SUPPLEMENTARY INFORMATION: On September 16, 1981 the NCUA Board revised Part 721 of the NCUA Rules and Regulations. The revised regulation changes the requirements for federal credit unions that choose to offer insurance and group purchasing plans to their members. The regulation was published in the **Federal Register** on September 28, 1981. The effective date was November 17, 1981.

Subsequently, it was determined that the effective date did not give federal credit unions enough time to conduct investigations of existing insurance and group purchasing plans in order to formally endorse them by November 17, 1981. Accordingly, the NCUA Board has extended the effective date of the revised regulation to April 1, 1982.

Regulatory Procedures

Pursuant to 5 U.S.C. 553(b)(B), public comment is unnecessary because this action merely extends the effective date of a regulation on which there has already been extensive public comment.

Pursuant to 5 U.S.C. 553(d)(1), this action is effective immediately because it relieves a regulatory burden on federal credit unions.

(12 U.S.C. 1757(15), 1766, and 1789)

Approved by the National Credit Union Administration Board, the 5th day of November, 1981.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 81-32827 Filed 11-12-81; 8:45 am]

BILLING CODE 7535-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1301

Ban of Unstable Refuse Bins; Partial Revocation of the Rule as It Applies to Certain Front-Loading, Small-Capacity, Straight-Sided Refuse Bins

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission partially revokes its rule banning unstable refuse bins as the rule applies to certain front-loading, small capacity, straight-sided refuse bins without trunnion bars.[1] Presently available information shows that inclusion in the rule of these straight-sided refuse bins is not reasonably necessary to reduce an unreasonable risk of injury from crushing caused by the bins tipping over that is associated with rear-loading, slant-sided unstable refuse bins.

DATES: The partial revocation is effective November 13, 1981.

FOR FURTHER INFORMATION CONTACT: Paul Galvydis, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C., 20207 (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Background: Ban of Unstable Refuse Bins

At 16 CFR 1301 (42 FR 30296, June 13, 1977) the Commission issued a regulation that declares certain unstable refuse bins to be banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057, 2058). The Commission issued this regulation after granting a petition (CP 75-14) from Dr. Stephen R. Redmond, the Commissioner of Health of Dutchess County, New York. The purpose of the regulation is to ban those refuse bins that present an unreasonable risk of injury or death from crushing due to tip-over. At the time the ban was issued, the Commission had examined 19 in-depth investigation reports of accidents associated with the tip-over of unstable refuse bins, involving 21 victims and 13 deaths. Twenty of the 21 victims were children 10 years of age and under. The Commission records also showed three death certificates for victims under 5 years of age who were killed by unstable refuse bins tipping over. The Commission's records showed that accidents were associated only with slant-sided metal refuse bins that use trunnion bars for lifting filled refuse bins up to the openings of rear or side loading refuse collection trucks. The Commission's investigation also showed that certain refuse bins such as front-loading, roll-off, box, and other types of large or broad based refuse bins, are likely to be inherently stable because of their configuration, bulk, and weight.

The regulation declaring certain refuse bins to be banned hazardous products applies to metal refuse bins having an internal volume of one cubic yard or more that would tip over if tested according to procedures specified in the rule. The test procedures, based on a standard developed by the American National Standards Institute (ANSI) Z245.3-1976 subcommittee, require the application of a horizontal force of 70 pounds and a vertical force of 191 pounds, applied separately to the bin in the directions most likely to cause tipping. These test procedures represent forces that two eight-year old children may be capable of exerting that could lead to tip-over. In issuing the rule, the Commission observed that unstable refuse bins can be retrofitted in any permanent manner that would enable them to pass the test procedures. The banning regulation did not include refuse bins of less than one cubic yard capacity or plastic refuse bins, since the lack of injury information associated with these bins showed they presented little hazard of tip-over and crushing.

B. Proposed Partial Revocation of the Ban

On March 30, 1981, the Commission proposed to partially revoke the ban as it applied to certain front-loading, 1, 1½, and 2 cubic yard straight-sided refuse bins (46 FR 19247). The Commission published the proposal after granting a petition from the Greater Los Angeles Solid Wastes Management Association (CP 80-1). The Commission's proposal was based on a review of available injury information, engineering information submitted by the petitioner, and economic information.

At the present time, the Commission has received reports of 58 incidents associated with tip-over of refuse bins. In 39 of these incidents, the refuse bins were reported to be slant-sided. There is no evidence to indicate that any of the remaining 19 cases involved small capacity, straight-sided refuse bins. The Commission is not aware of any injuries that are associated with the bins that would be covered by the partial revocation.

The Commission's Division of Human Factors identified the single most frequent hazard pattern as swinging on or hanging from the front of a slant-sided bin. Persons playing in this manner are likely to use the trunnion bar as a handle. Other hazard patterns involve victims pushing or leaning against the bin, climbing onto or into the bin, or trying to prevent the bin from falling. Most of the refuse bins that would be exempted from the ban by the partial revocation are shorter than the refuse bins involved in the reported incidents. The refuse bins covered by the partial revocation are all straight-sided. These factors—height and configuration—mean that the vertical forces that could be exerted by children on the bins covered by the partial revocation are less likely to result in tip-over than in the case of slant-sided refuse bins. As the height of the bin is lowered, only small children would be able to hang from the side or front of the bin with their full weight (the most

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[1] Chairman Nancy Harvey Steorts and Commissioners R. David Pittle, Stuart Statler, and Samuel Zagoria voted for the partial revocation. Commissioner Edith Barksdale Sloan voted against this action, for the reasons stated in her dissent of June 27, 1980, in voting against granting Petition CP 80-1.

common fatality scenario). Therefore, since small children are light, they are less likely to exert the force necessary to tip over the bin.

The petitioner included engineering tests showing that some straight-sided refuse bins have a lower center of gravity than slant-sided refuse bins. To cause a straight-sided refuse bin to tip over, a child would be required to pull on the bin at an angle substantially away from the vertical. However, the overhanging front edge of a slant-sided bin allows the bin to tip over when the child merely hangs on the front edge. Children are far more likely to swing on or hang from the bins than to pull on them. Refuse bins that are straight-sided, low in height and lack trunnion bars from which children can swing, such as those covered by the partial revocation, are less likely to tip over and cause injury than are slant-sided bins. Some of the hazard patterns resulting from typical play of children around slant-sided refuse bins, as recorded in injury information, would be less likely to occur, and perhaps could not occur, around front-loading, small-capacity, straight-sided refuse bins.

At the present time, the only quantitative economic information available to the Commission on the effects of the partial revocation is for those refuse bins in the Southern California area to which the petitioner referred, even though the partial revocation would apply to these specified refuse bins in all parts of the country. The Commission's review of the available economic information shows that between 122,000 and 185,000 refuse bins in Southern California are front-loading, straight-sided refuse bins with 1–2 cubic yard capacities. Under the present regulations, if there is no partial revocation, between 53,200 and 80,500 of these refuse bins would require retrofit actions, with a total cost between 2.1 million and 4 million dollars. The cost would be an estimated $6,000 to $7,500 for a refuse collection company with 5 trucks. The partial revocation of the refuse bin regulation should make bins more readily available, and should assist small refuse haulers in controlling future costs to clients.

C. Comments on the Proposal

In response to the proposal, the Commission received two comments from interested persons. Both of these comments supported the proposal.

One comment, from the Director of Enviromental Health of a county health department, supported the revocation and stated that there is no evidence that the bins covered by the partial revocation present a safety hazard. The commenter stated that the revocation should apply to refuse bins, as described in the proposal, that do not have trunnion bars. The text of the regulation, as proposed, did not specifically describe the refuse bins covered by the partial revocation as refuse bins without trunnion bars. However, in the preamble to the proposal, the Commission discussed the lack of trunnion bars as a factor making it less likely that children could swing from the bins and tip them over. In support of the partial revocation, the petitioner contended that straight-sided refuse bins are inherently stable since they do not have trunnion bars for children to use as handholds to swing from. In order to help clarify any ambiguity in coverage, the Commission has specifically stated in the text of the final regulation that the partial revocation applies to refuse bins without trunnion bars.

The other comment received by the Commission, from a trade association, also supported the proposed revocation and concluded that there is little likelihood that a front-loading container has ever been involved in accidents resulting in personal injury or death. The commenter stated that two of the three refuse bin models covered by the partial revocation are much lower in height than the refuse bins under consideration when the test conditions of the ban were developed. The commenter also contended that most examples of the three bin models passed the stability test without retrofitting, and of those few models that did fail, failures were by six pounds or less.

The Commission did not receive any comments that urged that the partial revocation be extended to cover additional refuse bins other than those described in the proposal. The Commission at this time has not extended the partial revocation to include other types of refuse bins.

D. Statutory Findings

In order to revoke a consumer product safety rule, section 9(h) of the CPSA (as amended by Pub. L. 97–35) provides that the Commission must find that the regulation is not reasonably necessary to reduce or eliminate an unreasonable risk of injury. The Commission has found at § 1301.3(a) of its banning regulation that unstable refuse bins with an internal volume of one cubic yard or greater present an unreasonable risk of injury or death from crushing due to tip-over. However, none of the crushing injuries are associated with low, straight-sided, front-loading refuse bins of 1, 1½, and 2 cubic yard capacity, even though large numbers of these bins have been in use for many years. Moreover, the low height, straight-sided configurations, and lack of trunnion bars for these bins indicate that children generally would not be able to swing from them as they do from other refuse bins. All of the data available to the Commission at this time indicate that the likelihood of actual injury from the bins covered by this partial revocation is small. Thus, application of the ban to these bins would not have a significant potential for reducing injuries associated with refuse bins.

The available information also shows that the partial revocation will have the effect of decreasing the total costs to businesses, and could avoid possibly severe economic hardships for some firms, since companies in the refuse collection business would not be required to retrofit the refuse bins that would be subject to the ban. In addition, the partial revocation of the ban should generally make refuse bins more available, and should help small refuse haulers in controlling future costs to clients.

Having carefully considered all of the available information described above concerning the degree and nature of the risk of injury and the relevant economic factors, the Commission finds that the coverage under the banning rule of the refuse bins described below in the partial revocation is not reasonably necessary to reduce an unreasonable risk of injury or death due to crushing from tip-over of unstable refuse bins.

E. Impact on Small Businesses

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et. seq.) generally requires the agency to prepare a regulatory flexibility analysis describing the impact of the proposed rule on small businesses. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 601 note), is to require agencies, consistent with their objective, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. Section 605 of the act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

In the **Federal Register** notice proposing to partially revoke the regulation banning certain unstable refuse bins, the Commission certified that the rule, if issued, will not have a significant adverse economic impact on a substantial number of small entities. A copy of the certification and the reasons for the certification are available in the Office of the Secretary of the Commission. The basis for the certification is that the partial revocation should generally save refuse haulers, many of which are small businesses, the cost of having to retrofit refuse bins that are covered by the partial revocation. In the Southern California area alone, the savings for the estimated 53,200 to 80,500 straight-sided bins requiring retrofit would be between 2.1 million and 4 million dollars. The partial revocation should also have the effect of making refuse bins more readily available and should assist small refuse haulers in controlling future costs to clients.

F. Environmental Considerations

The partial revocation of the regulations banning certain unstable refuse bins falls within the categories of Commission action described at 16 CFR 1021.5(c)(1) that have little or no potential for affecting the human environment. As a result, the revocation does not require either an environmental assessment or an environmental impact statement.

G. Effective Date

Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, provides that the delayed effective date provisions for substantive rules are inapplicable to rules which relieve a restriction. Since this rule relieves a restriction within the meaning of this section, it is effective immediately. Accordingly, as provided by 5 U.S.C. 553(d)(1), the effective date of the Commission's partial revocation is November 13, 1981.

H. Conclusion

PART 1301—BAN OF UNSTABLE REFUSE BINS

In accordance with section 9(h) of the Consumer Product Safety Act (Sec. 9(h), Pub. L. 97-35, Pub. L. 92-573, 86 Stat. 1215, 15 U.S.C. 2058(h), and the Administrative Procedure Act (5 U.S.C. 553), the Commission partially revokes the consumer product safety rule declaring that certain unstable refuse bins are banned hazardous products. The partial revocation applies to certain front-loading, straight-sided refuse bins of 1, 1½, and 2 cubic yard capacity without trunnion bars. The Commission partially revokes the rule by adding a new paragraph (e) to § 1301.1 of Part 1301 of Title 16, Chapter II, Subchapter B, Code of Federal Regulations as follows:

§ 1301.1 Scope and application.

* * * * *

(e) This rule, effective November 13, 1981, is partially revoked and therefore does not apply to front-loading, straight-sided refuse bins without trunnion bars having an internal volume capacity of 1, 1½, or 2 cubic yards, of the following external dimensions:

Internal volume	Length (inches)	Width (inches)	Height[1]		Weight (lbs)
			High side (inches)	Low side (inches)	
1 cubic yard.	70-72	21-23	29-31	29-31	313-347
1½ cubic yards.	70-72	29-31	33-36	29-32	346-382
2 cubic yards.	70-72	32-35	39-43	31-36	409-453

[1] Does not include height of wheels.

(Sec. 9(h), Pub. L. 97-35, Pub. L. 92-573, 86 Stat. 1215, 15 U.S.C. 2058(h))

Dated: November 6, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-32702 Filed 11-12-81; 8:45 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 8, 9, 15, 16, 17, 18, 21, 33, 145, 147, 155, 166, and 180

Regulation of Domestic Exchange-Traded Commodity Options

Correction

In FR Doc. 81-31778 appearing at page 54500 in the issue for Tuesday, November 3, 1981, please make the following corrections:

(1) On page 54506, in the middle column, in the first full paragraph, in the 24th line, the phrase "was to imprecise" should have read "was too imprecise".

(2) On page 54507, in the first column, in the continuation of footnote 16 which appears at the bottom of the column, in the third line, the phrase "is a commodity" should have read "in a commodity".

(3) On page 54511, in the first column, in the sixth line from the top of the column, the word "covered" should have read "cover".

(4) On page 54512, in the first column, in the third paragraph, in the sixth line, the word "types" should have been "type".

(5) In § 1.3(bb), on page 54516, in the first column, in the 12th line of the paragraph, remove the comma which appears after the word "regular".

(6) In § 1.17(c)(1)(iii), on page 54517, in the first column, in the third line from the top of the page, the word "of" should have been "or".

(7) In § 1.17(c)(5)(x)(A), which appears on page 54517 in the middle column, in the first line of paragraph (A), the phrase "For an application" should have read "For an applicant".

(8) In § 1.17(e), on page 54518, in the first column, in the fifth line from the top of the page, "computed pursuant of" should have read "computed pursuant to".

(9) In § 1.17(j)(2), on page 54518, in the first column, in the fifth line of paragraph (i), "of (B) the purchase" should have read "or (B) the purchase", and in the eleventh line, "of (C) the ownership" should have read "or (C) the ownership".

(10) In § 1.35(b)(1), on page 54522, in the first column, in the first line on the page, "of credits" should have been "or credits".

(11) In § 1.37, on page 54523, in the first column, in the sixteenth line of paragraph (a), "show that name" should have read "show the name".

(12) In § 33.4, on page 54531, in the middle column, in paragraph (g), insert a period at the end of the last line.

(13) In § 33.7, in the Options Disclosure Statement, on page 54532, in the middle column, after the "*Contents of Disclosure Statement*" entries, the next three paragraphs should have read as follows:

(1) *SOME OF THE RISKS OF OPTION TRADING*

THE GRANTOR OF AN OPTION SHOULD BE AWARE THAT A COMMODITY OPTION MAY BE EXERCISED AT ANY TIME FROM THE TIME IT IS GRANTED UNTIL IT EXPIRES.

THE PURCHASER OF A PUT OR A CALL IS SUBJECT TO THE RISK OF LOSING THE ENTIRE PURCHASE PRICE OF THE OPTION—THAT IS THE PREMIUM PAID FOR THE OPTION PLUS ALL TRANSACTION COSTS.

(14) In § 33.7, on page 54533, in the middle column, in the ninth line of paragraph (c), the word "merchants" should have read "merchant".

(15) In § 33.7, on page 54533, in the third column, in the third line of paragraph (f), the word "of" should be "or".

(16) In § 33.9, on page 54533, in the third column, in the third line of

paragraph (b), the words "or, of" should have read "of, or".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 5, 16, and 131

[Docket No. RM80-39; Order No. 184]

Application for License for Major Unconstructed Projects and Major Modified Projects; Application for License for Transmission Lines Only; and Application for Amendment to License

Issued: November 6, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends the regulations governing three kinds of licensing under Part II of the Federal Power Act (Act) for: (1) Major water power projects that have an installed generating capacity greater than 1.5 megawatts and that would either utilize the water power potential of a dam that, at the time application is filed, is not constructed ("major unconstructed project") or that would change the state of existing project works so as to produce a significant increase in the normal maximum surface area or elevation of an impoundment or otherwise produce a significant environmental impact ("major modified project"); (2) only the transmission lines that transmit power from a licensed water power project or other hydroelectric project authorized by Congress to the point of junction with the distribution system or with the interconnected primary transmission system; and (3) any amendment to a license that would entail a change in the physical features, plans, mode of operation, or construction period of the project or its boundary.

The rule would also make conforming changes in §§ 4.31, 4.50, 16.7, 131.2, and Appendix A of Part 2 of the Commission's requirements. The regulations would reorganize the license applications. The regulations are designed to ease the burden of preparing applications and to assist the Commission in processing applications for license. The rulemaking is therefore expected to expedite hydropower development.

DATE: This rule is effective December 14, 1981.

FOR FURTHER INFORMATION CONTACT:

Ronald Corso, Director, Division of Hydropower Licensing, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 376-9171

James Hoeker, Division of Rulemaking & Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-9342

SUPPLEMENTARY INFORMATION:

Issued: November 6, 1981.

The Federal Energy Regulatory Commission (Commission) amends three regulations governing applications for license under Part I of the Federal Power Act (Act). First, the Commission revises the licensing regulations governing major water power projects with an installed generating capacity greater than 5 megawatts (MW) that would utilize the water power potential of a dam that, at the time application is filed, is not constructed ("major unconstructed project") or that would change the state of existing project works so as to produce a significant increase in the normal maximum surface area or elevation of an impoundment or otherwise produce a significant environmental impact ("major modified project"). Second, the Commission revises the regulations governing applications for license for transmission lines that transmit power from a licensed water power project or other hydroelectric project authorized by Congress to the point of junction with the distribution system or with the interconnected primary transmission system. Third, the Commission revises the regulations governing applications for any amendment to a license that would entail a change in the physical features, plans, mode of operation, or construction period affecting the project or its boundaries.

The rule would also make conforming changes in §§ 4.31, 4.50, 16.7, 131.2, and Appendix A of Part 2 of the Commission's regulations.

I. Background

This final rule is the third phase of a program of licensing reform for all projects within the Commission's jurisdiction built for the generation of electric power by means of water power. The Commission issued its Notice of Proposed Rulemaking in this docket on January 23, 1981 (46 FR 10165, February 2, 1981).

The first phase of the program was instituted in 1978, when the Commission issued the so-called "short-form" application procedures for all "minor" projects, *i.e.*, those with a capacity of 1.5 MW or less.[1] On October 22, 1979, the Commission issued procedures applicable to both preliminary permit and license applications, and which simplify the procedures for application for preliminary permits, amendments to permits, and cancellations of permits.[2]

On November 19, 1979, the Commission issued rules which established application procedures for licensing major projects that are located at existing dams and have a generating capacity greater than 1.5 MW.[3]

The Commission has also issued related rules to encourage development of specialized kinds of hydroelectric facilities. It recently established procedures to exempt from all, or part of, Part I of the Act any small conduit hydroelectric facility that has a generating capacity of 15 MW or less.[4] Similarly, the Commission issued rules on November 7, 1980, setting forth procedures to exempt from licensing and other requirements of the Act any small hydroelectric power projects having a proposed generating capacity of 5 MW or less.[5]

The existing requirements for the types of license applications which are affected by the rulemaking in this

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[1] Order No. 11, "Regulations Governing Applications for Short-form License (Minor)" (Docket No. RM78-9), issued September 5, 1978, 43 FR 40215, September 11, 1978. The 1.5 MW capacity criterion was based on the fact that the Commission is authorized under Section 10(i) of the Act (16 U.S.C. 803(i)) to ease certain requirements for minor projects. "Minor" projects should not be confused with so-called "small" hydroelectric power projects with an installed capacity of 30 MW or less at existing dams which are encouraged under the Public Utility Regulatory Policies Act of 1978 ("PURPA") (16 U.S.C. 2705 et seq.). PURPA mandates simplified and expeditious licensing for such small water power projects, and, as amended by the Energy Security Act of 1980 (94 Stat. 611), permits the Commission to exempt from licensing and other requirements of the Act certain small hydroelectric power projects 5 MW or less. The first phase of the Commission's reforms therefore covered only a portion of the projects identified under PURPA.

[2] Order No. 54, "Regulations Prescribing General Provisions for Preliminary Permit and License Applications; and Regulations Governing Applications for Amendments to and Cancellation of Permits" (Docket No. RM79-23), issued October 22, 1979, 44 FR 61328, October 25, 1979.

[3] Order No. 59, "Regulations Governing Applications for License for Major Projects—Existing Dams" (Docket No. RM79-36), issued December 18, 1979, 45 FR 75383, December 20, 1979.

[4] Order No. 76, "Exemptions of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act" (Docket No. RM79-35), issued April 18, 1980, 45 FR 28085, April 28, 1980.

[5] Order No. 106, "Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM80-65), issued November 7, 1980, 45 FR 76115, November 16, 1980.

docket are located in various parts of Title 18 of the Code of Federal Regulations. Subtantive requirements applicable to one or all of these applications are found in §§ 2.80 and 2.81, Appendix A to Part 2, §§ 4.40, 4.41, 4.70, 4.71, 5.1 through 5.4, 16.7, 131.2, 131.3, and 131.4 of the Commission's regulations. A potential applicant now faces the prospect of meeting information requirements embodied in up the 23 separate exhibits.

The final rule set forth in this docket is designed to ease the burden of compliance in several ways. First, it reduces the information needed for the Commission to carry out its duties under law in an informed and responsible manner.[6] For example, the provisions requiring extensive documentation of the nature of the applicant and its authority to file the application have been eliminated or reduced, and requirements relating to evidence of compliance with state laws have been simplified.[7] In any case, an applicant will continue to be obligated to comply with any applicable state law not preempted by Part I of the Act.

Second, the Commission has consolidated the requests for information according to related subject matter. All paragraphs and exhibits requesting information on environmental matters[8] have been consolidated into Exhibit E (Environmental Report), required under § 4.41(f). Improved organization of the application requirements should reduce confusion and redundancy in the materials submitted.

Finally, the rule will help minimize the element of subjective interpretation in the Commission's requirements by reducing the requests for information, where possible, to simple, objective, descriptions of what is necessary. The Commission believes that clearer, simpler requirements and cooperation between the Commission and applicants will help avoid the application deficiencies that have slowed the licensing process in the past.

Projects to the type covered by this rulemaking usually result in more significant environmental impacts than do water, power projects at existing dams which do not entail significant construction or alteration of the impoundment level. Under the new regulations, the Commission therefore requires of any applicant for license for a major unconstructed project or a major modified project an Environmental Report of considerably greater detail than it does for smaller projects and most projects at existing dams. Under any of the Commission's hydropower licensing regulations, the Environmental Report (Exhibit E) submitted by the applicant must be commensurate with the size and type of water power project for which the applicant seeks a license or with the scope of any proposed amendment to an existing license.[9]

Under the final rule, an applicant for license for any project with an installed generating capacity of 5 megawatts or less may file under the Commission's abbreviated application procedures.

The Commission has issued a companion rulemaking which provides abbreviated application procedures for all projects with a total generating capacity of 5 MW or less.[10]

However, this change will not alter the current requirement that a more extensive Environmental Report (Exhibit E) be filed for any major unconstructed or major modified project with an installed capacity in excess of 1.5 MW.

II. Analysis of Comments

Most commenters express overall approval of the Commission's efforts to simplify licensing requirements pursuant to section 405 of PURPA. The single greatest source of concern is the type and amount of information required of a license applicant. A variety of comments declare that the Commission's proposed license application requirements are too burdensome. Others argue that more information should be required.

A. License application for Major Unconstructed Projects and Major Modified Projects

1. *Exhibit E. (Environmental Report)*

a. *General Comments.*

Exhibit E, the Environmental Report, received particular attention. Some public utilities claim that the proposed rule represents an increase in the amount and level of detail of data over that required in existing license requirements. This is an incorrect assumption. The final rule does not contemplate submittal of a greater variety of information than that required under existing §§ 4.40 and 4.41. Specifically, the data requirements under former Exhibits R, S, V, and W and the environmental report set forth in Appendix A of § 2.81, have been consolidated and reorganized. The Commission has reduced filing requirements, where possible, consistent with its previous hydroelectric rulemakings. However, of all of the revised Exhibits E established to date, the environmental report required for projects included in this rulemaking is the least susceptible to major reductions in data requirements because of the environmental consequences associated with the construction of a new dam and impoundment.

Most of the data now required under Appendix A, including that related to the temporary and permanent impacts of project construction on water use and quality, fish and wildlife resources, historic resources, socioeconomic and aesthetic features, is necessary to perform a thorough environmental analysis of a project that will fundamentally alter the ecology and geography of an area. The applicant's Exhibit E will form the basis for the Environmental Impact Statement that will usually be prepared for projects licensed under this rule. The data required is also important to the success of the consultation with agencies having responsibility to review project impacts that occurs during any licensing proceeding. In light of the variety of impacts that flow from dam construction and the creation or substantial alteration of the affected impoundment, an applicant must supply the Commission with a complete, self-explanatory description and analysis of the project and its impact in order to expedite consideration of the proposal

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[6] Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 2705) provides that the Commission's simplified licensing procedures must be "consistent with the applicable provisions of law" and that no project covered by the procedures will be exempted from "any requirement applicable to any such project under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal Law."

[7] *See* existing §§ 4.40(b) and 4.41—Exhibits A-F. These requirements have been distilled to simple statements in the initial portion of the application under § 4.41(a). Since the entire application is subscribed and verified under § 1.16 of our rules, the applicant's statements will suffice as evidence. Additional information will be requested in cases where it is needed. Consistent with the policy announced in the Notice of Proposed Rulemaking in Docket No. RM81-15, issued February 20, 1981, 46 FR 14751, March 3, 1981, the Commission will request from municipalities evidence of competency under state law to engage in the electric power business.

[8] *See* existing §§ 2.80, 2.40(k) and (1), 4.41 (Exhibits H, R, S, V, and W), and Appendix A to Part 2.

[9] Section 2.80 through 2.82 constitute most of the Commission's existing environmental review regulations, under the National Environmental Policy Act of 1969 (NEPA). Under this rulemaking, the environmental report requirement of Appendix A of Part 2 will cease to apply to any application relating to hydroelectric project licensing and will be replaced by the specialized Exhibit E in each licensing regulation.

[10] "Regulations Governing Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less," (Docket No. RM81-10), issued January 21, 1981. Many of the section numbers cross-referenced in the rules in this docket and in Docket No. RM81-10 derive from the new, rather than existing, regulations.

under NEPA, the Fish and Wildlife Coordination Act, the Endangered Species Act and other Federal laws.

Some commenters, including the Environmental Protection Agency (EPA), suggest that an applicant be permitted to incorporate by reference environmental documentation containing the information required in the Exhibit E. While the applicant is not precluded from referring to standardized and reliable information, Exhibit E should be a self-explanatory exhibit which adequately describes the anticipated environmental impacts of the individual proposed project. Submittal of a satisfactory exhibit will require case-specific studies and an application that lends itself to a well-rounded understanding of the nature and effects of project development.

As a number of commenters emphasize, the rule requires only information which is commensurate with the scope of the proposed project. The final rule so specifies. However, it is important to note that projects with the greatest potential impacts on the environment will be licensed under this rule and an applicant should be prepared to explain the omission of any required data or analysis. If the applicant's own analysis, in light of consultation with state or Federal agencies, indicates that the effect on resources (e.g., historical resources, water quality, etc.) would be minimal, the report to the Commission may be reduced accordingly.

In commenting on the Initial Regulatory Flexibility Analysis, the law offices of Spiegel and McDiarmid (Spiegel) argues that the Commission's distinction between "major" and "minor" projects is unreasonable and proposes that a more meaningful delineation would be between "constructed" and "unconstructed" projects for purposes of assessing environmental impacts. The Commission notes that section 10(i) of the Federal Power Act provides that the Commission may waive certain conditions and requirements of the Act for projects with an installed capacity of 2000 horsepower (1.5 MW) or less. Historically, the Federal Power Commission and this Commission have utilized this statutory language to reduce the application requirements for any license for such "minor" projects and to impose less stringent conditions on their continued operations, regardless of whether a particular dam was proposed or existing. However, the Commission has also carefully differentiated in its rules between "constructed" and "unconstructed" projects that would have an installed capacity in excess of 1.5 MW, so-called "major" projects. The license application requirements, including data requests, are substantially less for projects at existing dams. (§§ 4.50 and 4.51.) This rulemaking extends to projects under 5 MW the benefits of abbreviated license applications, although an Exhibit E under § 4.41(f) will be required for unconstructed major projects and projects otherwise subject to major modification. The "major-minor" distinction will also continue to delineate differences in standard terms and conditions of license, barring any future change in section 10(i).

Some commenters propose that Exhibit E seek information in more general terms or require only "estimates" rather than quantified data. The Commission rulemakings cited above have produced significant reductions in the level and volume of information required of applicants for license for minor projects and major projects at existing dams. While this final rule accomplishes similar goals, major unconstructed and modified projects present a different set of environmental, engineering, and regulatory problems. Such projects typically are "major Federal actions significantly affecting the quality of the human environment" within the meaning of Section 102 of the NEPA. In order to expedite project licensing and minimize deficencies and delay, Exhibit E is clearer and more specific in its data requests than prior equivalent exhibits, without imposing data-gathering requirements that are unnecessary to the Commission's statutory duties. However, adequate review of a proposed project requires that the information submitted be specific, accurate, and sufficiently quantified to convey a precise picture of the project and its probable effects. To the extent that an application contains generalities, the Commission must resort to time-consuming data requests.

On several occasions, commenters claim that the consultation requirements of the proposed regulations are both too open-ended and do not require agencies to respond to the applicant's requests for consultation and documentation within a "reasonable" time. The Commission has consequently amended the consultation requirements in its licensing regulations to require that the applicant need only wait for a specified time period after requesting an agency to consult and to provide documentation of the consultation process before submitting an application containing its own evidence of consultation. The applicant may submit a summary of the consultation process or attempts to consult with designated agencies, if agencies are not responsive. The Commission emphasizes, however, that, apart from the consultation process, all interested agencies have an opportunity to comment on any filed application. The pre-application consultation is designed to expedite this process.

The Commission disagrees with some commenters who believe that the consultation process represents an additional, unnecessary burden on the applicant. Pre-application consultation is a necessary element in the application process to avoid the costly and time-consuming delays in licensing and to promote expeditious environmental evaluation of proposed laws of development. Other interested agencies would be disadvantaged by being notified of a project development only after the plan is filed. The consultation process is also designed to prevent premature application-related expenditures by an applicant who might find, after discussions with appropriate agencies, that the project is wholly or partly infeasible. Consultation is required by the Fish and Wildlife Coordination Act and the Endangered Species Act and is advisable whenever other Federal or state agencies have responsibilities under law which affect project development and operation.

The Commission recognizes the point made by commenters that pre-application consultation may involve placing a prospective applicant's plan in the public record of another agency, thereby affording competitors an opportunity to examine those plans. Some commenters fear that the availability of such information will provide unfair advantages to a party who would utilize another's data as its own. However, the Commission believes that the benefits which derive from consultations countervail the potential problems which may result from them. An applicant who determines that an unfair advantage may accrue to persons who might resort to plagarism may seek whatever protections may be available. The Commission expects that each applicant will perform its own studies and present its own application for license; however, each applicant is also expected to pursue effective pre-application consultation.

Spiegel states that the consultation requirements may not satisfy the requirements of section 9(b) of the Act under which the applicant must submit evidence of compliance with state laws governing beds and banks, and the appropriation, diversion and use of water for power purposes and competency to engage in the power business. The Commission points out that consultation normally does not serve to obtain such information. It is a process designed to provide a basis for analysis of the environmental problems relating to certain Federal actions. Portions of the Initial Statement in license applications, such as § 4.41(a)(5), request submittal of the appropriate information required by section 9(b).

Terrestrial Environmental Specialists, Inc. (TES) inquires whether requiring the applicant, not the Commission, to consult is contrary to the Fish and Wildlife Coordination Act. Once an application is filed, all interested agencies are served with the application by the Commission or the applicant and provided time to comment directly. This is the primary means by which the Commission consults with other agencies under this and other statutes. However, the Commission uses the pre-application consultation process to promote compliance with the provisions of that act and other laws, in an expeditious manner. Consultation has proven its value to applicants and agencies alike by promoting more thorough consideration and understanding of environmental issues.

In response to several comments that expressed confusion over the administration of the consultation process, the Commission points out that the applicant should carry out the consultation by contacting the agency, presenting the proposal for comment, and providing a reasonable opportunity for the agency to comment and to provide documentation of the applicant's consultation efforts. The Commission will provide a list of appropriate agencies with which to consult but it is not itself an environmental agency and prefers not to mediate between the applicant and agencies consulted. The applicant should expect agency comments to address those issues which the agency is competent to discuss. The applicant's response to the agencies' positions should be stated in the application, and the Commission will review the issues and resolve any disputes through informed decision making.

b. *Report on water use and quality.* Numerous comments propose clarifying and corrective amendments to portions of Exhibit E.

The EPA voices concern that applicants may not analyze the eutrophication potential behind the dam and the downstream water quality impacts of the project. The Commission expects both aspects of water quality impact to be addressed under § 4.41(f)(2)(iv), to the extent practicable. That section specifically mentions the thermal, turbidity, and nutrient effects of the project.

Two comments focus on the requirement to describe mitigation measures under § 4.41(f)(2)(v). R. W. Beck and Associates (Beck) states that the cost of mitigation measures should be a line item in the applicant's discussion of project costs. While the costs of mitigation are relevant to project development, the Commission believes any presentation of such costs is speculative. It does not preclude the need for a narrative description of measures proposed by agencies and the applicant. Commission review of this item is important for establishing terms and conditions for the license. Pacific Gas & Electric Company (PG&E) argues that the regulations should not require detailed mitigation information at the time of application. However, Commission staff must know the scope of proposed mitigation measures at the earliest possible time to fully understand the impacts that may occur due to development and operation of the project. Such mitigation measures may be the outcome of the pre-application consultation and will clarify the overall evaluation of project viability. This, of course, does not preclude an applicant from performing further study after an application is submitted.

c. *Report on fish, wildlife and botantical resources.*

Alabama Power Co. (Alabama) states that mitigation or environmental protection measures should be described by applicants only if adverse impacts are expected. The Commission believes that at least some adverse impacts are inevitable from the kinds of construction which would be authorized under this regulation. Rather than invite argument over the nature of these impacts and suffer delays due to deficiencies in the filed application, the application requirements should be complete and fully explanatory. If there were no impacts, there would of course be no proposed mitigation measures.

In order to avoid any duplicative requirement, the Commission deletes from § 4.41(f)(3)(iii) of the final rule any reference to archaeological resources since that topic is the focus of § 4.41(f)(4). In response to comments, the Commission also clarifies the data requirement in § 4.41(f)(3)(i) to require analysis of impacts on fish species important because of their commercial or recreational value.

Some commenters find § 4.41(f)(3) unclear, as proposed. It requires a separate and detailed description of impacts on fish, wildlife and botanical resources, including possible effects on the size, distribution, or reproductive capacity of these ecological features. The term "production," rephrased "reproduction," refers to the amount of aquatic life the project area is able to sustain. One commenter recommends elimination of this data request in favor of an approach advocated by the U.S. Fish and Wildlife Service as an alternative to population estimates. We conclude that this "carrying capacity" analysis is a valid means of determining mitigation requirements in a variety of circumstances where loss of habitat value is a possibility. This analysis would effectively supplement information on the impacts on fish and wildlife populations. The Commission, however, is not of the view that other information requested in paragraph (f)(3)(i) is unnecessary. The complexity of the effects arising from dam construction requires a more circumspect analysis of possible environmental damage than would be afforded by the carrying capacity analysis alone.

In response to a procedural inquiry, the Commission notes that any drawings submitted in this exhibit need not conform to the specifications in § 4.32.

d. *Report on historic and archaeological resources*

Some commenters anticipate that lack of access to any private property at the project site could be a hindrance to performing the archaeological survey work required under § 4.41(f)(4). The Commission has not found evidence that any lack of access to the site has been an insurmountable problem. Were an applicant unable to gain physical access, information on such resources is generally available elsewhere. It is essential that such information be collected in order to ascertain the probable impacts on archaeological resources and to devise means to mitigate those impacts. Environmental protection and efficient processing of applications countervail the suggestion that such information be obtained after filing because of the possibility that an applicant's development plans might, to some extent, be revealed when it requests permission to enter onto private land.

EEI suggests that on-site surveys should be required only in areas where a "high probability" of historic or archaeological resources exists and that, before submittal of an application, only an overview of the site should be required. The Commission believes that delaying detailed analysis of environmental resources in favor of a cursory examination and a determination of what constitutes a "high probability" of sensitive environmental features would be an inefficient use of Commission resources that would delay the licensing procedure. Applications should be as complete as possible when submitted. However, even on-site inspections are fallible. For example, historic and archaeological resources are not always discoverable until unearthed by construction. This is the exception to the rule, however.

The Commission agrees with EEI that references to the Heritage Conservation and Recreation Service, recently dissolved, should be deleted from the final rule. The National Park Service is substituted, where appropriate. The requirement that the applicant consult with the State Archaeologist is deleted as well. Consultation with the State Archaeologist may be an advisable step to expedite preparing and processing the application; however, consultation with the State Historic Preservation Officer as provided by statute will serve to protect archaeological resources.

The Commission wishes to note that it foresees little of the difficulties anticipated by one commenter with respect to the requirements of the Commission and those of the Bureau of Land Management regarding rights-of-way for linear project features like transmission lines. The Commission finds the requirements of the two agencies to be generally consistent and subject to any necessary reconciliation during the consultation process.

e. *Report on socio-economic impact.*

Commenters criticize the socio-economic reporting requirement in § 4.41(f)(5) of Exhibit E as being too difficult to provide and having no legal basis. As a general proposition, standard economic projections and accepted forecasting procedures are sufficient to perform the analysis required in the report. Much of this information may be obtained as part of the required consultation process, from data compiled by local and state agencies. The socio-economic information requested in the new Exhibit E is not greater than that normally required under existing regulations.

It has long been the policy of the Commission to consider in licensing determinations the relative socio-economic impacts of proposed projects, such as the probable effects on local economies and human resources. The Commission issues licenses based on a variety of factors; it believes that socio-economic information is an important element in the determination of the feasibility and practicability of the proposed project. Under the NEPA, agencies must use a systematic, interdisciplinary approach, including the natural and social sciences, to evaluate actions that significantly affect the quality of the human environment. NEPA therefore contemplates the analysis of socio-economic impacts for such major actions. Moreover, the Commission has responsibilities under the Federal Power Act to protect life, health, and property and to obtain a range of information to assist its statutory duties to issue licenses for hydropower development. The information required in this rulemaking is more comprehensive than that required for projects at existing dams since the environmental impacts associated with new construction are usually more significant.

f. *Report on geological and soil resources.*

Some commenters believe the geological and soils data required in § 4.41(f)(6) should be placed in Exhibit F, which consists of design drawings. However, the soil and geological data required in Exhibit E does not address the structural limitations of the project site as depicted in Exhibit F, but instead depicts the qualitative aspects of the project lands. The proposal has therefore not been adopted.

g. *Report on recreational resources.*

Several commenters termed unnecessary the "buffer zone" requirement of § 4.41(f)(7). This requirement is continued from existing regulations. It was established by the Commission in Order No. 313,[11] pursuant to the Commission's responsibilities under section 10(a) of the Act and the policy on outdoor recreation and resources delared by the Congress.[12] Order No. 313 states that applicants are required to provide such buffer zones within the project boundary. Whether there are factors that make such buffer zones unneeded or uneconomical for a particular project must be determined on the basis of the information submitted by the applicant. The new regulation does not change the policy of Order No. 313, but simply requires that the matter be addressed at the outset of a licensing proceeding when preparing the application.

Washington Water Power Company (Washington) suggests that § 4.41(f)(7)(iii) should pertain only to "reasonable" public access. The standard articles included in a project license [13] condition approval of a project on the provision of reasonable public access to the project area, consistent with the protection of life, health and property. These conditions are not provided specifically in the application requirements. The applicant should instead suggest what might constitute reasonable access with such considerations in mind.

Alabama argues that it would be fruitless to describe recreational facilities and land uses that will abut the project in the future since it might not own the abutting property. The Commission recognizes that the applicant will not necessarily have the authority to commit abutting properties to specific land uses. As a matter of practicality, the applicant need only provide such information to the extent that the applicant has knowledge of any proposed plans or prospective agreements.

In response to another inquiry by Alabama regarding detailed cost estimates of the construction, operation, and maintenance of existing and proposed recreation facilities, the Commission believes that such information is an important indication of the quality of facilities and the parties responsible for dependable operation and maintenance of them. The recreation report should be sufficiently detailed to describe the facilities and the recreation plan for the project. This does not preclude the applicant from filing "as-built" drawings after construction.

Spiegel argues that the Commission is without authority to condition a license on consideration of the needs of the handicapped. The Commission previously ruled in Order No. 508 [14] that recreation facilities at hydroelectric projects must be designed to accomodate the handicapped. This is a policy worth continuing and is not designed to provide a "barrier-free wilderness," as the commenter argues, but reasonable access to major recreational features.

h. *Alternatives to location and design.*

The new regulations introduce a new section addressing "alternatives" to the location and design of the project and to hydropower development itself (§ 4.41(f)(10)). NEPA requires agencies to consider alternatives to proposed actions. The Commission has created this provision to deal separately with those alternatives that focus on issues other than the strictly environmental

[11] 30 FR 16198, December 22, 1965, 34 FPC 1546 (1965).

[12] Section 1, Outdoor Recreation Programs Act of May 28, 1963, 16 U.S.C. 460.

[13] Form L-1, Articles 17 and 18, Order No. 540, 40 FR 51998, November 7, 1975.

[14] Form L-1, Article 17, 54 FPC 1799, 1804 (1975); 18 CFR 2.7(b), 51 FPC 1425 (1974), 39 FR 16338, May 8, 1974.

ones, such as designs and site locations. Most commenters suggest that all references to alternatives should be located in this section. Some commenters argue that a discussion of alternative sites for a project is superfluous since the viability of another hydropower site should not preclude development of the proposed site.

The requirement that applications discuss alternative sites does not suggest that development of the proposed site would preclude the future development of any other site, but only that, in the interest of comprehensive and efficient utilization of limited water resources, the Commission must analyze the process of site selection in relation to other available sites and possible developments.

2. *Exhibit F.*

Some commenters appear to misunderstand the Commission's requirements with respect to final design drawings for the project. It should be noted that the regulations do not require final design drawings prior to licensing. Final drawings are required before construction may begin. The supporting design report required to be filed with the Exhibit F in § 4.41(g)(3) should be consistent with the drawings submitted. If the drawings are preliminary in nature, the report should be preliminary also.

B. General Comments on the Rulemaking

Several commenters suggest that the Commission provide a chart explaining the various changes made to the regulations. Two such charts have been developed to indicate the various options available to a prospective applicant under the Commission's former regulations and the revised licensing regulations. They are attached as an Appendix to the copies of this rule that are available at the Commission's Office of Public Information during regular business hours.

Sections 1.5 and 1.16 of the Commission's rules of practice and procedure apply to all filings made with the Commission, including license applications. Niagara Mohawk Power Company (Niagara) recommends that the rule be revised to be consistent with existing § 1.5 of the Commission's regulations which requires an application to be in writing and under oath. It is unnecessary to repeat the subscription requirement in those sections again in § 4.41. The Commission also points out that 18 U.S.C. 1621 prohibits any false subscription to a material fact made in a statement under oath and submitted to the Federal Government, with resulting civil and criminal sanctions for a violation of the statute.

Niagara also suggests that applicants be required to recite the statutory provisions under which a filing is made. This provision of § 1.5 tends to be superfluous. Given the organization of the Part 4 regulations and the requirement that each Initial Statement be clearly labeled according to the type of authorization sought, statutory citations would be of assistance to neither the applicant nor the Commission. Section 1.5 is proposed to be replaced (*See,* Notice of Proposed Rulemaking in Docket No. RM78-22, issued March 4, 1981). Applications lacking the citations required in that provision will not, for that reason, be deemed deficient.

The Commission has also added paragraph (a)(6) to § 4.71 to require evidence of compliance with applicable state laws in accordance with the requirements of section 9(b) of the Act. This conforms to similar application requirements in §§ 4.41 and 4.51.

TES states that the regulations should require information on a transmission line "corridor" rather than a specific right-of-way under §§ 4.41 or 4.71. Such information is acceptable. It is the normal procedure for the Commission to authorize transmission line construction within a corridor, leaving later acquisition of a right-of-way within that corridor to the licensee. Therefore, an applicant may depict a preferred corridor in the application, rather than a right-of-way as such.

One commenter argues that the change in the title of Appendix A to Part 2, an environmental report requirement, is a major change in the Commission's NEPA provisions because it imposes environmental requirements on actions undertaken by the Commission or a regulated entity pursuant to sections 202(b), 210, 211 and 212 of the Federal Power Act. The proposed amendment was designed only to indicate that Appendix A is replaced by the Exhibits E in Part 4, for water power projects, leaving other actions under the Act covered by Appendix A, to the extent an environmental report may be required. A change in title alone imposes no substantive requirements to prepare an Environmental Report for, say, wheeling or interconnection cases. It may otherwise be determined that these actions would entail construction which must be investigated under NEPA. Nevertheless, the title is revised to avoid this misunderstanding.

C. Amendment of License

Most comments on the regulations governing amendments to license suggest establishing a threshold level of proposed modification beyond which a licensee would be subject to competition by interested parties. Spiegel states that any proposed change in capacity of 1.5 MW or greater should be considered a "new project" subject to competition under the general licensing regulations.

The Commission acknowledges that a licensee's proposal to change the configuration or operation of its licensed project may not, in all cases, be consistent with the plan of development contemplated when the project was licensed. As a general matter, amendments to a license, whether they add capacity, change project works, or otherwise reshape the project, are not so fundamental as to create a different licensed project, thereby necessitating public notice, intervention, and protest procedures. It would, in any case, be very difficult to prescribe universal criteria applicable to all projects indicating which amendments are permissible and which are not. For example, an increase of 1.5 megawatts of installed capacity may be incidental in one case and important in another. Such a change might necessitate major operational changes or virtually none at all, depending on the size, location or operational characteristics of the project. In any case, section 6 of the Act prohibits amendment of a project license without the mutual consent of the licensee and the Commission. In those instances where significant new project works are proposed to be added or a major change in existing works or mode of operation is proposed, the Commission may withhold its assent or issue public notice in order to permit participation in a proceeding by interested persons. However, the Commission may not initiate a process that might defeat a license based on a proposed amendment.[15] The final rule does not establish, in terms of installed capacity or other criteria, a threshold beyond which a new license is required rather than an amendment to an existing license. The Commission requests that, prior to submittal of any application for amendment, the licensee consult with the Commission to ascertain whether the proposed changes in the license is

[15] The reference to § 4.33 in existing § 5.4, which a commenter pointed out, is an errant and outdated cross-reference and does not imply that the competing application provisions in existing § 4.33 apply to any amendments of license, as such. Part 5 is revoked by this rule.

within the scope of the project. The final rule also encourages such a practice.

PG&E argues that the amendment of license requirements should not apply except to changes in capacity greater than 5 MW. As stated above, the consequences of change in project operation or configuration will vary from project to project. Terms and conditions may permit a change in one instance but not in another. Therefore, the Commission is reluctant to arbitrarily establish a threshold for applicability of §§ 4.200 and 4.201 based only on an amount of proposed installed capacity.

Some commenters express uncertainty about whether the installed capacity levels referred to in proposed § 4.201(b) pertain to the increment of additional capacity proposed in an application for amendment of license or the total installed capacity including any new generating capacity proposed by the licensee. The Commission clarifies this provision to indicate that *total* installed capacity after the amendment of a license is what determines the appropriate exhibits for submittal.

In response to a comment from EEI, the regulations now permit, in the interest of flexible application of the requirements and minimizing unnecessary filings, an applicant to submit only the revised portion of an exhibit affected by the amendment. The Commission maintains in its permanent records all exhibits and amendments submitted by an applicant-licensee.

D. Paperwork Reduction Act of 1980 (PRA)

One commenter perceives the revised Exhibit E, § 4.41(f), as an undue paperwork burden and requests review and approval of the regulation by the Office of Management and Budget under the PRA. The Commission has long recognized the practical need for, and legislative interest in, the reduction or elimination of unnecessary regulatory burdens. The final rules in this docket and in Docket No. RM81–10 manifest this recognition. The rulemaking in this docket completes the major portion of the Commission's three-year program to reorganize, clarify, and reduce all of its preliminary permit and license application requirements.

The Commission's revised hydropower regulations have thus far helped reduce, by an average of 50 percent, the time which the Commission requires to process preliminary permit and licensing applications for all types of projects. Regulatory delay increases the capital expenditures on projects by as much as one percent per month, if a 12 to 15 percent inflation rate is assumed. The duplicative, lengthy, and discursive hydropower application requirements which existed before the Commission's recent revisions (existing §§ 4.40 and 4.41 being the vestigial remains of those regulations) not only imposed an undue burden on applicants, they resulted in poorer quality applications, deficiency letters, and a lengthier period between filing and a final Commission order. It is important to note that the final rule in this docket, in conjunction with that in Docket No. RM81–10, also permits up to 50 percent of all major unconstructed projects to be licensed under the so-called "short-form" application procedures.

The provisions of the Exhibit E are designed to carry forward the same policies and to conform to the same format established in previous Commission orders revising the hydropower licensing requirements.[16] Those orders resulted in substantial savings to applicants by requiring only such information as the Commission considers essential to carry out its statutory responsibilities under the Federal Power Act and the numerous environmental statutes which relate directly to its licensing authority. The Commission anticipates that its final action in this docket will provide similar regulatory relief, first, by making its requirements clear and, second, by enabling the Commission to act expeditiously on applications.[17]

The construction of a dam and impoundment involves an intricate network of ecological, socio-economic, and aesthetic ramifications which the Commission is obligated by statute to study and help mitigate. Its responsibilities range from considerations of public health and safety to protection of wild and scenic rivers, endangered species, and anadromous fish runs. A proposal to develop capacity at an existing dam does not entail the level of engineering and environmental problems, and normally does not occasion the amount of public interest and participation, as does a proposed new dam. This accounts for the greater detail requested under the new § 4.41, particularly Exhibit E. The Commission has taken into account both the level of information which it considers necessary to discharge its responsibilities and that which an applicant for license can reasonably be expected to provide, given the nature and complexity of the kinds of projects to be approved for construction under the final rule.

With respect to OMB review of agency forms, the Commission will comply with all applicable provisions of law.

E. Regulatory Flexibility Act (RFA)

One commenter claims that the Commission's Initial Regulatory Flexibility Analysis (Initial Analysis), contained in the Notice of Proposed Rulemaking in Docket No. RM81–10 but applicable to this rulemaking also, is deficient in estimating the burdens and benefits of the rules and in analyzing reasonable alternatives. The commenter also asserts that the requirements proposed in this docket constitute an entry barrier to small entities interested in developing hydroelectric power projects and that the distinction made between major and minor projects based on installed capacity is unreasonable.

A Final Regulatory Flexibility Analysis of the two rulemakings has been prepared as required by section 604 of the RFA and is published in the preamble to the final rule in Docket No. RM81–10. The Commission's analysis in that document bears on the issues raised by the commenter, including consideration of alternatives to the proposed rule and the regulatory burden on small entities. The Commission also offers the following views.

As stated above, in its discussion of the Paperwork Reduction Act, the Commission's basis for undertaking this rulemaking is to reduce the regulatory burden on all prospective non-Federal developers, not to devise new and expensive filing requirements as prerequisites to a license. The Commission believes that the final rules are more easily understood and better organized than previous licensing provisions; requests for superfluous information such as articles of incorporation and rate schedule information are deleted; exhibits are consolidated and the requirements clarified, without an overall increase in the volume of data requested. The exhibits on socio-economic and recreational impacts and access to project waters are not new, as the commenter supposes. They spring from statutory requirements that such values be studied. The Commission subscribes to the statutory purposes set forth in the RFA but disagrees with the commenter with respect to how those purposes ought to be carried out in the context of a rule such as this.

[16] See, orders cited in Footnote 1, *supra*.

[17] The effects of the hydropower licensing reform program on applicant's costs and the Commission's approval processes is discussed in the Final Regulatory Flexibility Analysis in Docket No. 81–10 which applies to the final rule in this docket as well.

Neither the Federal Power Act nor the RFA contemplate providing authorization to use a public resource without taking into account the maximum effective utilization of that resource consistent with the public interest in producing reliable power, preserving lives, public health and safety, and environmental values.[18] An applicant for license must have a financially and technologically feasible plan of development and be capable of constructing, operating and maintaining a project in a manner consistent with the Congress' environmental mandates. The larger and more complex the proposed project, the greater the Commission's task in assessing its impacts and determining the conditions under which it must operate.

In Hydropower licensing, the need for the information required does not vary according to the nature or size of the applicant but according to the nature of the project. For that reason, the requirements have been segregated according to the installed capacity of the proposed project[19] and whether the plan of development requires that a new dam and impoundment be constructed. The revised requirements in §§ 4.40 and 4.41 are necessary means to evaluate the viability, feasibility, and environmental desirability of major projects without resort to prolonged case-by-case data requests by means of deficiency letters. They form the basis for preparing the Environmental Impact Statement which is almost invariably required under NEPA because authorization of major unconstructed projects is normally a major Federal action significantly affecting the quality of the human environment. Such considerations make it inadvisable to reduce further the amount of information the Commission may obtain about a project, as the commenter advocates, or to reduce the requirements which prospective developers of a certain size must meet, as the commenter implies.

"Small entities", including municipalities under 50,000 population (section 601(5) of the RFA), have not in the past confronted undue barriers to the licensing process. Even under the existing, more cumbersome procedures, such entities constitute up to 60 percent of all applicants for major unconstructed projects. Not only does the final rule simplify the requirements for major unconstructed projects over 5 MW, it places approximately 50 percent of such projects formerly licensed under §§ 4.40 and 4.41 under the "short-form" application requirements which prescribe submittal of four abbreviated exhibits instead of seven lengthier ones. As the Initial Analysis states, this will, if anything, enable small entities to compete more effectively for those kinds of projects in which they have been most interested historically.

In addition, the benefit to "small entities" from this rulemaking is a benefit available to all prospective applicants, just as the burdens are applicable to all applicants. The costs of preparing an application and complying with state and Federal regulatory requirements will vary dramatically depending on the project and its location. Commission staff estimates that the cost of compliance with *all* state and Federal requirements for major unconstructed projects, including the license application provisions, will vary considerably up to as much as $1,500,000. The precise cost-savings to any particular applicant from a more (or less) stringent regulation would therefore be difficult to estimate.

There are, in any case, benefits which flow from a thorough and systematic collection of data. Efficient consultation and effective compliance with state and Federal agency requirements, coordinated through the Commission's processes, will lead to swifter licensing and substantial cost-savings. For example, 12 percent inflation will add one percent per month to the up-front cost of a project; if—as happened pursuant to Order No. 59 for major projects at existing dams—the approval process can be shortened by one year, the eventual licensee of a $10 million project could save as much as $1,200,000 in building the project.

The consultation procedures prescribed in the Commission's revised hydropower licensing rules and the reduction in deficiency letters or rejections which arose from unclear requirements will yield similar benefits to applicants for license for major unconstructed projects in the form of faster preparation and processing of the application and therefore faster development.

In sum, the commenter clearly wants the Commission to go farther in easing its filing requirements. A balanced consideration of the competing interest in expeditious and economical hydropower development and the protection of non-economic values, consistent with the requirements of the RFA, indicates that the approach to data collection originally proposed in this docket serves the best interests of small entities as well as the general public.

III. Final Regulatory Flexibility Analysis

The Commission's statement concerning the impact of this rulemaking on small entities is combined with the analysis of the final rule governing short-form license applications in Docket No. RM81-10, issued as a companion to this rulemaking.

IV. Summary of the Regulations

A. (Subpart E) Major Unconstructed Projects and Major Modified Projects

§ *4.40 Applicability and definitions.*

This section states that §§ 4.40 and 4.41 apply to any application for an initial license for a major unconstructed project, and an initial license or new license for a major modified project. Applications for license of major water power projects with an installed generating capacity of 5 MW or less must be filed under §§ 4.60 and 4.61 of the Commission's regulations. Section 4.40 defines "major unconstructed project", "major modified project", "initial license", and "new license", and offers the assistance of the Commission staff in determining whether §§ 4.40 and 4.41 apply to the applicant's proposed project.

§ *4.41 Contents of application.*

This section describes the contents of an application for a license for a major unconstructed project or a major

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[18] In addition to the Federal Power Act, any of the following statutes may affect the licensing and development of a water power project: National Environmental Policy Act, Federal Water Pollution Control Act (Clean Water Act), Fish and Wildlife Coordination Act, National Historic Preservation Act, National Trails System Act, Water Resources Planning Act, Wilderness Act, Archeological and Historic Preservation Act of 1974, Bureau of Outdoor Recreation Organic Act, Anadromous Fish Act, National Forest Multiple Use Act, Coastal Zone Management Act, Endangered Species Act, Energy Policy and Conservation Act of 1975, Federal Land Management Policy Act, Wild and Scenic Rivers Act, and Energy Security Act.

[19] The Commission and its predecessor, the Federal Power Commission, have maintained a distinction between "major" and "minor" projects based on section 10(i) of the Federal Power Act. That provision permits waiver of some provisions or requirements of the Act for projects with not more than 2000 horsepower or 1.5 megawatts of installed capacity. Such waiver is manifested in the kinds of conditions contained in licenses for projects above ("major") and below ("minor") the 1.5 megawatt demarcation. *See* § 2.9. The "short-form" license application procedures now set forth in § 131.6 will be applied to minor projects and to major projects with an installed capacity of 5 megawatts or less under the final rule in Docket No. RM81-10. However, section 10(i) of the Act will continue to permit the less stringent conditions in licenses for minor projects. The Commission adopts the 5 MW demarcation for license application provisions to parallel Congress' determination that the Commission may grant exemption from all or part of Part I of the Act, including licenses of all water power projects located at existing dams and having a proposed installed capacity of 5 megawatts or less, so-called "small hydroelectric power projects." *See* §§ 4.101 *et seq.* of the Commission's regulations.

modified project. The rule requires applicants to consult with appropriate local, state, and Federal resource agencies, including those responsible for socio-economic impacts such as the State Historic Preservation Officer, prior to filing their applications for license. These regulations follow other Commission procedures by affording other agencies an opportunity to review the proposed development and to be part of the planning process before the application has been filed wth the Commission. Otherwise, proceedings might often be delayed while agencies consider the effects of projects on their areas of responsibility and fashion recommendations. With pre-application consultation, key environmental issues will be identified and addressed at an earlier point in the process and the Commission's own required consultation with other agencies will be expedited.[20] The applicant must allow at least 60 days for each agency consulted to respond to the applicant's request for documentation of the consultation process which must then be submitted. At any subsequent time, however, the applicant may submit a summary of the applicant's consultation efforts. The Commission then will supply to each such agency a copy of the completed application, as filed, in order to provide further opportunity for comment.

(a) *Initial statement.* The initial statement provides certain basic information necessary for identification and orientation purposes, including the nature of the application, the name, business address, and telephone number of the applicant and its authorized agents, the status of the applicant, and the name and location of the project. The applicant is also required to state that it has complied with the laws of the state where the project is located with respect to obtaining property rights and the rights to appropriate, divert, and use water for power purposes, and with respect to obtaining authorization to engage in the business of producing, transmitting, and distributing power, and any other business necessary to accomplish the purposes of the requested license.[21]

(b) *Exhibit A.* This exhibit provides a description of the physical structures and features of the project. It the project includes more than one dam and associated facilities, each such discrete development must be described separately. The exhibit also includes a tabulation of any lands of the United States that are enclosed within the project boundary. This tabulation is necessary in order to record accurately the lands which have been reserved from entry, location, or other disposal pursuant to section 24 of the Act, 16 U.S.C. 818.

(c) *Exhibit B.* A statement of project operation and resource utilization is provided by this exhibit. The exhibit calls for a description of the available water supply and technical documentation of the manner in which the applicant proposes to utilize that water supply for the generation of power. The applicant must also explain how it intends to sell the power. Finally, the applicant must describe any plans it has for future hydroelectric development on the affected stream. The information in this exhibit will assist the Commission in determining whether the applicant's existing or proposed development and operation comport with optimum development of the waterway, as required by section 10(a) of the Act, 16 U.S.C. 803(a).

(d) *Exhibit C.* The third exhibit provides a proposed construction schedule for new construction on the project and a construction history for existing project works, including the dates of commencement and completion of construction and the date of first commercial operation.

(e) *Exhibit D.* This exhibit provides a statement of costs and financing. If the applicant seeks a new license for a proposed change in the existing state of project works or project operations which would result in a significant increase in the normal maximum surface area or elevation of an existing impoundment, and is not a municipality or a state, it must provide an estimate of the amount that would be payable (net investment) if the United States exercised its right to take over the project upon expiration of the license pursuant to section 14 of the Act, 16 U.S.C. 807.

If the applicant seeks an initial license, and any portion of the proposed project consists of previously constructed, unlicensed water power structures or facilities, a statement of the original cost of those project works and the corresponding land and water rights must be provided. The Commission is required by section 4(b) of the Act, 16 U.S.C. 797(b) to obtain information on the original cost of a project in order to determine the economic viability of the project and the quality of the applicant's plan.

Estimated costs of any proposed new development and estimated annual costs must also be provided, as well as information concerning the value of project power to the applicant and the sources and extent of financing and annual revenues available to meet the estimated costs. This information would enable the Commission to assess the economic and financial viability of the project.

(f) *Exhibit E.* This exhibit provides a report on the environmental resources of the project, the effects of the project on those resources, the proposed measures to mitigate the impacts or to protect and enhance the resources, and an environmental assessment of alternative sites, facility designs, and energy options. The greater detail required in this Exhibits E, compared to the Exhibit E for other projects, is justified on the basis that there are greater impacts associated with the construction of dams and the creation of impoundments, or any significant modification of an existing dam which would increase the maximum surface area or elevation of the impoundment or otherwise cause a significant environmental impact. The level of detail required should be commensurate with the nature and scope of the proposed project.

The Environmental Report contains a general description of the environment of the proposed project area and detailed analysis of water use and quality; fish, wildlife and botantical resources; historic and archaeological resources; socio-economic impacts; geological and soil resources; recreational resources; aesthetic resources; and, land uses.

An applicant must explain why it considers any measures proposed by any agency consulted not to be appropriate.

(g) *Exhibit F.* This exhibit consists of general design drawings of the principal project works. The drawings must show plans, elevations, profiles, and sections for each structure, and must be accompanied by sufficient information concerning structural strength and stability and other controlling factors to demonstrate that the structures are safe and adequate for their state function.

The applicant may file either preliminary or final design drawings with the application, and five copies of a

[20] Several statutes, including PURPA, require the Commission to consult with other agencies. Section 405 of PURPA provides that, prior to issuing a license for a project which fits the PURPA criteria, the Commission must "provide opportunity for consultation with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project." This duty will be carried out in accordance with our established procedures for consultation during the license application review process. Moreover, in certain circumstances, other agencies may have concurrent jurisdiction with respect to authorization of a project. Prior consultation by applicants will facilitate coordination with these other agencies. *See* section 10(c) of the Act, 16 U.S.C. 803(c).

[21] *See* section 9(b) of the Act, 16 U.S.C. 802(b).

supporting design report must accompany the drawings, describing the basis for the design depicted in the design drawings. The supporting design report must include design assumptions and the result of all design analyses in sufficient detail for staff to make an independent assessment of the safety and adequacy of the proposed project works. The final design drawings must be submitted prior to construction of the project.

(h) *Exhibit G.* The final exhibit is a map of the project. The map must show the geographical location of the project, the physical interrelationships of project works and other features, a project boundary enclosing the project purposes, and any lands of the United States that are within the project boundary.

The following table indicates how the information required under the former regulations has been eliminated or transferred to the new regulations:

Former regulations [1]	New regulations [2]
§ 4.40(e)	§ 4.41(b) Exhibit A.
§ 4.41 Required Exhibits:	
A	§ 4.41(a) Initial Statement.
B	§ 4.41(a) Initial Statement.
C	§ 4.41(a) Initial Statement.
D	§ 4.41(a) Initial Statement.
E	§ 4.41(a) Initial Statement.
F	§ 4.41(a) Initial Statement.
G	§ 4.41(e) Exhibit D.
H	§ 4.41(c) Exhibit B.
I	§ 4.41(b) Exhibit A, § 4.41(c) Exhibit B.
J	§ 4.41(h) Exhibit G.
K	§ 4.41(h) Exhibit G.
L	§ 4.41(g) Exhibit F.
M	§ 4.41(b) Exhibit A.
N	§ 4.41(e) Exhibit D.
O	§ 4.41(d) Exhibit C.
P	* * *
Q	* * *
R	§ 4.41(f) Exhibit E.
S	§ 4.41(f) Exhibit E.
T	§ 4.41(c) Exhibit B.
U	§ 4.41(c) Exhibit B.
V	§ 4.41(f) Exhibit E.
W	§ 4.41(f) Exhibit E.

[1] For proposed unconstructed major project.
[2] For major unconstructed projects and major modified projects.

B. Transmission Lines.

Sections 4.70 and 4.71, governing applications for license for transmission lines only, would be revised to direct applicants to use the exhibits provided in § 4.41 or § 4.61, depending upon the installed generating capacity of the project served by the transmission line and whether the line is constructed at the time of a license application. All applications for license for transmission line only must include an initial statement indicating the name and address of the applicant, the name of the project to which the transmission line will be connected, and the proposed market for the power.

An application for license of any unconstructed transmission line connected to a water power project with an installed capacity of more than 5 MW must include the exhibits required under § 4.41, to the extent that those requirements are appropriate to transmission lines. Applications for license for any line that is already constructed or that is unconstructed but proposed to be connected to a project with a capacity of 5 MW or less must include the short-form exhibits required under § 4.61, to the extent that those requirements are appropriate to transmission lines.

The following table illustrates the transfer of Exhibits from the existing to the revised regulations:

Former Regulations [1]	Now Regulations [1]
§ 4.71 Required Exhibits:	
A	§ 4.71(a) Initial Statement.
B	§ 4.71(a) Initial Statement.
C	§ 4.71(a) Initial Statement.
D	§ 4.71(a) Initial Statement.
J	§ 4.71(b), § 4.41(h) Exhibit G, § 4.61(d) Exhibit F, § 4.61(e) Exhibit G.
K	§ 4.71(b), § 4.41(h) Exhibit G, § 4.61(d) Exhibit F, § 4.61(e) Exhibit G.
M	§ 4.71(b), § 4.41(b) Exhibit A, § 4.61.
N	§ 4.71(b), § 4.41(e) Exhibit D.
O	§ 4.71(b), § 4.41(d) Exhibit C.
P	* * *
Q	* * *
V	§ 4.71(b), § 4.41(f) Exhibit E, § 4.61(c) Exhibit E.

[1] For transmission line only.

C. Amendment of License

Sections 5.1 through 5.4 are revoked, and the regulations governing applications for amendment of a license are transferred to a new subpart of Part 4 of the regulations. Under new Subpart L, all applications for amendment of a license must include an initial statement indicating the name, address, and telephone number of the applicant, a description of the proposed changes, and the reasons for the changes. Subpart L then refers applicants to §§ 4.41, 4.51, or 4.61 depending upon the installed generating capacity of the project and whether or not the dam and impoundment are constructed at the time the application is filed.

An application for amendment of a license for a major unconstructed or major modified project must include the exhibits required under § 4.41. An application for amendment of a license for a major project—existing dam must include the exhibits required under § 4.51. Lastly, an application for amendment of a license for a minor hydroelectric power project must include the exhibits required under § 4.61, but if the project is between 1.5 MW and 5 MW at the site of a dam proposed to be constructed after the issuance of the amendment, the application must include an Environmental Report (Exhibit E) from § 4.41.

The following table shows how exhibits in the existing regulations governing license amendments are transferred or eliminated:

Former regulations [1]	New regulations [1]
§ 5.1	§ 4.200, § 4.201.
§ 5.2	§ 4.201.
§ 5.3	§ 4.200.
§ 5.4	* * *

[1] For amendment of license.

V. Other Changes and Deletions

In addition to the described amendments to §§ 4.40, 4.41, 4.70, 4.71, and 5.1 through 5.4, the Commission further amends the existing regulations. Section 4.50, which defines the applicability of the major project—existing dam regulations, is amended to indicate that §§ 4.50 and 4.51 do not apply to those projects that fall within the category of major modified projects. These regulations govern such projects and are referenced in § 4.50(a). Section 4.31 would be amended to reflect the nomenclature of §§ 4.40 and 4.41.

Section 4.51 is amended to make clear the applicant's responsibilities with respect to pre-application consultation with Federal, state, and local agencies. The requirements of the consultation process are noted at the beginning of § 4.51 and explained in detail in the appropriate exhibits.

Section 16.7 is revised to refer applicants for a "nonpower license" to the requirements of § 4.51 ("major project—existing dam").

Finally, the rule revokes four existing provisions of the Commission's regulations. The title of Appendix A to Part 2, which prescribes the Environmental Report required of applicants for license under the Act, is revised because the rule contains a new environmental report (Exhibit E). With the adoption of the final rule, Appendix A no longer applies to any type of hydroelectric license. Section 131.2, which prescribes the proper form for an application for license, is revoked since the proposed rule contains a new application format. Similarly, § 131.5, which prescribes the form for license for transmission line only, the § 131.30, which prescribes the form for amendment of license, are revoked because the final rule contains new formats for both types of applications.

VI. Effective Date

This final rule is effective December 14, 1981.

(Federal Power Act, as amended, 16 U.S.C. 792–828c; Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12209, 3 CFR 142 (1979))

In consideration of the foregoing, the Commission amends Parts 2, 4, 5, 16, and 131 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective December 14, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. Part 2 is amended by revising the title of Appendix A to read:

Appendix A.—Guidelines for the Preparation of Environmental Reports for Applications Under the Federal Power Act, Other Than Applications for Preliminary Permit or License for Water Power Projects

* * * * *

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

2. Part 4 is amended in the Table of Contents by revising Subparts E and H, and adding a new Subpart L, to read as follows:

* * * * *

Subpart E—Application for License for Major Unconstructed Project and Major Modified Project

Sec.

4.40 Applicability and definitions.
4.41 Contents of application.

* * * * *

Subpart H—Application for License for Transmission Line Only

4.70 Applicability.
4.71 Contents of application.

* * * * *

Subpart L—Application for Amendment of License

4.200 Applicability.
4.201 Contents of application.
4.202 Alteration and extension of license.

3. Subpart E (§§ 4.40 and 4.41) is revised to read as follows:

* * * * *

Subpart E—Application for License for Major Unconstructed Project and Major Modified Project

§ 4.40 Applicability and definitions.

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license for a major unconstructed project that would have a total installed capacity of more than 5 megawatts, and any application for an initial or new license for a major modified project with a total installed capacity more than 5 megawatts. An applicant for license for any major unconstructed or major modified water power project that would have a total installed generating capacity of 5 megawatts or less must submit application under Subpart G (§§ 4.60 and 4.61).

(b) *Definitions.* For the purposes of this subpart:

(1) "Initial license" means any license for a water power project that is issued under the Federal Water Power Act of 1920 or the Federal Power Act.

(2) "Major unconstructed project" means any unlicensed water power project that is proposed to:

(i) Have a total installed generating capacity of more than 1.5 MW; and

(ii) Use the water power potential of a dam and impoundment which, at the time application is filed, has not been constructed.

(3) "Major modified project" means any major project—existing dam, as defined in § 4.50(b)(5) of this chapter, that is proposed to include:

(i) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or the normal maximum surface elevation of an existing impoundment; or

(ii) Any change in existing project works or operations that would result in a significant environmental impact.

(4) "New license" means any license, except an annual license issued under section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project.

(c) *Guidance from Commission staff.* A prospective applicant for a license for a major unconstructed project or major modified project may seek advice from the Commission's Division of Hydropower Licensing regarding the applicability of this subpart to its project [*see* § 4.31(g)], including the determinations whether any proposed repair, modification or reconstruction of an existing dam would result in a significant change in the normal maximum surface elevation of an existing impoundment, or whether any proposed change in existing project works or operation would result in a significant environmental impact.

(d) *Consultation.* As provided under § 4.41(f) of this chapter, the appropriate Federal, state and local resource agencies must be given the opportunity to comment on the proposed project prior to filing of the application for license for a major unconstructed or major modified project. Information from the consultation must be included in the Exhibit E, as appropriate.

§ 4.41 Contents of application.

Any application under this subpart must contain the following information in the form prescribed:

(a) *Initial statement.*

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION: APPLICATION FOR LICENSE FOR MAJOR UNCONSTRUCTED PROJECT OR MAJOR MODIFIED PROJECT

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for a [license or new license, as appropriate] for the [name of project] water power project, as described in the attached exhibits. [Specify any previous FERC project number designation.]

(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, business address, and telephone number of the applicant are:

______

______

(4) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate. *See* 16 U.S.C. 796].

(5)(i) The statutory or regulatory requirements of the state(s) in which the project would be located and that affect the project as proposed with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are: [provide citation and brief identification of the nature of each requirement; if the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of developing, transmitting, utilizing, or distributing power.]

(ii) The steps which the applicant has taken, or plans to take, to comply with each of the laws cited above are: [provide brief description for each requirement]

(b) *Exhibit A* is a description of the project. If the project includes more than one dam with associated facilities, each dam and the associated component parts must be described together as a discrete development. The description for each development must contain:

(1) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, powerhouses, tailraces or other structures proposed to be included as part of the project;

(2) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments to be included as part of the project;

(3) The number, type and rated capacity of any proposed turbines or generators to be included as part of the project;

(4) The number, length, voltage and interconnections of any primary transmission lines proposed to be included a part of the project [*See* 16 U.S.C. 796(11)];

(5) The description of any additional mechanical, electrical, and transmission equipment appurtenant to the project; and

(6) All lands of the United States, including lands patented subject to the provisions of section 24 of the Act, 16 U.S.C. 818, that are enclosed within the project boundary described under paragraph (h) of this section (Exhibit G), identified and tabulated by legal subdivisions of a public land survey, by the best available legal description. The tabulation must show the total acreage of the lands of the United States within the project boundary.

(c) *Exhibit B* is a statement of project operation and resource utilization. If the project includes more than one dam with associated facilities, the information must be provided separately for each discrete development. The exhibit must contain:

(1) A description of each alternative site considered in selecting of the proposed site;

(2) A description of any alternative facility designs, processes, and operations that were considered.

(3) A statement as to whether operation of the power plant will be manual or automatic, an estimate of the annual plant factor, and a statement of how the project will be operated during adverse, mean, and high water years;

(4) an estimate of the dependable capacity and average annual energy production in kilowatt-hours (or mechanical equivalent), supported by the following data:

(i) The minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, with a specification of any adjustment made for evaporation, leakage minimum flow releases (including duration of releases) or other reductions in available flow; a flow duration curve indicating the period of record and the guaging stations used in deriving the curve; and a specification of the critical streamflow used to determine the dependable capacity;

(ii) An area-capacity curve showing the gross storage capacity and usable storage capacity of the impoundment, with a rule curve showing the proposed operation of the impoundment and how the usable storage capacity is to be utilized;

(iii) The estimated hydraulic capacity of the powerplant in terms of flow and efficiency (cubic feet per second at one-half, full and best gate), and the corresponding generator output in kilowatts;

(iv) A tailwater rating curve; and

(v) A curve showing powerplant capability versus head and specifying maximum, normal, and minimum heads;

(5) A statement of system and regional power needs and the manner in which the power generated at the project is to be utilized, including the amount of power to be used on-site, if any, supported by the following data:

(i) Load curves and tabular data, if appropriate;

(ii) Details of conservation and rate design programs and their historic and projected impacts on system loads; and

(iii) The amount of power to be sold and the identity of proposed purchaser(s); and

(6) A statement of the applicant's plans for future development of the project or of any other existing or proposed water power project on the affected stream or other body of water, indicating the approximate location and estimated installed capacity of the proposed developments.

(d) *Exhibit C* is a proposed construction schedule for the project. The information required may be supplemented with a bar chart. The construction schedule must contain:

(1) The proposed commencement and completion dates of any new construction, modification, or repair of major project works;

(2) The proposed commencement date of first commercial operation of each new major facility and generating unit; and

(3) If any portion of the proposed project consists of previously constructed, unlicensed water power structures or facilities, a chronology of original completion dates of those structures or facilities specifying dates (approximate dates must be identified as such) of:

(i) Commencement and completion of construction or installation;

(ii) Commencement of first commercial operation; and

(iii) Any additions or modifications other than routine maintenance.

(e) *Exhibit D* is a statement of project costs and financing. The exhibit must contain:

(1) A statement of estimated costs of any new construction, modification, or repair, including:

(i) The cost of any land or water rights necessary to the development;

(ii) The total cost of all major project works;

(iii) Indirect construction costs such as costs of construction equipment, camps, and commissaries;

(iv) Interest during construction; and

(v) Overhead, construction, legal expenses, and contingencies;

(2) If any portion of the proposed project consists of previously constructed, unlicensed water power structures or facilities, a statement of the original cost of those structures or facilities specifying for each, to the extent possible, the actual or approximate total costs (approximate costs must be identified as such) of:

(i) Any land or water rights necessary to the existing project works;

(ii) All major project works; and

(iii) Any additions or modifications other than routine maintenance;

(3) If the applicant is a licensee applying for a new license, and is not a municipality or a state, an estimate of the amount which would be payable if the project were to be taken over pursuant to section 14 of the Federal Power Act, 16 U.S.C. 807, upon expiration of the license in effect including:

(i) Fair value;

(ii) Net investment; and

(iii) Severance damages;

(4) A statement of the estimated average annual cost of the total project as proposed, specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

(i) Cost of capital (equity and debt);

(ii) Local, state, and Federal taxes;

(iii) Depreciation or amortization, and

(iv) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies;

(5) A statement of the estimated annual value of project power based on a showing of the contract price for sale of power or the estimated average annual cost of obtaining an equivalent amount of power (capacity and energy) from the lowest cost alternative source of power, specifying any projected changes in the costs (life-cycle costs) of power from that source over the estimated financing or licensing period if the applicant takes such changes into account;

(6) A statement describing other electric energy alternatives, such as gas, oil, coal and nuclear-fueled powerplants and other conventional and pumped storage hydroelectric plants;

(7) A statement and evaluation of the consequences of denial of the license application and a brief perspective of what future use would be made of the proposed site if the proposed project were not constructed; and

(8) A statement specifying the sources and extent of financing and annual revenues available to the applicant to meet the costs identified in paragraphs (e) (1) and (4) of this section.

(f) *Exhibit E* is an Environmental Report. Information provided in the report must be organized and referenced according to the itemized subparagraphs below. If information required is not applicable, the applicant must briefly explain why it is not applicable. For application for license for a major unconstructed or major modified project (more than 5 MW) submitted under this subpart or for applications for such projects (5 MW or less) submitted under §§ 4.60 and 4.61 of this part, Exhibit E must be prepared in accordance with the following consultation provisions, after consultation with appropriate Federal, state, and local resource agencies, as indicated in this paragraph. Consultation must be documented by appending to the report a letter from each agency consulted that indicates the nature, extent, and results of consultation. If any agency that an applicant is required to consult fails to consult or fails to provide documentation of the consultation process within a reasonable time after the applicant informs the agency of the proposed project and requests to consult, the applicant may submit a summary of the consultation or attempts to consult, including any recommendations of the agency. An applicant must allow at least 60 days for consultation and documentation, unless the agency indicates that it has no comment. A list of agencies to be consulted can be obtained from the Director of the Commission's Division of Hydropower Licensing. The Environmental Report must contain the following information, *commensurate with the scope of the project:*

(1) *General Description of the Locale.* The applicant must provide a general description of the environment of the proposed project area and its immediate vicinity. The description must include location and general information helpful to an understanding of the environmental setting.

(2) *Report on Water Use and Quality.* The report must discuss water quality and flows and contain baseline data sufficient to determine the normal and seasonal variability, the impacts expected during construction and operation, and any mitigative, enhancement, and protective measures proposed by the applicant. The report must be prepared in consultation with the state and Federal agencies with responsibility for management of water quality and quantity in the affected stream or other body of water. The report must include:

(i) A description of existing instream flow uses of streams in the project area that would be affected by construction and operation; estimated quantities of water discharged from the proposed project for power production; and any existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes;

(ii) A description of the seasonal variation of existing water quality for any stream, lake, or reservoir that would be affected by the proposed project, including (as appropriate) measurements of: significant ions, chlorophyll *a*, nutrients, specific conductance, pH, total dissolved solids, total alkalinity, total hardness, dissolved oxygen, bacteria, temperature, suspended sediments, turbidity and vertical illumination;

(iii) A description of any existing lake or reservoir and any of the proposed project reservoirs including surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate classification, and gradient for streams directly affected by the proposed project;

(iv) A quantification of the anticipated impacts of the proposed construction and operation of project facilities on water quality and downstream flows, such as temperature, turbidity and nutrients;

(v) A description of measures recommended by Federal and state agencies and the applicant for the purpose of protecting or improving water quality and stream flows during project construction and operation; an explanation of why the applicant has rejected any measures recommended by an agency; and a description of the applicant's alternative measures to protect or improve water quality stream flow;

(vi) A description of groundwater in the vicinity of the proposed project, including water table and artesian conditions, the hydraulic gradient, the degree to which groundwater and surface water are hydraulically connected, aquifers and their use as water supply, and the location of springs, wells, artesian flows and disappearing streams; a description of anticipated impacts on groundwater and measures proposed by the applicant and others for the mitigation of impacts on groundwater; and

(vii) As an appendix, either:

(A) A copy of the water quality certificate (or agency statement that such certification is waived) as described in Section 401 of the Federal Water Pollution Control Act (Clean Water Act) [*see* 33 U.S.C. 134]; or

(B) A copy of a dated letter from the applicant to the appropriate agency requesting such certification.

(3) *Report on Fish, Wildlife, and Botanical Resources.* The applicant must provide a report that describes the fish, wildlife, and botanical resources in the vicinity of the proposed project; expected impacts of the project on these resources; and mitigation, enhancement, or protection measures proposed by the applicant. The report must be prepared in consultation with the state agency or agencies with responsibility for these resources, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service (if the proposed project may affect anadromous, estuarine, or marine fish resources), and any state or Federal agency with managerial authority over any part of the proposed project lands. The report must contain:

(i) A description of existing fish, wildlife, and plant communities of the proposed project area and its vicinity, including any downstream areas that may be affected by the proposed project and the area within the transmission line corridor or right-of-way. A map of vegetation types should be included in the description. For species considered important because of their commercial or recreational value, the information provided should include temporal and spatial distributions and densities of such species. Any fish, wildlife, or plant species proposed or listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service [*see* 50 CFR 17.11 and 17.12] must be identified;

(ii) A description of the anticipated impacts on fish, wildlife and botanical resources of the proposed construction and operation of project facilities, including possible changes in size, distribution, and reproduction of essential population of these resources and any impacts on human utilization of these resources;

(iii) A description of any measures or facilities recommended by state or Federal agencies for the mitigation of impacts on fish, wildlife, and botanical resources, or for the protection or enhancement of these resources, the impact on threatened or endangered species, and an explanation of why the applicant has determined any measures or facilities recommended by an agency are inappropriate as well as a description of alternative measures proposed by applicant to protect fish, wildlife and botanical resources; and

(iv) The following materials and information regarding any mitigation measures or facilities, identified under clause (iii), proposed for implementation or construction:

(A) Functional design drawings;

(B) A description of proposed operation and maintenance procedures for any proposed measures or facilities;

(C) An implementation, construction and operation schedule for any proposed measures or facilities;

(D) An estimate of the costs of construction, operation, and maintenance of any proposed facilities or implementation of any measures;

(E) A statement of the sources and amount of financing for mitigation measures or facilities; and

(F) A map or drawing showing, by the use of shading, crosshatching or other symbols, the identity and location of any proposed measures or facilities.

(4) *Report on Historic and Archaeological Resources.* The applicant must provide a report that discusses any historical and archaeological resources in the proposed project area, the impact of the proposed project on those resources and the avoidance, mitigation, and protection measures proposed by the applicant. The report must be prepared in consultation with the State Historic Preservation Officer (SHPO) and the National Park Service of the U.S. Department of Interior. The report must contain:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the specified state and Federal agencies for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that would be affected by construction and operation of the proposed project, together with a statement of the applicant's position regarding the acceptability of the recommendations;

(ii) The results of surveys, inventories, and subsurface testing work recommended by the state and Federal agencies listed above, together with an explanation by the applicant of any variations from the survey, inventory, or testing procedures recommended;

(iii) An identification (without providing specific site or property locations) of any historic or archaeological site in the proposed project area, with particular emphasis on sites or properties either listed in, or recommended by the SHPO for inclusion in, the National Register of Historic Places that would be affected by the construction of the proposed project;

(iv) A description of the likely direct and indirect impacts of proposed project construction or operation on sites or properties either listed in, or recommended as eligible for, the National Register of Historic Places;

(v) A management plan for the avoidance of, or mitigation of, impacts on historic or archaeological sites and resources based upon the recommendations of the state and Federal agencies listed above and containing the applicant's explanation of variations from those recommendations; and

(vi) The following materials and information regarding the mitigation measures described under paragraph (f)(4)(v) of this section:

(A) A schedule for implementing the mitigation proposals;

(B) An estimate of the cost of the measures; and

(C) A statement of the sources and extent of financing.

(vii) The applicant must provide five copies (rather than the fourteen copies required under § 4.31(b) of the Commission's regulations) of any survey, inventory, or subsurface testing reports containing specific site and property information, and including maps and photographs showing the location and any required alteration of historic and archaeological resources in relation to proposed project facilities.

(5) *Report on Socio-Economic Impacts.* The applicant must provide a report which identifies and quantifies the impacts of constructing and operating the proposed project on employment, population, housing, personal income, local governmental services, local tax revenues and other factors within the towns and counties in the vicinity of the proposed project. The report must include:

(i) A description of the socio-economic impact area;

(ii) A description of employment, population and personal income trends in the impact area;

(iii) An evaluation of the impact of any substantial in-migration of people on the impact area's governmental facilities and services, such as police, fire, health and educational facilities and programs;

(iv) On-site manpower requirements and payroll during and after project construction, including a projection of total on-site employment and construction payroll provided by month;

(v) Numbers of project construction personnel who:

(A) Currently reside within the impact area;

(B) Would commute daily to the construction site from places situated outside the impact area; and

(C) Would relocate on a temporary basis within the impact area;

(vi) A determination of whether the existing supply of available housing within the impact area is sufficient to meet the needs of the additional population;

(vii) Numbers and types of residences and business establishments that would be displaced by the proposed project, procedures to be utilized to acquire these properties, and types and amounts of relocation assistance payments that would be paid to the affected property owners and businesses; and

(viii) A fiscal impact analysis evaluating the incremental local government expenditures in relation to the incremental local government revenues that would result from the construction of the proposed project. Incremental expenditures may include, but are not be limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(6) *Report on Geological and Soil Resources.* The applicant must provide a report on the geological and soil resources in the proposed project area and other lands that would be directly or indirectly affected by the proposed action and the impacts of the proposed project on those resources. The information required may be supplemented with maps showing the location and description of conditions. The report must contain:

(i) A detailed description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources;

(ii) A detailed description of the soils, including the types, occurrence, physical and chemical characteristics, erodability and potential for mass soil movement;

(iii) A description showing the location of existing and potential geological and soil hazards and problems, including earthquakes, faults, seepage, subsidence, solution cavities, active and abandoned mines, erosion, and mass soil movement, and an identificaiton of any large landslides or potentially unstable soil masses which could be aggravated by reservior fluctuation;

(iv) A description of the anticipated erosion, mass soil movement and other impacts on the geological and soil resources due to construction and operation of the proposed project; and

(v) A description of any proposed measures of facilities for the mitigtion of impacts on soils.

(7) *Report on Recreational Resources.* The applicant must prepare a report containing a proposed recreation plan describing utilization, design and development of project recreational facilities, and public access to the project area. Development of the plan should include consideration of the needs of the physically handicapped. Public and private recreational facilities provided by others that would abut the project should be noted in the report. The report must be prepared in consultation with appropriate local, regional, state and Federal recreation agencies and planning commissions, the National Park Service of the U.S. Department of the Interior, and any other state or Federal agency with managerial responsibility for any part of the project lands. The report must contain:

(i) A description of any areas within or in the vicinity of the proposed project boundary that are included in, or have been designated for study for inclusion in:

(A) The National Wild and Scenic Rivers Systems (*see* 16 U.S.C. § 1271);

(B) The National Trails System (*see* 16 U.S.C. 1241); or

(C) A wilderness area designated under the Wilderness Act (*see* 16 U.S.C. 1132);

(ii) A detailed description of existing recreational facilities within the project vicinity, and the public recreational facilities which are to be provided by the applicant at its sole cost or in cooperation with others no later than 3 years from the date of first commercial opertion of the proposed project and those recreation facilities planned for future development based on anticipated demand. When public recreation facilities are to be provided by other entities, the applicant and those entities should enter into an agreement on the type of facilities to be provided and the method of operation. Copies of agreements with cooperating entities are to be appended to the plan;

(iii) A provision for a shoreline buffer zone that must be within the project boundary, above the normal maximum surface elevation of the project reservoir, and of sufficient width to allow public access to project lands and waters and to protect the scenic, public recreational, cultural, and other environmental values of the reseroir shoreline;

(iv) Estimates of existing and future recreational use at the project, in daytime and overnight visitation (recreation days), with a description of the methodology used in developing these data;

(v) A development schedule and cost estimates of the construction, operation, and maintenance of existing, initial, and future public recreational facilities, including a statement of the source and extent of financing for such facilities;

(vi) A description of any measures or facilities recommended by the agencies consulted for the purpose of creating, preserving, or enhancing recreational opportunities at the proposed project, and for the purpose of ensuring the safety of the public in its use of project lands and waters, including an explanation of why the applicant has rejected any measures or facilities recommended by an agency; and

(vii) A drawing or drawings, one of which describes the entire project area, clearly showing:

(A) The location of project lands, and the types and number of existing recreational facilities and those proposed for initial development, including access roads and trails, and facilities for camping, picnicking, swimming, boat docking and launching, fishing and hunting, as well as provisions for sanitation and waste disposal;

(B) The location of project lands, and the type and number of recreational facilities planned for future development;

(C) The location of all project lands reserved for recreational uses other than those included in paragraphs (f)(7)(vii) (A) and (B) of this section; and

(D) The project boundary (excluding surveying details) of all areas designated for recreational development, sufficiently referenced to the appropriate Exhibit G drawings to show that all lands reserved for existing and future public recreational development and the shoreline buffer zone are included within the project boundary. Recreational cottages, mobile homes and year-round residences for private use are not to be considered as public recreational facilities, and the lands on which these private facilities are to be developed are not to be included within the proposed project boundary.

(8) *Report on Aesthetic Resources.* The applicant must provide a report that describes the aesthetic resources of the proposed project area, the expected impacts of the project on these resources, and the mitigation, enhancement or protection measures proposed. The report must be prepared following consultation with Federal, state, and local agencies having managerial responsibility for any part of the proposed project lands or lands abutting those lands. The report must contain:

(i) A description of the aesthetic character of lands and waters directly and indirectly affected by the proposed project facilities;

(ii) A description of the anticipated impacts on aesthetic resources from construction activity and related equipment and material, and the subsequent presence of proposed project facilities in the landscape;

(iii) A description of mitigative measures proposed by the applicant, including architectural design, landscaping, and other reasonable treatment to be given project works to preserve and enhance aesthetic and related resources during construction and operation of proposed project facilities; and

(iv) Maps, drawings and photographs sufficient to provide an understanding of the information required under this subparagraph. Maps or drawings may be consolidated with other maps or drawings required in this exhibit and must conform to the specifications of § 4.32.

9. *Report on Land Use.* The applicant must provide a report that describes the existing uses of the proposed project lands and adjacent property, and those land uses which would occur if the project is constructed. The report may reference the discussions of land uses in other sections of this exhibit. The report must be prepared following consultation with local and state zoning or land management authorities, and any Federal or state agency with managerial responsibility for the proposed project

or abutting lands. The report must include:

(i) A description of existing land use in the proposed project area, including identification of wetlands, floodlands, prime or unique farmland as designated by the Soil Conservation Service of the U.S. Department of Agriculture, the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, and lands owned or subject to control by government agencies;

(ii) A description of the proposed land uses within and abutting the project boundary that would occur as a result of development and operation of the project; and

(iii) Aerial photographs, maps, drawings or other graphics sufficient to show the location, extent and nature of the land uses referred to in this section.

(10) *Alternative Locations, Designs, and Energy Sources.* The applicant must provide an environment assessment of the following:

(i) Alternative sites considered in arriving at the selection of the proposed project site;

(ii) Alternative facility designs, processes, and operations that were considered and the reasons for their rejection;

(iii) Alternative electrical energy sources, such as gas, oil, coal, and nuclear-fueled power plants, purchased power or diversity exchange, and other conventional and pumped-storage hydroelectric plants; and

(iv) The overall consequences if the license application is denied.

(11) *List of Literature.* Exhibit E must include a list of all publications, reports, and other literature which were cited or otherwise utilized in the preparation of any part of the environmental report.

(g) *Exhibit F* consists of general design drawings of the principal project works described under paragraph (b) of this section (Exhibit A) and supporting information used as the basis of design. If the Exhibit F submitted with the application is preliminary in nature, applicant must so state in the application. The drawings must conform to the specifications of § 4.32.

(1) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

(i) Plans (overhead view);

(ii) Elevations (front view);

(iii) Profiles (side view); and

(iv) Sections.

(2) The applicant may submit preliminary design drawings with the application. The final Exhibit F may be submitted during or after the licensing process and must show the precise plans and specifications for proposed structures. If the project is licensed on the basis of preliminary designs, the applicant must submit a final Exhibit F for Commission approval prior to commencement of any construction of the project.

(3) *Supporting Design Report.* The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed. The report must include:

(i) An assessment of the suitability of the site and the reservoir rim stability based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type of dam structure suitable for the site;

(ii) Copies of boring logs, geology reports and laboratory test reports;

(iii) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;

(iv) Stability and stress analyses for all major structures and critical abutment slopes under all probable loading conditions, including seismic and hydrostatic forces induced by water loads up to the Probable Maximum Flood as appropriate; and

(v) The bases for determination of seismic loading and the Spillway Design Flood in detail sufficient detail to independent staff evaluation.

(4) The applicant must submit five copies (not fourteen copies as required under § 4.31(b) of this part) of the supporting design report described in paragraph (g)(3) of this section at the time preliminary and final design drawings are submitted to the Commission for review. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report."

(h) *Exhibit G* is a map of the project that must conform to the specifications of § 4.32. If more than one sheet is used, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicating that portion of the project depicted on that sheet. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within a reasonable period following the completion of project construction, a final Exhibit G showing the extent of such changes. The map must show:

(1) *Location of the project and principal features.* The map must show 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 other permanent monuments or objects, such as roads, transmission lines or other structures, that can be noted on the map and recognized in the field. The map must also show the relative locations and physical interrelationships of the principal project works and other features described under paragraph (b) of this section (Exhibit A).

(2) *Project boundary.* The map must show a project boundary enclosing all of the principal project works and other features described under paragraph (b) of this section (Exhibit A). If accurate survey information is not available at the time the license application is filed, the applicant must so state and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as flowage, public recreation, shoreline control, or protection of environmental resources. If the boundary is on land covered by a public land survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(i) *Impoundments.* The boundary around a project impoundment must be no more than 200 feet (horizontal measurement) from the exterior margin of the reservoir, defined by the normal maximum surface elevation, except where deviations may be necessary in describing the boundary according to the method used, or where additional lands are necessary for project purposes, such as public recreation. The boundary may be described by any one or a combination of the following methods:

(A) Contour lines, including the contour elevation (preferred method); or

(B) Specified courses and distances (metes and bounds); or

(C) If the project lands are covered by a public land survey, lines parallel to the lines of the survey.

(ii) *Continuous features.* The boundary around linear project features such as access roads, transmission lines and conduits may be described by specified distances from center lines or offset lines of the survey. The width of such corridors must not exceed 200 feet, unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet, with information showing the sequence of continuous sections.

(iii) *Noncontinuous features.* The boundary around noncontinuous project works such as dams, spillways and powerhouses must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project, or for other specified project purposes, such as public recreation or protection of environmental resources. The boundary may be described by any one or a combination of the following methods:

(A) Contour lines; or

(B) Specified courses and distances; or

(C) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey.

(3) *Federal Lands.* Any public lands and reservations of the United States ("Federal lands") [*see* 16 U.S.C. 796 (1) and (2)] that are within the project boundary, such as lands administered by the U.S. Forest Service, Bureau of Land Management, or National Park Service, or Indian tribal lands, and the boundaries of those Federal lands, must be identified as such on the map by:

(i) Legal subdivisions of a public land survey of the affected area (a protraction of identified township and section lines is sufficient for this purpose); and

(ii) The Federal agency, identified by symbol or legend, that maintains or manages each identified subdivision of the public land survey within the project boundary; or

(iii) In the absence of a public land survey, the location of the Federal lands according to the distances and directions from fixed monuments or physical features. When a Federal survey monument or a Federal bench mark will be destroyed or rendered unusable by the construction of project works, at least two permanent, marked witness monuments or bench marks must be established at accessible points. The maps show the location (and elevation, for bench marks) of the survey monument or bench mark which will be destroyed or rendered unusable, as well as of the witness monuments or bench marks. Connecting courses and distances from the witness monuments or bench marks to the original must also be shown.

(4) *Non-Federal Lands.* For those lands within the project boundary not identified under paragraph (h)(3) of this section, the map must identify by legal subdivision:

(i) Lands owned in fee by the applicant and lands that the applicant plans to acquire in fee; and

(ii) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired to be required by easement or lease.

4. Section 4.31 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 4.31 Acceptance for filing or rejection.

(a) * * *

(2) * * *

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

* * * * *

5. Section 4.50 is amended by revising paragraph (a) to read as follows:

§ 4.50 Applicability and definitions.

(a) *Applicability.* (1) Except as provided in paragraph (a)(2) of this section, the provisions of this subpart apply to any application for either an initial license or new license for a major project—existing dam that is proposed to have a total installed capacity of more than 5 megawatts.

(2) This subpart does not apply to any major project—existing dam (*see* § 4.40) that is proposed to entail or include:

(i) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or normal maximum surface elevation of an existing impoundment; or

(ii) Any new development or change in project operation that would result in a significant environmental impact.

(3) An applicant for license for any major project—existing dam that would have a total installed capacity of 5 megawatts or less must submit application under Subpart G (§§ 4.60 and 4.61.).

* * * * *

§ 4.50 [Amended]

6. Section 4.50 is amended in paragraph (b)(5) by adding the word "and" at the end of clause (i), by deleting the semicolon at the end of clause (ii), and inserting a period in lieu thereof, and by removing clauses (iii) and (iv).

7. Section 4.51 is amended by revising the introductory statement and paragraph (f) to read as follows:

§ 4.51 Contents of application.

An application for license under this subpart must contain the following information in the form specified. As provided in paragraph (f) of this section, the appropriate Federal, state, and local resource agencies must be given the opportunity to comment on the proposed project, prior to filing of the application for license for major project—existing dam. Information from the consultation process must be included in this Exhibit E, as appropriate.

* * * * *

(f) *Exhibit E* is an environmental report. Information provided in the report must be organized and referenced according to the provisions of this paragraph. If a request for information is not applicable, the applicant must briefly explain why it does not apply. The Environmental Report is prepared after consultation with appropriate Federal, state and local resource agencies. If any agency that an applicant is required to consult fails to consult or fails to provide documentation of the consultation process within a reasonable time after the applicant informs the agency of the proposed project and requests to consult, the applicant may submit a summary of the consultation or attempts to consult, including any recommendations of the agency. An applicant must allow at least 60 days for this consultation and documentation, unless the agency indicates within that period that it has no comment. A list of agencies to be consulted can be obtained from the Director of the Commission's Division of Hydropower Licensing. The Environmental Report must contain the following information, *commensurate with the scope of the proposed project:*

* * * * *

8. Subpart H (§§ 4.70 and 4.71) is revised to read as follows:

* * * * *

Subpart H—Application for License for Transmission Line only

* * * * *

Subpart H—Application for License for Transmission Line only

§ 4.70 Applicability.

This subpart applies to any application for license issued solely for a transmission line that transmits power from a licensed water power project or other hydroelectric project authorized by Congress to the point of junction with the distribution system or with the interconnected primary transmission system.

§ 4.71 Contents of application.

An application for license for transmission line only must contain the following information in form specified. As provided in the appropriate Exhibit E requirements, the appropriate Federal, state, and local resource agencies must be given the opportunity to comment on the proposed project prior to filing of the application. A list of the agencies to be consulted may be obtained from the Director of the Commission's Division of Hydropower licensing.

(a) *Initial statement.*

BEFORE THE FEDERAL ENERGY REGULATION COMMISSION; APPLICATION FOR LICENSE FOR TRANSMISSION LINE ONLY

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for a [license or new license, as appropriate] for the [name of project] transmission line only, as described in the attached exhibits, that is connected with FERC Project No. ———, for which a license [was issued, or application was made, as appropriate] on the ——— day of ————, 19——.

(2) The location of the transmission line would be:

State or territory: ————————

County: ————————

Township or nearby town: ————————

(3) The proposed use or market for the power to be transmitted.

(4) The exact name, business address, and telephone number of the applicant are:

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(5) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate, *see* 16 U.S.C. 796].

(6)(i) [For any applicant which, at the time of application for license for transmission line only, is a non-licensee.] The statutory or regulatory requirements of the state(s) in which the project would be located and that affect the project as proposed with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting, and distribution power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are: [provide citation and brief identification of the nature of each requirement; if the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or, if such laws or documents are not clear, other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of developing, transmitting, utilizing, or distributing power.]

(ii) [For any applicant which, at the time of application for license for transmission line only, is a licensee.] The statutory or regulatory requirements of the state(s) in which the transmission line would be located and that affect the project as proposed with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes, are: [provide citations and brief identification of the nature of each requirement.]

(iii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are: [provide brief descriptions for each law.]

(b) *Required exhibits.* The application must contain the following exhibits, as appropriate:

(1) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of more than 5 MW—Exhibits A, B, C, D, E, F, and G under § 4.41 of this chapter;

(2) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of 5 MW or less—Exhibits E, F, and G under § 4.61 of this chapter; and

(3) For any transmission line that, at the time the application is filed, has been constructed and is proposed to be connected to any licensed water power project—Exhibits E, F, and G under § 4.61 of this chapter.

9. Part 4 is amended by adding a new Subpart L to read as follows:

* * * * *

Subpart L—Application for Amendment of License

Sec.
4.200 Applicability.
4.201 Contents of application.
4.202 Alteration and extension of license.

* * * * *

Subpart L—Application for Amendment of License

§ 4.200 Applicability.

This part applies to any application for amendment of a license, if the applicant seeks to:

(a) Make a change in the physical features of the project or its boundary, or make an addition, betterment, abandonment, or conversion, of such character as to constitute an alteration of the license;

(b) Make a change in the plans for the project under license; or

(c) Extend the time fixed on the license for commencement or completion of project works.

§ 4.201 Contents of application.

An application for amendment of a license for a water power project must contain the following information in the form specified. As provided in the appropriate Exhibit E requirements, the appropriate Federal, state, and local resource agencies must be given the opportunity to comment on the proposed amendment prior to filing of the application for amendment of license. A list of the agencies to be consulted can be obtained from the Director of the Commission's Division of Hydropower licensing.

(a) *Initial statement.*

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION; APPLICATION FOR AMENDMENT OF LICENSE

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for an amendment of license for the [name of project] water power project.

(2) The exact name, business address, and telephone number of the applicant are:

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————————

(3) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate, see 16 U.S.C. 796], licensee for the water power project, designated as Project No. ——— in the records of the Federal Energy Regulatory Commission, issued on the ——— day of ————, 19——.

(4) The amendments of license proposed and the reason(s) why the proposed changes are necessary, are: [Give a statement or description]

(5)(i) The statutory or regulatory requirements of the state(s) in which the project would be located that affect the project as proposed with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes are: [provide citation and brief identification of the nature of each requirement.]

(ii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are: [provide brief description for each law.]

(b) *Required exhibits.* The application must contain the following exhibits, or revisions or additions to any exhibits on file, *commensurate with the scope of the licensed project:*

(1) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of more than 5 MW—Exhibits A, B, C, D, E, F, and G under § 4.41 of this chapter;

(2) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 1.5 MW or less—Exhibits E, F, and G under § 4.61 of this chapter;

(3) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 5 MW or less, but more than 1.5 MW—Exhibits F and G under § 4.61 of this chapter, and Exhibit E under § 4.41 of this chapter;

(4) For amendment of a license for a water power project that, at the time the application for amendment is filed, has been constructed, and is proposed to have a total installed generating capacity of 5 MW or less—Exhibit E, F and G under § 4.61 of this chapter;

(5) For amendment of a license for a water power project that, at the time the application is filed, has been constructed and is proposed to have a total installed generating capacity of more than 5 MW—Exhibits A, B, C, D, E, F, and G under § 4.61 of this chapter.

(c) *Consultation and waiver.* (1) If an applicant for license under this subpart believes that any exhibit required under paragraph (b) of this section is inappropriate with respect to the particular amendment of license sought by the applicant, a petition for waiver of the requirement to submit such exhibit may be submitted to the Commission under § 1.7 of this chapter, after consultation with the Commission's Division by Hydropower Licensing.

(2) A licensee wishing to file an application for amendment of license under this section may seek advice from Commission staff whether the proposed amendment is consistent with the scope of the existing licensed project.

§ 4.202 Alteration and extension of license.

(a) If it is determiend that approval of the application for amendment of license would constitute a significant alteration of license pursuant to section 6 of the Act, 16 U.S.C. 799, public notice of such application shall be given at least 30 days prior to action upon the application.

(b) Any application for extension of time fixed in the license for commencement or completion of construction of project works must be filed with the Commission not less than three months prior to the date or dates so fixed.

PART 5—[REMOVED]

10. Part 5 is removed.

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

11. Section 16.7 is amended by revising the introductory statement to read as follows:

§ 16.7 Application for non-power license.

Each application for a "non-power license" must conform to the requirements of § 4.51 of this chapter and must include the information specified in paragraphs (a) through (c) of this section. The application and all accompanying exhibits must be filed in accordance with § 4.31 of this chapter.

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PART 131—FORMS

§ 131.2 [Removed]

12. Section 131.2 is removed.

§ 131.5 [Removed]

13. Section 131.5 is removed.

[FR Doc. 81-32660 Filed 11-12-81; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Parts 4, 16, 131, and 375

[Docket No. RM81-10; Order No. 185]

Application for License for Minor Water Power Projects and Major Water Projects 5 Megawatts or Less

Issued: November 6, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts regulations governing so-called "short-form" applications for license for minor water power project and any water power project with an installed generating capacity of 5 megawatts or less. The requirements in the Commission's existing regulations are clarified by these regulations and the threshold installed capacity requirement for use of the short-form application is raised. This rulemaking is designed to expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications.

DATE: This rule is effective December 14, 1981.

FOR FURTHER INFORMATION CONTACT:

Ronald Corso, Director, Division of Hydropower Licensing, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capital Street, NE, Washington, D.C. 20426 (202) 379-9171;

James Hoecker, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE, Washington, D.C. 20426 (202) 357-9342.

SUPPLEMENTARY INFORMATION:

Order No. 185

Issued: November 6, 1981.

In the matter of regulations governing applications for license for minor water power projects and major water power projects 5 megawatts or less.

The Federal Energy Regulatory Commission (Commission) amends the regulations governing applications for licenses under Part I of the Federal Power Act (Act) for water power projects with an installed generating capacity of 5 megawatts or less. The rule also revises §§ 4.60 and 4.61, and affects §§ 4.31, 4.50, 4.51, 16.12, 131.6, and 375.308 of the Commisson's regulations.

I. Background and Summary

On September 5, 1978, the Commission initiated the first phase of a program to revise its regulations to simplify and expedite hydropower licensing by adopting regulations governing so-called "short-form" application for license.[1] The Commission continued that program by completing additional rulemakings to revise the regulations governing the authorization of hydropower development.[2]

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[1] Order No. 11, "Regulations Governing Applications for Short-form License (Minor)" (Docket No. RM78-9), issued September 5, 1978, 43 FR 40215, September 11, 1978.

[2] Order No. 54, "Regulations Prescribing General Provisions for Preliminary Permit and License Applications; and Regulations Governing Applications for Amendments to and Cancellation of Permits" (Docket No. RM79-23), issued October 22, 1979, 44 FR 61328, October 25, 1979.

Order No. 59, "Regulations Governing Applications for License for Major Projects—Existing Dam" (Docket No. RM79-36), issued December 18, 1979, 45 FR 75383, December 20, 1979;

Order No. 76, "Exemptions of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act" (Docket No. RM79-35), issued April 18, 1980, 45 FR 28085, April 28, 1980;

Order No. 106, "Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM80-65), issued November 7, 1980, 45 FR 76115, November 18, 1980.

The Commission believes that further changes in the abbreviated license application requirements would expedite hydropower development. Consequently, it issued a Notice of Proposed Rulemaking in this docket on January 21, 1981 to expand the applicability of the "short-form" application to all projects of 5 megawatts or less, among other things.[3] The final rule established pursuant to that notice is designed to simplify the regulations and bring them into general conformance with other revisions to the license application regulations. Specifically, the exhibits required as attachments to an application have been redesignated as Exhibit A (description of the project and mode of operation), Exhibit E (Environmental Report)[4], Exhibit F (project drawings), and Exhibit G (maps). Most important, the final rule expands the applicability of the abbreviated or "short-form" application provisions to include all minor water projects and major water power projects with an installed generating capacity of 5 megawatts or less.[5] However, the Commission recognizes that proposed major (more than 1.5 megawatts) projects that have, at the time of application for license, no previously constructed dam or impoundment, and major modified projects that utilize existing dams but involve construction or operation changes that would significantly increase the maximum surface area or elevation of an existing impoundment, will usually have different and more substantial environmental impacts than will other major water power projects. The Commission will therefore require an application for license for such major unconstructed or major modified projects with an installed capacity between 1.5 and 5 megawatts to include an Environmental Report under § 4.41(f), rather than the short-form Exhibit E under § 4.61(c) which is otherwise applicable to all projects under 5 megawatts.

II. Comment Analysis

Commenters generally favor simplifying the license application requirements for minor projects and major projects 5 megawatts or less as proposed. However, some disagreement was expressed with respect to specific provisions of the rule, as follows.

A. Consultation Requirements

Several commenters state that the consultation requirements of the new rules do not define what is a "reasonable" time period within which resource agencies that must be contacted must in turn respond with pre-application comments on the proposed project. The proposed rule states that that period may in no case be less than 30 days. However, the Commission has revised the final rule to clarify that the applicant need only wait a specified time period after requesting that an agency consult before the applicant submits an application and substitutes its own documentation of the consultation process for that requested from the agency. After 30 days, the applicant may submit a summary of the consulation process or its attempts to consult with designated agencies. This does not foreclose further agency comment because all interested agencies are consulted by the Commission after an application is filed.

Pacific Gas and Electric (PG&E) believes that the pre-application consultation process is unfair to "initial" applicants since it enhances the possibility that any competitor may utilize information that is important to the initial applicant's proposal. The Commission recognizes that the pre-application consultation process might give another interested party an opportunity to plagiarize ideas. However, significant contervailing considerations militate against eliminating, or otherwise restricting, the requirement that a filed application be based in part on pre-application consultations. For example, pre-application consultation helps to avoid costly and time-consuming delays in the licensing process. It is designed to prevent premature application-related expenditures by an applicant who might find, after discussions with appropriate agencies, that the project is wholly or partly infeasible or otherwise poses unforeseen environmental problems. Consultation helps ensure better applications and expedites the final interagency consultation, such as that required by the Fish and Wildlife Coordination Act (16 U.S.C. 662) and Endangered Species Act (16 U.S.C. 1536). In any case, the Commission expects that all applicants will perform studies and consult with the appropriate resource agencies, regardless of the source of its plan of development, in order to help expedite the Commission's consultations and determinations.

The Department of the Interior (DOI) recommends that the Commission require applicants to consult with existing site owners to facilitate planning for future project operations. An applicant for license is not required to own the project site but is expected to acquire all necessary rights as a licensee, sometimes by exercise of eminent domain powers. At times this means that an applicant's and an owner's interests conflict. Therefore, the Commission may only urge that such coordination as DOI proposes take place. Generally, private negotiations for purchase or entry onto the land are conducted between the interested parties. The Commission will not undertake to require or supervise such consultation, however.

B. Procedures

Proposed § 4.61(a)(2) requires service of the filed application on Federal, state, and local agencies in order to help expedite the processing time necessary for "short-form" license applications by ensuring the earliest possible consideration of each plan of development by interested agencies. Niagara Mohawk Power Company (Niagara) voices concern over the logistics of service on the various agencies. Niagara urges the Commission to distribute copies of the application itself, claiming that it would be duplicative for the applicant to do so, having just consulted the agencies.

The Commission is particularly interested in avoiding the delays attendant to transmitting the large numbers of applications submitted for projects covered by this rule. It has therefore prepared a list of agencies to be consulted; it is available at any time from the Commission's Division of Hydropower Licensing. Because applicants have consulted with the agencies specified by the Commission during preparation of the application, they are in a good position to deliver copies of the application to those resource agencies. It is far less necessary that the straightforward

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[3] 46 FR 9637, January 29, 1981.

[4] The Environmental Report has been revised slightly to be consistent with the report required under the Commission's rule governing case-by-case procedures for exempting small hydroelectric power projects from all or part of Part I of the Act. *See* 18 CFR 4.107(e)[Exhibit E].

[5] The Commission and its predecessor, the Federal Power Commission, have maintained a distinction between "major" and "minor" projects based on section 10(i) of the Federal Power Act. That provision permits waiver of some provisions or requirements of the Act for projects with not more than 2000 horsepower or 1.5 megawatts of installed capacity. Such waiver is manifested in the kinds of conditions contained in licenses for projects above ("major") and below ("minor") the 1.5 megawatt demarcation. *See* § 2.9. The "short-form" license application procedures now set forth in § 131.6 were previously applied only to minor projects. Under this rule, those procedures also apply (with the exception of an Exhibit E for unconstructed projects) to major projects with an installed capacity of 5 megawatts or less. However, section 10(i) will continue to permit the construction or operation under less stringent license conditions of minor projects.

short-form application be scrutinized by Commission staff before resource agencies are given the document. Both the applicant and the agencies will benefit from this method of distribution.

The final rule has been revised at § 4.60(c) to reflect the request of the Environmental Protection Agency (EPA) that the regulations require the applicant to furnish copies of the application when requested. In addition, that revised section addresses the concern expressed by DOI that the proposed reference to notification by "public notice procedures" did not include direct service of a notice of the application on interested agencies. Service of the notice is currently provided to interested agencies and no change in that policy is contemplated.

The Washington Department of Ecology (Washington) states that it prefers to continue processing applications for hydro-power projects under its state environmental policy act (SEPA). The Commission also wishes to continue the pre-application consultation that has worked so well with states such as Washington. The final rule will not affect the ongoing consultation practices designed to help protect environmental values.

C. Applicability and Installed Capacity

Commenters question how new increments of capacity added to existing licensed projects will affect the applicability of the short-form applications. PG&E advocates applying the short-form requirements based on increments of new capacity (*i.e.*, 5 MW or less) rather than the total installed capacity of the licensed project. It also argues that, if such small amounts of additional capacity are added, the Commission should require only the filing of a notice, as it proposed to do for projects exemptible under the categorical exemption rule of Docket No. RM81-7.[6]

In response, it should first be noted that a new licensing proceeding is not required for every increase in capacity. Increases in capacity for licensed projects may be provided for in the license or authorized as an amemdment to a license.[7] The requirements for amending licenses and for licensing new projects, however, are established according to the total proposed installed capacity of the project and whether the dam and impoundment have been constructed. The Commission has determined that projects over 5 MW generally require greater scrutiny and more complex terms and conditions than smaller projects due to the magnitude of project construction, probable inundation, and other impacts. Incremental changes in capacity have effects that vary with the size, location, and type of development, thereby it is difficult to establish by rule the appropriate data needed in all cases. Nevertheless, the amount of data filed and the conditions imposed may be adjusted to suit site-specific characteristics under the regulation proposed.

PG&E also recommends that a minor license should be subject only to the same terms and conditions applied to categorically exempted projects. The privileges and obligations of a licensee and those of the owner of an exempted project are quite different. Licensees are held strictly accountable for the use of public resources. The Congress has allowed the Commission only limited discretion to exempt certain hydroelectric power projects from licensing. In implementing the exemption authority, the Commission has applied streamlined terms and conditions to two categories of projects with specific characteristics found by the Commission not to affect significantly the quality of the human environment. Licensing potentially applies to a greater assortment of projects than the limited exemption provisions and therefore requires greater scrutiny of a proposed project in order for the Commission to carry out its responsibilities to protect water resources, lives, public health and safety, and the environment.

In a related matter, DOI recommends that the Commission require all projects 5 MW or less to be sized to the "maximum economic potential." The concerns of DOI are anticipated in the Commission review of any proposal to ensure "comprehensive" development of water resources, consistent with protection of environmental values. The Commission will not favor a clearly undersized project, particularly when a better plan of development is proposed for the same or a mutually exclusive site. In both licensing and exemptions from licensing, the highest feasible installed capacity is encouraged both by the rules of competition and the economic realities of the marketplace which militate against building two or more small projects when one large one is practicable. However, the Commission looks to a variety of factors, including environmental considerations, to ascertain which is the best adapted plan of development. Moreover, "maximum economic potential" is a changeable kind of standard which may defy quantification and foster lengthy debate. The recommendation is therefore not adopted.

D. Reporting Requirements

The Wisconsin Public Service Corporation (WPSC) argues that the requirement for mapping the project boundary should not be eliminated in § 4.61(e)(3) for projects with a capacity of 1.5 MW or less because conflicts between state and local governmental units might arise with respect to taxing authority. It appears to the Commission that there is little legitimate need for an extensive mapping requirement due to the limited area affected by such projects. The project boundaries for minor projects are generally regarded as the shoreline. The Commission wishes no broader application of its terms and conditions and, in any case, considers a project boundary to have little significance beyond the Commission's licensing provisions. If an applicant confronts special problems of this kind and therefore desires to have a boundary approved, it may ask for such consideration.

EPA suggests that the regulations allow an applicant to submit maps or photographs of environmentally sensitive areas to expedite review of the Exhibit E. The Commission revises the final rule accordingly to include this provision in § 4.61(c)(2)(ii). EPA also recommends that the project description include all roads. The final rule does so in § 4.61(e)(1).

Niagara proposes that the regulations in § 4.61(a)(3) be clarified to allow maintenance and repairs on existing project works prior to receipt of a license from the Commission. The final rule has been changed to reflect this suggestion by prohibiting prelicense construction work only on "proposed" project works. Repair of an existing dam which would be part of a proposed project could significantly affect the plan of development and the environment. Such work should be undertaken only to the extent necessary to protect lives or preserve the structural integrity of the dam. The project works

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[6] Notice of Proposed Rulemaking, "Exemption from Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or less," issued December 22, 1980, 46 FR 1291, January 6, 1981.

[7] The final rule in Docket No. RM80-39, which accompanies this rule, revises the relevant license amendment regulations and permits greater flexibility in their application.

Order No. 184, "Regulations Governing Application for License for Major Unconstructed Projects and Major Modified Projects; Application for License for Transmission Line Only; and Application for Amendment to License," (Docket No. RM80-39), issued November 6, 1918.

as described in the application should not be changed substantially while the Commission reviews an applicant's proposal.

DOI requests that the application refer specifically to the National Inventory of Potential Wild and Scenic Rivers in order to facilitate protection of those resources. The Commission is aware of its responsibility to consult DOI on this and other environmental features potentially affected by developments. The breadth of information requested in the proposed exhibits is sufficient to enable the Commission and DOI to identify any possible threat to wild and scenic rivers and more specific references would not enhance further the protection of such resources.

DOI also proposes that the application contain more information on physical project works for use in evaluating the safety of dams. The proposed rule contained such data requests in § 4.6(a)(4) and the final rule is revised to require such information in an Exhibit A. Moreover, the projects licensed under this rule may also be subject to on-site inspection.

E. Other

DOI recommends a standard licensing article requiring the licensee to provide free public access to the project lands and waters. The Commission presently provides such access in Article 18 ("major license") and Article 13 ("Minor License") and will continue to do so.

Given the variety of new rules recently adopted by the Commission, two charts are provided to describe the options available under the former and revised regulations. They are attached as an appendix to the copies of the final order available at the Commission's Division of Public Information. The charts are filed as part of the original document.

III. Final Regulatory Flexibility Analysis for Docket Nos. RM81-10 and RM80-39

This analysis of the impact of the two rulemakings on "small entities" is prepared pursuant to the Regulatory Flexibility Act (RFA),[8] which requires certain statements, descriptions, and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities." These RFA requirements apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981. The broad purpose of the RFA is to ensure more careful and informed agency consideration of regulations that may significantly affect small business and small government entities, to encourage agency analysis of the burdens associated with regulations, and consideration of alternative approaches that would minimize the significant economic effects on these small entities.

In the preambles to both the final rule in this docket and the rule governing applications for license for major unconstructed and major modified water power projects[9], the Commission has presented its reasons for revising its hydropower licensing requirements, the legal basis for the rulemakings, and the reporting, recordkeeping, and other compliance requirements which they impose. An Initial Regulatory Flexibility Analysis (Initial Analysis) was prepared and published in the Notice of Proposed Rulemaking in this docket, in accordance with the requirements of section 603(b) of the RFA. Public comment on the Initial Analysis is addressed in the comment analysis in each docket and summarized below.

A Final Regulatory Flexibility is required by section 604(a) of the RFA to contain (1) A statement of the need for, and the objectives of, the rule; (2) a summary of public comment on the Initial Analysis and the agency's responses to such comment, and (3) an evaluation of alternatives to the action considered by the agency and the reasons for rejecting them. As stated in the Initial Analysis, both rules constitute part of the Commission's program to extend to all applicants for license for hydropower projects the benefits of the mandate of section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) to provide simplified and expeditious licensing procedures for small hydroelectric power projects, consistent with the Act and other applicable laws. The common objective of both final rules is to ease the burden of applying for a license, particularly for those projects with a comparatively small installed capacity, by clarifying and consolidating the exhibits that must be filed and by extending the benefits of the "short-form" application requirement from licenses for projects of 1.5 megawatts or less to licenses for any water power project with an installed capacity of 5 megawatts or less. The Commission believes that these changes will have an impact on the non-Federal development of hydroelectric facilities, including development by small businesses and small governmental entities that may seek to build, own, and operate many of them; the impact of the revised requirements will primarily be the reduction of the regulatory and compliance costs associated with hydroelectric development.

Specifically, the major purpose of this rule, as proposed, is to "establish differing compliance . . . requirements . . . that take into account the resources available to small entities," and to "clarify, consolidate, or simplify compliance and reporting requirements . . . for small entities"—precisely the approach which the RFA seeks to encourage.[10] Applications for license for the kind of water power projects that would be covered by the procedures proposed in this docket number approximately 150 each year. Of these applications, possibly 75% are filed by entities that qualify as "small entities", including, within the meaning of section 601 of the RFA, municipalities under 50,000 population. The greatest simplification of the application requirements—applying the short-form licensing rule with its abbreviated initial statement and only four short exhibits to projects between 1.5 and 5 megawatts—will affect those projects for which small entities most frequently seek licenses.

The Commission receives annually between 10 and 15 applications for license for the major unconstructed water power projects covered by the rule in Docket No. RM80-39. Between 50 percent and 60 percent of these applicants are "small entities", including municipalities. The Commission's responsibilities to protect lives, public health and safety, and the environment, and to ensure comprehensive development of the Nation's water resources, require that the filing requirements for such projects be generally more extensive than for projects with smaller installed generating capacities built at existing dams. Nevertheless, applicants for license for major unconstructed projects will be subject to greatly clarified requirements with fewer and better organized exhibits and fewer duplicative and unnecessary data requests. The Commission anticipates that it will receive under this rule, as it has under other revised applications rules, better and more complete applications which do not contain the applicant's subjective interpretations of the regulations. As a result, licensing will become a more efficient and less financially wasteful process.

The Commission considered various alternatives to the proposed rule which might help minimize any adverse economic impact on small entities. From the viewpoint of regulatory flexibility, the alternatives to the proposed rules

[8] 5 U.S.C. 601-612.

[9] *See* Footnote 7, *supra*.

[10] *See e.g.*, 5 U.S.C. 603(c) (1) and (2).

are to leave the existing provisions intact, to further simplify the licensing regulations, or to tailor application requirements according to the type of applicant. The first would contradict the objectives of regulatory reform. The second, a further reduction in the amount of information requested in the exhibits, would seriously impair the Commission's ability to fulfill its responsibilities under its primary jurisdictional statutes and relevant environmental laws. The Fish and Wildlife Coordination Act, the Endangered Species Act, the Wilderness Act, the Wild and Scenic Rivers Act, the Clean Water Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and similar statutes, necessitate a certain circumspection in authorizing development of public water resources.

A third alternative is available to the Commission. Two kinds of short-form license provisions for facilities 5 megawatts and smaller could be established, one for applications for "small entities" within the meaning of the RFA, and another for applications filed by larger entities. As stated in the Initial Analysis, the Commission does not believe this represents a viable approach. The RFA encourages regulations which fit the scale of the business or governmental unit which is subject to regulation. However, in this instance, the information collected is related only to the nature and size of the proposed project, not the size or resources of the applicant. It is the project, not the small entity, that is the subject of regulation.

Relatively small entities commonly seek to develop major unconstructed or major modified projects, with all the attendant impacts of such projects. Those impacts and the relevant public interest concerns do not diminish according to the size of the applicant. NEPA, for example, does not enable the Commission to waive the Environmental Impact Statement requirement for actions that might significantly affect the quality of human environment based on who can bear the regulatory costs. Moreover, this alternative would create an unnecessary multiplicity of license application forms for projects 5 megawatts and smaller, and result in an undesirable proliferation of categories that would complicate, not simplify, hydroelectric regulation. In any event, the benefits of savings in time and money which derive from the shortform procedures should be equally available to all entities, small and large, which seek these licenses.

The Commission received some criticism of its Initial Analysis as it pertains to the proposed rule in Docket No. RM80–39. One commenter found the Initial Analysis inadequate in assessing the costs and benefits which the rule would confer on "small entities." The commenter suggested that the alternative of further reducing filing requirements was not considered. As a result of the Commission's alleged failure to comply with the RFA in these ways, the commenter asserts that small entities are confronted with a barrier to entry into the field of hydropower development.

The Commission has reviewed the rule in Docket No. RM80–39 in light of these comments and concluded that the concerns expressed are anticipated in the rule. The primary objective of the rule in that docket, as in this, is to provide regulatory relief. The license application requirements for major unconstructed projects are written in clear but detailed prose which may appear to constitute an overall increase in the volume of information requested despite the reduction in the number of the exhibits. This perception is fundamentally inaccurate. The amount of data requested overall is diminished under the final rule. The application requirements now include reference to the significant amount of information typically requested and obtained by individual requests after applications are found deficient. Another benefit of a highly explanatory application requirement is to minimize the element of subjective interpretation which arises from ambiguous or incomplete instructions. The degree of diminution of the requested information is admittedly not as great as in the Commission's revisions in Order Nos. 11, 54, and 59.[11] This is due not to any lack of commitment to regulatory reform but to the particular engineering and environmental characteristics of the construction and operation of major unconstructed and major modified projects in relation to the Commission's regulatory responsibilities under law.

"Small entities" are not distinguished from other license applicants in terms of the extent of the filing or consultation requirements which must be met. The Commission believes that such a distinction, which recognizes the relative abilities of applicants to comply, might be appropriate for other kinds of regulations but not for those which pertain to authorization to construct, operate, and maintain a particular kind of facility, especially when the statutory scheme of the Federal Power Act contemplates competition for a single development among different kinds of applicants and the utilization of public water resources.

Alternatives to the final rule have been considered and rejected, either because they would result in delays in the licensing process which are costly to applicants for license or because statutory requirements limit further reduction of the filing requirements for the kinds of projects licensed pursuant to the final rule in Docket No. RM80–39.

IV. Section-by-Section Analysis

The final rule primarily revises Subpart G or Part 4 and sets forth what is required of a non-Federal applicant seeking a license for development of a water power project 5 megawatts or less.

Applicability and definitions. § 4.60

This section states that §§ 4.60 and 4.61 apply to any application for either an initial or new license for a water power project with an installed generating capacity of 5 megawatts or less. The section defines "minor water power project", "new license", and "initial license". Under § 4.50(a) and § 4.40(a), as revised in Docket No. RM80–39, an applicant for a major project with an installed capacity of 5 megawatts or less must use the abbreviated application requirements provided in §§ 4.60 and 4.61

Contents of application. § 4.61

This section contains the specific regulations governing the contents of the abbreviated application for license for water power projects with a total installed generating capacity of 5 megawatts or less. The requirements are embodied in the general instructions, an initial statement, and three lettered exhibits.

(a) *General instructions.* The general instructions prescribe the number of copies of the application that must be filed with the Commission, and explain the level of detail required of the applicant in describing the project. The applicant is required to consult with appropriate Federal, State, and local agencies with expertise in environmental matters and submit with its abbreviated application for license documentation of or a summary of the consultation process.

(b) *Initial statement.* The initial statement provides basic information, including the nature of the application, the names, addresses, and telephone numbers of the applicant and its authorized agents, the nature of the applicant, and the name and location of

[11] *See* Footnotes 1–3, *supra*.

the project. A brief project description and construction dates are required, together with a list of any public lands or reservations affected by the project a copy of the applicant's water quality certificate or a copy of a letter from the applicant to the appropriate agency requesting the certification evidence of competence under State law, and information on other State requirements.

(c) *Exhibit A.* Exhibit A is new. It now contains the project description and mode of operation information formerly in the General instructions and the Initial Statement.

(d) *Exhibit E.* This exhibit provides a report on the environmental resources of the project and the impacts of the project on those resources. Applicants for license of uncontested or modified projects between 1.5 megawatts and 5 megawatts ("major") must file an Environmental Report as required under the Commission's regulations governing major unconstructed projects and major modified projects.[12] Applicants for license for projects with an installed capacity of 1.5 megawatts or less and for most major projects at existing dams must file a less extensive Environmental Report, as outlined in the proposed Exhibit E. The more stringent requirements are necessary for major unconstructed and major modified projects because there are greater impacts associated with the construction of dams and the creation of impoundments, or any subsequent significant increase in the size of an impoundment.

The environmental report is required to contain a description of the steps taken by the applicant in consulting with Federal, State, and local natural resources agencies, and the applicant must furnish copies of any letters containing the comments of those agencies or, where appropriate, other documentation of the consultation.

(e) *Exhibit F.* This exhibit consists of general design drawings of the principal project works. The drawings must show a plan, elevation, profile, and section of the dam structure and powerplant, but the drawings need not conform to the specifications of § 4.32 of the Commission's regulations. Instead, the exhibit must be a simple drawing, and may be displayed on smaller sheets.

(f) *Exhibit G.* The final exhibit is a map of the project. The map need not conform to the specifications of § 4.32. If the project is proposed to have an installed capacity of 1.5 MW or less, and will not occupy any public lands or reservations, a definitive project boundary need not be shown. All other projects must include a project boundary defined by contours, courses, and distances, or a public land survey, depending upon the project works involved.

[12] *See* § 4.41(f) of Docket No. RM80-39.

V. Other amendments to the regulations

In addition the described amendments to §§ 4.60 and 4.61, the Commission further changes to the existing regulations. Section 4.31 is amended to reflect the nomenclature in §§ 4.60 and 4.61. In the rulemaking in Docket No. RM80-39, § 4.50(a), which now defines the applicability of the regulations for major projects—existing dam, requires use of the abbreviated application for license for any such project with a generating capacity of not more than 5 megawatts.

Section 16.12 is revised to reflect the nomenclature of §§ 4.60 and 4.61. Section 131.6, which prescribes the existing abbreviated application for license, is revoked, since the proposed rule contains a new application format that obviates § 131.6. Finally, § 375.308 is revised to omit the reference to § 131.6, which contains the existing short-form application requirements.

VI. Effective date

This final rule is effective December 14, 1981.

(Federal Power Act, as amended, 16 U.S.C. 792-828c; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645; the Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 142 (1978).)

In consideration of the foregoing, the Commission amends Parts 4, 16, 131, and 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective December 14, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

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

1. Part 4 is amended in the table of contents by revising Subpart G to read as follows:

* * * * *

Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less

Sec.

* * * * *

2. Subpart G is revised to read as follows:

* * * * *

Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less

§ 4.60 Applicability and Definitions.

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license or a new license for:

(1) a minor water power project, as defined in paragraph (b) of this section;

(2) any major project—existing dam, as defined in § 4.50(b)(5), that has a total installed capacity of 5 megawatts or less; or

(3) any major unconstructed project or major modified project, as defined in § 4.40(b) (2) and (3), that has a total installed capacity of 5 megawatts or less.

(b) *Definitions.* For the purposes of this subpart:

(1) "Initial license" means the first license issued for a water power project under either the Federal Water Power Act of 1920 or the Federal Power Act.

(2) "New license" means any license, except an annual license issued under Section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project.

(3) "Minor water power project" means any licensed or unlicensed, existing or proposed water power project that, as proposed to be licensed, would have a total installed generation capacity of 2000 horsepower, 1.5 megawatts, or less.

(c) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for lcense for a water power project 5 megawatts or less, and request comment on the application. Copies of the application will be available for inspection at the Commission's Office of Public Information, and agencies may request copies of the filed application from the applicant.

§ 4.61 Contents of Application.

(a) *General Instructions. (1) Consultation.* As provided in paragraph (c)(2) of this section, the appropriate Federal, state and local resource agencies are to be given the opportunity to comment on the proposed project prior to filing of an application for license for a water power project with an installed capacity of 5 megawatts or less. Information from the consultation process must be included in the applicant's Exhibit E, as appropriate.

(2) *Copies and appendix.* (i) The applicant must complete and file the original and fourteen copies of this

application with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and must at the time of filing serve a copy of the application, as filed, on the Commission's regional engineer for the region in which the project is located, and on each of the agencies consulted under paragraph (a)(1) of this section.

(ii) The applicant must attach to the application as an appendix, either:

(A) A copy of a water quality certificate as described in section 401 of the Federal Water Pollution Control Act (also known as the Clean Water Act, 33 U.S.C. 1341), or an agency statement that such certification is waived; or

(B) A copy of a dated letter from the applicant to the appropriate agency requesting that certification.

(3) *Entry upon land.* No work may be started on any proposed project works until the applicant receives a signed license from the Commission. Acceptance of an application does not authorize entry upon public lands or reservations of the United States for any purpose. The applicant should determine whether any additional Federal, state, or local permits are required.

(4) Exhibits F and G must be submitted on separate drawings. Drawings for Exhibits F and G must have identifying title blocks and bear the following certification: "This drawing is a part of the application for license made by the undersigned this —— day of ————, 19——."

(5) Each application for a license for a water power project 5 megawatts or less must include the information requested in the initial statement and lettered exhibits described by paragraphs (b) through (f) of this section, and must be provided in the form specified. The Commission reserves the right to require additional information, or another filing procedure, if data provided indicate such action to be appropriate.

(b) *Initial Statement.*

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION; APPLICATION FOR LICENSE FOR A [MINOR WATER POWER PROJECT, OR MAJOR WATER POWER PROJECT, 5 MEGAWATTS OR LESS, AS APPROPRIATE]

(1) ———— (Name of Applicant) applies to the Federal Energy Regulatory Commission for ———— (license or new license, as appropriate) for the ———— (name of project) water power project, as described hereinafter. (Specify any previous FERC project number designation.)

(2) The location of the project is:
State or territory: ————
County: ————
Township or nearby town: ————
Stream or other body of water: ————

(3) The exact name, address, and telephone number of the applicant are:

————
————
————

(4) The exact name, address, and telephone number of each person authorized to act as agent for the applicant in this application, if applicable, are:

————
————
————

(5) The applicant is a ———— (citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or State, as appropriate).

(6)(i) The statutory or regulatory requirements of the state(s) in which the project would be located that affect the project as proposed with respect to bed and banks and the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are: [provide citation and brief identification of the nature of each requirement; if the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of developing, transmitting, utilizing, or distributing power.]

(ii) The steps which the applicant has taken or plans to take to comply with each of the laws cited above are: [provide brief description for each requirement]

(7) Brief project description

(i) Proposed installed generating capacity —— MW.

(ii) Check appropriate box:

☐ existing dam ☐ unconstructed dam

☐ existing dam, major modified project (see § 4.40(b)(3))

(8) Lands of the United States affected (shown on Exhibit G):

	(Name)	(Acres)
(i) National Forest	————	————
(ii) Indian Reservation	————	————
(iii) Public Lands Under Jurisdiction of.		————
(iv) Other	————	————
(v) Total U.S. Lands	————	————
(vi) Check appropriate box:		

☐ Surveyed land ☐ Unsurveyed land

(9) Construction of the project is planned to start within —— months, and is planned to be completed within —— months, from the date of issuance of license.

(10) This application is executed in the
State of ————,
Count of ————, SS:
by: ———— (Name) ————
(Address) ————,

being duly sworn, depose(s) and say(s) that the contents of this application are true to the best of —— (his or her) knowledge or belief. The undersigned applicant(s) has (have) signed this application this —— day of ——, 19——.

————
(Applicant(s))
By: ————

Subscribed and sworn to before me, a [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] of the State of ————, this —— day of ————, 19——.

/SEAL/ [if any]

————
(Notary Public, or other authorized official)

(c) *Exhibit A* is a description of the project and the proposed mode of operation.

(1) The exhibit must include, in tabular form if possible, as appropriate:

(i) The number of generating units, including auxiliary units, the capacity of each unit, and provisions, if any, for future units;

(ii) The type of hydraulic turbine(s);

(iii) A description of how the plant is to be operated, manual or automatic, and whether the plant is to be used for peaking;

(iv) The estimated average annual generation in kilowatt-hours or mechanical energy equivalent;

(v) The estimated average head on the plant;

(vi) The reservoir surface area in acres and, if known, the net and gross storage capacity;

(vii) The estimated hydraulic capacity of the plant (flow through the plant) in cubic feet per second and estimated average flow of the stream or water body at the plant or point of diversion; for projects with installed capacity of more than 1.5 megawatts, a flow duration curve and a description of the drainage area for the project site must be provided;

(viii) Sizes, capacities, and construction materials, as appropriate, of pipelines, ditches, flumes, canals, intake facilities, powerhouses, dams, transmission lines, and other appurtenances; and

(ix) The estimated cost of the project.

(2) State the purposes of project (for example, use of power output).

(d) Exhibit E is an Environmental Report.

(1) For major unconstructed and major modified projects 5 MW or less. Any application must contain an Exhibit E conforming with the data and consultation requirements of § 4.41(f) of this chapter, if the application is for license for a water power project which has or is proposed to have a total installed generating capacity greater

than 1.5 MW but not greater than 5 MW, and which:

(i) Would use the water power potential of a dam and impoundment which, at the time of application, has not been constructed (*see* § 4.40(b)(2)); or

(ii) Involves any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or elevation of an existing impoundment or involves any change in existing project works or operations that would result in a significant environmental impact (*see* § 4.40(b)(3)).

(2) *For minor projects and major projects at existing dams 5 MW or less.* An application for license for any minor water power project with a total proposed installed generating capacity of 1.5 MW or less, or any major project—existing dam with a proposed total installed capacity of 5 MW or less, must contain an Exhibit E under this subparagraph. The Environmental Report must be prepared after consultation with appropriate Federal, state, and local agencies with expertise in environmental matters. If any agency that an applicant is required to consult fails to consult or fails to provide documentation of the consultation process within a reasonable time after the applicant informs the agency of the proposed project and requests to consult, the applicant may submit a summary of the consultation or attempts to consult, including any recommendations of the agency. An applicant must allow at least 30 days for consultation and documentation, unless the agency indicates within that time that it has no comment. A list of agencies to be consulted may be obtained from the Commission's Division of Hydropower Licensing. The Environmental Report must contain the following information:

(i) A description, including any maps or photographs which the applicant considers appropriate, of the environmental setting of the project, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational uses, historical and archeological resources, and scenic and aesthetic resources. The report must include a discussion of endangered or threatened plant and animal species, any critical habitats, and any sites included in, or eligible for inclusion in, the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from state natural resources agencies, the state historic preservation officer, and from local offices of Federal natural resources agencies.

(ii) A description of the expected environmental impacts from proposed construction or development and the proposed operation of the power project, including any impacts from any proposed changes in the capacity and mode of operation of the project if it is already generating electric power, and an explanation of the specific measures proposed by the applicant, the agencies, and others to protect and enhance environmental resources and values and to mitigate adverse impacts of the project on such resources. The applicant must explain its reasons for not undertaking any measures proposed by any agency consulted.

(iii) A description of the steps taken by the applicant in consulting with Federal, state, and local agencies with expertise in environmental matters during the preparation of this exhibit prior to filing the application for license with the Commission. In this report, the applicant must:

(A) Indicate which agencies were consulted during the preparation of the environmental report and provide copies of letters or other documentation showing that the applicant consulted or attempted to consult with each of the relevant agencies (specifying each agency) before filing the application, including any terms or conditions of license that those agencies have determined are appropriate to prevent loss of, or damage to, natural resources; and

(B) List those agencies that were provided copies of the application as filed with the Commission, the date or dates provided, and copies of any letters that may be received from agencies commenting on the application.

(iv) Any additional information the applicant considers important.

(e) *Exhibit F* consists of general drawings of the principal project works. The drawings need not conform to the specifications of § 4.32. The exhibit must conform to the following requirements:

(1) The exhibit must consist of ink drawings, or drawings of similar quality, on sheets no smaller than 8 and one-half inches by 11 inches, drawn to a scale no smaller than 1 inch equals 50 feet for plans, elevations, and profiles, and 1 inch equals 10 feet for sections. After initial review of the application, an original and 2 copies of any drawing must be submitted on 35mm microfilm, if requested by Commission staff.

(2) The drawings must show a plan, elevation, profile, and section of the dam structure and powerplant. Generating and auxiliary equipment proposed must be clearly and simply depicted and described. A north arrow must be included on the plan view.

(f) *Exhibit G* is a map of the project. The map need not conform to the specifications of § 4.32. The exhibit must instead conform to the following requirements:

(1) The exhibit is a map or maps that show the location of all project works and their location in relation to the stream or other water body on which the project is located and to the nearest town or any permanent monuments or objects, such as roads, transmission lines, or other structures, that can be noted on the map and recognized in the field. In the case of unsurveyed public land, or land that is not public land, give the best legal description available. If surveyed land, provide sections, subdivisions, range and township, and principal base and meridian.

(2) The map must consist of ink drawings or drawings of similar quality on sheets no smaller than 8 and one-half inches by 11 inches and not larger than 24 inches by 36 inches, drawn to a scale no smaller than one inch equals 1,000 feet. After review of the application, the applicant must submit an original of the map(s), if requested by Commission staff. Each original map must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3¼" x 7⅜") aperture cards. Two duplicates of each original must also be submitted at that time.

(3) For any minor water power project proposed to have an installed capacity of 1.5 MW or less, which will not occupy any public lands or reservations of the United States, no definitive project boundary is required to be shown. The map should provide a reasonably accurate depiction of the project location and all project works and features. For any minor water power project proposed to occupy any public lands, the definitive project boundary need only be shown on such U.S. lands or reservations.

(4) Water power projects not excepted by paragraph (f)(3) of this section must include a project boundary as follows:

(i) The project boundary must enclose all project works, such as the dam, reservoir, pipelines, access and other roads, powerplant, and transmission lines. The boundary must be set at the minimum feasible distance from project works necessary to allow operation and maintenance of the project and control of the shoreline and reservoir. The project boundary may be contour elevation lines, specified courses and distances, or lines upon or parallel to public land survey lines.

(ii) The project boundary must be depicted on the map by use of contour lines (preferred method), courses and distances, public land survey, or lines parallel to the lines of the survey, or any combination of those methods for reservoirs and impoundments, and the project boundary around dams, spillways, and powerhouses; and must be depicted by specified distances from a surveyed center line or offset lines of survey for continuous features such as access roads, transmission lines, pipelines, or canals. A tape-compass survey is acceptable for determining courses and distances.

(iii) The area of public lands or reservations within the project boundary must be shown in acres. The appropriate Federal agency should be contacted for assistance in determining the acreages.

(iv) For clarity, use inset sketches to a larger scale than that used for the overview map to show relationships of project works, natural features, and property lines.

(v) Show one or more ties by distance and bearing from a definite, identifiable point or points on project works or the project boundary to established corners of the public land survey or other survey monuments, if available.

(vi) If the project affects unsurveyed Federal lands, the protraction of township and section lines must be shown. Such protractions, whenever available, must be those recognized by the agency of the United States having jurisdiction over the lands. On unsurveyed lands, show ties by distance and bearing to fixed recognizable objects.

3. Section 4.31 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 4.31 Acceptance for filing or rejection.

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

* * * * *

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

* * * * *

(ii) License for a minor water power project and major water power projects 5 megawatts or less: §§ 4.60 and 4.61.

* * * * *

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

4. Part 16 is amended in the table of contents by revising § 16.12 to read as follows:

* * * * *

Sec.
16.12 Renewal of license for a minor water power project or for a minor part of a water power project not subject to sections 14 and 15 of the Federal Power Act.

* * * * *

6. Section 16.12 is revised to read as follows:

§ 16.12 Renewal of license for a minor water power project or for a minor part of a water power project not subject to sections 14 and 15 of the Federal Power Act.

A licensee whose minor water power project license, or license for a minor part of a project, is not subject to sections 14 and 15 of the Act, and who wishes to continue operation of the project after the end of the license term, must file an application for a "new license" not later than one year prior to the expiration of the original license, in accordance with § 4.31 of this chapter. Each application for new license under this section must conform to §§ 4.60 and 4.61 of this chapter.

PART 131—FORMS

§ 131.6 [Removed]

6. Section 131.6 is removed.

PART 375—THE COMMISSION

7. Section 375.308 is amended by revising paragraph (c) to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(c) Take appropriate action on uncontested filings made in response to a term or condition in a preliminary permit or license issued for a water power project, or in response to the requirements of an order of the Commission concerning a water power project, including:

(1) Acceptance and approval of new or revised exhibits in Part 4 of this chapter; and

(2) Acceptance and approval of any studies, plans, reports, maps, drawings, or specifications.

* * * * *

[FR Doc. 81-32679 Filed 11-12-81; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 35

[Docket No. RM81-41]

Filing of Rate Schedules; Correction

November 6, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Rule; Correction

SUMMARY: This document adds Appendix A to the interim rule regarding sales of electric power to the Bonneville Power Administration issued by the Commission on October 1, 1981 (46 FR 50517 (October 14, 1981)). Appendix A is a summary of issues, inadvertently omitted from publication.

FOR FURTHER INFORMATION CONTACT: John Conway, Office of the General Counsel Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

Kenneth F. Plumb,
Secretary.

On page 50520, middle column, FR Doc. 81-29725 is corrected by adding Appendix A after paragraph E as follows:

Appendix A

On August 27, 1981, the Bonneville Power Administration (BPA) tendered for review and approval its proposed Average System Cost Methodology (hereinafter ASC Methodology) required by the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act). Section 5(c)(7) of the Regional Act requires the BPA Administration to develop an ASC Methodology through a consultation process. That has been completed. The ASC Methodology is used to determine a utility's cost of power for purposes of the power exchange allowed by the Regional Act between a utility and BPA. Under the exchange, BPA's preference power rate is passed through to residential customers of an exchanging utility, generally resulting in lower electric rates for those customers.

Pursuant to section 5(c)(7) of the Regional Act, the Administrator's proposed ASC methodology has been submitted to the Federal Energy Regulatory Commission for its review and approval. The major issues that developed during the consultation and were decided regarding the ASC Methodology are set forth below.

1. Jurisdictional Costing Approach

The issue was whether the ASC Methodology should provide for the independent establishment of the basic cost and other data needed to calculate an ASC, or whether the findings made by retail rate setting bodies should be used in determining ASC. Agreement was reached that the costs allowed or established for retail ratemaking purposes should be used, subject to certain specific requirements, in calculating ASC.

2. Functionalization Procedure

a. General functionalization—Calculation of ASC requires a