

other data essential in evaluating the study.

(49 Stat. 1571, 33 U.S.C. 701c)

[40 FR 20081, May 8, 1975, as amended at 40 FR 36774, Aug. 22, 1975]

## PART 221—WORK FOR OTHERS

Sec.

221.1 Investigation and supervision of hydropower projects under the Federal Power Act (ER 1140-2-4).

APPENDIX A TO PART 221—PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

APPENDIX B TO PART 221—FEDERAL ENERGY REGULATORY COMMISSION FORM L-3 (REVISED OCTOBER 1975)

LIST OF FPC STANDARD ARTICLES FORMS USED IN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS

AUTHORITY: Secs. 2 and 4(e) of the Federal Power Act of 1920 (41 Stat. 1603, 16 U.S.C. 791-823), as amended; sec. 10 of the River and Harbour Act of 1899 (30 Stat. 1151, 33 U.S.C. 403); and sec. 404 of Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816, 33 U.S.C. 1344)

SOURCE: 43 FR 4979, Feb. 7, 1978, unless otherwise noted.

### § 221.1 Investigation and supervision of hydropower projects under the Federal Power Act (ER 1140-2-4).

(a) *Purpose.* This regulation<sup>1</sup> establishes procedures for executing Corps of Engineers functions under the authority of the Federal Power Act (FPA) administered by the Department of Energy, Federal Energy Regulatory Commission (FERC), formerly Federal Power Commission. Based on a specific request from FERC, these functions include:

(1) Investigation of applications filed with FERC for permits and licenses, and for relicensing of projects to ascertain impacts on Corps of Engineers responsibilities.

(2) Investigation of applications for surrender or termination of license to ascertain impacts on Corps of Engineers responsibilities.

(3) Supervision and inspection of operations of licensed hydroelectric

projects to ascertain impacts on Corps of Engineers responsibilities.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) Federal Power Commission publication entitled "Federal Power Act", as amended, dated 1 April 1975. The Act was originally enacted 10 June 1920 (41 Stat. 1063, 16 U.S.C. 791-823). This publication can be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

(2) Code of Federal Regulations, Title 18, part 1 to 149 relating to FERC General Rules and Regulations, available at the U.S. Government Printing Office, Washington, D.C. 20402.

(3) ER 1145-2-303 (33 CFR 209.120),<sup>2</sup> Permits for Activities in Navigable Waters or Ocean Waters.

(4) ER 1140-2-1, Submission of Data for Headwater Benefits Determination.

(d) *Definitions*—(1) *Licensed project.* A non-Federal hydroelectric project for which the FERC has issued a license granting authority for either construction, in the case of a proposed project, or for continued operation and maintenance of an existing project.

(2) *Major projects.* Hydroelectric projects with more than 2,000 horsepower installed capacity.

(3) *Minor projects.* Hydroelectric projects having installed capacity of 2,000 horsepower or less.

(4) *Preliminary permit application.* An application filed by a non-Federal entity with the FERC as a preliminary step in anticipation of filing for a license to construct and operate a hydroelectric project. A preliminary permit does not authorize construction. It merely gives the permittee priority of application for a FERC license over other non-Federal entities for a period of time. The permittee then develops information necessary for inclusion in an application for license to construct and operate a hydroelectric project. Analysis of this information may result in a decision to apply for the license or to withdraw the intent.

(5) *Relicensing.* A procedure applicable to projects for which the original period of license (usually 50 years) will

<sup>1</sup>This regulation supersedes ER 1140-2-4, 8 December 1967, and ER 1140-2-2, 10 September 1965.

<sup>2</sup>33 CFR 209.120 was removed at 42 FR 37133, July 19, 1977.

expire or has expired and application for new license has been or will be filed with the FERC.

(6) *Take over.* An act whereby the Federal government assumes project ownership. Upon expiration of a license for a hydroelectric project, the United States, under certain specific conditions set forth in section 14 of the Federal Power Act may "take over", maintain and operate the project. This does not apply to any project owned by a State or local government. Take over procedures are not applicable to "Minor Projects."

(e) *Authorities.* The Federal Power Act as amended delegates to the Secretary of the Army, the Chief of Engineers and the Corps of Engineers certain functions necessary for the FERC's administration of the Act. Implementation was provided through instructions issued by the President in a letter dated 18 May 1931 to the Secretary of War. These functions are set forth in the following excerpts from the Act:

(1) Section 2 of the Act provides in part that:

The Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army to serve the Commission as engineer officer or officers \* \* \*.

(2) Section 4(e) of the Act provides in part that:

The Commission is hereby authorized and empowered \* \* \* to issue licenses to citizens of the United States, or to any associations of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of construction, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization, of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction \* \* \*.

\* \* \* Provided that no license affecting the navigable capacity of any navigable water of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army.

(f) *Investigation of application for permits, licenses, or relicensing of projects.* Upon referral by the FERC, the Chief of Engineers will assign the investigation of an application for permit, license or relicensing to the appropriate Division Engineer who will submit a report on the investigation as specified herein to HQDA (DAEN-CWE-HY) WASH DC 20314 (exempt from reports control, Paragraph 7-2y, AR 335-15). The investigation should be coordinated with all interested organization elements including Engineering, Construction/Operations, Planning and Office of the Counsel. The date that the report is to be submitted will be specified. The nature of investigation and report by the Division Engineer will depend upon the nature of the request from the FERC. In general, reports as appropriate for the type of application filed with the Commission will consider the following items as pertinent and will include recommendation of pertinent license provisions:

(1) *License applications.* (i) The effect of the project on navigation and flood control, including adequacies of the plans of the structures affecting navigation. Section 4(e) of the Federal Power Act provides for approval of plans for hydroelectric power projects as noted in paragraph (e)(2) of this section. Section 4(e) approval normally will obviate the need for a Department of Army permit under section 10 of the 1899 River and Harbor Act. The basis for Corps approval under section 4(e) will be limited to effects on navigation; however, section 4(e) does not obviate the need for a Department of the Army permit pursuant to section 404 of the Federal Water Pollution Control Act (see paragraph (i)(2)) of this section. Such a permit is subject to a full public interest review pursuant to 33 CFR part 320 and the application of the Environmental Protection Agency's guidelines in 40 CFR part 230.

(ii) Recommendations for license provisions required to protect the interest of navigation. This item is discussed under paragraphs 7, 8 and 9.

(iii) Consideration of the project in relation to a comprehensive plan for developing the basin water resources from the standpoint of the Corps of Engineers' programs and responsibilities.

## § 221.1

## 33 CFR Ch. II (7-1-06 Edition)

Specific references should be made to pertinent published Congressional documents containing results of studies and/or to Congressional resolutions directing studies to be made to provide identification.

(iv) Consideration of environmental aspects of a project as related to navigation and flood control matters or other specific Corps interests and responsibilities in particular cases.

(v) The matter of possible redevelopment of an existing project to improve the usefulness of the project in relation to the objectives of the Corps program in the basin. In the case of an unconstructed project, based on request from the Commission, a recommendation along with justification, should be included as to whether or not development should be undertaken by the United States.

(vi) Consideration of structural safety and adequacy of spillway design flood for FERC licensed projects are the responsibility of the FERC. The Dam Safety Act, Pub. L. 92-367 provides that dams constructed pursuant to license issued under the authority of Federal Power Act are specifically exempted from the Corps National inspection program. This does not preclude the Corps District and Division offices from making comments on license applications for the FERC information, about any design deficiencies that are brought to their attention.

(2) *Relicensing (new license) application.* (1) Consider paragraphs (f) (1) through (6) of this section.

(ii) Recommendations should be furnished to the FERC with respect to possible need for “take over” of a project by the Federal Government. Details on “take over” under the Federal Power Act are provided in part 16 of the CFR, Title 18 (part 1 to 149). A copy of part 16 is provided for ready reference in Appendix A of this part.

(iii) FERC Preliminary Permit Application. Consider appropriate recommendations to insure coordination of applicant’s studies with the Division or District Engineer in cases where responsibilities and interests of the Corps of Engineers would be affected. The report should include discussion of Corps interests which could result in recommendations for provisions to be in-

cluded in a subsequent license. In general proposed construction of power facilities at or in conjunction with a Corps reservoir project will be reviewed with the objective of recommending design, construction and operation factors that the applicant must consider in its studies in order for the proposed power development to be compatible, physically and economically, with the authorized function of the Corps project(s).

(g) *Terms and conditions for insertion in FERC permits and licenses.* In investigation of an application for FERC license or permit, consideration will be given to aspects of the project affecting authorized functions of the Corps as well as to the responsibilities assigned to the Corps by the Federal Power Act. Accordingly, the Division engineer in his report on an application to the Chief of Engineers will always consider the necessity for including in any license or permit terms and conditions to protect the interests of navigation. Recommendations involving other responsibilities of the Corps in the area of water control management such as flood control, low flow augmentation minimum instantaneous releases, and other purposes should also be considered.

(h) *Standard terms and conditions used by the FERC in its permits and licenses.* Appendix B to this Regulation includes standard terms and conditions used by the FERC in licenses for projects affecting navigable waters of the U.S. The standard articles, included in Appendix B, are identified by the FERC in the following Forms:

(1) Form L-3 (Revised October 1975)

Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States.

(2) Form L-4 (Revised October 1975)

Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States.

Any special terms and conditions pertaining to the Corps of Engineers responsibilities, in addition to those identified in Appendix B should be tailored to suit the situation involved. Appendix B also provides a list of other FERC standard articles Forms that could be obtained from FERC offices.

(i) *Distinction between Corps of Engineers and FERC jurisdiction with respect to non-Federal Hydroelectric projects.* (1) The following procedures are currently being followed in connection with Department of Army permit responsibilities involving pre-1920 legislation:

(i) In regard to FERC licensing of projects, Corps responsibilities under section 10 of the River and Harbor Act of 1899, for power related activities, may normally be met through the FERC licensing procedure including insertion of terms and conditions in the license of the interest of navigation. Section 4(e) of the Federal Power Act provides for approval of plans of project works by the Chief of Engineers and Secretary of the Army from the standpoint of interests of navigation. The consideration for our approval under section 4(e) will be limited to effects of project power related activities on navigation.

(ii) Applications to Corps Division or District Engineers for approval of repairs, maintenance or modification of non-Federal water power projects authorized under River and Harbor Acts as well as special Acts of Congress prior to 1920, or requests for advice with respect thereto should be referred to the FERC for consideration in accordance with the provisions of the Federal Power Act. The permittee should be advised that the application is being referred to the FERC for consideration and that if a FERC license is required Corps recommendations will be furnished to the FERC.

(2) Responsibilities under section 404 of the Federal Water Pollution Control Act as amended in 1972 (33 U.S.C. 1151) pertinent to discharge of dredged or fill material into the navigable waters at specified disposal sites will be met only through the Department of Army permit procedures as specified in ER 1145-2-303. In regard to FERC cases involving section 404, our report to the FERC through (DAEN-CWE-HY) will specify the need for a Department of Army permit (section 404) if, on the basis of the Division and District Engineers' reports, such permit is deemed necessary. A Department of the Army permit will be required for any portion of a proposed project which involves the discharge of dredged or fill material into

the waters of the United States. This includes the placement of fill necessary for construction of a project's dam and appurtenant structures.

(3) When applicable, FERC will be advised that the requirement for Department of the Army permit pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 for the transport of dredged material from the project site for the purpose of dumping it into the ocean waters will be met only through the Department of the Army permit program.

(4) In connection with FERC licensed projects there may be proposed non-power water oriented activities, such as recreational development, which are associated with the overall project but may not be a part of the hydroelectric power facilities at the project. Such cases, if involving navigable waters should be reviewed from the standpoint of need for a section 10 permit. Such section 10 permit actions would involve consideration of the overall public interest, including water quality, fish and wildlife, recreation, general environmental concerns and the needs and welfare of the people. Corps responsibilities for permit requirements under section 10 of the River and Harbor Act of 1899 for nonpower activities affecting navigable waters at the FERC projects will be met only through the Corps permit procedures. The Corps' report to FERC through (DAEN-CWE-HY) will specify the need for such permit when recommended by the Division and District Engineers' report.

(j) *Investigation of applications for surrender or termination of license.* The period of the FERC license for hydroelectric projects is usually 50 years. During and/or upon the expiration of the period of a license, a licensee may file with the FERC an application for surrender or termination of its license. These applications may encompass requests for physical removal of an existing dam and/or powerhouse structures from a stream. Division Engineers who would be assigned by the Chief of Engineers to review such applications will consider, in their review and report to DAEN-CWE-HY, the possibility that sediment discharge resulting from removal of a dam structure from a navigable river or from any site that may

## § 221.1

affect navigable waters would impair the anchorage and navigation and/or flood carrying capacity of the stream. In cases where there is a possibility of significant downstream shoaling (sedimentation) as the result of removal of a dam and its appurtenant structures, recommendation may be made to the FERC, through DAEN-CWE-HY, requiring licensee as a condition of approval of dam removal to agree to bear the expense for removal of any shoaling at the navigable river(s) which would be determined by the Corps to be detrimental to navigation. Other recommendations to be considered include gradual lowering of a dam over a period of time and/or possibility of sediment removal prior to dam removal. It should also be noted that a Department of the Army permit under section 404 of the Federal Water Pollution Control Act amendments of 1972 (33 U.S.C. 1151), as discussed in Paragraph 9b of this regulation, may be needed in connection with removal of dams on or affecting the navigable waters if a discharge of dredged or fill material also occurs during the removal operation. Other recommendations within the Corps authority that should be considered in reviewing applications for surrender or termination of licenses for projects where their power facilities have been removed, or recommended for removal, is that upon any approval of such application by the FERC, continuation of existence of the nonpower project on or affecting the navigable waters of the U.S. will require a Department of the Army permit in compliance with section 10 of the River and Harbor Act of 1899. Furthermore, it should be noted that in the absence of FERC nonpower use license, pursuant to 16 U.S.C. 808(b), the structural safety and maintenance of dam and reservoir for a nonpower project will be governed by the laws and regulations of the State in which the project is located.

(k) *Supervision and inspection of operation of licensed hydroelectric projects.* Corps Division and District Engineers responsibilities with respect to any project affecting navigable waters include surveillance of operation and maintenance to insure that the interests of navigation are not adversely affected. In addition, in certain cases the

## 33 CFR Ch. II (7-1-06 Edition)

Corps, at the request of the FERC, may act as agent for the FERC for overall supervision of project operation and maintenance. Corps Division Engineers have, in the past, represented the FERC in supervision and inspection of a number of FERC licensed projects within their respective divisions. The Commission by letter dated March 4, 1976 relieved the Corps of Engineers from acting as the Commission's representative for supervision and inspection of its licensed projects. This responsibility has been transferred by the Commission to its own regional engineers. There are no requirements for any periodic or annual reports from the Division offices regarding the operation of FERC licensed hydroelectric projects. However, Division Engineers will report to DAEN-CWE-HY on a current basis any significant detrimental effects with respect to Corps of Engineers responsibilities or other matters which come to their attention.

(l) *Safety of licensed hydroelectric projects.* The Dam Safety Act, Public Law 92-367, provides that dams constructed pursuant to licenses issued under the authority of the Federal Power Act are specifically exempted from the national inspection program administered by the Corps. However, the law further provides that the Secretary of the Army upon request of the FERC may inspect dams which have been licensed under the Federal Power Act. The Commission by letter dated August 29, 1972 informed the Corps that the Commission does not expect to request the Corps' assistance for inspecting the projects licensed under the Federal Power Act.

(m) *Supervision of construction of licensed hydroelectric projects.* In cases where the FERC may request the Corps to supervise the actual construction of licensed hydroelectric project on behalf of the Commission, instructions will be furnished to the appropriate District Engineer through the Division Engineer at the time the request is made.

(n) *Other investigation under the Federal Power Act.* Corps of Engineers operations under the Federal Power Act also include participation in FERC procedures in determining headwater benefits from Corps reservoir projects

(RCS, 1461-FPC). This matter is discussed in ER 1140-2-1.

(o) *Funding of operations under the Federal Power Act.* (1) The salaries of the Corps of Engineers personnel involved in investigations discussed herein will be charged against funds for "Special Investigations" under the appropriation for "General Expenses." The FERC may provide reimbursement if requested by the Chief of Engineers to cover the nonpersonal expenses which may be incurred in the investigation and supervision of projects under permits and licenses.

(2) Non-personal costs amounting to less than \$100 for any single investigation will not be reimbursed from the Commission funds but will be charged also to "Special Investigations" under the appropriations for "General Expenses." Each Division Engineer charged with a detailed investigation of an application for license or the supervision of a project that will require more than a nominal amount of nonpersonal costs will be specifically requested to submit an estimate of the funds required upon assignment of the work by the Chief of Engineers.

(3) Reimbursement from the FERC funds for nonpersonal costs in excess of \$100 will be made by the Chief of Engineers upon submission of a voucher on Standard Form 1080 by the District Engineer through the Division Engineer. The voucher will show the fiscal year during which the work was done and the Commission project number on which the money was spent.

APPENDIX A TO PART 221—PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

Sec.

- 16.1 Purpose and coverage.
- 16.2 Public notice of projects under expiring license.
- 16.3 When to file.
- 16.4 Notice upon filing of application.
- 16.5 Annual licenses.
- 16.6 Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.
- 16.7 Application for nonpower license.
- 16.8 Departmental recommendations for takeover.

- 16.9 Commission recommendation to Congress.
- 16.10 Motion for stay by Federal department or agency.
- 16.11 Procedures upon congressional authorization of takeover.
- 16.12 Renewal of minor or minor part licenses not subject to sections 14 and 15.
- 16.13 Acceptance for filing or rejection of application.

AUTHORITY: Federal Power Act, secs. 7(c), 14, 15, 309 (16 U.S.C. 800, 807, 808, 825h).

SOURCE: Order 141, 12 FR 8461, Dec. 19, 1947; as amended by Order 175, 19 FR 5212, Aug. 18, 1954; Order 260, 28 FR 814, Jan. 11, 1963; 28 FR 1680, Feb. 21, 1963; 28 FR 2270, Mar. 8, 1963; Order 288, 29 FR 14106, Oct. 14, 1964; Order 384, 34 FR 12269, July 25, 1969 and as otherwise noted.)

§16.1 *Purpose and coverage.*

This part implements the amendments of sections 7(c), 14, and 15 of part I of the Federal Power Act, as amended, enacted by Public Law 90-451, 82 Stat. 616, approved August 3, 1968. It applies to projects subject to sections 14 and 15 of the Federal Power Act including projects for which a nonpower license may be issued. Procedures are provided for the filing of applications for either power or nonpower licenses for projects whose licenses are expiring. A license for a power project issued to either the original licensee or another licensee is referred to in this part as a "new license" and a license for a nonpower project as a "non-power license". Also provided are procedures for the filing of recommendations for takeover by Federal departments or agencies and applications for renewal of licenses not subject to section 14.

§16.2 *Public notice of projects under expiring license.*

In order that there should be adequate notice and opportunity to file timely applications for a license the Commission's Secretary will give notice of the expiration of license of a project (except transmission line and minor projects) 5 years in advance thereof in the same manner as provided in section 4(f) of the Act. The Secretary shall upon promulgation of the rules herein give notice, as provided in section 4(f) of the Act, of all whose license terms have expired since January 1, 1968, or which will expire within 5 years of the effective date of this rule. In addition, the Commission each year will publish in its annual report and in the FEDERAL REGISTER a table showing the projects which will expire during the succeeding 5 years. The table will list these licenses according to their expiration dates and will contain the following information: (a) License expiration date; (b) licensee's name; (c) project number; (d) type of principal project works licensed, e.g., dam and reservoir, powerhouse, transmission lines; (e) location by State, county,

and stream; also by city or nearby city when appropriate; and (f) plant installed capacity.

§16.3 *When to file.*

(a) An existing licensee must file an application for a “new license” or “nonpower license” or a statement of intention not to file an application for a “new license” no earlier than 5 years and no later than 3 years prior to the expiration of its license, except that, where the license will expire within 3½ years of the issuance of this part, such applications or statements shall be filed within 6 months from the effective date of this part. Applicants which have applications pending which were filed under previous Commission regulations shall supplement their applications in accordance with pertinent provisions of this part within 6 months of the effective date of this part.

(b) Any other person or municipality may file an application for a “new license” or “non-power license” within 5 years of the expiration of the license, but in no event, unless authorized by the Commission, later than 6 months after issuance of notice of the filing of an application or statement by the licensee under §16.4 or 2½ years before the expiration of the license, whichever is earlier.

(c) Any application submitted after the expiration of the time specified herein for filing must be accompanied by a motion requesting permission to file late, which motion shall detail the reasons of good cause why the application was not timely filed and how the public interest would be served by its consideration.

§16.4 *Notice upon filing of application.*

When any timely application or statement within the meaning of §16.3 is received, or when the Commission grants any motion for consideration of a late filed application, notice of receipt thereof will be furnished the applicant, and public notice will be given in the same manner as provided in sections 4(f) and 15(b) of the Act (49 Stat. 838; 41 Stat. 1072; 82 Stat. 616; 16 U.S.C. 797, 808) §§1.37 and 2.1 of this chapter, the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*, and by publication in the FEDERAL REGISTER.

§16.5 *Annual licenses.*

No application for annual license need be filed nor will such application be accepted under section 15 of the Act. An existing licensee making timely filing for a new license will be deemed to have filed for an annual license. If the Commission has not acted upon an application by licensee for a new license at the expiration of the license terms, by the issuance of an order granting, denying or dismissing it, an annual license shall be issued by notice of the Secretary.

§16.6 *Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.*

(a) Each application for a new license hereunder shall conform in form to §131.2 of this chapter, and shall set forth in appropriate detail all information and exhibits prescribed in §§4.40 through 4.42 of this chapter, inclusive and in §4.51 of this chapter, as well as additional information specified in paragraphs (b) through (e) of this section, except that Exhibit A may be incorporated in an application by reference where one applicant files applications for several projects, one of which already contains an Exhibit A or in any case where applicant has filed an Exhibit A within 10 years preceding the filing of the application, and that Exhibits N and O as specified in §4.41 of this chapter need only be filed as provided in paragraph (c) of this section. An original and fourteen conformed copies of the application and all accompanying exhibits shall be submitted to the Commission plus one additional conformed copy for each interested State Commission.

(b) An application for a “new license” hereunder shall include a statement showing the amount which licensee estimates would be payable if the project were to be taken over at the end of the license term pursuant to the provisions of sections 14 and 15 of the Federal Power Act. This statement shall include estimates of: (1) Fair value; (2) net investment; and (3) severance damages. (This subsection is not applicable to State, municipal, or nonlicensee applicants.)

(c) If the applicant proposes project works in addition to those already under license, the maps, plans, and descriptions of the project works (Exs. I, J, L and M) shall distinguish the project works of parts thereof which have been constructed from those to be constructed. Exhibits N and O shall also be included in the application relating to new construction.

(d) Applicant shall furnish its plans for the future modification or redevelopment of the project, if any, and shall set forth in detail why technically feasible, additional capacity is not proposed for installation at the time of relicensing.

(e) Applicant shall file a statement on the effect that takeover by the United States or relicensing to another applicant would have upon the supply of electric energy to the system with which it is interconnected, the rates charged its customers, the licensee’s financial condition, and taxes collected by local, State, and Federal Governments. (This subsection is not applicable to State, municipal or nonlicensee applicants.)

§16.7 *Application for nonpower license.*

Each application for “non-power license” shall generally follow the form prescribed in §131.6 of this chapter, except for subsections 7 and 8 thereof. It shall be accompanied by

Exhibits K, L, R, and S prepared as described in section 4.41, and shall include the information specified in paragraphs (a) through (c) of this section. Unless otherwise specified, an original and 14 conformed copies of the application and all accompanying exhibits shall be submitted with one additional conformed copy for each interested State commission. Additional information may be requested by the Commission if desired.

(a) Applicant shall furnish a description of the nonpower purpose for which the project is to be utilized and a showing of how such use conforms with a comprehensive plan for improving or developing a waterway or waterways for beneficial uses, including a statement of the probable impact which conversion of the project to nonpower use will have on the power supply of the system served by the project.

(b) Applicant shall identify the State, municipal, interstate or Federal agency, if any, which is authorized or willing to assume regulatory supervision over the land, waterways and facilities to be included within the nonpower project. (If there is such an agency, applicant shall forward one copy of the application to such agency.)

(c) Applicant shall submit a proposal for the removal or other disposition of power facilities of the project.

A "non-power license" shall be effective until such time as in the judgement of the Commission a State, municipal, interstate, or Federal agency is authorized and willing to assume regulatory supervision over the land, waterways, and facilities included within the "non-power license" or until the project structures are removed. Such State, municipal, interstate or Federal agency may petition the Commission for termination of a "non-power license" at any time. Where the existing project is located on the public lands or reservations of the United States, and there is no application for relicensing as a power project either by the original licensee, or some other entity, or a takeover recommendation, the Commission may, in its discretion, and upon a showing by the agency having jurisdiction over the lands or reservations that it is prepared to assume requisite regulatory supervision for the nonpower use of the project, terminate the proceeding without issuing any license for nonpower use.

**§16.8 Departmental recommendations for takeover.**

A recommendation that the United States exercise its right to take over a project may be filed by any Federal department or agency no earlier than 5 years and no later than 2 years prior to the expiration of the license term; *Provided, however,* That such recommendation shall not be filed later than 9 months after the issuance of a notice of application for a new license. Departments or

agencies filing such recommendations shall thereby become parties to the relicensing-takeover proceeding. An original and 14 copies of the recommendation shall be filed together with one additional copy for each interested State commission. The recommendation shall specify the project works which would be taken over by the United States, shall include a detailed description of the proposed Federal operation of the project, including any plans for its redevelopment and shall indicate how takeover would serve the public interest as fully as non-Federal development and operation. It shall also include a statement indicating whether the agency making the recommendation intends to undertake operation of the project. A copy of the recommendation shall be served upon the licensee by the Commission's Secretary. Any applicant for a new license covering all or part of the project involved in the takeover recommendation shall have 120 days within which to serve a reply to the recommendation upon the Commission with copies to any parties in the proceeding.

**§16.9 Commission recommendation to Congress.**

If the Commission, after notice and opportunity for hearing, concludes upon departmental recommendation, a proposal of any party, or its own motion, that the standards of section 10(a) of the Act would best be served if a project whose license is expiring is taken over by the United States, it will issue its findings and recommendations to this effect, and after any modification thereof, upon consideration of any application for reconsideration, made in conformity with the provisions of §1.34 of this chapter governing applications for rehearing, forward copies of its findings and recommendations to the Congress.

**§16.10 Motion for stay by Federal department or agency.**

If the Commission does not recommend to the Congress that a project be taken over, a Federal department or agency which has filed a timely recommendation for takeover as provided in this part may, within thirty (30) days of issuance of an order granting a license, file a motion, with copies to the parties in the proceeding, before the Commission requesting a stay of the license order. Upon the filing of such a motion, the license order automatically will be stayed for 2 years from the date of issuance of the order, unless the stay is terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission will notify Congress of any such stay. Upon expiration or termination of the stay, including any extension thereof by act of Congress, the Commission's license order shall automatically become effective in accordance with its terms. The Commission will notify Congress of each license order

which has become effective by reason of the expiration or termination of a stay.

§16.11 *Procedures upon congressional authorization of takeover.*

A determination whether or not there is to be a Federal takeover of a project would ultimately be made by Congress through the enactment of appropriate legislation. If Congress authorizes takeover, the Secretary will immediately give the Licensee not less than 2 years' notice in writing of such action. Within 6 months of issuance of such notice the Licensee shall present to the Commission any claim for compensation consistent with the provisions of section 14 of the Federal Power Act and the regulations of the Commission.

§16.12 *Renewal of minor or minor part licenses not subject to sections 14 and 15.*

Licenses whose minor or minor part licenses are not subject to sections 14 and 15 of the Act and wish to continue operation of the project after the end of the license term shall file an application for a "new license" 1 year prior to the expiration of their original license in accordance with applicable provisions of part 4 of this chapter.

§16.13 *Acceptance for filing or rejection of application.*

Acceptance for filing or rejection of applications under this part shall be in accordance with the provisions of §4.31 of this chapter.

APPENDIX B TO PART 221—FEDERAL ENERGY REGULATORY COMMISSION  
FORM L-3 (REVISED OCTOBER 1975)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

*Article 1.* The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

*Article 2.* No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

*Article 3.* The project area and project works shall be in substantial conformity

with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgement have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

*Article 4.* The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and projects works in the performance of their

official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

*Article 5.* The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in projects lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

*Article 6.* In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the projects or project property created by the Licensee or created or incurred after the issuance of the license: *Provided*, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

*Article 7.* The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be deter-

mined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

*Article 8.* The licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

*Article 9.* The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

*Article 10.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

*Article 11.* Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for

interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

*Article 12.* The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all time be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

*Article 13.* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including

satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

*Article 14.* In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding of eliminating inductive interference.

*Article 15.* The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

*Article 16.* Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

*Article 17.* The Licensee shall construct, maintain, and operate, or shall arrange for

the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

*Article 18.* So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

*Article 19.* In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

*Article 20.* The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representatives of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

*Article 21.* Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere

with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

*Article 22.* Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

*Article 23.* The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

*Article 24.* The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

*Article 25.* The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

*Article 26.* If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the

surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

*Article 27.* The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

*Article 28.* The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

FEDERAL ENERGY REGULATORY COMMISSION

FORM L-4 (REVISED OCTOBER, 1975)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

*Article 1.* The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

*Article 2.* No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

*Article 3.* The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes

in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

*Article 4.* The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alterations thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and

across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

*Article 5.* The Licensee, within 5 years from the date of issuance of the license, shall acquire title in fee or other right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

*Article 6.* In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the License: *Provided*, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

*Article 7.* The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

*Article 8.* The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

*Article 9.* The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

*Article 10.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

*Article 11.* Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United

States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

*Article 12.* The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

*Article 13.* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties bene-

fitting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

*Article 14.* In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

*Article 15.* The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

*Article 16.* Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United

States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

*Article 17.* The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

*Article 18.* So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided,* That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

*Article 19.* In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

*Article 20.* The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in

accordance with appropriate Federal, State, and local statutes and regulations.

*Article 21.* Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

*Article 22.* Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

*Article 23.* The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

*Article 24.* The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

*Article 25.* The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

*Article 26.* If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to

**Pt. 221, List**

restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

*Article 27.* The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

*Article 28.* The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

**LIST OF FPC STANDARD ARTICLES FORMS USED IN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS**

The following FPC standard articles Forms, in addition to the standard Forms L-3, and L-4 which are provided in this appendix, are available from the FPC offices:

FPC Forms <sup>1</sup>	Title
P-1 .....	Terms and conditions of preliminary permit.
L-1 .....	Terms and conditions of license for constructed major project affecting lands of the United States.
L-2 .....	Terms and conditions of license for unconstructed major project affecting lands of the United States.
L-5 .....	Terms and conditions of license for constructed major projects affecting navigable waters and lands of the United States.
L-6 .....	Terms and conditions of license for unconstructed major project affecting navigable waters and lands of the United States.
L-9 .....	Terms and conditions of license for constructed minor projects affecting navigable waters of the United States.
L-10 .....	Terms and conditions of license for constructed major project affecting the interests of interstate or foreign commerce.
L-11 .....	Terms and conditions of license for unconstructed major project affecting the interests of interstate or foreign commerce.

**33 CFR Ch. II (7-1-06 Edition)**

FPC Forms <sup>1</sup>	Title
L-14 .....	Terms and conditions of license for unconstructed minor project affecting navigable waters of the United States.
L-15 .....	Terms and conditions of license for unconstructed minor project affecting the interests of interstate or foreign commerce.
L-16 .....	Terms and conditions of license for constructed minor project affecting lands of the United States.
L-17 .....	Terms and conditions of license for unconstructed minor project affecting lands of the United States.
L-18 .....	Terms and conditions of license for constructed minor project affecting navigable waters and lands of the United States.
L-19 .....	Terms and conditions of license for unconstructed minor project affecting navigable waters and lands of the United States.

<sup>1</sup> Revised Oct. 1975.

**PART 222—ENGINEERING AND DESIGN**

Sec.

- 222.2 Acquisition of lands downstream from spillways for hydrologic safety purposes.
- 222.3 Clearances for power and communication lines over reservoirs.
- 222.4 Reporting earthquake effects.
- 222.5 Water control management (ER 1110-2-240).
- 222.6 National Program for Inspection of Non-Federal Dams.

**AUTHORITY:** 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 *et seq.*; 33 U.S.C. 701, 701b, and 701c-1 and specific legislative authorization Acts and Public Laws listed in appendix E of §222.7.

**§222.2 Acquisition of lands downstream from spillways for hydrologic safety purposes.**

(a) *Purpose.* This regulation provides guidance on the acquisition of lands downstream from spillways for the purpose of protecting the public from hazards imposed by spillway discharges. Guidance contained herein is in addition to ER 405-2-150.

(b) *Applicability.* This regulation is applicable to all OCE elements and all field operating agencies having civil works responsibilities.

(c) *Reference.* ER 405-2-150.

(d) *Discussion.* A policy of public safety awareness will be adhered to in all phases of design and operation of dam and lake projects to assure adequate security for the general public in areas downstream from spillways. A real estate interest will be required in those