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]

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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.

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[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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

Subpart G—Application for License for Minor Project

* * * * *

Subpart H—Application for License for Transmission Line Only

* * * * *

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]
BILLING CODE 6450-01-M

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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.

Corporation (Transco), [3] United Municipal Distributors Group (Municipals), and United States Brewers Association, Inc. (Brewers).

Late petitions for rehearing were filed by United Gas Pipe Line Company (United) and Consolidated Gas Supply Corporation (Consolidated Gas). Consolidated and United filed motions asking the Commission to waive its regulations and accept their late-filed petitions for rehearing. In the alternative, each asks that its petitions be treated as a petition for reconsideration.

Both United and Consolidated Gas aver that their employees left their respective offices on June 21, 1979, in what should have been ample time to file an application for rehearing before the 5:00 p.m. deadline, but they arrived after 5:00 p.m. and the Secretary's office refused to accept the filings.

In effect, petitioners allege nothing to justify their late filings other than that they were late. Under the Commission's Rules of Practice and Procedure, petitioners had a full 30 days within which to file applications for rehearing. That they chose to wait until the last possible minute to file was a decision made at their peril.

Good cause for waiving the regulations pertaining to the filing of applications for rehearing has not been shown. We will, however, treat the petitions filed by United and Consolidated Gas as petitions for reconsideration and will address the merits of the arguments contained therein.[4]

On June 22, 1979, the Commission issued an Order granting rehearing of Order No. 29 solely for purpose of further consideration. We will now discuss the merits of the numerous issues raised by the petitions for rehearing.

Requests for Extension

The filing deadlines established in Order No. 29 were amended by Order Nos. 29–A (44 FR 37499, June 27, 1979) and 29–B (44 FR 45922, August 6, 1979). These subsequent orders render moot requests for reconsideration or extension of the deadlines by Eli Lilly, UGI Corporation, Pacific Gas and Electric Company, So Cal, Texas Eastern, and NI-Gas.

Oral argument

In addition to its petition for reconsideration, State of Louisiana also filed a motion for oral argument on the issue of whether the NGPA has superseded the nondiscrimination requirements of Section 4(b) of the Natural Gas Act, as interpreted in *State of North Carolina* v. *FERC.*[5]

This issue is thoroughly discussed in the comments and petitions of numerous parties to this proceeding. We do not believe that oral argument would add significantly to the record already compiled. State of Louisiana's motion is therefore denied.

Coordination With Rules Implementing Sections 401(b) and 402 of the NGPA

Several parties seek reconsideration on the grounds that the rule implementing section 401(a) is not coordinated with the implementation of sections 401(b) (alternative fuel) and 402 (essential industrial process and feedstock).

GSCG accuses the Commission of creating "moving targets" and argues that the issues of section 401(b) must be addressed before any gas is reclassified in Priority 2. Likewise, Consolidated Gas states that the date for filing data on agricultural uses should be postponed until after rules are issued under section 401(b), because only agricultural users without alternative fuel capability are intended to be protected by the new agricultural priority.

PGC states that the Commission has erred by implementing section 401(b) without regard to the impact on the implementation of section 402.

AGA argues that it will unnecessarily disrupt existing curtailment plans if a rule is issued under section 401(a) before section 401(b) is implemented.

United states that no rule under 401(a) should issue until the "consequences of such action can be considered" together with rules under section 402. United argues that to do otherwise will cause multiple and duplicative collections of data.

It is the Commission's view that its obligations under the NGPA do not permit any further delay in the final implementation of section 401(a). That section is subject to a statutory deadline. Sections 401(b) and 402 are not. Congress clearly intended that implementation of section 401(a) should be given precedence if similarly expeditious implementation of sections 401(b) and 402 was not possible. Given the different data required for implementing those sections and the need to coordinate rulemaking among the Department of Agriculture (USDA), the Economic Regulatory Administration (ERA), and the Commission, the simultaneous implementation of all sections of Title IV would be impossible without substantial delay of a final rule under section 401(a).

In this connection, the Commission observes that section 401 does not preclude reclassifying agricultural uses prior to a determination of alternative fuel availability under section 401(b). On the contrary, the curtailment priorities of section 401(a) must apply unless the Commission determines under section 401(b) that alternative fuel is reasonably available and economically practicable.[6] The absence of a time limit corresponding to the 120 day limit of section 401(a) also supports this interpretation.

Texas Eastern asks that the definition of alternative fuel in section 281.203(a)(16) be changed to include alternative fuel used in facilities other than boilers. Since no rule implementing section 401(b) has yet been implemented, the definition of alternative fuel in Order No. 29 has no present effect.[7] A rule implementing the alternative fuel provision of section 401(b) is under consideration in Docket No. RM79–40. The rule issued in that proceeding will contain a substantive definition of alternative fuel.[8] Nevertheless, to avoid confusion, § 281.203(16) will be amended to define alternate fuel "as it is defined in Subpart C," and to redesignate "alternate fuel" as "alternative fuel."

United and AGA point out that Order No. 29 appears to adopt the final USDA rule, even though only the USDA interim final rule was in effect when Order No. 29 was issued. AGA says that this confusion will make it difficult to comply with the filing requirements of Order No. 29. Both United and AGA urge this as an additional reason for postponement.

In Order No. 29–A, which was issued on June 15, 1979, in this docket,[9] the Commission made it clear that it was adopting the final, not the interim, USDA rule. Order 29–A was issued more

[3] Transco's petition will not be addressed here, since it was conditionally exempted from the requirements of Order No. 29 by an Order issued on August 2, 1979, in Docket No. RM79–15.

[4] In ruling on these filings the Commission does not waive its right to assert that United and Consolidated Gas are not entitled to seek judicial review of the Commission's order in this proceeding because they failed to apply timely for rehearing of Order 29. See *Boston Gas Co.* v. *FERC*, 575 F.2d 9751 (1st Cir. 1978).

[5] 584 F.2d 1003 (1978).

[6] In this regard, section 401(b) differs from section 402(b), which applies the curtailment protection of 402(a) to essential industrial process and feedstock uses "*only if* the Commission determines" that alternative fuel is not. (Emphasis added.)

[7] *See* Notice Concerning June 15, 1979 Filing Deadline, Docket Nos. RM79–15 and RM79–40, June 8, 1979.

[8] *See* Notice of Proposed Rulemaking, Docket No. RM79–40, August 29, 1979.

[9] 44 FR 37499, June 27, 1979.

than a month before the deadline for agricultural users to file requests for reclassification of essential agricultural uses. There has therefore been ample time for compliance with the requirements of Order No. 29.

The Establishment of New Curtailment Priorities

Columbia Gas argues that the NGPA does not require or intend that interstate pipelines reprioritize their existing curtailment plans. Instead, Columbia urges adoption of a final rule based on exemption procedures similar to the interim rule. In support of its arguments Columbia states that (1) requiring pipelines to reprioritize their end-use priorities is inconsistent with Congress' intention to minimize disruption of existing curtailment plans, (2) the Natural Gas Act, as interpreted in *State of Louisiana* v. *FPC*,[10] requires the Commission to tailor any curtailment plan to the particular circumstances existing on that pipeline,[11] and (3) section 5 of the Natural Gas Act, and cases interpreting that section, require the Commission to determine whether an existing curtailment plan is just and reasonable before ordering that plan to be reprioritized.

Columbia's arguments do not support rehearing. In the first place, NGPA does contemplate that interstate pipelines may be required to reprioritize their existing curtailment plans to the extent necessary to comply with Title IV. The Conference Report specifically states:

> For purposes of implementing this section, the Commission is instructed to reopen curtailment plans only to the extent necessary to adjust those plans to bring them into conformity with the new curtailment *priority* schedule.[12]

Furthermore, the ERA rule implementing section 401 provides that the relative order of priorities in existing curtailment plans will remain unchanged only if those priorities do not conflict with the required protection of high priority and essential agricultural uses.[13] Although a rule establishing exemption procedures may be one way of resolving such a conflict, it is not the only way. We understand the ERA rule as providing that, in cases of conflict, the priorities of existing curtailment plans may be changed. This interpretation is consistent with the Conference Report, which assures the Commission that it "has the necessary flexibility in implementing any changes."[14]

The relevance of the Natural Gas Act is discussed in more detail at pages 10–11 *infra*. At this point, it is sufficient to say that the Natural Gas Act and the court cases thereunder do not require rehearing of Order No. 29. For purposes of implementing section 401, the hearing procedures of section 5 of the Natural Gas Act are the kind of "lengthy proceedings which might throw existing curtailment plans into disarray."[15] And if any pipeline does have "particular circumstances" making the rule unsuitable to it, the adjustment procedures of section 502(c) are available.[16]

The interim rule established procedures whereby agricultural users could request adjustments from their suppliers in case of supply deficiencies. This ad hoc approach provides adequate protection during the summer season. When gas supplies were sufficient so that agricultural users did not have to seek relief on a large scale. If curtailments deepen during the winter, however, numerous requests for adjustment could be expected on most pipeline systems. Under such circumstance, the interim rule could be an awkward device, creating much uncertainty in the implementation of curtailments. The Commission believes that the rule of Order No. 29 is more appropriate on a permanent basis. It establishes priorities in advance of curtailment, and allows the pipelines and their customers to plan accordingly.[17]

The need to tailor curtailment plans to individual pipelines

United, Columbia Gas, and State of Louisiana criticize the establishment of a single "inflexible" rule applicable to 37 different pipelines.

State of Louisiana argues that the rule is especially inappropriate for United's system, because it would require United to serve the historical base period requirements of its pipeline customers for agricultural and high priority use.[18] According to State of Louisiana, this method of curtailment has never been used on United's system and could result in the curtailment of high priority and essential agricultural uses in United's direct market.

In a related argument, Municipal Distributors also criticize the rule for failing to distinguish between direct and pipeline customers on United's system. Municipal Distributors asks that (1) United be deleted from the list of pipelines included in the rule and (2) United be required to file tariff provisions protecting high priority and essential agricultural customers in United's direct market only.

Citing *State of Louisiana* v. *FPC*,[19] and *Consolidated Edison Co. of New York, Inc.*, v. *FPC*,[20] Columbia Gas asserts that the rule fails to meet the requirement that the Commission tailor any curtailment plan for an individual pipeline to the particular circumstances existing on that pipeline system.

In applying Order No. 29, the Commission has not been inflexible. Where the rule was obviously unsuited to the system of a particular pipeline, it has not been applied.[21] The Commission has also evinced flexibility in molding curtailment plans in the settlement context.[22]

If petitioners believe the rule unsuited to individual pipeline curtailment plans, the appropriate avenue for relief is a 502(c) adjustment or offer of settlement, not rehearing of the rule.[23]

The cases cited by Columbia are inapposite. Besides being decided prior to enactment of the NGPA, those cases applied to the establishment of entire curtailment plans,[24] rather than the limited reopening of established plans to implement a discrete change.

[10] 503 F.2d 844 (5th Cir. 1974). The significance of *State of Louisiana* v. *FPC* is discussed at pages 9–10 *infra*.

[11] Columbia Gas mentions no "special circumstances" existing on its system to which the rule should be tailored. Furthermore, Columbia Gas projects no curtailments on its system through 1987.

[12] Emphasis added. H.R. Report No. 95–1752, 95th Cong., 2d Sess. 113 (October 10, 1978) (hereinafter cited as Conference Report).

[13] 10 CFR 580.03(c), 44 FR 15642, March 15, 1979.

[14] Conference Report at 113.

[15] *Id.*

[16] *Cf.* Natural Gas Pipeline Company of America and Inland Gas Company, Inc., Docket Nos. TC79–128, et al. (May 2, 1979). The Commission found that the permanent rule was not suited to the curtailment systems of Inland Gas Co., Inc. and Natural Gas Pipe Line Co. Instead, the companies were ordered to file tariffs conforming to the essential character of the rule.

[17] This does not mean that the Commission would not approve a plan similar to the interim plan in lieu of an Order 29 plan for a particular pipeline in the context of an adjustment or adjustment/settlement proceeding. In such cases, sufficient focus is placed on the particular situation of the pipeline and on the viability of an interim type plan on a long-term basis. See e.g., *Transcontinental Gas* Pipeline Company, Docket No. RP72–99, *Order Denying Rehearing*, issued August 2, 1979.

[18] State of Louisiana does not describe the rule's effect quite accurately. At least as applied to essential agricultural requirements, the rule would not limit entitlements to base period requirements, but would require that 100 percent of current requirements be served.

[19] 503 F.2d 844, 872 (5th Cir. 1974).

[20] 511 F.2d 372, 381 (D. C. Cir. 1974).

[21] See Note 16 *supra*.

[22] *See* Columbia Gas Transmission Corporation, Docket No. TC79–127, Order Approving Settlement, September 27, 1979.

[23] *See* United Gas Pipeline Company, Dockets Nos. RP71–29, *et al.*, Order Granting Motion to Establish Procedures and Denying Petition for Waiver of Rules, September 28, 1979.

[24] Existing curtailment plans have already been tailored to the needs of individual pipelines in accordance with the above mentioned cases and the requirements of the Natural Gas Act.

Furthermore, the rule here, unlike the curtailment plans criticized in the cases cited,[25] is related to the record evidence in this particular case.

The Natural Gas Act

Numerous petitioners challenge the rule on the grounds that it is inconsistent with various provisions of the Natural Gas Act and court decisions thereunder.

PGC asserts that failure of the Commission to determine whether its order meets the standards of the Natural Gas Act constitutes error. Columbia Gas and State of Louisiana both argue that the Commission lacks authority to prevent pipelines from filing, under section 4 of the Natural Gas Act, a plan that does not comply with Order No. 29, but adequately protects high priority and essential agricultural uses. State of Louisiana and United challenge the Commission's authority to establish new priorities for any pipeline without complying with the requirements of Section 5 of the Natural Gas Act.

The NGPA did not repeal the Natural Gas Act (NGA). Nevertheless, it did modify the NGA to require a higher level of protection for essential agricultural uses than for industrial uses.

Order 29 was promulgated to implement the requirements of Section 401. The order satisfies the statutory requirements of Section 401 as well as the requirements of section 4 of the NGA as modified by the NGPA.

Order 29 is a rule and it requires 37 named interstate pipelines to implement Section 401 in a particular and detailed manner. Interstate pipelines may file plans under section 4 of the Natural Gas Act that deviate from Order 29. But such a filing by itself would not waive the requirement to file in accordance with Order 29 *unless* the pipeline has received an adjustment under Section 502(c). A deviant plan filed under section 4 of the NGA cannot go into effect until the requirements of Order 29 have been waived.

Section 401 of the NGPA required an expeditious change in pipeline curtailment plans. The Commission has determined that the only feasible way to meet its obligations in such a short time period was to issue rules requiring all pipelines to amend their curtailment plans. A section 5 proceeding under the Natural Gas Act would be a wholly inappropriate vehicle for implementation of Section 401 in light of the time limits imposed by Congress.[26]

State of North Carolina v. FERC

Many petitioners seek rehearing on the grounds that Order No. 29 fails to meet the requirements of *State of North Carolina* v. *FERC*.[27] For the reason indicated in the preamble to Order No. 29, the Commission does not believe that *North Carolina* controls this rulemaking.[28] Even if that case were applicable, however, Order No. 29 would not be inconsistent with its requirements.

Since the NGPA does not require reopening the base periods of the existing curtailment plans, the issue of stale base period data does not arise under Order No. 29. Moreover, because the Secretary of Agriculture has established essential agricultural requirements on a current basis, such uses will be updated annually and the question of stale data is thereby mooted for these uses.

State of Louisiana, United, Columbia Gas, and Entex all criticize the Commission for failing to assess the rule's "impact on actual end-use." To the extent they argue that the Commission cannot implement section 401 without first collecting voluminous end-use data for each pipeline affected, we reject the argument. Such an effort is not within the bounds of "the maximum extent practicable" and would unduly delay implementation of the rule, perhaps for years. Moreover, to the extent that Order 29 causes a particular hardship, inequity, or undue burden, an adjustment to the rule may be granted.

Contract limitations

Allied, ABA, Columbia Nitrogen, TFI and Brewers argue that contract and certificate limitations should not limit the amount of gas that essential agricultural customers may receive. These parties say that the Commission lacks authority to reduce the amount of gas essential agricultural users may receive below the level of requirements certified by the USDA. Thus, it is argued § 281.204(c)(2) of the Rule must be deleted.

This same argument was raised by Brewers in its petition for rehearing of the interim rule in Docket No. RM79-13. In the order denying rehearing in that proceeding, the Commission noted that Order No. 29 did not change the volumes certified by the Secretary of Agriculture. The relevant issue was whether or not the pipelines were obliged to meet those requirements regardless of contract or certificate limitations. On this issue the Commission stated that section 401 does not create new contract or certificate obligations. Rehearing on this issue is denied here for the same reasons it was denied in Docket No. RM79-13.[29]

The Commission does not believe that Section 401 creates new contract or certificate obligations for interstate pipelines. Section 401 requires only an amendment to curtailment plans of interstate pipelines. Curtailment plans are a method of allocation of contract demand of natual gas. *FPC* v. *Transcontinental Gas Pipeline Corp.*, 423 U.S. 326, 327-28 (1976).

The attribution formula

Various complaints are raised concerning the attribution rule which apportions high priority and essential agricultural requirements. Entex states that the attribution formula contained in section 281.209 is unworkable and could overstate the agricultural requrements of partial requirements customers. Entex is correct: the rule was intended to attribute exactly 100 percent of essential agricultural requirements by essential agricultural users. The attribution formula as applied by distribution companies and interstate pipelines was intended to allow attribution in the same manner as was done in the underlying curtailment plans of interstate pipelines. Rehearing is granted for the limited purpose of correcting the attribution formula of § 281.209 to reflect Commission intent.

Only interstate pipelines are required to attribute their priority 1 requirements. Distributors are not. Entex says this favors distributors served by more than one supplier. The rule does not require attribution by a distributor because the total base period entitlements of each distributor have already been established by operation of its suppliers' currently effective curtailment plan. The distributor merely determines what volume in its base period entitlements from each supplier reflected end uses now defined under Order 29 as high priority uses. Those volumes are now placed in the new Priority 1 and there is no need for attribution.

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[25] In Consolidated Edison Co. of New York v. FPC, the court criticized the Commission's rejection of a settlement filed by Transco. The court said that the Commission's belief that curtailment on the bases of the priorities of Order No. 467-B would be better "appears to be premised on the Commission's general policy statement [467-B] rather than an examination of evidence pertaining to the Transco system." 511 F.2d at 381.

Order No. 29 is a rule, not a policy statement, and was based on a record developed in accordance with rulemaking procedures.

[26] Because of the delay involved, the Supreme Court has indicated that a section 5 proceeding is unsuitable for evaluating curtailment plans. *FPC* v. *Louisiana P & L*, 406 U.S. 621, 643 (1972).

[27] 584 F.2d 1003 (D.C. Cir. 1978). See petitions for rehearing by Air Products, Atlanta Gas, Columbia Gas, Entex, PGC, State of Louisiana, and United.

[28] Order No. 29 at 5-6.

[29] Order Denying Rehearing of Interim Curtailment Rule, Docket No. RM79-13, June 20, 1979 at 5-7.

Tennessee, on the other hand, argues that it is inconsistent to require even pipelines to attribute high priority requirements, since the rule does not provide for updating high priority requirements and attribution could result in an entitlement different than that currently contained in the base period. To the extent that Priority 1 volumes of interstate pipelines increase (which is purely speculative) it will be caused by the new definition of high priority uses incorporated form the ERA.

NI-Gas and Brewers argue that non pipeline supplies should not be included in the attribution formula. According to NI-Gas, this penalizes distributors that have engaged in self help and may be an unconstitutional taking without just compensation. NI-Gas alleges that by recognizing the status quo of pipeline curtailments, the provision including non pipeline supplies amounts to granting an abandonment without complying with the provisons of the Natural Gas Act.

Brewers adds that gas from other sources is likely to be more expensive, and that by including it in the attribution formula, the rule precludes access to lower priced pipeline gas. According to Brewers, this contradicts the purpose of preventing unnecessary increases in the cost of food.

The NGPA does not require that pipelines deliver more gas than is actually necessary to meet the requirements certified by the USDA. On the contrary, the Commission is directed to open existing curtailment plans "only to the extent necessary" to bring them into conformity with the new priority schedule. [30] Therefore, to the extent that essential agricultural requirements are being met by non-pipeline sources, they will not be reclassified in the pipeline's curtailment plan. Otherwise, the rule would extend Priority 2 protection to agricultural users, whose needs are being met from other sources at the expense of lower priority users, including industrial process and feedstock users.

The inclusion of non-pipeline sources in the attribution formula deprives no one of gas. It only prevents users from receiving additional gas to serve requirements being met from another source.

The Base Period

AGA, GSCG, Natural, United, PGC, Brooklyn Union, and ConEd all challenge the use of an updated or rolling base period for calculating agricultural requirements. These petitioners maintain that it is improper to extend Priority 2 protection to new or expanded agricultural uses not included in existing curtailment plans.

In a related argument, PGC, Natural, United, Brooklyn Union, and GSCG say that it was error for the Commission to adopt completely the USDA certification of 100 percent of current agricultural requirements.

These arguments were raised in petitions for rehearing in Docket No. RM79-13 and were rejected. They are rejected here for the same reasons.[31] Furthermore, when Order No. 29 was promulgated, the Commission fully explained the basis for its decision to expand the requirements above base period volumes.[32]

PGC argues that because the USDA certification is incorporated into the ERA rule, the Commission has authority under sections 403 and 404 of the DOE Act to review that certification. USDA's authority to certify agricultural requirements is independent of any authority the NGPA grants to ERA or the Commission. This authority therefore cannot be diluted or made subject to our review simply because it is recognized by the ERA rule.

Brooklyn Union further challenges adoption of agricultural entitlements equal to 100 percent of current requirements because there has been no showing that expanded service is "necessary" for "full food and fiber production" or that adherence to existing base periods would impair operations of essential agricultural users.

No such showing is required, or even relevant, in this proceeding. Determinations of what is necessary for full food and fiber production are the province of the USDA, not the Commission. Likewise, whether or not adherence to existing base periods would impair essential agricultural uses is not the issue. The issue is whether or not adherence to existing base periods would fulfill the Commission's duty to implement the USDA certification of 100 percent of current requirements. For reasons already mentioned we find that it would not.

Capacity Limitations

Farmland and TFI seek rehearing on the grounds that the protection afforded by section 401 and Order 29 should apply to curtailments resulting from capacity limitations as well as from supply shortages. Farmland urges that § 281.203(a)(6) (definition of end-use curtailment) be modified accordingly. The NGPA does not define the term "curtailment plan." In large part, curtailment has been a method of dealing with natural gas shortages vis-a-vis contract obligation to deliver natural gas. For example, Order 467-B established end-use priorities for deliveries of natural gas in the face of a supply shortage. If TFI and Farmland face supply problems in the absence of curtailment, they may avail themselves of their Natural Gas Act remedies. Accordingly, rehearing on this issue is denied.

Burner Tip Curtailment

Allied, ABA, Columbia Nitrogen, and TFI assert that Order No. 29 is in error because is does not require local distributors to deliver gas to the end-users to whom agricultural uses are attributable.

The Commission's authority to establish curtailment plans for interstate pipelines is founded in its transportation jurisdiction under section 1(b) of the Natural Gas Act.[33] Section 1(b) of that act, however, specifically prohibits the exercise of Commission jurisdiction over "the local distribution of natural gas." Consequently, it has not been Commission policy to attach end-use conditions to pipeline curtailment plans.[34]

Nothing in section 401 indicates an intention to expand the Commission's jurisdiction to include local distributors. On the contrary, the House bill would have applied the curtailment prohibitions of section 401 to local distribution companies, but this provision was deleted from the final act.[35]

There are sound policy reasons that weigh against extending the Commission's curtailment jurisdiction to include local distributors. Such an extension of curtailment jurisdiction would create inevitable conflict with local regulatory agencies. Moreover, it would not be feasible for this agency to administer workable curtailment plans for the thousands of local distributors throughout the country. State agencies,

[30] Conference Report at 113.

[31] Order Denying Rehearing of Interim Curtailment Rule, Docket No. RM79-13, June 20, 1979, at 8-11.

[32] Order No. 29 at 12-13 (44 FR 26855, 26857).

[33] *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 636-41 (1972).

[34] Opinion No. 754, Panhandle Eastern Pipe Line Co., Docket No. RP71-119, February 27, 1976, at 31-33.

[35] Allied argues that because the Senate passed legislation was designed to deregulate natural gas within the framework of the Natural Gas Act, it cannot be concluded that the Senate intended to reject the Houses's inclusion of local distribution companies. This argument is not persuasive, especially if the intention was to deregulate within the frame work of the Natural Gas Act. As has been shown, the Natural Gas Act specifically excludes local distribution from Commission jurisdiction.

on the other hand, are in a position to know the practices and requirements of local distributors and their customers.

In addition, if conditions requiring the flow through of gas were imposed, the Commission would face the dilemma of applying those conditions only for high priority and essential agricultural uses, or reopening every curtailment plan to provide flow-through to all priorities.

For these reasons, rehearing in this issue is denied.

GSCG asks that the rule be amended to indicate that it does not require "State commissions to order local distribution companies to add new customers, increase deliveries or execute new or modified contracts or service agreements." The rule is so clarified. A specific amendment is unnecessary.

"Necessary adjustments" to current requirements.

ABA, TFI, Farmland and PGC all question the meaning of the rule's definition of current requirements (Section 281.208(b)(1)(ii). Farmland argues that it is improper to impose an historical base period restriction on agricultural requirements. ABA and TFI urge that the phrase "with necessary adjustments" be interpreted to permit calculation of actual protected current requirements rather than limit agricultural users to the amount of gas used in a prior time period.

PGC, on the other hand, says that it is error to include "energy consumption" within the definition rather than "natural gas consumption."

The definition of current requirements is intended to implement fully the USDA certification of 100 percent of current requirements. This certification would not be fully recognized if essential agricultural users who used alternative fuel as a result of past curtailment are limited to whatever amount of gas they were able to obtain or use during that period. Consequently, current requirements are defined to include total energy requirements rather than natural gas only.

The phrase "with necessary adjustments" is intended to provide for users who have significantly expanded their capacity since the most recent 12 month period for which data is available or who may have been operating at less than full capacity during that period and are now at full capacity. The rule uses the most recent 12 month period for which data is available as the most practicable method for making an objective determination of current requirements. If this period would not accurately reflect the current requirements of particular agricultural users because of significant changes in capacity, however, these changes may be reflected in a "necessary adjustment" to the collected data.

The rule does not limit agricultural users to an historical base period. Essential agricultural users may submit requests to change their Priority 2 entitlements under § 281.211(b)(4).

Storage Gas

Order 29 retains the status quo of storage gas. For those pipelines which sprinkle, storage volumes will be spread over all priorities, including the new high-priority and essential agricultural uses. For those pipelines which treat storage as an end use and place the volumes in old Priority 2 the curtailment plan under Order 29 will result in putting these volumes in a lower priority.

Nobody protests the results of those pipelines which sprinkle storage volumes. AGA, Brooklyn Union, Columbia Gas, GSCG, Natural, Consolidated Gas and NI-Gas object to the downgrading of storage gas for those pipelines which have previously placed storage in Priority 2.

By maintaining the status quo, the Commission believes it can best implement the Congressional intent of avoiding protracted litigation and extensive reopening of curtailment plans. Nonetheless, if the status quo for any of those few pipelines which do not use storage sprinkling will lead to "an undue preference or advantage" or the maintenance of "unreasonable difference in . . . Service . . . either as between localities or between classes of services, the pipelines may make an appropriate filing to modify its treatment of storage volumes.

Certain petitioners assert that Order 29 violates the ERA rule:

> "Nothing in this rule shall prohibit the injection of natural gas into storage by interstate pipelines or deliveries to its customers for their injection into storage unless it is demonstrated to the Federal Energy Regulatory Commission that these injections or deliveries are not reasonably necessary to meet the requirements of high-priority or essential agricultural users. 10 CFR 580.03(d)

Stripped of its negatives, the rule is intended to allow the Commission flexibility in treatment of storage volumes.[36] And in the absence of a showing that storage is used exclusively to serve high-priority and essential agricultural requirements or that failure to fill storage may result in insufficient supplies to serve those requirements in the winter, we will not adopt the suggestions that storage injection be included as a high-priority use.

[36] See 44 FR 15642, 15645, March 15, 1979.

Small Distributors Exemptions

Gas Consumers asks clarification to indicate that the rule was not intended to effect the exemption of small distributors from curtailment, as provided in many pipeline curtailment plans. Gas Consumers advances many policy and factual arguments in support of retaining the small distributor exemptions.

We agree with the arguments advanced by Gas Consumers. The Commission has previously found the small distributor exemptions to be in the public interest. Order No. 29 was not intended to disturb these exemptions. The rule is so clarified.

Payback Obligations

Section 281.214(b) of the rule provides for payback in dollars or in kind as a remedy for violations of the rule. GSCG urges that payback be prescribed for any gas that is misclassified. According to GSCG, this deterrent is necessary to assure that only the minimum amounts of gas are upgraded, especially since alternative fuel determinations have not yet been implemented.

GSCG states that in its Notice of Proposed Rulemaking the Commission indicated that it would require payback if gas is misclassified by the data verification committee. This is inaccurate. The notice said that "the Commission will grant relief prospectively" when high priority and essential agricultural uses are misclassified and that "the Commission reserves the right to order payback of excess volumes in appropriate cases." Section 281.208(c)(4) of the proposed rule provided that "[t]he Commission *in its discretion may* direct the payback to excess volumes taken while the end-user was temporarily misclassified." (Emphasis added.)

The final rule is consistent with, albeit not identical to, the provisions of the notice and the proposed rule. We would not extend the rule to require payback in cases of simple error. It would not be consistent with the purpose of protecting high priority and essential agricultural uses to put this risk on those who make good faith requests for classification under Order No. 29.

Requests for classification of essential agricultural requirements are required to be under oath (section 281.211(b)(iii)). We believe that this requirement, along with the remedies established in 281.214(b), provides sufficient deterrent to misclassification.

Schools and Hospitals

GSCG asks that the rule be amended to clarify the definitions of schools and hospitals. GSCG says that it is unclear whether "dormitories, administration buildings, and laboratories" would come within the definition of school. To the extent such buildings are an integral part of "a facility, the primary function of which is to deliver instruction to regularly enrolled students in attendance at such facility," they would come within the definition.

GSCG asks that the sentence excluding "outpatient clinics or doctors offices" from the definition of hospital be stricken, since such buildings are part of the hospital complex in some instances.

It would not be administratively feasible to distinguish for separate curtailment treatment outpatient clinics and doctors offices that are physically connected to the rest of the hospital or its heating plant. Such uses should be considered part of the "facility" and included within the definition. Otherwise they are excluded.

Clarification of these issues obviates the need for further amendment.

Consultations With USDA

PGC suggests that the Commission's consultations with USDA may have violated *ex parte* regulations because section 401(b) only authorizes consultations concerning alternative fuel determinations. We do not give section 401 such a limited reading. As numerous petitioners for rehearing, including PGC,[37] remind us, our responsibilities under sections 401(a) and 401(b) are closely related. In any event, memoranda submitted to the Commission by the USDA pursuant to its consultations are in the public record of this proceeding.[38]

The Data Verification Committees (DVCs)

PGC urges that a representative of an industrial process or feedstock user should be included on all DVCs. Section 281.213 was never intended to preclude representation on the DVCs by representatives of other industries.

Protests and Complaints

PGC criticizes § 281.213(c), which limits protests to customers of the interstate pipeline. Section 281.214(a), limiting complaints to aggrieved direct customers and distribution companies, is similarly criticized. PGC would extend standing under these sections to "all interested parties." We agree. This policy is appropriate in light of the new policy of end product curtailment embodied in the NGPA. Order 29 will be modified to allow full participation by all interested persons.

Filing Requirements

Section 281.204(a) requires pipelines subject to the rule to file tariff sheets "including an index of entitlements." Tennessee submits that because its index of entitlements is so voluminous, this requirement is unnecessary and unduly burdensome. Tennessee notes that its present index of entitlements totals 132 pages and that base period data used by most pipelines has not been included in company tariffs in the past.

As an alternative, Tennessee suggests that it file its complete index of entitlements with the Commission and serve copies on its customers and affected state commissions.

Tennessee was the only party to raise this issue. If Tennessee should find the filing of an index of requirements unduly burdensome, it may seek an adjustment.

Rate Adjustments

Tennessee states that any significant change in its base period data in conformance with Order No. 29 could affect the sales volume estimates underlying its rates and cause a loss of necessary revenues. Tennessee concern appears to be speculative and beyond the scope of Order 29.

The Commission orders: For the reasons set forth above, the Commission orders:

A. The petitions for rehearing and clarification are granted to the extent indicated in the body of this order. Otherwise they are denied.

B. The motions by United and Consolidated Gas for acceptance of late filed petitions for rehearing and waiver of the Commission's Rules of Practice and Procedure are denied.

C. Petitions for extension of filing deadlines by Eli Lilly, Pacific Gas, UGI Corporation, So Cal, Texas Eastern, and NI-Gas are dismissed as moot.

D. The motion for oral argument filed by State of Louisiana is denied.

E. Subpart B, Part 281, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below, effective November 21, 1979.

(Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267.)

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 281—NATURAL GAS CURTAILMENT

1. Section 281.203(a) is revised by deleting subparagraph (16) and substituting the following in lieu thereof:

§ 281.203 Definitions and cross references.

(a) *Definitions.* * * *

(16) "Alternative fuel" means alternative fuel as it is defined in Subpart C of this Part.

* * * * *

2. Section 281.205(b) is amended in subparagraph (1) by adding a new sentence at the end of that subparagraph to read as follows:

§ 281.205 General rules.

* * * * *

(b) *Method of curtailment.* * * *

(1) * * * Nothing in this paragraph is intended to alter the operation of any "small customer" or "small distributor" exemption or waiver (as defined in an interstate pipeline's currently effective curtailment plan).

* * * * *

3. Section 281.209 is revised in by deleting paragraphs (d)(1), (d)(3), (e) and (f) and substituting the following in lieu thereof:

§ 281.209 Attribution.

* * * * *

(d) *Essential agricultural user.* (1) An essential agricultural user shall calculate its attributable essential agricultural requirements attributable to a particular direct supplier by multiplying its total essential agricultural requirements by the Annual Quantity Entitlements from such direct supplier and dividing the product (numerator) by the sum of all Annual Quantity Entitlements and all volumes received from sources not providing an Annual Quantity Entitlement to such user (denominator).

* * * * *

(3) If an essential agricultural user does not have Annual Quantity Entitlements with respect to more than one of its direct suppliers, the attributable essential agricultural requirements attributable to a particular direct supplier shall be calculated by multiplying its total essential agricultural requirements by the total volume of natural gas received from such supplier in 1972 and dividing the product (numerator) by the total supplies of natural gas received from all sources in 1972 (denominator).

[37] See PGC petition at 9.

[38] Notice of Proposed Rulemaking, Docket No. RM79-15, January 18, 1976, at 8 n. 2.

(e) *Local distribution company.* A local distribution company shall calculate its attributable indirect essential agricultural requirements among its direct suppliers in the same manner as it attributed its supplies to its direct suppliers for purposes of establishing entitlements in the currently effective curtailment plans of such direct supplier.

(f) *Interstate pipelines.* An interstate pipeline shall attribute Priority 1 and 2 entitlements respectively among its direct pipeline supplies in the same manner as it attributed its supplies to its direct pipeline suppliers for purposes of establishing entitlements in the currently effective curtailment plans of such direct suppliers.

4. Section 281.213 is revised by deleting paragraph (c) and substituting the following in lieu thereof:

§ 281.213 Data Verification Committee.

* * * * *

(c) Any interested person may file a written protest concerning the index of entitlements. Such protests shall be filed with the Data Verification Committee no later than September 21, 1979. For years after 1979, protests shall be filed not later than 30 days after a draft index of entitlements is served in accordance with section 281.212(d) of this part.

* * * * *

5. Section 281.214 is revised by deleting paragraph (a) and substituting the following in lieu thereof:

§ 281.214 Notice, complaint and remedy.

(a) *Complaint.* Any interested person may file a complaint concerning an alleged violation of this subpart under § 1.6 of this chapter.

* * * * *

[FR Doc. 79-32970 Filed 10-24-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Regulation 6010-8-R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services; Amendment No. 2

Correction

In FR Doc. 79-31420, appearing on page 58709 in the issue of Thursday, October 11, 1979, amendatory paragraph 1.b. in the second column should read: "b. By deleting old paragraph (b)(107)."

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing and Livestock Use on the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Forest Service issues final rule incorporating amendments to the Federal Land Policy and Management Act of 1976 made by the Public Rangelands Improvement Act of 1978. These amendments substitute the word "sixteen" for "eleven" in front of ". . . contiguous western States," expand the definition of "Range Improvements," and broaden the scope of consultation and cooperation in the development of allotment management plans. The amendments do not represent policy additions or major changes in policies which have applied to the administration of grazing permits on the National Forest System beyond that prescribed by law.

EFFECTIVE DATE: October 25, 1979.

ADDRESS: Chief R. Max Peterson (2200), Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Assistant Director, Range Management Staff, Forest Service, P.O. Box 2417, Room 610 RP-E, Washington, D.C. 20013, Telephone (703) 235-8139.

SUPPLEMENTARY INFORMATION: This amendment makes minor changes in the regulations so it conforms with the Rangelands Improvement Act. These regulations were substantially changed on November 28, 1977, to implement provisions of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579) (**Federal Register**, Vol. 42, No. 208, Friday, October 28, 1977, pages 56430-56737). This Act was subsequently amended by the Public Rangelands Improvement Act of 1978. Minor changes in this amendment are to: (1) Substitute the word "sixteen" in place of "eleven" in front of ". . . contiguous western States"; (2) Expand the definition of "Range Improvements"; and (3) Broaden the scope of consultation and cooperation in the development of allotment management plans. It has been determined that publication of these amendments in accordance with the Proposed Rulemaking Procedures Act, 5 U.S.C. 533, is unnecessary. The amendments do not represent policy additions or major changes in policies which have applied to the administration of grazing permits on the National Forest System beyond that prescribed by law (Rangelands Improvement Act of 1978).

The minor changes being made by this amendment are explained as follows:

(1) Authority is expanded to include the Public Rangelands Improvement Act of 1978.

(2) Previously in § 222.1(b)(7), § 222.1(b)(20), § 222.3(c)(1), § 222.6(a), § 222.10(a), and § 222.11 (a) and (b), it referred to ". . . 11 contiguous western States." These are changed to read ". . . 16 contiguous western States."

(3) § 222.1(b)(7) is being expanded to add five additional States—North Dakota, South Dakota, Kansas, Nebraska, and Oklahoma (States are listed in alphabetical order).

(4) § 222.1(b)(21) expands the definition of "Range Improvement" to include ". . . activity or program designed to improve production of forage and includes facilities or treatments . . .".

(5) § 222.2(b) is broadened to include consultation and cooperation with landowners, States, and grazing advisory boards.

Dated: October 19, 1979.

David G. Unger,

Deputy Assistant Secretary for Natural Resources and Environment.

PART 222—RANGE MANAGEMENT

Title 36, Part 222 is amended as follows:

1. The authority citation in Subpart A is revised to read as follows:

Authority: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331-1340); Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

2. § 222.1(b)(20), § 222.3(c)(1), § 222.6(a), § 222.10(a), and § 222.11(a) and (b) are amended by changing the words "11 contiguous western States" to "16 contiguous western States" wherever they appear.

3. Paragraphs (b)(7) and (21) of § 222.1 are amended to read as follows:

§ 222.1 Authority and definitions.

* * * * *

(b) * * *

(7) "Lands within National Forest in the 16 contiguous western States" means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

* * * * *

(21) "Range Improvement" means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) * * *

* * * * *

4. Paragraph (b) of § 222.2 is amended to read as follows:

§ 222.2 Management of the range environment.

* * * * *

(b) Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

* * * * *

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 190))

[FR Doc. 79-32966 Filed 10-24-79; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF JUSTICE

41 CFR Part 28

[Order No. 859-79]

Amendment to the Designation of Office

AGENCY: Department of Justice.

ACTION: Final rule: Editorial Amendment to Chapter 28.

SUMMARY: Pursuant to a reorganization within the Department of Justice, the Office of Management and Finance has been abolished and replaced by the Justice Management Division. In addition, the Operations Support Staff, the subdivision of the Office of Management and Finance that was authorized to perform procurement functions, has been abolished and replaced by the Property Management and Procurement Staff. These organizational changes have necessitated editorial amendments to Chapter 28.

EFFECTIVE DATE: October 1, 1979.

FOR FURTHER INFORMATION CONTACT: William J. Snider, Administrative Counsel, Justice Management Division, Department of Justice, Washington, D.C. 20530 (202-633-4165).

By virtue of the authority vested in me by 28 U.S.C. § 509 and § 510, Chapter 28 of Title 41 is hereby amended as follows:

1. By substituting "Justice Management Division, Property Management and Procurement Staff" for "Office of Management and Finance, Operations Support Staff" in § 28-1.205(a)(1) of Subpart 28-1.2 of Part 28-1.

2. By substituting "Director, Property Management and Procurement Staff, Justice Management Division" for "Director, Operations Support Staff, Office of Management and Finance" in § 28-1.404.50(a)(1) of Subpart 28-1.4 of Part 28-1.

3. By substituting "Justice Management Division" for "Office of Management and Finance" in § 28-1.404.51(c) of Subpart 28-1.4 of Part 28-1.

4. By substituting "Justice Management Division" in Section 28-1.405 of Subpart 28-1.4 of Part 28-1.

Dated: October 10, 1979.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 79-32969 Filed 10-24-79; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Ch. II

[R-4583; Public Land Order 5684]

California; Withdrawal for the Boulder Gulch Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 18.82 acres of public land for expansion of an existing recreation area.

EFFECTIVE DATE: October 25, 1979.

FOR FURTHER INFORMATION CONTACT: Evelyn Tauber, 202-343-6486.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry, under the general land laws, including the mining laws, 30 U.S.C., Ch. 2, in aid of programs of the Corps of Engineers, Department of the Army:

Mount Diablo Meridian

A parcel of land situated within the SE¼SE¼, Sec. 7,
T. 26 S., R. 33 E., described as follows:

Beginning at the section corner common to Secs. 7, 8, 17, and 18, said township and range, marked by a found 3-inch x 3-inch redwood hub in a rock mound; thence westerly along section line common to Secs. 7 and 18, 749.32 feet to the easterly right-of-way line of State Highway No. 155 as recorded with the Bureau of Land Management as Parcel 63628 to Department of Public Works, State of California; thence, along said easterly right-of-way line N. 10°18'E., 465.99 feet; thence, N. 13°52'35"E., 400.78 feet; thence, N. 07°17'53"E., 477.39 feet to the intersection of said easterly line and the northerly line of the SE¼SE¼ of said Sec. 7; thence, leaving said easterly right-of-way, east along said northerly line of said SE¼SE¼ 508.43 feet to the northeast corner of said SE¼SE¼; thence, S. 00°02'07" E. along the section line common to said Secs. 7 and 8, 1,321.08 feet to the point of beginning, containing 18.82 acres, more or less, in Kern County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistance Secretary of the Interior.

October 12, 1979.

[FR Doc. 79-32968 Filed 10-24-79; 8:45 am]

BILLING CODE 4310-84-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1050

Monitoring and Reporting Program Performance

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: CSA is filing a final rule specifying the quantifiable data required on Project Progress Review (PPR) Reports required by grantees funded under Section 222(a) of the Economic Opportunity Act. These data will assure that information provided on these programs is uniform.

DATES: This rule is effective November 26, 1979.

Implementation date: Information as required in this rule will be provided by