

§ 45.70

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) *Finality.* The ALJ's decision under this section will be final, with respect to the disputed issues of material fact, for any Department involved in the hearing. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 8251(b).

Subpart C—Alternatives Process

§ 45.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 45.12(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be served on each license party and FERC, using:

(i) One of the methods of service in § 45.13(c); or

(ii) Regular mail.

(2) The provisions of § 45.13(d) and (e) regarding acknowledgment and certifi-

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cate of service apply to service under this subpart.

§ 45.71 How do I propose an alternative?

(a) *General.* To propose an alternative, you must:

(1) Be a license party; and

(2) File a written proposal with OEPC within 30 days after the deadline for the bureau to file preliminary conditions or prescriptions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the bureau's preliminary condition or prescription;

(2) An explanation of how the alternative:

(i) If a condition, will provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, will be no less protective than the fishway prescribed by the bureau;

(3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (e.g., regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 45.72 What will the bureau do with a proposed alternative?

If any license party proposes an alternative to a preliminary condition or

prescription under § 45.71(a)(1), the bureau must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 45.73; and

(b) File with FERC:

(1) Any condition or prescription that the bureau adopts as its modified condition or prescription; and

(2) Its analysis of the modified condition or prescription and any proposed alternatives under § 45.73(c).

§ 45.73 How will the bureau analyze a proposed alternative and formulate its modified condition or prescription?

(a) In deciding whether to adopt a proposed alternative, the bureau must consider evidence and supporting material provided by any license party or otherwise available to the bureau, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the bureau's preliminary condition or prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 45.60 with respect to the preliminary condition or prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 45.71.

(b) The bureau must adopt a proposed alternative if the bureau determines, based on substantial evidence provided by any license party or otherwise available to the bureau, that the alternative:

(1) Will, as compared to the bureau's preliminary condition or prescription:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will:

(i) If a condition, provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, be no less protective than the bureau's preliminary prescription.

(c) When the bureau files with FERC the condition or prescription that the bureau adopts as its modified condition or prescription under §§ 45.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition or prescription; and

(ii) If the bureau is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that the bureau gave equal consideration to the effects of the condition or prescription adopted and any alternative not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 45.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094-0001.