

FERC Hydropower Notices for the Traditional Licensing Process

TYPE OF NOTICE	PURPOSE	RESPONSE TIME
PRE-FILING		
Preliminary Permit Application	Announces that a utility has filed a preliminary permit application with FERC; requests motions to intervene, protests, oppositions, and competing applications	60 days
POST-FILING		
License Application Tendered	Announces that application was filed and received by FERC; requests that any additional studies be filed	60 days from application date
License Application Accepted	Accepts application in accordance with FERC's regulations; requests filing of Motion to Intervene ¹	none
Scoping: Scoping Document I, Site Visit, and Site Meeting	Invites public participation in scoping and attendance at meetings and site visit; accepts written comments; accepts competing applications	60 days
Scoping Document II	Identifies issues and alternatives to be addressed or analyzed in draft NEPA document	Issued some time after 60 day scoping comment period
Application Ready for Environmental Analysis	Announces that license application has been accepted and FERC is ready to prepare the NEPA document (EA or EIS); requests terms and conditions, preliminary prescriptions, comments ²	60 days
Clarification Meeting	Clarifies issues and topics for the NEPA document; meeting requested by agencies or stakeholders as deemed necessary	15-30 days
Availability of DEA or DEIS	Releases its draft analysis of impacts and alternatives, and requests comments and modified Section 18 prescriptions	30 days; 45 days if intervenors
EIS Meeting	Invites verbal participation at public forum where FERC explains results of its draft EIS	30 days
10(j) Meeting	Clarifies FERC's findings of 10(j) inconsistencies and allows for dialogue	30 days
Availability of FEA or FEIS	Discloses final NEPA analysis ³	none
POST-LICENSING⁴		
License Surrender	Application being surrendered because licensee cannot construct project; invites comments, motions to intervene, and protests	30 or 60 days
Time Extension	Reveals FERC's decision whether to grant a 2-year time extension to commence construction	30 days

¹ MDNR should intervene in all cases in order to be a legal party to the proceeding

² MDNR must file timely to this notice as the provided information will be included in FERC's NEPA document

³ Does not request public comments or input, but doesn't initiate a 45 day period for agencies to file their Section 4(e) conditions with FERC

⁴ A motion to intervene should be filed for each post-licensing proceeding

FERC Hydropower Notices for the Alternative Licensing Process (ALP)

TYPE OF NOTICE	PURPOSE	RESPONSE TIME
PRE-FILING		
Approval use of the ALP	Approves applicant's use of the ALP; usually requires buy-in by resource agencies and stakeholders via a Communications Protocol	none
Pre-filing Meeting	Announces date of pre-filing meeting	none
APEA Scoping Meeting	Requests attendance to identify all relevant public issues and concerns, including studies	30 days after Scoping Meeting
Preliminary Terms and Conditions	Accepts requests this information to incorporate into its preliminary draft application ⁵	60 days
POST-FILING		
License Exemption	FERC determines whether application is exempt from licensing	none
Procedural Protocol Schedule	Approve standards and procedures that follow	60 days
License Application Tendered	Announces that application was filed and received by FERC; requests that any additional studies be filed	60 days
Scoping: Scoping Document I, Site Visit, and Site Meeting	Invites public participation in scoping and attendance at meetings and site visit; accepts written comments; accepts competing applications	60 days
Application Ready for Environmental Analysis	Announces that license application has been accepted and FERC is ready to prepare the NEPA document (EA or EIS); requests terms and conditions, preliminary prescriptions, comments	60 days
10(j) Meeting	Clarifies FERC's findings of 10(j) inconsistencies and allows for dialogue	30 days
Availability of DEA or DEIS and public meeting	Releases its draft analysis of impacts and alternatives, and requests comments and modified Section 18 prescriptions	30 days; 45 days if intervenors
Availability of FEA or FEIS	Discloses final NEPA analysis	none
POST-LICENSING⁶		
License Amendments	Discloses substantive changes to license, invites comments, motions to intervene, and protests	30 days

⁵ Preliminary terms and conditions should not be provided until the license application is filed with FERC and the proceeding has officially begun

⁶ A motion to intervene should be filed for each post-licensing proceeding

KEY SCHEDULING MILESTONES

Within the licensing framework there are many opportunities for resource agencies, Indian tribes, and the general public to become informed of the status of the licensing process, receive useful information, and provide comments and recommendations. Both traditional and alternative licensing processes have specific milestones. Most milestones are characterized by specified “windows” of time rather than by single dates within which action is required.

Pre-filing Consultation

Consultation must begin with resource agencies, Indian tribes, and the public as early as possible so that the results of such consultation can be used to develop licensing alternatives, guide engineering and environmental study programs, and complete preparation of the license application within the allotted period. In this phase of pre-filing, at a minimum, the applicant must allow time:

- to prepare an initial consultation package (ICP) or initial information package (IIP);
- for agencies and tribes to review the ICP or IIP;
- to have a joint meeting;
- to consult on necessary studies;
- to conduct and discuss the results of those studies (which may be seasonally dependent);
- to incorporate the results of those discussions into the effect and proposed protection, mitigation, and enhancement sections of the draft license application;
- for review of the draft license application by Indian tribes and resource agencies
- ❖ ***When reviewing draft license application, ensure that all resource agency requests have been met, and that all of the study results are included. Request additional data if necessary (typically, a licensee will refute additional agency requests).***
- to resolve any disputes regarding resource impacts or proposed measures, including holding a joint meeting; and
- prepare and file the final license application after comment on the draft
- ❖ ***At this point, insert MDNR Final Terms and Conditions with comments***

Some of the above steps have regulatory timeframes as described in 18 CFR 4.38 (licensing) or 18 CFR 16.8 (relicensing) and herein.

Notice of Intent

An existing licensee must file a notice of intent (NOI) stating whether it intends to file or not to file an application for a relicense. If a license expires on or after October 17, 1992, the NOI must be filed at least 5 but not more than 5½ years before the expiration date of its license. Applications for original licenses or exemptions are subject to the rules described in section 2.1

Request for 401 Certification

To comply with Section 401(a)(1) of the Clean Water Act (CWA), the Commission requires that an application for a license or relicense must include a copy of the water quality certification, a copy of the request, including proof of the date on which the certifying agency received the water quality certification request, or evidence of waiver of water quality certification. The 401-certification process can begin at any time prior to filing of the application.

Application Filing

An applicant may file an application for license or relicense following completion of the pre-filing consultation. An applicant for relicense must file an application at least 24 months before the existing license expiration. This deadline is statutory and cannot be waived.

Public Tendering Notice

An applicant must publish a notice twice of the filing of its application, no later than 14 days after the filing date. The Commission will issue a public notice of the tendering for filing of each application for a hydropower license. The tendering notice will establish the final deadline for filing requests for additional scientific studies. The tendering notice will also establish procedures and the deadline for submission of final amendments. All Commission notices include a clear title to indicate the type of notice, the expected response, the deadline date for responses, and whether any federal lands are located within the project boundaries.

FERC Notice of Application Deficiencies

The Commission will notify the applicant by letter, or in the case of minor deficiencies, by telephone, describing any deficiencies in the application. The letter will establish a deadline for deficiency correction, generally 90 days after the date of the letter.

Last Date for Final Amendments

An applicant must make any final amendments to its application no later than the date specified in the Commission processing deadline notice or not later than 30 days after issuance of a ready for environmental analysis notice.

Commission Notice of Application Acceptance or Rejection

The Commission will notify the applicant by letter if the application has been accepted for filing. The acceptance letter may include requests for additional information.

Public Notice of Application Acceptance

If the application is accepted, the Commission will issue a public notice soliciting comments and motions to intervene or protest and establish dates, typically 60 days from the issuance of the public notice, for filing comments, motions to intervene and protests.

FERC Issuance of Ready for EA Notice

Under the traditional licensing process, the Commission conducts scoping and prepares NEPA documents. The Commission staff prepares a scoping document for public comment and may hold a public meeting to discuss the scope of the NEPA document. When sufficient information is available for the Commission staff to prepare the NEPA document (e.g., through correction of deficiencies and filing of additional information, if necessary, and scoping), the Commission will publish a ready for environment assessment (REA) notice requesting comments, recommendations, terms and conditions, and prescriptions. After the close of the comment period, the Commission then prepares the NEPA document typically with a draft for public comment. All comments, including mandatory conditions, must be filed no later than 60 days after issuance of the REA notice. All reply comments by applicants must be filed within 105 days of that notice. In cases where no additional information or scoping is required, the Commission may issue a single notice combining the notice of acceptance and REA. Under an alternative process where the applicant files an preliminary draft EA, or preliminary draft EIS prepared by a third party contractor, no REA notice need be given by the Commission. Instead, the Commission will issue a notice requesting that agencies, affected Indian Tribes, and interested entities file final comments, recommendations, terms and condition, and prescriptions.

Relicense Issuance The target date for issuance of a relicense is the expiration date of the original license. If processing extends beyond this date, annual licenses will be issued to the licensee until action on relicensing is taken.

