

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 4

(Docket No. RM05-18-000; Order No. 655)

Modification of Hydropower Procedural Regulations,  
Including the Deletion of Certain Outdated or Non-essential Regulations

(Issued May 27, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations concerning applications for preliminary permits to eliminate certain outdated requirements and reduce unnecessary burdens on persons subject to the Commission's regulations. These modifications are the result of a review begun by the Commission's FERC Information Assessment Team (FIAT) to identify all of the Commission's current information collections to evaluate their original purposes and current uses, and to propose ways to reduce the burden on industry through the elimination, reduction, streamlining or reformatting of current collections. The Commission is amending its regulations to eliminate 18 CFR 4.81(d) (3) to remove the requirements for identifying a market for power and related power system information in the application for a preliminary permit. The Commission expects that these minor modifications of its regulations will not have a significant impact on preliminary permit proceedings. Because these changes relate only to the Commission's procedures and

relieve unnecessary regulatory burdens, notice and comment on the changes is not required, and the changes are effective **[insert date 30 days from publication of this order in the Federal Register.]**

FOR FURTHER INFORMATION CONTACT:

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Modifications of Hydropower Procedural  
Regulations, Including the Deletion of Certain  
Outdated or Non-essential Regulations

Docket No. RM05-18-000

ORDER NO. 655

FINAL RULE

(Issued May 27, 2005)

**I. INTRODUCTION**

1. The Federal Energy Regulatory Commission (Commission) has reviewed its hydropower procedural regulations to determine whether they contain any outdated requirements or impose any unnecessary burdens on persons subject to the Commission's jurisdiction. This review was begun by the FERC Information Assessment Team (FIAT), which was directed by the Chairman to assess the Commission's information needs. Goal 2 of the tasks identified by the team to meet this mission included identifying all of the Commission's current information collections, through forms and filing requirements, and evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through elimination, reduction, streamlining or reformatting of current collections.

2. In this final rule, the Commission is amending its regulations to eliminate 18 CFR § 4.81(d) (3), in order to remove the requirement that the applicant for a preliminary permit must identify a market for the power that it proposes to generate and provide related power system information at the preliminary permit stage of a hydropower license application. At the preliminary permit stage, the applicant is not required to develop a proposed project in detail, so this information is unnecessary.

3. The Commission expects these regulations will reduce the amount of information the Commission requires applicants to file, and that these modifications will not have a significant impact on preliminary permit proceedings. Because these changes relate only to the Commission's procedures and relieve unnecessary regulatory burdens, notice and comment on the changes is not required, and the changes are effective **[insert date 30 days from publication of this order in the Federal Register.]**

4. The Commission's regulations provide a range of alternatives for development of a hydropower project. A prospective developer may, *inter alia*, apply to the Commission for a preliminary permit under Section 4(f) of the Federal Power Act.<sup>1</sup> These permits allow a specified term, no more than three years, for the prospective developer to perform investigations and studies to support a license application and to determine the economic, engineering and environmental feasibility of developing a hydropower project at a specific site. The permit preserves the exclusive right to file, during the specified term,

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<sup>1</sup> 16 U.S.C. 797(f) (2000).

an application for either a license or an exemption from licensing for the proposed project. Thus, the permittee may conduct needed studies to determine the feasibility of the project without fear of someone else filing a development application for the site. A preliminary permit is not required to develop a project; a developer may choose to file directly for either a license or an exemption from licensing. Preliminary permits are not transferable.

## II. DISCUSSION

5. The Commission regulates non-Federal hydropower development under Part I of the Federal Power Act<sup>2</sup> (FPA). The Commission issues licenses for terms up to 50 years for “projects best adapted to a comprehensive plan” for improving a waterway for beneficial public purposes. Pursuant to Section 4(f) of the FPA, the Commission is authorized to issue preliminary permits, for the purpose of enabling prospective license applicants to secure the information necessary to support an application for license. Preliminary permits, issued for three years, reserve the right to file a development application at a specific site,<sup>3</sup> but do not authorize construction of any hydropower facilities or other land-disturbing activities.<sup>4</sup>

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<sup>2</sup> 16 U.S.C. 791a, *et seq.* (2000).

<sup>3</sup> See FPA Section 5, 16 U.S.C. § 798.

<sup>4</sup> See, *e.g.*, Greenfields Irrigation District, 111 FERC ¶ 62,039 (2005).

6. The purpose of obtaining a preliminary permit, as noted above, is to maintain a priority status for an application for a license while the prospective applicant conducts site examinations and surveys to prepare maps, plans, specifications and estimates. This period of time also provides the applicant with the opportunity to conduct engineering, economic and environmental feasibility studies, and to make financial arrangements for the construction of any project. During the term of the permit, the Commission will accept no other application for a preliminary permit or application for license or exemption submitted by another person for the same site.

7. The Commission is eliminating 18 CFR § 4.81(d) (3), thus eliminating the need for preliminary permit applicants to identify the market for the power that they propose to generate and to provide certain related power system information. At the time of a preliminary permit application, the project proposal is necessarily incomplete and this information is not needed to understand the project at this stage. The Commission is also incorporating 18 CFR § 4.81(d) (1) and (2), concerning study costs and financing sources, into 18 CFR § 4.81(c), which requires the applicant to describe studies conducted or to be conducted in connection with the preparation of a development application for the proposed project. These rules benefit applicants for preliminary permits by simplifying and expediting the preliminary permit process.

### **III. INFORMATION COLLECTION STATEMENT**

8. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>5</sup> Comments are solicited on the Commission's need for this information, whether it will have practical utility, the accuracy of burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

### **IV. ESTIMATED ANNUAL BURDEN**

9. The current reporting burden for this information collection is as follows:

Data Collection	Number of Respondents	Number of Hours	Number of Responses	Total Annual Hours
FERC-512	50	73	1	3,650

The Commission estimates that preliminary permit applications filed pursuant to the new rule would require approximately 15 percent less time to prepare. Using an assumed cost of \$52 per hour, the total savings would be \$572 per application or \$28,000 saved for a year in which 50 applications are prepared and filed.

*Title:* Application for Preliminary Permit (FERC-512)

*Action:* Change to an Existing Collection

*OMB Control No.:* 1902-0073

*Respondents:* Businesses or other for-profit and not-for-profit institutions

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<sup>5</sup> 5 CFR 1320.11.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The proposed regulations will revise the reporting requirements for a preliminary permit application to streamline the requirements and reduce the burden on the applicant. The information filed with the Commission preserves a priority to file by a prospective developer of a hydropower project. These permits allow a specified time for the developer to conduct investigations necessary to support a license application and to determine the economic, engineering and environmental feasibility of developing a hydropower project at a certain site. The preliminary permit is not required to develop a project. Therefore, the developer may file directly for either a license or an exemption from licensing. The Commission offers preliminary permits as part of its efforts to simplify and expedite the hydropower licensing process. This final rule will take those efforts one step further.

*Internal Review:* The Commission has reviewed the proposed amendments to its regulations to remove the requirement that an applicant for a preliminary permit must identify a market for the power that it proposes to generate and provide related power system information at the preliminary permit stage of a hydropower license application. At the preliminary permit application stage, it is not necessary for the applicant to provide information regarding a market for the project's power and related matters. This amendment to the Commission's regulations conforms to the Commission's plan for efficient information collection, communication, and management within the hydropower

industry. The Commission has assured itself, by means of internal review, that the new rule will reduce the burden estimates associated with preliminary permit applications.

10. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202)502-8415, fax: (202)273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).]

11. Please send your comments concerning the collection of information(s) and the associated burden estimate(s) to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs Washington, D.C., 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-4650, fax: (202)395-7285].

## V. **ENVIRONMENTAL ANALYSIS**

12. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>6</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>7</sup> The action taken here falls within the categorical exclusions in the Commission's

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<sup>6</sup> Order No. 486, *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>7</sup> 18 CFR 380.4(a) (2) (ii).

regulations for rules that involve information gathering, analysis, and dissemination.<sup>8</sup>

This proposed rule, if finalized, is procedural in nature and therefore falls under this exception. Therefore, an environmental assessment is unnecessary and one has not been prepared for this rulemaking.

## **VI. REGULATORY FLEXIBILITY ACT CERTIFICATION**

13. The Regulatory Flexibility Act of 1980 (RFA)<sup>9</sup> requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.<sup>10</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

14. The Commission has concluded that the amendments to its regulations would not have such an impact on small entities. These regulations are intended to benefit all entities regardless of size by reducing the burden of information collection while preparing an application for a preliminary permit. The adoption of these amendments to

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<sup>8</sup> 18 CFR 380.4(a) (5).

<sup>9</sup> 5 U.S.C. 601-612 (2000).

<sup>10</sup> The RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed four million megawatthours. 13 CFR 121.201 (Section 22, Utilities, NAICS) (2004).

the regulations will reduce the amount of information that must be filed with the Commission and will be of greater benefit to small entities who have limited resources for conducting investigations and preparing a licensing application if they so choose. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### **VIII. DOCUMENT AVAILABILITY**

15. 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 print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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

17. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or calling toll-free at (866)208-3676. For TTY, contact (202) 502-8659, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659,

(e-mail at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov)).

#### **IX. EFFECTIVE DATE AND CONGRESSIONAL NOTIFICATION**

18. This Final Rule will take effect **[insert date 30 days from publication of this order in the Federal Register.]** The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), that this rule is not a major rule within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>11</sup> The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.<sup>12</sup>

19. The Administrative Procedure Act (APA)<sup>13</sup> requires rulemakings to be published in the Federal Register. It also requires that an opportunity for comment be provided when the agency promulgates regulations. However, notice and comment are not required by the APA when the agency for good cause finds that notice and public comments thereon are impracticable, unnecessary, or contrary to the public interest.<sup>14</sup> The Commission finds that notice and comment are unnecessary to this rulemaking. As explained above, we are merely clarifying the scope of our regulations concerning

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<sup>11</sup> See 5 U.S.C. 804(2) (2000).

<sup>12</sup> See 5 U.S.C. 801(a) (1)(A) (2000).

<sup>13</sup> 5 U.S.C. 551-559 (2000).

<sup>14</sup> 5 U.S.C. 553(b) (3)(B) (2000).

applications for preliminary permits. This action should benefit the public by reducing the need to provide more information than is necessary for the Commission to evaluate preliminary permit applications. This clarification will result in a reduction of the filing requirements and will decrease the reporting burden on persons planning to develop hydroelectric power projects. Accordingly, this rule is effective **[insert date 30 days from publication of this order in the Federal Register.]**

List of subjects in 18 C.F.R. Part 4

Hydropower, Reporting and recordkeeping requirements.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

In consideration of the foregoing, the Commission amends part 4, Chapter 1, Title 18, Code of Federal Regulations, as follows:

**PART 4 - - LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATIONS  
OF PROJECT COSTS**

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

Authority: 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. In § 4.81,

(a) Remove existing paragraph (d) (3);

(b) Paragraphs (d) introductory text, (d) (1) and (d) (2) are redesignated as paragraphs (c) introductory text, (c) (4) (i) and (c) (4) (ii);

(c) In the redesignated paragraph (c) introductory text, the words “Exhibit 3” are removed and the words “Exhibit 2” are inserted in their place;

(d) Paragraph (e) is redesignated paragraph (d);

(e) In redesignated paragraph (d), the words “Exhibit 4” are removed and the words “Exhibit 3” are inserted in their place, to read as follows:

§ 4.81 **Contents of Application.**

\* \* \* \* \*

(c) \* \* \*

(4) A statement of costs and financing specifying and including, to the extent

possible:

(i) The estimated costs of carrying out or preparing the studies, investigations, tests, surveys, maps, plans or specifications identified under paragraph (c) of this section;

(ii) The expected sources and extent of financing available to the applicant to carry out or prepare the studies, investigations, tests, surveys, maps, plans, or specifications identified under paragraph (c) of this section.

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