

ner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

(5) If the Commission finds that the Secretary's final condition would be inconsistent with the purposes of this subchapter, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

(b) Alternative prescriptions

(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 811 of this title, the license applicant or any other party to the license proceeding may propose an alternative to such prescription to construct, maintain, or operate a fishway.

(2) Notwithstanding section 811 of this title, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, any other party to the proceeding, or otherwise available to the Secretary, that such alternative—

(A) will be no less protective than the fishway initially prescribed by the Secretary; and
(B) will either, as compared to the fishway initially prescribed by the Secretary—

- (i) cost significantly less to implement; or
- (ii) result in improved operation of the project works for electricity production.

(3) In making a determination under paragraph (2), the Secretary shall consider evidence provided for the record by any party to a licensing proceeding, or otherwise available to the Secretary, including any evidence provided by the Commission, on the implementation costs or operational impacts for electricity production of a proposed alternative.

(4) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 811 of this title or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the prescription adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely

manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

(5) If the Commission finds that the Secretary's final prescription would be inconsistent with the purposes of this subchapter, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

(June 10, 1920, ch. 285, pt. I, § 33, as added Pub. L. 109-58, title II, § 241(c), Aug. 8, 2005, 119 Stat. 675.)

§ 823e. Promoting hydropower development at existing nonpowered dams

(a) Expedited licensing process for non-Federal hydropower projects at existing nonpowered dams

(1) In general

As provided in this section, the Commission may issue and amend licenses, as appropriate, for any facility the Commission determines is a qualifying facility.

(2) Rule

Not later than 180 days after October 23, 2018, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses for qualifying facilities under this section.

(3) Interagency task force

(A) In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate a qualifying facility.

(B) The task force shall develop procedures that are consistent with subsection (e)(1)(E) to seek to ensure that, for projects licensed pursuant to this section, the Commission and appropriate Federal and State agencies and Indian tribes shall exercise their authorities in a manner that, to the extent practicable, will not result in any material change to the storage, release, or flow operations of the associated nonpowered dam existing at the time an applicant files its license application.

(4) Length of process

The Commission shall seek to ensure that the expedited process under this section will result in a final decision on an application for a license by not later than 2 years after receipt of a completed application for the license.

(b) Dam safety**(1) Assessment**

Before issuing any license for a qualifying facility, the Commission shall assess the safety of existing non-Federal dams and other non-Federal structures related to the qualifying facility (including possible consequences associated with failure of such structures).

(2) Requirements

In issuing any license for a qualifying facility at a non-Federal dam, the Commission shall ensure that the Commission's dam safety requirements apply to such qualifying facility, and the associated qualifying nonpowered dam, over the term of such license.

(c) Interagency communications

Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a qualifying facility under this section, and interagency communications relating to licensing process coordination pursuant to this section, shall not—

(1) be considered to be ex parte communications under Commission rules; or

(2) preclude an agency from participating in a licensing proceeding under this subchapter, providing that any agency participating as a party in a licensing proceeding under this subchapter shall, to the extent practicable, demonstrate a separation of staff cooperating with the Commission under the National Environmental Policy Act¹ (42 U.S.C. 4321 et seq.) and staff participating in the applicable proceeding under this subchapter.

(d) Identification of nonpowered dams for hydropower development**(1) In general**

Not later than 12 months after October 23, 2018, the Commission, with the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, shall jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development.

(2) Considerations

In developing the list under paragraph (1), the Commission and the Secretaries may consider the following:

(A) The compatibility of hydropower generation with existing purposes of the dam.

(B) The proximity of the dam to existing transmission resources.

(C) The existence of studies to characterize environmental, cultural, and historic resources relating to the dam.

(D) The effects of hydropower development on release or flow operations of the dam.

(3) Availability

The Commission shall—

(A) provide the list developed under paragraph (1) to—

(i) the Committee on Energy and Commerce, the Committee on Transportation

and Infrastructure, and the Committee on Natural Resources, of the House of Representatives; and

(ii) the Committee on Environment and Public Works, and the Committee on Energy and Natural Resources, of the Senate; and

(B) make such list available to the public.

(e) Definitions

For purposes of this section:

(1) Qualifying criteria

The term “qualifying criteria” means, with respect to a facility—

(A) as of October 23, 2018, the facility is not licensed under, or exempted from the license requirements contained in, this subchapter;

(B) the facility will be associated with a qualifying nonpowered dam;

(C) the facility will be constructed, operated, and maintained for the generation of electric power;

(D) the facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and

(E) the operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.

(2) Qualifying facility

The term “qualifying facility” means a facility that is determined under this section to meet the qualifying criteria.

(3) Qualifying nonpowered dam

The term “qualifying nonpowered dam” means any dam, dike, embankment, or other barrier—

(A) the construction of which was completed on or before October 23, 2018;

(B) that is or was operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, drinking water, or flood control purposes; and

(C) that, as of October 23, 2018, is not generating electricity with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this subchapter.

(f) Savings clause

Nothing in this section affects—

(1) any authority of the Commission to license a facility at a nonpowered dam under this subchapter; and

(2) any authority of the Commission to issue an exemption to a small hydroelectric power project under the Public Utility Regulatory Policies Act of 1978.

(June 10, 1920, ch. 285, pt. I, § 34, as added Pub. L. 115-270, title III, § 3003, Oct. 23, 2018, 132 Stat. 3863.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83

¹ So in original. Probably should be followed by “of 1969”.

Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (f)(2), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

§ 823f. Closed-loop pumped storage projects

(a) Expedited licensing process for closed-loop pumped storage projects

(1) In general

As provided in this section, the Commission may issue and amend licenses, as appropriate, for closed-loop pumped storage projects.

(2) Rule

Not later than 180 days after October 23, 2018, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses for closed-loop pumped storage projects under this section.

(3) Interagency task force

In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate closed-loop pumped storage projects.

(4) Length of process

The Commission shall seek to ensure that the expedited process under this section will result in final decision on an application for a license by not later than 2 years after receipt of a completed application for such license.

(b) Dam safety

Before issuing any license for a closed-loop pumped storage project, the Commission shall assess the safety of existing dams and other structures related to the project (including possible consequences associated with failure of such structures).

(c) Exceptions from other requirements

(1) In general

In issuing or amending a license for a closed-loop pumped storage project pursuant to the expedited process established under this section, the Commission may grant an exception from any other requirement of this subchapter with respect to any part of the closed-loop pumped storage project (not including any dam or other impoundment).

(2) Consultation

In granting an exception under paragraph (1), the Commission shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State in which the closed-loop pumped storage project is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

(3) Terms and conditions

In granting an exception under paragraph (1), the Commission shall include in any such exception—

(A) such terms and conditions as the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency described in paragraph (2) each determine are appropriate to prevent loss of, or damage to, fish and wildlife resources and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act; and

(B) such terms and conditions as the Commission deems appropriate to ensure that such closed-loop pumped storage project continues to comply with the provisions of this section and terms and conditions included in any such exception.

(4) Fees

The Commission, in addition to the requirements of section 803(e) of this title, shall establish fees which shall be paid by an applicant for a license for a closed-loop pumped storage project that is required to meet terms and conditions set by fish and wildlife agencies under paragraph (3). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in paragraph (3) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

(d) Transfers

Notwithstanding section 798 of this title, and regardless of whether the holder of a preliminary permit for a closed-loop pumped storage project claimed municipal preference under section 800(a) of this title when obtaining the permit, on request by a municipality, the Commission may, to facilitate development of a closed-loop pumped storage project—

(1) add entities as joint permittees following issuance of a preliminary permit; and

(2) transfer a license in part to one or more nonmunicipal entities as co-licensees with a municipality, if the municipality retains majority ownership of the project for which the license was issued.

(e) Interagency communications

Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a closed-loop pumped storage project submitted pursuant to this section, and interagency communications relating to licensing process coordination pursuant to this section, shall not—

(1) be considered to be ex parte communications under Commission rules; or

(2) preclude an agency from participating in a licensing proceeding under this subchapter, providing that any agency participating as a party in a licensing proceeding under this subchapter shall, to the extent practicable, dem-