

§ 16.11

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(i) A description of existing and planned operation of the project during flood conditions;

(ii) A discussion of any warning devices used to ensure downstream public safety;

(iii) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in subpart C of part 12 of this chapter, on file with the Commission;

(iv) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(v) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.

(3) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(4) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(5) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(6) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of non-compliance, their disposition, and any documentation relating to each incident.

(7) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(8) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(9) A statement of annual fees paid under Part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(c) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(1) The information specified in paragraph (a).

(2) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(i) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(ii) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in subpart C of part 12 of this chapter, and any proposed changes;

(iii) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(iv) A statement indicating whether or not the applicant is requesting the licensee to provide transmission services under section 15(d) of the Federal Power Act.

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 533, 56 FR 23154, May 20, 1991; 56 FR 61156, Dec. 2, 1991; Order 2002, 68 FR 51142, Aug. 25, 2003]

§ 16.11 Nonpower licenses.

(a) *Information to be provided by all applicants for nonpower licenses.* (1) An applicant for a nonpower license must provide the following information in its application:

(i) The information required by §§ 4.51 or 4.61 of this chapter, as appropriate;

(ii) A description of the nonpower purpose for which the project is to be used;

(iii) A showing of how the nonpower use conforms with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act;

(iv) A statement of any impact that converting the project to nonpower use may have on the power supply of the

system served by the project, including the additional cost of power if an alternative generating source is used to offset the loss of the project's generation;

(v) A statement identifying the state, municipal, interstate, or Federal agency, which is authorized and willing to assume regulatory supervision over the land, waterways, and facilities to be included within the nonpower project;

(vi) Copies of written communication and documentation of oral communication that the applicant may have had with any jurisdictional agency or governmental unit authorized and willing to assume regulatory control over the project and the point of time at which the agency or unit would assume regulatory control;

(vii) A statement that demonstrates that the applicant has complied with the requirements of §16.8(d)(2);

(viii) A proposal that shows the manner in which the applicant plans to remove or otherwise dispose of the project's power facilities;

(ix) Any proposal to repair or rehabilitate any nonpower facilities;

(x) A statement of the costs associated with removing the project's power facilities and with any necessary restoration and rehabilitation work; and

(xi) A statement that demonstrates that the applicant has resources to ensure the integrity and safety of the remaining project facilities and to maintain the nonpower functions of the project until the governmental unit or agency assumes regulatory control over the project.

(2) [Reserved]

(b) *Termination of a proceeding for a nonpower license.* The Commission may deny an application for a nonpower license and turn the project over to any agency that has jurisdiction over the land or reservations if:

(1) An existing project is located on public lands or reservations of the United States;

(2) Neither the existing licensee nor any other entity has filed an application for a new license for the project;

(3) No one has filed a recommendation to take over the project pursuant to §16.14; and

(4) The agency that has jurisdiction over the land or reservations demonstrates that it is able and willing to:

(i) Accept immediate responsibility for the nonpower use of the project; and

(ii) Pay the existing licensee for its net investment in the project and any severance damages specified in section 14(a) of the Federal Power Act.

(c) *Termination of nonpower license.* A nonpower license will be terminated by Commission order when the Commission determines that a state, municipal, interstate, or Federal agency has jurisdiction over, and is willing to assume regulatory responsibility for, the land, waterways, and facilities included within the nonpower license.

[Order 513, 54 FR 23806, June 2, 1989, as amended by Order 2002, 68 FR 51142, Aug. 25, 2003]

§ 16.12 Application for exemption from licensing by a licensee whose license is subject to sections 14 and 15 of the Federal Power Act.

(a) An existing licensee whose license is subject to sections 14 and 15 of the Federal Power Act may apply for an exemption for the project.

(b) An applicant for an exemption under paragraph (a) must meet the requirements of subpart K or subpart J of part 4 of this chapter, and §§16.5, 16.6, 16.7, 16.8, 16.9(b) (1), (2) (except the requirement to comply with §§4.41, 4.51, or 4.61 of this chapter), 16.9(c), 16.10(a), 16.10(b), 16.10(d), and 16.10(e).

(c) The Commission will process an application by an existing licensee for an exemption for the project in accordance with §§16.9(b)(3), 16.9(b)(4), and 16.9(d).

(d) If a license application is filed in competition with an application for exemption filed by the existing licensee, the Commission will decide among the competing applications in accordance with the standards of §16.13 and not in accordance with the provisions of §4.37(d)(2) of this chapter.

§ 16.13 Standards and factors for issuing a new license.

(a) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.