

Guidance on Environmental Measures in License Applications

The Federal Energy Regulatory Commission (Commission) staff has undertaken a number of initiatives to foster the development of license applications in an efficient and timely manner. One important component of license applications is the description of proposed measures and plans to protect, mitigate, or enhance environmental resources (PM&E Measures). Proposed PM&E measures could include modifications to project facilities and operations; construction, operation, and maintenance of new facilities; or protection or mitigation measures for addressing project-related effects. These could be individual measures, or a series of related measures (e.g., construction and maintenance of two boat docks, a picnic area, and a trail) which may be packaged into one plan (e.g., a Recreation Plan). How (and if) these proposed measures are packaged is not as important as the information that should be provided. Applicants have requested that Commission staff provide guidance on the level of detail that should be provided and at what point in the licensing process these measures are needed. We offer the following guidance in developing any proposed environmental measures.

GOAL

Commission staff must have an application with sufficient detail to complete the environmental analysis required under the National Environmental Policy Act of 1969 as amended (NEPA), and to weigh the benefits of any proposed measures along with their costs (economic, generation, and other competing uses) and any alternative proposed measures, as required under sections 4(e) and 10(a) of the Federal Power Act. While Commission staff understand that the level of detail on PM&E measures may vary, the goal is to have sufficient information on measures to be able to recommend to the Commission implementation of those measures that are best adapted to a comprehensive plan for improving or developing the waterway in any license issued.

INFORMATION REQUIREMENTS

To achieve this goal, applicants, agencies, tribes, and non-governmental organizations should provide specific measures that permit staff to describe what is going to be done, where, when, how, and why. That information should include at a minimum: (a) a description of the specific measures to be implemented, including conceptual drawings, depictions, or similar graphic information for any facilities proposed to be constructed; (b) a clear description of where any proposed measures are likely or intended to be implemented, whether these are related to operation (e.g., the release points for minimum flows and where the flow would be measured), facilities, or protective or mitigative measures for addressing project-related effects, including reference to the project boundary; (c) a preliminary description of any steps necessary to implement measures and the preliminary schedules for implementing the measures referenced to the license issuance date; (d) a description of the purpose of the

measures and the benefits that they would provide; (e) the consultation record leading to the measures; (f) an estimated cost for the implementation of each measure; and (g) as applicable, an applicant's explanations as to why it is not adopting any comments or recommendations made by stakeholders. Final details may not always be possible. However, what is provided should be sufficient to answer the above questions.

WHEN SHOULD THIS INFORMATION BE PROVIDED

To promote constructive feedback, proposed measures should be provided as soon as possible in the pre-filing portion of the licensing process.

Proposed PM&Es at Culmination of Study Phase:

Some measures are developed at the culmination of the study phase and included in study reports filed with the Commission. If any are developed at this phase, they should be incorporated by reference in an applicant's draft license application/preliminary licensing proposal (DLA/PLP).

PM&Es in the Preliminary Licensing Proposal or Draft Application:

To promote constructive feedback, preliminary proposals for measures and plans to protect, mitigate, or enhance environmental resources should be described and evaluated to the extent possible in an applicant's DLA/PLP documents (18 C.F.R. §§ 5.16(b)(1) and (2)). At a minimum, the draft license application/PLP should include preliminary proposed measures, operations and maintenance plans, and a draft environmental analysis associated with them.

PM&Es in the License Application:

By the time the final license application is filed, all of an applicant's proposed PM&E measures must be provided (18 C.F.R. § 5.18(b)(5)(ii)(C)), including the information identified in (a) through (g) above. Measures that contain sensitive information (e.g., location of an archaeological site) should be submitted separately and marked "Not for Public Disclosure" (18 C.F.R. § 388.107 (c)).