application for a license for a water power project under Part I of the Federal Power Act while the permittee obtains the data and performs the acts required to determine the feasibility of the project and to support an application for a license.

§ 4.81 Contents of application.

Each application for a preliminary permit must include the following initial statement and numbered exhibits containing the information and documents specified:

(a) *Initial statement:*

Before the Federal Energy Regulatory Commission; Application for Preliminary Permit

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for a preliminary permit for the proposed [name of project] water power project, as described in the attached exhibits. This application is made in order that the applicant may secure and maintain priority of application for a license for the project under Part I of the Federal Power Act while obtaining the data and performing the acts required to determine the feasibility of the project and to support an application for a license.

(2) The location of the proposed project is:

State or territory: ____________
County: ____________
Township or nearby town: ____________
Stream or other body of water: ____________

(3) The exact name and business address of each applicant are:

____
____
____

The exact name and business address of each person authorized to act as agent for the applicant in this application are:

____
____
____

(4) [Name of applicant] is a [citizen, association of citizens, domestic corportation, municipality, or state, as appropriate].

(5) The proposed term of the requested permit is [period not to exceed 36 months].

(b) *Exhibit 1* must contain a description of the proposed project, specifying and including, *to the extent possible:*

(1) The number, physical composition, dimensions, general configuration and, where applicable, age and condition, of any dams, spillways, penstocks, powerhouses, tailraces, or other structures, whether existing or proposed, that would be part of the project;

(2) The estimated number, surface area, storage capacity, and normal maximum surface elevation (mean sea level) of any reservoirs, whether existing or proposed, that would be part of the project;

(3) The estimated number, length, voltage, interconnections, and, where applicable, age and condition, of any primary transmission lines whether existing or proposed, that would be part of the project [*see* 16 U.S.C. § 796(11)];

(4) The total estimated average annual energy production and the estimated number, rated capacity, and, where applicable, age and condition, of any turbines or generators, whether existing or proposed, that would be part of the project;

(5) All lands of the United States that are enclosed within the proposed project boundary described under paragraph (e)(3) of this section, identified and tabulated on a separate sheet by legal subdivisions of a public land survey of the affected area, if available; and

(6) Any other information demonstrating in what manner the proposed project would develop, conserve, and utilize in the public interest the water resources of the region.

(c) *Exhibit 2* is a description of studies conducted or to be conducted with respect to the proposed project, including field studies. Exhibit 2 must supply the following information:

(1) *General requirement.* For any proposed project, a study plan containing a description of:

(i) Any studies, investigations, tests, or surveys that are proposed to be carried out, and any that have already taken place, for the purposes of determining the technical, economic, and financial feasibility of the proposed project, taking into consideration its environmental impacts, and of preparing an application for a license for the project; and

(ii) The approximate locations and nature of any new roads that would be built for the purpose of conducting the studies; and

(2) *Work plan for new dam construction.* For any development within the project that would entail new dam construction, a work plan and schedule containing:

(i) A description, including the approximate location, of any field study, test, or other activity that may alter or disturb lands or waters in the vicinity of the proposed project, including floodplains and wetlands; measures that would be taken to minimize any such disturbance; and measures that would be taken to restore the altered or disturbed areas; and

(ii) A proposed schedule (a chart or graph may be used), the total duration of which does not exceed the proposed term of the permit, showing the intervals at which the studies, investigations, tests, and surveys, identified under this paragraph are proposed to be completed.

(iii) For purposes of this paragraph, "new dam construction" means any dam construction the studies for which would require test pits, borings, or other foundation exploration in the field.

(3) *Waiver.* The Commission may waive the requirements of paragraph (c)(2) pursuant to § 1.14(a)(2) of this chapter, upon a showing by the applicant that the field studies, tests, and other activities to be conducted under the permit would not adversely affect cultural resources or endangered species and would cause only minor alterations or disturbances of lands and waters, and that any land altered or disturbed would be adequately restored.

(d) *Exhibit 3* must contain a statement of costs and financing, specifying and including, *to the extent possible:*

(1) The estimated costs of carrying out or preparing the studies, investigations, tests, surveys, maps, plans or specifications identified under paragraph (c) of this section;

(2) The expected sources and extent of financing available to the applicant to carry out or prepare the studies, investigations, tests, surveys, maps, plans, or specifications identified under paragraph (c) of this section; and

(3) A description of the proposed market for the power generated at the project, including the identity of the proposed purchaser or purchasers of the power, and any information that is available concerning the revenues to be derived from sale of the power.

(e) *Exhibit 4* must include a map or series of maps, to be prepared on United States Geological Survey topographic quadrangle sheets or similar topographic maps of a State agency, if available. *The maps need not conform to the precise specifications of § 4.32 (a) and (b).* If the scale of any base map is not sufficient to show clearly and legibly all of the information required by this paragraph, the maps submitted must be enlarged to a scale that is adequate for that purpose. (If Exhibit 4 comprises a series of maps, it must also include an index sheet showing, by outline, the parts of the entire project covered by each map of the series.) The maps must show:

(1) The location of the project as a whole with reference to the affected stream or other body of water and, if possible, to a nearby town or any permanent monuments or objects that can be noted on the maps and recognized in the field;

(2) The relative locations and physical interrelationships of the principal project features identified under paragraph (b) of this section;

(3) A proposed boundary for the project, enclosing:

(i) All of the principal project features identified under paragraph (b) of this section;

(ii) Any non-Federal lands and any public lands or reservations of the United States [*see* 16 U.S.C. § 796 (1) and (2)] necessary for the purposes of the project. To the extent that those public lands or reservations are covered by a public land survey, the project boundary must enclose each of and only the smallest legal subdivisions (quarter-quarter section, lots, or other subdivisions, identified on the map by subdivision) that may be occupied in whole or in part by the project.

(4) Areas within or in the vicinity of the proposed project boundary which are included in or have been designated for study for inclusion in the National Wild and Scenic Rivers System; and

(5) Areas within the project boundary that, under the provisions of the Wilderness Act, have been:

(i) Designated as wilderness area;

(ii) Recommended for designation as wilderness area; or

(iii) Designated as wilderness study area.

§ 4.82 Amendments.

(a) Any permittee may file an application for amendment of its permit, including any extension of the term of the permit that would not cause the total term to exceed three years. (Transfer of a permit is prohibited by section 5 of the Federal Power Act.) Each application for amendment of a permit must conform to § 4.31(a)(1) and any relevant requirements of § 4.81 (b), (c), (d), and (e).

(b) If an application for amendment of a preliminary permit requests any material change in the proposed project, public notice of the application will be issued as required in § 4.31(c)(2).

§ 4.83 Cancellation and loss of priority.

(a) The Commission may cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit. The Commission may also cancel a permit for other good cause shown, after notice and opportunity for hearing. Cancellation of a permit will result in loss of the permittee's priority of application for a license for the proposed project.

(b) Failure of a permittee to file an application for a license before the permit expires will result in loss of the permittee's priority of application for a license for the proposed project.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

§ 16.6 [Amended]

8. In § 16.6(a), the phrase "§§ 4.40 through 4.42 of this chapter, inclusive, and in § 4.51 of this chapter" is deleted and the phrase "§§ 4.32, 4.40, 4.41, and 4.51 of this chapter" is inserted in lieu thereof.

PART 131—FORMS

§ 131.2 [Amended]

9. In § 131.2, the phrase "§§ 4.30 through 4.42 of this chapter" is deleted and the phase "§§ 4.30 through 4.41 of this chapter" is inserted in lieu thereof.

§ 131.4 [Amended]

10. In § 131.4, the cross-reference is revised to read "(*see* §§ 4.30 through 4.71 of this chapter)".

§ 131.10 [Revoked]

11. Section 131.10 is revoked.

§ 131.13 [Amended]

12. In § 131.13, the cross-reference is revised to read "(*see* § 4.41, Exhibit A)".

[FR Doc. 79-32971 Filed 10-24-79; 8:45 am]
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18 CFR Part 281

[Docket No. RM 79-15; order 29-C]

Natural Gas Curtailment; Order Amending Regulation, Granting in Part and Denying in Part Petitions for Rehearing and Motions for Clarification, Denying Motion for Oral Argument, and Denying Motions To Waive Regulations and Accept Late-Filed Petitions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rules.

SUMMARY: On May 2, 1979, the Federal Energy Regulatory Commission issued Order No. 29, the permanent curtailment rule in Docket No. RM79-15, implementing section 401 of the Natural Gas Policy Act of 1978. The Commission hereby amends its regulations relating to the permanent curtailment rule, grants in part and denies in part petitions for rehearing and motions for clarification, denies motions for oral argument, and denies motions to waive regulations and accept late-filed petitions, under Order No. 29-A. This order corrects arithmetic errors in the allocation formula of the attribution rule, expands right to protest to the Data Verification Committee to any interested person and extends the scope of the complaint procedure to allow any interested person to file a complaint. It also grandfathers a small customer or small distributor exemption into the curtailment plans and redesignates alternate fuel as alternative fuel and redefines that term to be compatible with the alternate fuel rules in Subpart C.

EFFECTIVE DATE: November 21, 1979

FOR FURTHER INFORMATION CONTACT: MaryJane Reynolds, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Room 8000. Washington, D.C. 20426 (202) 357-8455.

SUPPLEMENTARY INFORMATION:

Final Regulation for the Implementation of section 401 of the Natural Gas Policy Act

Issued October 22, 1979.

On May 2, 1979, the Commission issued Order No. 29, the permanent curtailment rule in Docket No. RM79-15. That order implements section 401 of the Natural Gas Policy Act of 1978 (NGPA).

Timely petitions for rehearing have been filed by Air Products and Chemicals, Inc., Stauffer Chemical Company, and Williamette Industries, Inc., (Air Products), Allied Chemical Corporation (Allied), American Bakers Association (ABA), American Gas Association (AGA), Atlanta Gas Light Company (Atlanta Gas), Brooklyn Union Gas Company (Brooklyn Union), Columbia Gas Transmission Company (Columbia Gas), Columbia Nitrogen Corporation and Nipro, Inc. (Columbia Nitrogen), Consolidated Edision Company of New York (Con Ed), Consolidated Gas Supply Corporation (Consolidated Gas), Eli Lilly and Co. (Eli Lilly), Entex, Inc. and Louisiana Gas Service Company (Entex), Farmland Industries, Inc., and Terra Chemicals International, Inc. (Farmland), The Fertilizer Institute (TFI), Gas Consumers Group (Gas Consumers),[1] General Service Customer Group (GSCG), Natural Gas Pipeline Company of America (Natural), Northern Illinois Gas Company (NI-GAS), Process Gas, Consumers Group and Georgia Industrial Group (PGC), Southern California Gas Company (SoCal), State of Louisiana, Tennessee Gas Pipeline Company (Tennessee), [2] Texas Eastern Transmission Corporation (TETCO), Transcontinental Gas Pipe Line

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[1] Gas Consumers seeks clarification concerning the effect of Order No. 29 on the small customer exemption provisions of curtailment plans. In the alternative it seeks rehearing of Order No. 29.

[2] Tennessee's petition includes a request for clarification.