

# Recreation Development at Licensed Hydropower Projects

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Division of Project Compliance and Administration  
Office of Hydropower Licensing  
Federal Energy Regulatory Commission  
Washington, DC 20426

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# PURPOSE

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This guide describes a licensee's responsibilities under the Federal Power Act (FPA) to provide recreation opportunities at hydroelectric projects under the Federal Energy Regulatory Commission's jurisdiction. It provides direction for updating recreation plans in conjunction with amendments to licenses and gives information about comprehensive recreation plans and recreation policies in the United States. Licensees can use this knowledge to more effectively meet the broader policy goals of the FPA as they relate to recreation.

While this guide will help you understand recreation policy and the amendment process, it is not a substitute for the Commission's regulations or specific conditions contained in project licenses. The amendment process is more fully described in the Commission's publication "Guide to the Hydroelectric License and Amendment Process." Before contacting the Commission or submitting an amendment application, licensees should review the Commission's regulations in Title 18, Part 4, Subpart L, of the Code of Federal Regulations.

# CONTACTS

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Copies of this guide are available from the Commission. Information about purchasing this guide or other Commission reports may be obtained by calling the Commission's Public Reference and Files Maintenance Branch at (202) 208-1371 or by writing to the Commission, Public Reference and Files Maintenance Branch, Room 2A, 888 First Street, NE., Washington, DC 20426.

The following publications also may be of interest:

*Code of Federal Regulations, Title 18, Parts 1 to 149 and Parts 280 to 399, U.S. Government Printing Office, Washington, DC*

*Hydroelectric Project Licensing Handbook*

*Hydroelectric Project Relicensing Handbook*

*Engineering Guidelines for the Evaluation of Hydropower Projects*

*Public Safety at Hydropower Projects*

*Manual of Standard Special Articles*

*Contact Us First - Division of Project Compliance and Administration*

*Guide to the Hydroelectric License and Exemption Amendment Process*

Direct questions and comments about the content of this guide to the Division of Project Compliance and Administration at (202) 219-2750.

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# INTRODUCTION

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Pursuant to the Federal Power Act, as amended by the Electric Consumers Protection Act, the Federal Energy Regulatory Commission (FERC or Commission) is authorized to issue licenses for non-federal hydroelectric power projects. After the Commission issues a license, modifications to the originally authorized project license are often necessary. Modifications could range from a simple time extension for completing a required study, to a complex major design change, or a modification of an existing project. The key element in determining the need for an amendment is whether or not the contemplated action is consistent with the authorizing documents. You should contact the staff if any proposed project modification could affect the terms and conditions of your license. If you are uncertain about what steps to take, the Commission staff in the Division of Project Compliance and Administration can advise you.

On December 27, 1965, FERC issued Order No. 313, which amended the General Policy and Interpretations section of the Commission's regulations (18 CFR Part 2) to ensure that the ultimate development of recreation resources at all projects is consistent with area recreational needs. Specifically, 18 CFR Part 2 was amended to include § 2.7, which requires licensees to: (1) acquire lands to assure optimum development of the recreational resources afforded by the project; (2) develop suitable public recreational facilities with adequate public access, considering the needs of physically handicapped persons in the design of facilities and access; (3) coordinate efforts with other agencies in the development of recreation areas and facilities; (4) provide for planning, operation, and maintenance of these facilities; and (5) inform the public of opportunities for recreation at licensed projects.

In addition, Order 313 specifically affects licensees seeking amendments. This Order states that it is the Commission's intent to incorporate license articles that require a recreation plan, public access, and installation of recreation facilities for any application for a substantial amendment to a license that does not already include such articles.

# CHAPTER 1

## Development of Commission Recreation Policy

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Recreation resources were not specifically provided for in the Federal Water Power Act enacted in 1920. In the era after World War I, however, leisure time increased due to shorter working hours and mass production of automobiles, which stimulated a dramatic increase in public demand for recreation. The federal government adopted policies to help accommodate that demand. When the Federal Water Power Act was incorporated into Part I of the Federal Power Act (FPA) of 1935, it amended Section 10(a) to include recreation as a beneficial public use. Henceforth, any review of a project for licensing by the Federal Power Commission (FPC) or the Federal Energy Regulatory Commission (FERC)<sup>1</sup> needed to consider the project's consistency with any comprehensive plans developed by state or federal agencies for the waterway.

After the Great Depression and World War II, demand for recreation increased again as a result of rising national prosperity, better roads and automobiles, and a decline in the average labor schedule to a 40 hour/5 day work week. Between 1952 and 1962, visits to National Parks increased by 87 percent, visits to federal recreation areas increased by 238 percent, and visits to state parks increased by 113 percent. In 1958, Congress established the Outdoor Recreation Resources Review Commission (ORRRC), which was responsible for assessing the nation's outdoor recreation needs through the year 2000. The ORRRC's 3 year study and report, "Outdoor Recreation for America," generated a number of federal actions directing national recreation policy. In 1963, the Bureau of Outdoor Recreation was established within the Department of Interior to coordinate national recreation policy and programs.<sup>2</sup> In



In 1935, the Federal Water Power Act was amended to require that recreation be included as a beneficial public use when evaluating the comprehensive development of project water resources.

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<sup>1</sup> The Federal Power Commission became the Federal Energy Regulatory Commission in 1977 when the Department of Energy was created.

<sup>2</sup> The Bureau of Outdoor Recreation was later incorporated into the National Park Service.

1965, the Land and Water Conservation Fund, which is administered by the Bureau of Outdoor Recreation, was created to fund states' development of outdoor recreation facilities. To be eligible for the funds, states must prepare a State Comprehensive Outdoor Recreation Plan (SCORP). Additionally, the National Wild and Scenic Rivers Act and the National Trails System Act were enacted in 1968. The Wild and Scenic Rivers Act allows the designation of rivers to be preserved for "outstandingly remarkable" natural, cultural, and historic qualities including recreation. It specifically prohibits FERC from issuing a license on or directly affecting any river designated as Wild and Scenic.

President Kennedy responded to the growing demand for recreation by issuing Executive Order 11017 on April 27, 1962. The Order established the Recreation Advisory Council to coordinate outdoor recreation policy and provide advice to all agency heads. The FPC acted by issuing a notice of proposed rule-making in 1962 that culminated with the issuance of Order 260-A on April 25, 1963. The Order amended Section 4.41 of the Commission's regulations (18 CFR Part 4, Subpart E, §4.41 - Contents of application) to require the filing of a recreation resource plan for all major license applications filed after June 1, 1963.



Order 313 states the Commission's intent to include recreation license articles for licensee's seeking substantial amendments, if such articles were not previously included.

Two years later, on December 27, 1965, the FPC issued Order No. 313, which added Section 2.7 of the General Policy and Interpretations section of the regulations to ensure that the ultimate development of recreation resources at all projects is consistent with area recreational needs. It allows the licensee to include, as a project cost, public recreational facilities developed pursuant to an approved plan. It expects the licensee to ensure public access, develop suitable public recreation facilities, and incorporate, by fee acquisition if necessary, sufficient lands within the project boundaries to ensure optimum development of the recreation resources offered by the project.<sup>3</sup>

Further, the Order stated the Commission's intent was to incorporate license articles that require a recreation plan, provision of public access, and the installation of recreation

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<sup>3</sup> Section 2.7 was further amended by Order No. 508 on April 30, 1974, to specifically include "consideration of the needs of physically handicapped" in the design and construction of access to project recreation facilities.

facilities for any application for a substantial amendment to a license that does not already include such articles.

During the 1960's, the Commission also began to more closely monitor recreation activities at licensed sites. Order 330, issued December 12, 1966, required licensees to file Form 80 recreation reports for each project development. The Form 80 report is used to collect recreational data at licensed projects, including data on the number and type of recreation facilities, facility capacity, the number of annual visits to all recreation areas, and project costs and revenues associated with all recreation areas.

Public demand for recreation and federal policies addressing that demand have continued to evolve since the 1960's. By the late 1970's, the ORRRC's projections for public participation in recreation for the year 2000 were already exceeded. To reassess the nation's recreation needs, President Reagan established the President's Commission on Americans Outdoors by Executive Order 12503 in 1985. After 2 years of work, the Commission, in its publication, "Americans Outdoors: The Legacy, the Challenge" reported that demand for recreation would continue to increase.



Since 1974, licensees have been required to consider the needs of disabled people in the design and construction of recreation facilities at hydropower sites.

The overall number of trips to federal recreation areas increased, but Americans were changing how they recreate. Between 1973 and 1988, the amount of time Americans had for leisure activities dropped by 38 percent.

Recent census statistics show a rise in dual income families with a decreased amount of leisure time, and greater disposable incomes. These socioeconomic changes affect recreation demand as reflected in statistics which show that people take fewer long (2-3 week) vacations and more short (2-3 day) vacation trips. Land use changes, such as the conversion of summer recreation areas to year-round residences or the transition of formerly rural, lower income areas to summer vacation spots or year-round retiree areas can have significant local impacts on recreation resources.

Changes in technology and sports equipment can also influence recreation demand. The growth in popularity of whitewater rafting over the last 25 years, for example, is largely due to the advent of the use of rubber rafts in the 1950's developed from World War II Army surplus materials. In the 1960's, only two dozen pioneering commercial rafting companies offered trips on western rivers. Today, nearly 9 million people travel to raft on whitewater



rivers across the country. Recent studies project a 167 percent increase in the number of trips by the year 2040.

FERC policy relative to recreation also changed during the same period. The 1986 Electric Consumers Protection Act (ECPA) amended section 4(e) of the FPA to require the Commission to give "equal consideration" to nondevelopment interests, including the "protection of recreational opportunities."

# CHAPTER 2

## License Amendments and Recreation

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FERC's Division of Project Compliance and Administration (DPCA) is responsible for reviewing and issuing license amendments, reviewing compliance filings, and monitoring FERC licensed projects. FERC keeps abreast of changes in recreation demand by means of various reporting requirements for licensees. Form 80 recreation reports, which may be the most familiar to licensees, require the submittal of reports on recreational use at project facilities every 6 years for data collected the year prior to filing. FERC may also require annual reporting of recreation use at project facilities by means of special license articles. Further, through other license articles, FERC may require licensees to prepare recreation plans that assess existing use patterns and provide for future demand through modification or addition of new recreation facilities.

License amendments are generally required when there is a proposed change to a project previously authorized by a Commission order issuing a license. Licensees considering the filing of a license amendment, whether or not it is related to recreation, should contact DPCA early on in the amendment process. In reviewing a proposed license amendment, DPCA will focus attention on issues directly related to the proposed change. It does not automatically open the whole project up to review. DPCA will provide guidance on what exhibits will need to be filed with the proposed amendment application.

Project changes that require an amendment can be classified into six categories: capacity, project features, operational, land status changes, compliance filings, and time extensions.

Activities affecting approved recreation plans may fall into any of these categories. For instance, a proposal to raise the level of the project impoundment may require an amended recreation plan to incorporate additional boating facilities or the loss of lake side campsites. Flow modifications or project boundary changes may require an amended recreation plan if these activities affect recreation related uses. A licensee must address these affects in consultation with appropriate state and federal resource agencies.

### Consultation Requirements

Agency consultation is an integral part of the Commission's review of an application for amendment. The consultation process assists the Commission in the determination as to whether or not a project is consistent with comprehensive plans for a waterway.

The licensee must document consultation and explain how and why the project is consistent with the comprehensive plans. In nearly all cases, there will be at least one comprehensive plan related to recreation that the project will need to review for consistency.

The level of consultation depends on the nature of the amendment being requested. The Commission's regulations (18 CFR §4.38) require pre-filing consultation with resource agencies for certain types of project amendments. This consultation is required for the following four categories:

- a capacity-related amendment;
  - resulting in an increase in the maximum hydraulic capacity of the project of 15 percent or more; and
  - resulting in an increase in the installed nameplate capacity of 2 megawatts or more.
- construction of a new dam or diversion where none currently exists;
- any repair, modification, or reconstruction of an existing structure resulting in a significant change in reservoir elevation; or
- the addition of new water power turbines other than replacing existing turbines.

If a proposed change falls into one of these four categories, the licensee must follow the full consultation process prescribed in 18 CFR §4.38. Updated recreation exhibits must be prepared for this consultation.

If the proposed project is a non-capacity related amendment, the proposed change does not require consultation under 18 CFR §4.38. In these cases, the Commission staff will identify which resource agencies, if any, should be consulted, and the appropriate exhibits or revisions or additions to exhibits on file to be included in the amendment application.

Non-capacity related amendments that may require consultation include:

- project feature changes (i.e., transmission line);
- operational changes (i.e., increase/decrease in capacity);
- land status changes; and
- compliance filings.

For these types of amendments, the Commission staff determines whether or not recreation resource agencies must be consulted. Modifications to, or the addition of, project recreation facilities not authorized by the original license would require filing an amendment application and developing or modifying the project recreation plan. In other cases, such as an extension of time to complete construction of a facility, licensees may not be required to consult with recreation resource agencies.

### Waivers

If an applicant for amendment believes that revision of a recreation exhibit is inappropriate, a petition for waiver of the requirement to submit such an exhibit may be filed with the Commission (18 CFR §4.201(d)). Requesting a waiver, however, will still require the applicant to document reasons why certain exhibits should not be required to be filed.

# CHAPTER 3

## Recreation Impacts

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This chapter describes the potential impacts of a proposed amendment from a recreation perspective. Although it provides examples of how a proposed modification may affect recreation, it is not a comprehensive list of all potential impacts. FERC staff expect applicants to consider each proposed amendment on a case-by-case basis.

Project modifications may affect either the supply or the quality of recreation resources. Following are some examples, based on the types of amendments discussed in Chapter 2, of how a project modification may affect recreation.

### **New Dam Construction**

New dams are likely to have a significant impact on recreation. They may create a new reservoir that could increase opportunities for warmwater fishing and flatwater boating. At the same time, they may decrease the amount of coldwater fishing or scenic viewing locations by inundating riffle and pool complexes attractive to trout or eliminating the soothing sound of water that makes an area attractive for picnicking. Resources may be eliminated entirely or the quality may be greatly altered.

### **Modification to Increase Storage Elevation of an Existing Dam**

If there is no shoreline development, a large increase in elevation may have no significant recreation impact. If there are seasonal camps, public beaches, and shoreside camping, however, an increase of even 1 foot may be significant. Beaches, for example, are typically very gently sloped, and a 1 foot increase may inundate a substantial portion of currently useable beach area, which would decrease available recreation area. Conversely, an increase in water depth and increase in the reservoir surface area may make the reservoir more attractive to power boating and related recreation activities, such as water skiing. The increased elevation may increase water depth to make a once unboatable reservoir now boatable, improve the quality of boating, and create more supply. The change may induce more recreational boating use of the reservoir, which could require the licensee to build a new boat ramp.

### **Addition/Removal of a New Turbine**

Adding or removing a turbine to best accommodate the available range of flows at a project site may affect recreation resources. Whitewater opportunities at projects with boatable downstream reaches can be affected by the alteration of natural spillage flows if a new

turbine utilizes, rather than spills, flows in excess of the project's original hydraulic capacity. This would affect both supply and quality of the resource by reducing the length of the season for boating and reducing the maximum flow available. Reductions in flow can have a significant effect on the quality of whitewater boating. On the other hand, the new turbine may provide more flexibility to adjust flows in a bypassed reach, making it possible for a project to continue generating power, while providing minimum flow releases to enhance other resources. Alteration of a project's generating equipment may also have an effect on entrainment or impingement of fish, affecting the recreational fishery associated with the project waterway.

### **Feature Changes**

Significant changes in the physical features of a project, such as new structures, relocation of transmission lines, or alterations of existing structures, may occur during project construction or subsequent operation.

These activities may affect recreation resources by altering the project impoundment level, creating new opportunities for water-related activities, or by changing the availability of existing opportunities. New opportunities for water skiing, swimming, and boating could result from increased water levels, whereas lower water levels could affect the adequacy of existing boat launches and docks, bank fishing opportunities, and canoe portage routes.

Other design changes could result in transmission line relocation through existing recreation areas, degrading their appearance or removing portions from use. Installation or modification of fishways which could improve the recreational fishery may require facility upgrades to accommodate additional users. Construction activities requiring clearing, creation of access roads, or development of new project structures could also potentially affect existing recreation areas.

### **Operational Changes**

After a facility is completed, licensees may require changes to the authorized mode of operation. These changes may include increasing the operating level of the reservoir, modifying minimum flows downstream of the project, or revising the ramping rate.

These types of modifications may affect recreation activities both upstream and downstream of the project. Significant alterations in the level of the project reservoir may affect public and private boat launching facilities and docks, inundate areas currently utilized for camping or picnicking, or alter the type and size of watercraft that can safely operate on the impoundment.

Modification of minimum flows below the project could affect tailrace fishing opportunities, whitewater boating, and recreational canoe trips. Downstream releases also have a direct

impact on the quality of fishing in the tailrace and opportunities for boating. Changes in downstream flow may affect public safety related to ramping and user access points.

### **Land Status Changes**

Changes in the status of project lands may be requested for altered usage of lands of the United States, changes in land rights, non-project use of project lands, or changes in the recreational usage. These changes may affect recreation at the project by altering the amount and type of land available for use. Facilities currently under control of the licensee and designated for recreation use may no longer be available. Any changes proposed for existing or planned recreation lands must be evaluated and filed with an updated recreation plan.

### **Compliance Filings**

Project licenses issued by the Commission require a licensee to adhere to requirements that may govern project operation, require monitoring studies, or address a variety of issues related to environmental effects and engineering. These requirements may include water quality monitoring, fish and wildlife studies, recreational plans, soil erosion control, and maintenance of minimum flows.

License articles may require the licensee to file study results, mitigation plans, study plans, or schedules with the Commission. Such filings are termed compliance filings. The Commission determines if the filing complies with the article requirements and presents its findings in a letter or order. For example, a compliance filing is required when a license article specifies the preparation of a recreation plan. The licensee would need to develop a plan to ensure that the project adequately provides for the recreation needs of the area. The Commission would review the recreation plan to assess its acceptability and present its findings in a letter or order. When the Commission requires that compliance filings be submitted for its "approval," the approval is obtained in the form of an order.

You may be considering modifications other than those mentioned above. If so, the Commission staff can advise you if an amendment application needs to be filed and if updated recreation exhibits need to be included in the application.

## CHAPTER 4

# Recreation Exhibits

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As part of a license application, 18 CFR §4.41 (f)(7) of the Commission's regulations require the preparation of a report containing a proposed recreation plan describing the utilization, design, and development of project recreational facilities and public access areas. These recreation exhibits must contain a detailed description of existing recreational facilities within the project vicinity, and the public recreational facilities that are to be provided in the future. Licensees must also include estimates of existing and future recreational use at the project, in daytime and overnight visitation (recreation days); a development schedule and cost estimate for the construction, operation, and maintenance of existing, initial, and future public recreational facilities; and drawings clearly showing the locations of the types and number of existing and proposed facilities in relation to the project boundaries.

Updating recreation exhibits for a proposed project amendment requires consideration of existing resources, demand for new or improved facilities, and the effects that any modifications may have on the area and recreational opportunities offered. In Chapter 3, we presented examples of how proposed amendments may affect the supply and quality of recreation resources. The licensee also must consider the influences of demand for recreation. Although evaluating the project impact relative to demand can be difficult, it is necessary if the project is to make the optimum use of recreation resources.

In some cases, the attractiveness of the project facilities themselves may influence greater demand. For example, licensed hydropower facilities have contributed directly to the growth in popularity of some boating activities. Scheduled releases in warm weather combine good, predictable water levels with comfortable weather conditions.

### Preparing Good Recreation Exhibits

The best way to fully evaluate a project's recreation resources is to develop a comprehensive plan. A good recreation plan specifically considers the supply and quality of the project's present recreation resources, and then projects how that supply may be affected over the project license.

Licensees who have developed comprehensive recreation plans that document existing and planned facilities, provide for recreational use monitoring, and contain other important recreation planning information have found them enormously beneficial. Thorough and complete recreation planning can save significant amounts of money over the long term by providing a tool to effectively deal with different requests for recreation facilities from a broad range of users.



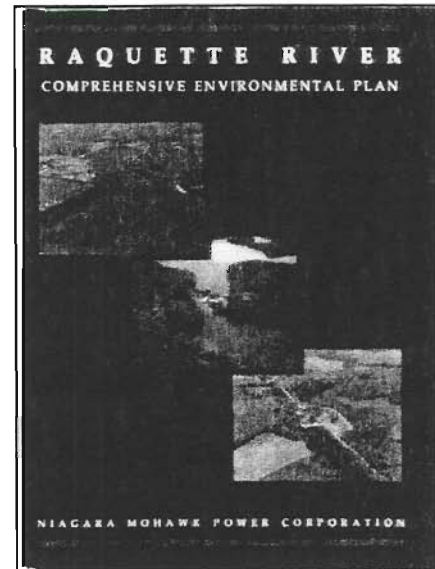
A good recreation plan includes:

- 1) A complete inventory of all land and recreation resources within the project boundaries.
- 2) A thorough and open planning process that involves all recreation user groups in the development of the plan. This includes publicly advertised meetings, involvement of public officials, and public review of draft elements of the plan. Public participation can help identify desirable goals and prepare for future demands. The open process also has the advantage of identifying conflicting uses and controversial issues, thus allowing the licensee an opportunity to adjust plans at an early stage when such changes are less costly.

3) A well documented user survey is an essential part of a good recreation plan. Existing use can be documented by systematically recording use at project recreation facilities. For example, surveyors may count the number of boats launched daily from a boat ramp or the number of picnic tables occupied. Counting the number of cars parked at a trailhead will provide an indication of the trail's level of use. This will help licensees determine whether the facilities are over or under used, thus providing a tool to help determine if existing facilities are meeting recreation demands and if expansion of the facilities are warranted. Surveys should cover every type of recreation activity for which the project's facilities are used. These indirect surveys should be done frequently enough to provide a full profile of use by weekday, weekend, month, and season.

The FERC Form 80 recreation report provides a good list of the types of potential recreation activities to be monitored at a project. The standard measure of use required for Form 80 recreation reports is a recreation day. A recreation day is each visit by a person to a project development for recreational purposes during any portion of a 24-hour period. Another standard is a recreational visitor day. A recreational visitor day is defined as twelve hours of recreation use by one or more persons. For example, a person who fishes from 8 am to 8 pm would constitute one recreational visitor day. If he or she were joined in a boat by three other people and the group fished together for three hours, that also is counted as one recreational visitor day.

Additional information can be gathered by direct interviews or mail-in questionnaires. Questionnaires can be designed to solicit visitors' thoughts on the quality of facilities, to provide a demographic profile of your users, to determine if other types of facilities are desired or necessary, or for a variety of other purposes where the user's input would be



Recreation plans can help licensees provide for the changing needs of users in the project area.

helpful to the preparation of the recreation plan. The combination of well documented statistics on use and users' responses to interviews or questionnaires provides the basic foundation of a good recreation plan.

4) Projections of future demand for project-based recreation facilities can help to predict whether there will be sufficient capacity at your facilities in the future. Census data on population growth or decline and demographic information about the population within a one-hour drive of the project will provide the basic data needed to forecast future demand. State SCORP documents typically include these data. The SCORP will also include projections of growth in specific recreation activities within the state and should be used as a standard reference in preparing recreation plans

Licensees must also keep in mind that demand for recreation is not static; it is an evolving process. Periodic review of a project's consistency with recreation demands is required to ensure that the public need for recreational opportunity is being met by existing and proposed facilities. Reassessing how a project relates to the present and future recreation environment is an important part of long-range facility planning.

#### Recreation and Public Safety

Project owners, through their own initiative and FERC directives, are responsible for installing and maintaining physical safety barriers and other safety measures at their projects. Because each project is unique and requires site-specific judgments and solutions to resolve safety issues, the Commission has requested that all licensees prepare a Public Safety Plan detailing the type and location of all project safety features. The safety standard applicable to most project structures, where potential or actual danger exists, is to require safety devices or other warning systems that may be necessary or desirable to warn the public of fluctuations in flow from the project, or otherwise protect the public in the use of project lands and waters. Projects that have heavily utilized recreation facilities require significant attention to public safety measures. The licensee needs to consider public safety when providing public access to its project. Often the most dangerous features of a project are those that are the most attractive to the recreating public. For example, although tailrace fishing or fishing in a bypass reach may be best in these locations, rapid changes in water levels can endanger anglers. A licensee needs to provide sufficient safety devices or warning systems to protect anglers in these areas.

A good recreation plan should include information on project safety by describing the types of hazards that can exist at the project and the safety devices or other measures employed to enhance the protection of the public that utilize project lands and waters. In addition to the installation of safety devices, other safety measures may include preventing recreational activities in hazardous areas. For example, portage trails that enhance recreation may improve public safety by directing boaters away from dangerous spillways, power canals, or other project features that may endanger paddlers.

## CHAPTER 5

### Questions and Answers

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1. There are no articles in my license that address recreation. Does that mean I don't have to discuss recreation in my amendment application?

*No. Order No. 313 states that the Commission's intent is to include recreation license articles in amended licenses when there are affected recreation resources.*

2. I received a license 10 years ago. Can I just submit the same recreation exhibits with my amendment application?

*You should update all the information in your recreation exhibits to reflect current conditions. Demand for recreation is a dynamic process. New trends in recreation, demographic changes, or shifts in the economy all affect demand.*

3. When I received my license several years ago, the project was consistent with all the comprehensive plans. Can I assume that nothing has changed?

*No. You should assume things have changed in 5 years. For example, State Comprehensive Outdoor Recreation Plans (SCORPs) are updated every 5 years.*

4. How do I find out if my recreation plan is consistent with other comprehensive plans?

*The Commission keeps a list of accepted comprehensive plans for each state. You should request a copy of the most recent list from the OHL, Division of Project Review.*

5. I don't think my proposed amendment would affect recreation. Can the requirement to file recreation exhibits be waived?

*You may request a waiver for submittal of certain exhibits you believe are unaffected by an amendment. The burden is still on you, however, to provide documentation as to why you are entitled to the waiver.*

6. In the last 10 years, the number of people fishing on my reservoir has tripled. I would like to install a new boat ramp, do I need to file for an amendment?

*Yes. Changes in your recreation plan must be addressed in license amendments and are subject to agency consultations. You should check with Commission staff before making any changes.*

7. A local environmental organization has prepared a plan for the river my project is located on. Do I need to include the elements of their plan in my recreation plan?

*No, but it is always helpful to consult with local organizations about their ideas for your project. In general, the more input from the public and other users of the recreation resources in your project area, the better your recreation plan will be. Early consultation is especially useful for identifying possible conflicts between uses.*

8. A local real estate developer would like to acquire property within my project boundaries that is not useful to me in power production. There is already adequate public access to the project's recreation resources. Are there any recreation issues I need to be concerned with?

*All changes in project land status require FERC approval. In addition, the development of a new subdivision within the immediate area of a project can have a significant effect on the demand for recreation at your project. In fact, the proximity of recreation resources associated with your project may be an important incentive for people to purchase homes within the new development.*

*In preparing your application, include an analysis of effects of potential demand increases from new development on existing facilities and what might be required to accommodate these increases.*

9. The State Rivers Commission identified canoe portage around my dam as a priority for a recreation corridor in the waterways. It wants me to build the portage, but I don't own the property on which it would be constructed. Is there anything I can do?

*Order No. 313 and Section 2.7 allow the licensee to include land acquisition and development of project-related recreation facilities as project costs. You may also want to investigate establishing an easement or other type of land transfer mechanism with the present property owner.*

10. If I build all the recreation facilities required by the Commission, I'll need one full-time person to maintain the facilities, plus money to maintain the facilities. What can I do to offset some of these costs?

*It is the Commission's policy to allow licensees to charge reasonable fees for use of project facilities. These fees should be assessed in order to help defray the cost of constructing, operating, and maintaining such facilities.*

11. Can I make arrangements with others (government agencies, private entities, etc.) to construct, manage, and/or maintain approved project recreational facilities?

*Yes, you are permitted to make arrangements with others to construct manage, and/or maintain approved recreation facilities. However, you remain ultimately responsible for the construction, management, and maintenance of such facilities and must ensure that these facilities are constructed, managed, and maintained in accordance with the requirements of your license.*

# GLOSSARY

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<b>Comprehensive Plan</b>	State or federal report accepted by the Commission detailing issues and recommendations for developing or conserving a waterway. Examples include plans for watershed management; protection of waterfowl and unique ecosystems; land and water resource management; and studies of water quality, water quantity, fisheries, scenic resources, and recreation.
<b>Capacity-related amendment</b>	Changes to projects that involve additional capacity not previously authorized, and that 1) would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more; and 2) would result in an increase in the installed nameplate capacity of 2 megawatts or more.
<b>Form 80 Recreation Report</b>	Commission required recreation reports filed in 6 year intervals, which are used to collect recreational data at licensed projects. Data collected include the number and type of recreation facilities, total miles/acres by resource, facility capacity, and the number of visits to all recreation areas.
<b>Recreation Exhibit</b>	An individual resource report contained in licensing documents that must contain a detailed description of existing recreational facilities within the project vicinity, and the public recreational facilities which are to be provided in the future. Licensees must also include estimates of existing and future recreational use at the project, in recreation days; a development schedule and cost estimate for the construction, operation, and maintenance of existing, initial, and future public recreational facilities; and drawings clearly showing the locations of the types and number of existing and proposed facilities in relation to the project boundaries.
<b>Recreational Use Survey</b>	Formal survey that determines level and type of use at recreational facilities used to evaluate the adequacy of existing facilities and/or the need for new or improved facilities.

**State Comprehensive Outdoor Recreation Plan (SCORP)**

State-issued plans that serve as status reports and overall guidelines for recreation resource preservation, planning, and development. They provide statewide policy direction for the assessment and management of natural, cultural, and recreational resources.

**Recreation Day**

Each visit by a person to a development for recreational purposes during any portion of a 24-hour period.

**Project Development**

The portion of a project that includes (a) a reservoir, or (b) a generating station and its specifically related waterways.

## LITERATURE CITED

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# APPENDICES

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Appendix A: 18 CFR Section 4.38. Consultation Requirements.

Appendix B: 18 CFR Part 4, Subpart L. Application for Amendment of License.

Appendix C: 18 CFR Section 2.7. Recreational Development at Licensed Projects.

Appendix D: 18 CFR Section 2.19. State and Federal Comprehensive Plans.

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Appendix A: 18 CFR Section 4.38. Consultation Requirements.

## § 4.38 Consultation requirements.

(a) Requirement to consult. (1) Before it files any application for an original license or an exemption from licensing that is described in paragraph (a)(4) of this section, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate State fish and wildlife agencies, the appropriate State water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1341(c)(1), and any Indian tribe that may be affected by the proposed project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3) An applicant for an exemption from licensing or an applicant for a license seeking benefits under section 210 of the Public Utility Regulatory Policies Act, as amended, for a project that would be located at a new dam or diversion must, in addition to meeting the requirements of this section, comply with the consultation requirements in § 4.301.

(4) The pre-filing consultation requirements of this section apply only to an application for:

(i) Original license;

(ii) Exemption;

(iii) Amendment to an application for original license or exemption that materially amends the proposed plans of development as defined in § 4.35(f)(1);

(iv) Amendment to an existing license that would increase the capacity of the project as defined in § 4.201(b); or

(v) Amendment to an existing license that would not increase the capacity of the project as defined in § 4.201(b), but that would involve:

(A) The construction of a new dam or diversion in a location where there is no existing dam or diversion;

(B) 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

(C) The addition of new water power turbines other than to replace existing turbines.

(5) Before it files a non-capacity related amendment as defined in § 4.201(c), an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section to the extent that the proposed amendment would affect the interests of the agencies or tribes. When consultation is necessary, the applicant must, at a minimum, provide the resource agencies and Indian tribes with copies of the draft application and allow them at least 60 days to comment on the proposed amendment. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment, propose reasonable protection, mitigation, or enhancement measures to respond to impacts identified as being caused by the proposed amendment, and respond to any objections, recommendations, or conditions submitted by the agencies or Indian tribes. Copies of all written correspondence between the applicant, the agencies, and the tribes must be attached to the application.

(6) This section does not apply to any application for a new license, a nonpower license, a subsequent license, or surrender of a license subject to sections 14 and 15 of the Federal Power Act.

(7) If a potential applicant has any doubt as to whether a particular application or amendment would be subject to the pre-filing consultation requirements of this section or if a waiver of the pre-filing requirements would be appropriate, the applicant may file a written request for clarification or waiver with the Director, Office of Hydropower Licensing.

(b) First stage of consultation. (1) A potential applicant must promptly contact each of the appropriate resource agencies and affected Indian tribes; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes, and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(2) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies and Indian tribes under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies and Indian tribes to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies and Indian tribes on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(3) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section by means of the public notice published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) of this section will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency and Indian tribe.

(4) Not later than 60 days after the joint meeting held under paragraph (b)(2) of this section (unless extended within this time period by a resource agency or Indian tribe for an additional 60 days by sending written notice to the applicant and the Director of OHL within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency or Indian tribe in furthering its resource goals and objectives that are affected by the proposed project.

(5)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Hydropower Licensing (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(5)(i) or (b)(5)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(5).

(iv) The Director will resolve disputes by letter provided to the potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study to the Director under paragraph (b)(5)(i) of this section, or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to §§ 4.32 (e)(1) or (e)(2), merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(5)(iv) of this section, that such study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice. (6) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of OHL of its need for more time to provide written comments under paragraph (b)(4) of this section, in which case the first stage of consultation ends when all the participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 120 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first.

(c) Second stage of consultation. (1) Unless determined to be unnecessary by the Director pursuant to paragraph (b)(5) of this section, a potential applicant must diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies and Indian tribes under paragraph (b) of this section that are necessary for the Commission to make an informed decision regarding the merits of the application. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (e.g., instream flow study) or technical feasibility of the project (e.g., study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (e.g., resource surveys), or suitable mitigation or enhancement measures, or to minimize impact on significant resources (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before issuance of a license or exemption, if the applicant otherwise complied with the provisions of paragraph (b)(1) of this section and the study or information gathering would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the expiration of the applicant's preliminary permit or the application filing deadline set by the Commission;

(iii) After a new license or exemption is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (e.g., post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency or Indian tribe requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis and reasoning for its request, under paragraphs (b)(4) (i)-(vi) of this section, the potential applicant must promptly initiate the study or gather the information, unless the study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice. The applicant may refer any such request to the Director of the Office of Hydropower Licensing for dispute resolution under the procedures set forth in paragraph (b)(5) of this section and need not conduct prior to filing any study determined by the Director to be unreasonable or unnecessary or to employ a methodology that is not generally accepted.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency and Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(1)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency or Indian tribe to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency or Indian tribe has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) Third stage of consultation. (1) The third stage of consultation is initiated by the filing of an application for a license or exemption, accompanied by a transmittal letter certifying that at the same time copies of the application are being mailed to the resource agencies, Indian tribes, and other government offices specified in paragraph (d)(2) of this section.

(2) As soon as an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, as the Commission may direct the applicant must serve on every resource agency and Indian tribe consulted and on other government offices copies of:

(i) Its application for a license or an exemption from licensing;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

(e) Waiver of compliance with consultation requirements. (1) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) Application requirements documenting consultation and any disagreements with resource agencies. An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency or Indian tribe;

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of

any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan; (7)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act):

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(7)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in title 18, chapter I, subpart B, any application to amend an existing license, and any amendment to a pending application for a license, requires a new request for water quality certification pursuant to paragraph (f)(7)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

(8) A description of how the applicant's proposal addresses the significant resource issues raised at the joint meeting held pursuant to paragraph (b)(2) of this section; and

(9) A list containing the name and address of every federal, state, and interstate resource agency and Indian tribe with which the applicant consulted pursuant to paragraph (a)(1) of this section.

(g) Public participation. (1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(2) of this section, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated. The notice shall include a summary of the major issues to be discussed at the joint meeting.

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until the date of the joint meeting required by paragraph (b)(2) of this section.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(2) of this section at least two copies of the information specified in paragraph (b)(1) of this section.

(h) Transition provisions. (1) The provisions of this section are not applicable to applications filed before June 19, 1991.

(2) The provisions of paragraphs (a) and (b) of this section are not applicable to potential applicants that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991.

(3) The provisions of paragraph (c) of this section are not applicable to potential applicants that complied with the provisions of paragraph (b)(2) of this section prior to June 19, 1991. (4)(i) Any applicant that files its application on or after June 19, 1991, and that complied with the provisions of paragraphs (a) and (b)(1) of this section prior to June 19, 1991, must hold a public meeting, within 90 days from June 19, 1991, at or near the site of the proposed project, to

generally explain the potential applicant's proposal for the site and to obtain the views of the public regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. The public meeting must include both day and evening sessions, and the potential applicant must make either audio recordings or written transcripts of both sessions.

(ii)(A) At least 15 days in advance of the meeting, the potential applicant must provide all affected resource agencies, Indian tribes, and the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(B) At least 14 days in advance of the meeting, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the meeting, in a daily or weekly newspaper published in each county in which the proposed project or any part thereof is situated.

(iii)(A) A potential applicant must make available to the public for inspection and reproduction information comparable to that specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (h)(4)(ii) of this section is first published until the date of the public meeting required by paragraph (h)(4)(i) of this section.

(B) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(C) A potential applicant must make available to the public for inspection at both sessions of the public meeting required by paragraph (h)(4)(i) of this section at least two copies of the information specified in paragraph (h)(4)(iii)(A) of this section.

(D) A potential applicant must promptly provide copies of the audio recordings or written transcripts of the sessions of the public meeting to the Commission and, upon request, to any resource agency or Indian tribe consulted.

(iv) Any applicant holding a public meeting pursuant to paragraph (h)(4)(i) of this section must include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

[Order 533, 56 FR 23153, May 20, 1991, as amended at 56 FR 61155, Dec. 2, 1991]



Appendix B: 18 CFR Part 4, Subpart L. Application for Amendment 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.

[Order 184, 46 FR 55943, Nov. 13, 1981]

### § 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. (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 for capacity related amendments. Any application to amend a license for a hydropower project that involves additional capacity not previously authorized, and that would increase the actual or proposed total installed capacity of the project, would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more, and would result in an increase in the installed name-plate capacity of 2 megawatts or more, 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;

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## Appendices

(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 § 4.51 of this chapter.

(c) Required exhibits for non-capacity related amendments. Any application to amend a license for a water power project that would not be a capacity related amendment as described in paragraph (b) of this section must contain those exhibits that require revision in light of the nature of the proposed amendments.

(d) 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 § 385.207(c)(4) 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 the Commission staff regarding which exhibits(s) must be submitted and whether the proposed amendment is consistent with the scope of the existing licensed project.

[Order 184, 46 FR 55943, Nov. 13, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 48 FR 4459, Feb. 1, 1983; 48 FR 16653, Apr. 19, 1983; Order 413, 50 FR 11689, Mar. 25, 1985; Order 533, 56 FR 23154, May 20, 1991]

#### § 4.202 Alteration and extension of license.

(a) If it is determined 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.

[Order 184, 46 FR 55943, Nov. 13, 1981]

Appendix C: 18 CFR Section 2.7. Recreational Development at Licensed Projects.

## 2.7 Recreational development at licensed projects.

The Commission will evaluate the recreational resources of all projects under Federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities. The Commission expects the licensee to assume the following responsibilities:

- (a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objectives of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.
- (b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of physically handicapped individuals in the design and construction of such project facilities and access.
- (c) To encourage and cooperate with appropriate local, State, and Federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting.
- (d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities.
- (e) To cooperate with local, State, and Federal Government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area.
- (f)(1) To comply with Federal, State and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional necessary regulations for such purposes.
- (2) To provide either by itself or through arrangement with others for facilities to process adequately sewage, litter, and other wastes from recreation facilities including wastes from watercraft, at recreation facilities maintained and operated by the licensee or its concessionaires.
- (g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin.
- (h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities.

[Order 313, 30 FR 16198, Dec. 29, 1965, as amended by Order 375-B, 35 FR 6315, Apr. 18, 1970; Order 508, 39 FR 16338, May 8, 1974]

Appendix D: 18 CFR Section 2.19. State and Federal Comprehensive Plans.

§ 2.19 State and Federal comprehensive plans.

(a) In determining whether the proposed hydroelectric project is best adapted to a comprehensive plan under section (10)(a)(1) of the Federal Power Act for improving or developing a waterway, the Commission will consider the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

- (1) An agency established pursuant to Federal law that has the authority to prepare such a plan, or
- (2) A state agency, of the state in which the facility is or will be located, authorized to conduct such planning pursuant to state law.

(b) The Commission will treat as a state or Federal comprehensive plan a plan that:

- (1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;
  - (2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan;
- and
- (3) Is filed with the Secretary of the Commission.

[Order 481-A, 53 FR 15804, May 4, 1988]

Appendix E: Order 313



Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

RECREATIONAL DEVELOPMENT AT LICENSED PROJECTS, DOCKET  
NO. R-294

ORDER NO. 313

ISSUING STATEMENT OF GENERAL POLICY

(Issued December 27, 1965)\*

This order sets forth a statement of Commission Policy with respect to outdoor recreational development at projects licensed or to be licensed under the Federal Power Act.

There has been a dramatic increase in public utilization of outdoor recreation opportunity during the twenty years since World War II. During the period from 1952 to 1962, for example, visits to National Parks increased 87 percent, visits to other Federal recreation areas increased 238 percent, and visits to State parks increased 113 percent.

The population of the United States has increased substantially in the past two decades, with greater growth predicted for the future. A larger number of Americans than ever before are participating in one form or another of outdoor recreation at established recreational areas. Reservoirs at Federally licensed projects currently provide a significant source of outdoor recreation opportunity; but there is every indication that greatly expanded recreational development at such sites is possible both at existing projects and at those to be licensed in the future.

The Congress, in enacting Public Law 88-29<sup>1</sup> recognizing future recreational needs of the nation, set forth the following national policy on outdoor recreation:

\* \* \* the Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action, to the extent practicable without diminishing or affecting their respective powers and functions, to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people.

The President, by Executive Order 11017, dated April 27, 1962, established the Recreation Advisory Council to provide broad policy advice to the heads of federal agencies on all important matters affecting outdoor recreation resources and to facilitate coordinated efforts among federal agencies.

The Federal Power Commission has long been interested in recreational development at licensed projects. While section 10(a) of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063) did not refer specifically to recreation, in 1923 when the Federal Water Power Act was re-enacted as Part I of the Federal Power Act (49 Stat. 838, 16 U.S.C. 791a-825r), the words "including recreational purposes" were added to section 10(a) to make clear that

\*Published in the Federal Register on December 27, 1965 (30 F.R. 18197).

<sup>1</sup>An act to promote the coordination and development of effective programs relating to outdoor recreation (77 Stat. 49, 16 U.S.C. 4601). This statute established the Bureau of Outdoor Recreation within the Department of the Interior to promote the coordination and development of effective programs relating to outdoor recreation.

recreation considerations were to be included in comprehensive development of the nation's water resources.

In the ensuing years the Commission, starting with a practice of considering project recreational possibilities on case-by-case basis at the time of initial application, has gradually developed a comprehensive general pattern. Standard license forms for various categories of projects have for a number of years provided for reasonable free public access to project reservoirs for recreational purposes, and obliging the licensee, upon notice and opportunity for hearing, to take such steps to install reasonable recreational facilities as might be required by public interest and consistent with the other objectives of the license. Recognizing the need for greater advance planning for development of outdoor recreation resources at licensed projects, the Commission, in 1962, issued a notice of proposed rulemaking (Docket No. R-223), proposing that license applicants submit a recreational use plan for all major projects. This proceeding culminated on April 25, 1963 in Order No. 260-A 29 FPC 777, 28 F.R. 4092), whereby the Commission amended § 4.41 of its Regulations under the Federal Power Act to require the filing of Exhibit R—a recreational use plan—as part of every application for major license filed after June 1, 1963. The requirements of Exhibit R were further particularized by Order No. 292, issued January 8, 1965 (33 FPC 32, 30 F.R. 523).

Reflecting its desire to make project recreational opportunities widely known to the general public, the Commission by Order No. 299, issued May 27, 1965, amended Regulations under the Federal Power Act by adding a new Part 8 requiring the publicizing of recreational features or operational procedures affecting recreation at licensed projects (33 FPC 1131, 30 F.R. 7313).

These various provisions constitute a comprehensive recreational package applicable to all new major licensees, whether their licenses are for constructed or unconstructed projects. We also intend in connection with any application for substantial amendment to a license, reasonably related to recreation, which does not presently incorporate an article requiring the filing of a recreational use plan, the standard free access article, or the article providing for the installation of such recreational facilities as the Commission might, after notice and opportunity for hearing, find consistent with the other objectives of the license and required by public interest, to require the licensee to show cause why such articles should not be incorporated into its license, if the license is otherwise amended in response to the application. And in the future we shall not approve any application or request by a licensee to dispose of any interest in lands within project boundaries, in the absence of a showing by the licensee that such disposal is not inconsistent with the approved public recreational plan for the project, or, in the absence of such a plan, that the lands in question do not have recreational value.

By separate order we are amending Section 4.41 of the regulations to make clear that we expect licensees to extend their project boundaries beyond the 200 feet from the exterior margin of reservoirs presently specified whenever appropriate to effectuate a comprehensive recreational plan. In addition, it is our view, as set out in the proposed policy statement below, that generally all recreational areas specified in an approved plan, should be acquired by the licensee in fee, and should include all lands immediately adjacent to the exterior margin of the reservoirs. We recognize, however, that in the case of some constructed though unlicensed projects or amendments to existing licenses, the latter two objectives on occasion may not be consistent with the economic well being of the project, or in isolated situations of low recreational potential, required by the public interest.

The Commission believes that irrespective of the requirements of their licenses, licensees whose projects comprise land and water resources with outdoor recreational potential have a responsibility for the development of those resources in accordance with area needs, to the extent that such development is not inconsistent with the primary purpose of the project. All licensees will therefore be encouraged to submit for Commission approval and incorporation into their licenses an appropriate recreational plan. In assuming this responsibility the licensee should consider each project on the basis of its physical and economic characteristics, its operational plan, and area needs for outdoor recreation. As an aid to both licensees and the Commission in this endeavor we are proposing to initiate a nationwide inventory of the recreational potential of all Commission licensees for which an appropriate recreational use plan had not been approved within the last five years.

When formulating plans for project recreational facilities, applicants and licensees are encouraged to consult and coordinate such planning with local, state and federal agencies concerned with outdoor recreation, as well as with professional recreational facilities designers and landscape architects. Pursuant to The Land and Water Conservation Act of 1965 (P.L. 88-578, 78 Stat. 897, 16 U.S.C. 4601-4), public funds may be made available by the Secretary of the Interior for both state and federal acquisition and for state development of recreational areas under appropriate circumstances. Cooperation with the Bureau of Outdoor Recreation of the Department of the Interior as well as with interested state agencies could result in state or federal developments adjacent to licensed projects reservoirs, thereby supplementing and enhancing project facilities.

The Commission recognizes that a licensee will incur costs in providing recreational facilities, and, therefore, will allow appropriate and reasonable expenditures for recreational facilities, including the purchase of additional land, to be included as part of the project cost. The Commission also recognizes that certain annual costs will be incurred by a licensee in the operation and maintenance of recreational facilities. Accordingly, the Commission will not object to the imposition by a licensee of reasonable user fees in order to help defray these costs.

In making project lands, waters, and facilities available for public recreation, licensee should, of course, comply with local and state regulations and also formulate such rules of use as may be appropriate to insure public safety.

Concurrently with the issuance of this order we are issuing a report entitled "Criteria and Standards for Outdoor Recreation Development at Hydroelectric Projects." The report consists of a selected compilation of criteria and standards utilized by federal and state agencies concerned with outdoor recreation development which are adaptable to hydroelectric projects. We are making it public in the hope that it will be of value to licensees, applicants for license, and recreational planners, in formulating plans for the development of recreational facilities at hydroelectric projects.

*The Commission finds:*

- (1) The notice and effective date provisions of section 4 of the Administrative Procedure Act do not apply with respect to the amendment here adopted.
- (2) It is appropriate and in the public interest in administering Part I of the Federal Power Act to promulgate Commission policy on recreational development at licensed projects.

*The Commission orders:*

(A) Part 2, General Policy and Interpretations, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations is amended by adding a new § 2.7, entitled "Recreational development at licensed projects," as follows:

§ 2.7 Recreational development at licensed projects.

The Commission will evaluate the recreational resources of all projects under federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities.

The Commission expects the licensee to assume the following responsibilities:

(a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objective of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.

(b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters.

(c) To encourage and cooperate with appropriate local, state, and federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting.

(d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities.

(e) To cooperate with local, state, and federal government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area.

(f) To comply with local and state regulations for health, sanitation, and public safety, and to cooperate with local law enforcement authorities in the development of additional necessary regulations for such purposes.

(g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin.

(h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities.

(B) Licensees who have not already done so are encouraged to file comprehensive recreational plans for approval and incorporation within their licenses to the extent necessary and appropriate to provide adequate recreational facilities. The Commission will approve extensions of the boundaries of existing projects as part of its approval of any such plan.

(C) The Commission will not grant any authorization for a licensee to dispose of any interest in project lands, unless a showing is made that such

disposal is not inconsistent with any approved recreational plan or in the absence of such a plan, that the lands do not have recreational value. Pending a determination by the Commission that such lands are not needed for public recreational purposes, all project lands, buildings, or other property will be considered to be required to achieve the purposes of the license within the meaning of any article in the license relating to the leasing of such lands, buildings, or other property. The licensee, in the absence of specific Commission exemption from these requirements, shall include in the instrument of conveyance a covenant running with the land adequate to insure that, unless the Commission subsequently authorizes a different use as consistent with a comprehensive plan for improving or developing the waterway, the use of the lands conveyed will not endanger health, create a nuisance, or otherwise be incompatible with over-all project recreational use.

(D) The amendments prescribed herein will be effective upon the issuance of this order.

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Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.