



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 4 and 5

[Docket No. RM20-21-000]

### Removing Profile Drawing Requirement for Qualifying Conduit Notices of Intent and Revising Filing Requirements for Major Hydroelectric Projects 10 MW or Less

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects. Specifically, the Commission is proposing to remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility and extend the licensing requirements that currently apply to major projects up to 5 MW to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the Hydropower Regulatory Efficiency Act of 2013.

**DATES:** Comments are due **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

**ADDRESSES:** You may send comments, identified by RM20-21-000, by one of the following methods:

- Electronic Filing (eFiling) at the Commission's Web Site:

<http://www.ferc.gov>

- U.S. Postal Service Mail: Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426
- Delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to the Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Heather Campbell (Technical Information)

Office of Energy Projects

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

(202) 502-6182

[heather.e.campbell@ferc.gov](mailto:heather.e.campbell@ferc.gov)

Kelly Houff (Technical Information)

Office of Energy Projects

Federal Energy Regulatory Commission

888 First Street NE

Washington, DC 20426

(202) 502-6063

kelly.houff@ferc.gov

John Matkowski (Technical Information)

Office of Energy Projects

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

(202) 502-8576

john.matkowski@ferc.gov

Rachael Warden (Legal Information)

Office of the General Counsel

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

(202) 502-8717

rachael.warden@ferc.gov

**SUPPLEMENTARY INFORMATION:**

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## **I. Background and Discussion**

1. By this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission or FERC) proposes to amend Parts 4 and 5 of its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects.

2. The Commission, under Part I of the Federal Power Act (FPA), licenses hydropower projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others.

3. The Hydropower Regulatory Efficiency Act of 2013 (2013 HREA)<sup>1</sup> was signed into law on August 9, 2013. As explained below, changes implemented in response to the 2013 HREA form the basis for these proposed revisions to the Commission's regulations.

### **A. Qualifying Conduits**

4. The 2013 HREA amended section 30 of the FPA to create a subset of small conduit facilities that are categorically excluded from the licensing and exemption requirements of the FPA. In September 2014, the Commission issued Order No. 800, which became effective February 23, 2015, defining a "qualifying conduit hydropower

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<sup>1</sup> Pub. L. 113–23, 127 Stat. 493 (2013).

facility” at section 4.30(b)(26) of its regulations.<sup>2</sup> Subsequently, section 30 of the FPA was amended by the America’s Water Infrastructure Act of 2018.<sup>3</sup>

5. In accordance with section 30(a)(2)(A),<sup>4</sup> any person, State, or municipality proposing to construct a “qualifying conduit hydropower facility” must file a notice of intent demonstrating the facility meets the following “qualifying criteria”<sup>5</sup>:

- be located on and use only the hydroelectric potential of a non-federally-owned conduit;
- have a proposed installed capacity that does not exceed 40 Megawatts (MW);<sup>6</sup> and
- be proposed for construction and, as of the date of enactment of the 2013 HREA, not be licensed under, or exempted from, the licensing requirements of Part I of the FPA.

6. Under the 2013 HREA, as amended by the America’s Water Infrastructure Act of 2018,<sup>7</sup> the Commission is required to determine whether proposed projects meet the criteria to be considered qualifying conduit hydropower facilities. Qualifying conduit

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<sup>2</sup> See *Revisions and Technical Corrections to Conform the Commission’s Regulations to the Hydropower Regulatory Efficiency Act of 2013*, Order No. 800, 79 FR 59105 (Oct. 1, 2014), 148 FERC ¶ 61,197 (2014).

<sup>3</sup> Pub. L. 115-270, 132 Stat. 3765 (2018).

<sup>4</sup> 16 U.S.C. 823a(a)(2)(A).

<sup>5</sup> *Id.* 823a(a)(3)(C). The qualifying conduit hydropower facility must also meet the requirements for a small conduit facility as defined in section 30(a)(3)(A) of the FPA. *Id.* 823a(a)(3)(A).

<sup>6</sup> The 2013 HREA required that qualifying conduit hydropower facilities not exceed 5 MW. This limit was revised to 40 MW at section 3002(2) in the America’s Water Infrastructure Act of 2018 (codified at 16 U.S.C. 823a(a)(3)(C)(ii)).

<sup>7</sup> Pub. L. No. 115-270, 132 Stat. 3765.

hydropower facilities are not required to be licensed or exempted by the Commission; however, the entity proposing to construct a facility that meets the criteria must file a Notice of Intent (NOI) to Construct a Qualifying Conduit Hydropower Facility with the Commission that demonstrates the facility meets the qualifying criteria discussed above.

7. The NOI must contain: an introductory statement; a statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit; a statement that the proposed facility has not been licensed or exempted on or before August 9, 2013; a description of the facility proposal; project drawings; the preliminary permit project number of the proposed facility, if applicable; and verification in a sworn notarized statement or an unsworn statement.<sup>8</sup> Specifically with respect to the project drawings, the NOI must include a plan (or overhead view); a location map showing the facilities and their relationship to the nearest town; and if a dam would be constructed in association with the facility, a profile drawing showing that the conduit, and not the dam, creates the hydroelectric potential.<sup>9</sup>

8. On June 18, 2015, in *Soldier Canyon Filter Plant*,<sup>10</sup> the Commission stated:

In determining whether a proposed qualifying conduit hydropower facility meets the requirement of FPA section 30(a) that it use “only the hydroelectric potential of a non-federally owned conduit” and (if it meets the other section 30(a) requirements) is thus excluded from the licensing requirements of the FPA, we see no reason to apply a different, more

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<sup>8</sup> 18 CFR 4.401 (2020).

<sup>9</sup> *Id.* 4.401(f).

<sup>10</sup> 151 FERC ¶ 61,228 (2015).

stringent standard than was established in 1980 for small conduit facility exemptions. We view small conduit facilities and qualifying conduits as simply generating hydroelectricity by using the water within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. Whether, or in what proportion, the conduit's ability to generate hydropower is due to the conduit's gradient or the head from an upstream dam is not relevant.<sup>11</sup>

This holding indicates that the profile drawings are no longer relevant and should not be required as part of the NOI submittal. Consequently, the Commission proposes to amend its regulations to remove this requirement.

**B. Major Projects Greater than 5 MW and up to and Including 10 MW**

9. Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>12</sup> provided that certain hydropower projects that produce 5,000 kilowatts, or 5 MW, or less of power were exempted from the licensing requirements of Part 1 of the FPA.

10. In 1981, the Commission adopted the 5-MW demarcation for certain major hydroelectric projects required to be licensed under Part 1 of the FPA to parallel PURPA's 5-MW demarcation regarding exemptions.<sup>13</sup> Part 4 of the Commission's

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<sup>11</sup> *Id.* P 13.

<sup>12</sup> 16 U.S.C. 2705.

<sup>13</sup> *Regulations Governing Applications for License for Major Unconstructed Projects and Major Modified Projects; Applications for License for Transmission Line Only and Applications for Amendment to License*, Order No. 184, 46 FR 55926 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,308 (1981) (cross-referenced at 17 FERC ¶ 61,122); *Regulations Governing Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less*, Order No. 185, 46 FR 55944 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,309 (1981) (cross-referenced at 17 FERC ¶ 61,121).

regulations includes three relevant licensing subparts: (1) Subpart E—Application for License for Major Unconstructed Project and Major Modified Project (see 18 CFR 4.40); (2) Subpart F—Application for License for Major Project—Existing Dam (see 18 CFR 4.50); and (3) Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 MW or Less (see 18 CFR 4.60; 4.61).<sup>14</sup> Subparts E and F apply to projects greater than 5 MW, and include additional filing requirements beyond Subpart G, which applies to projects less than or equal to 5 MW.

11. Likewise, Part 4 of Commission’s regulations include two subparts that rely on the same 5-MW limit to determine minimum filing requirements for an application for license solely for transmission lines that transmit power from a licensed water power projects as well amendments to licensed water power projects:

(1) Subpart H—Application for License for Transmission Line Only (see 18 CFR 4.71); and (2) Subpart L—Application for Amendment of License (see 18 CFR 4.201), respectively.

12. Part 5 of the Commission’s regulations rely on the 5-MW limit to determine minimum filing requirements for applications for license for water power projects filed and processed using the integrated licensing process (see 18 CFR 5.18).

13. The 2013 HREA amended section 405 to increase the limit for exemptions to 10,000 kilowatts, or 10 MW, with the goal of facilitating the speed at which such

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<sup>14</sup> The Commission has maintained a distinction between major and minor projects based on section 10(i) of the FPA. However, the license application procedures set forth in § 4.61 of the Commission’s regulations apply to both minor projects and major projects less than 5 MW (with the exception of Exhibit E for unconstructed projects). These proposed changes do not affect minor projects.



hydropower projects could be built. Order 800 amended the Commission's regulations to reflect the 10-MW limit.<sup>15</sup>

14. As a result of these changes, the Commission's limit for license application provisions no longer parallels the limit for exemptions. We continue to believe that a parallel demarcation is appropriate to "expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications."<sup>16</sup> Moreover, the 5-MW limit in the Commission's regulations could be burdensome to projects greater than 5 MW and up to and including 10 MW, in terms of the cost and time associated with the additional filing requirements of Subparts E and F.

15. Therefore, the Commission proposes to amend Parts 4 and 5 of its regulations to extend the licensing and amendment filing requirements that currently apply to major projects up to 5 MW to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the 2013 HREA.<sup>17</sup>

## **II. Regulatory Requirements**

### **A. Information Collection Statement**

16. The Paperwork Reduction Act<sup>18</sup> requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection

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<sup>15</sup> See Order No. 800, 148 FERC ¶ 61,197 (2014).

<sup>16</sup> *Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less*, 46 FR 9637 (Jan. 29, 1981), FERC Stats. & Regs. ¶ 32,106 (1981) (cross-referenced at 14 FERC ¶ 61,042).

<sup>17</sup> Section 4.32(a)(5)(ii), which contains a cross-reference to § 4.61, will also be revised.

<sup>18</sup> 44 U.S.C. 3501-3521.

of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contemplated by proposed rules.<sup>19</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

17. **Public Reporting Burden:** In this NOPR, the Commission proposes to revise its regulations governing the filing requirements for qualifying conduits and for major hydroelectric power projects greater than 5 MW and up to and including 10 MW.

18. This proposed rule would modify certain reporting and recordkeeping requirements included in FERC-500 (OMB Control No 1902-0058)<sup>20</sup> and FERC-505 (OMB Control No. 1902-0115).<sup>21</sup>

19. The proposed revisions to the Commission’s regulations, associated with the FERC-500 and FERC-505 information collections, are intended to align the Commission’s filing requirements for qualifying conduits with Commission precedent and to align the Commission’s filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition of a small

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<sup>19</sup> See 5 CFR 1320.11 (2020).

<sup>20</sup> FERC-500 includes the reporting and recordkeeping requirements for “Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity.”

<sup>21</sup> FERC-505 includes the reporting and recordkeeping requirements for “Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.”

hydroelectric power project in the 2013 HREA. Both proposed revisions will represent a slight decrease in the reporting requirements and burden information for FERC-500 and FERC-505.

20. The estimated burden and cost for the requirements contained in this NOPR follow.

Annual Changes Proposed by the NOPR in Docket No. RM20-21-000					
	No. of Respondents (1)	No. of Responses <sup>22</sup> per Respondent (2)	Total No. of Responses (1)X(2)=(3)	Avg. Burden Hrs. & Cost Per Response <sup>23</sup> (4)	Total Annual Burden Hours & Total Annual Cost (3)X(4)=5
FERC-500	3	1	3	320 hours reduction \$83.00	960 hours/ \$79,680 reduction
FERC-505	8	1	8	10 hours reduction \$83.00	80 hours/ \$6,640 reduction
<b>TOTAL</b>					1,040 hours/ \$86,320 reduction

21. **Titles:** FERC-500 (Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity) and FERC-505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

22. **Action:** Revisions to information collections FERC-500 and FERC-505.

23. **OMB Control Nos.:** 1902-0058 (FERC-500) and 1902-0115 (FERC-505).

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<sup>22</sup> We consider the filing of an application or notice of intent to be a “response.”

<sup>23</sup> Commission staff estimates that the industry’s skill set and cost (for wages and benefits) for FERC-500 and FERC-505 are approximately the same as the Commission’s average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is \$172,329/year (or \$83.00/hour).

24. **Respondents:** Municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.
25. **Frequency of Information:** Ongoing.
26. **Necessity of Information:** The revised regulations would remove the Commission's requirement for notices of intent to construct a qualifying conduit to include a profile drawing, consistent with Commission precedent, and would align the Commission's filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition of a small hydroelectric power project in the 2013 HREA. The revised regulations would affect only the number of entities that would file applications with the Commission for these two project types, and would reduce information collection requirements.
27. **Internal Review:** The Commission has reviewed the proposed revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.
28. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission at one of the following methods:
- USPS at: Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426
  - Hard copy communication other than USPS: Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 12225 Wilkins Avenue, Rockville, Maryland 20852

- email to [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov)
- phone (202) 502-8663, or by fax (202) 273-0873.

Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Comments submitted to OMB should be sent within 30 days of publication of this notice in the *Federal Register* and should refer to FERC-500 (OMB Control No 1902-0058) and FERC-505 (OMB Control No. 1902-0115).

## **B. Environmental Analysis**

29. The Commission is required to prepare an Environmental Assessment or an Environmental Impact statement for any action that may have a significant effect on the human environment.<sup>24</sup> Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.<sup>25</sup> This proposed rule proposes to revise the filing requirements for qualifying conduit projects and revise the filing requirements for license applications for major hydroelectric projects with an installed capacity of 10 MW or less. Because this proposed rule is procedural and does not substantially change the effect of the regulations being amended, preparation of an Environmental Assessment or

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<sup>24</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>25</sup> 18 CFR 380.4(a)(2)(ii) (2020).

Environmental Impact Statement is not required.

**C. Regulatory Flexibility Act**

30. The Regulatory Flexibility Act of 1980 (RFA)<sup>26</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.<sup>27</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>28</sup>

31. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>29</sup> The SBA size standard for electric utilities is based on the number of employees, including affiliates.<sup>30</sup> Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111)<sup>31</sup> is small if, including its affiliates, it employs 500 or fewer people.<sup>32</sup> The Commission, however, currently does not require information regarding the number of individuals employed by

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<sup>26</sup> 5 U.S.C. 601-612.

<sup>27</sup> *Id.* 603(c).

<sup>28</sup> *Id.* 605(b).

<sup>29</sup> 13 CFR 121.101 (2020).

<sup>30</sup> *Id.* 121.201.

<sup>31</sup> The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, <https://www.census.gov/eos/www/naics/>.

<sup>32</sup> 13 CFR 121.201 (Sector 22 - Utilities).

hydroelectric generators to administer Part 1 of the Federal Power Act and therefore is unable to estimate the number of small entities under the SBA definition. Regardless, the Commission anticipates that the proposed rule will affect few entities.

32. As noted earlier, the proposed rule will only affect entities filing notices of intent to construct a qualifying conduit in instances where a dam would be constructed in association with the facility and entities filing licensing or amendment applications for major hydroelectric projects with an installed capacity of greater than 5 MW and up to and including 10 MW. From 2013 to 2020, the Commission received approximately 140 total notices to construct qualifying conduits and 18 applicable licensing applications. If enacted, the proposed revisions would eliminate the filing requirement for profile drawings and reduce the filing requirements for major hydroelectric projects with an installed capacity greater than 5 MW and up to and including 10 MW, thus reducing the burden on small hydro developers going forward.

33. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### **D. Comment Procedures**

34. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must refer to Docket No. RM20-21-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

35. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

36. Commenters that are not able to file comments electronically must send an original of their comments to the Commission via USPS or another preferred carrier. For submission sent via USPS, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426. Submission of filings other than by USPS should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

37. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**E. Document Availability**

38. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020



proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

39. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

40. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

## **List of Subjects**

### **18 CFR Parts 4 and 5**

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: February 18, 2021.

**Kimberly D. Bose,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to revise parts 4 and 5, chapter I, title 18, *Code of Federal Regulations*, as follows:

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

1. The authority citation for part 4 continues to read as follows:

**Authority:** 16 U.S.C. 791a-825r; 42 U.S.C. 7101-7352.

2. In § 4.32, revise paragraph (a)(5)(ii) to read as follows:

**§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.**

(a) \* \* \*

(5) \* \* \*

(ii) License for a minor water power project and a major water power project 10 MW or less: § 4.61;

\* \* \* \* \*

3. In § 4.40, revise paragraph (a) to read as follows:

**§ 4.40 Applicability.**

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license for a major unconstructed project that would have a total installed capacity of more than 10 megawatts, and any application for an initial or new license for a major modified project with a total installed capacity more than 10 megawatts. An applicant for license for any major unconstructed or major modified water power project that would have a total installed generating capacity of 10 megawatts or less must submit application under subpart G (§§ 4.60 and 4.61)

\* \* \* \* \*

4. In § 4.50, revise paragraphs (a)(1) and (3) to read as follows:

**§ 4.50 Applicability.**

(a) \* \* \* (1) Except as provided in paragraph (a)(2) of this section, the provisions of this subpart apply to any application for either an initial license or new license for a major project—existing dam that is proposed to have a total installed capacity of more than 10 megawatts.

\* \* \* \* \*

(3) An applicant for license for any major project—existing dam that would have a total installed capacity of 10 megawatts or less must submit application under subpart G (§§ 4.60 and 4.61).

\* \* \* \* \*

5. Revise the heading to Subpart G to read as follows:

**Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 10 Megawatts or Less**

6. In § 4.60, revise paragraphs (a)(2) and (3) and (b) to read as follows:

**§ 4.60 Applicability and notice to agencies.**

(a) \* \* \*

(2) Any major project—existing dam, as defined in §4.30(b)(16), that has a total installed capacity of 10 MW or less; or

(3) Any major unconstructed project or major modified project, as defined in § 4.30(b)(15) and (14) respectively, that has a total installed capacity of 10 MW or less.

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 10 MW or less and request comment on the application. Copies of the application

will be available for inspection at the Commission's Public Reference Room. The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

\* \* \* \* \*

7. In § 4.61, revise paragraphs (a)(3), (b) introductory text, and (d)(1) and (2) to read as follows:

**§ 4.61 Contents of application.**

(a) \* \* \*

(3) Each application for a license for a water power project 10 megawatts or less must include the information requested in the initial statement and lettered exhibits described by paragraphs (b) through (f) of this section, and must be provided in the form specified. The Commission reserves the right to require additional information, or another filing procedure, if data provided indicate such action to be appropriate.

\* \* \* \* \*

(b) *Initial statement.*

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION  
*Application for License for a [Minor Water Power Project, or Major Water Power Project, 10 Megawatts or Less, as Appropriate]*

\* \* \* \* \*

(d) \* \* \*

(1) For major unconstructed and major modified projects 10 MW or less. Any application must contain an Exhibit E conforming with the data and consultation requirements of § 4.41(f) of this chapter, if the application is for license for a water power

project which has or is proposed to have a total installed generating capacity greater than 1.5 MW but not greater than 10 MW, and which:

\* \* \* \* \*

(2) For minor projects and major projects at existing dams 10 MW or less. An application for license for either a minor water power project with a total proposed installed generating capacity of 1.5 MW or less or a major project— existing dam with a proposed total installed capacity of 10 MW or less must contain an Exhibit E under this subparagraph. *See* § 4.38 for consultation requirements. The Environmental Report must contain the following information:

\* \* \* \* \*

8. In § 4.71, revise paragraphs (b)(1) and (2) to read as follows:

**§ 4.71 Contents of application.**

\* \* \* \* \*

(b) \* \* \*

(1) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41 of this chapter;

(2) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of 10 MW or less—Exhibits E, F, and G under § 4.61 of this chapter; and

\* \* \* \* \*

9. In § 4.201, revise paragraphs (b)(1) and (3) through (5) to read as follows:

**§ 4.201 Contents of application.**

\* \* \* \* \*

(b) \* \* \*

(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 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41 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 10 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 10 MW or less—Exhibit E, F, and G under § 4.61 of this chapter;

(5) For amendment of a license for a water power project that, at the time the application is filed, has been constructed and is proposed to have a total installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.51 of this chapter.

\* \* \* \* \*

§ 4.401 [Amended]

10. In § 4.401, remove paragraph (f)(3).

**PART 5—INTEGRATED LICENSE APPLICATION PROCESS**

11. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

12. In § 5.18, revise paragraph (a)(5)(i) to read as follows:

§ 5.18 Application content.

(a) \* \* \*

(5) \* \* \*

(i) License for a minor water power project and a major water power project

10 MW or less: § 4.61 (General instructions, initial statement, and Exhibits A, F, and G);

\* \* \* \* \*

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