

existing, approved and proposed hydroelectric projects in the river basin.

(31) The length of time for which a preliminary permit is desired. A preliminary permit may be issued for a period not exceeding two years. This period may be extended by order of the Commission. An extension may not exceed one year.

(32) The names and addresses of all property owners, as can reasonably be determined from records in the office of the County Assessor, whose land is:

- (a) Adjacent to any portion of the stream in which the quantity of water will be affected by the project; or
- (b) Borders or is within the project vicinity.

Application of Standards to Preliminary Permits

690-51-080 The purpose of issuing a preliminary permit is set forth in ORS 543.240. Preliminary permit applications will be approved unless the Commission finds the proposed project would not be in the public interest because of significant adverse impacts on natural resources or other uses of the water involved. Information in the application and hearing record will be used to assess the public interest and to form conditions to be included in the Commission's order on the application. Approval of a preliminary permit application shall not convey the right to construct any project facilities. Issuance of a preliminary permit shall not constitute approval or assurance of approval for any subsequent application for hydroelectric license for the project. Failure to comply with conditions in the approval order may result in the cancellation of the preliminary permit.

Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards

690-51-090(1) Under ORS 543.300(7), the Commission may waive any or all requisite filings, hearings and approvals for a minor license. The term of a license and annual fees cannot be waived. The Commission's waiver authority is delegated to the Water Resources Director.

(2) An application shall be filed for each minor license. Contents of the application shall be prescribed by the Director. No application shall be filed for a project in a designated resource area described in OAR 690-51-030.

(3) A public hearing shall be held only if the Commission deems it in the public interest to do so. The Commission may limit the scope of the hearing to specific issues.

(4) Any minor project that would violate the standards in OAR 690-51-190 through 690-51-260 shall be rejected.

(5) The intent of this rule is to reduce the expense of licensing for owner-consumers of power from minor projects.

Application for Major License or Permit: Contents, Scope of Evaluation

690-51-100(1) An initial statement shall be filed with the application explaining if the applicant is an individual, corporation, municipality, etc.; the applicant's authority to file the application; and the applicant's authority, under the laws of the State of Oregon, to develop and market hydroelectric power. The initial statement must be supported by the following:

(a) A copy of articles of incorporation or other organization papers certified by the secretary of the applicant corporation or other organization and, if a corporation, bearing the corporate seal thereof, or certified by the Corporation Commissioner of the State of Oregon or by the county clerk of a county in which said articles are filed. If the applicant is an individual, or an association of individuals, an affidavit of citizenship from each individual is required. If the applicant is a municipal corporation, evidence that the applicant qualifies as a municipal corporation under the laws of the State of Oregon is required.

(b) A copy of all minutes, resolutions of stockholders or directors, or other representatives of the applicant, properly attested, authorizing the filing of the application.

(c) Evidence that the applicant has complied with the requirements of the laws of the State of Oregon with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of the license. This evidence shall be accompanied by a statement of the steps that have been taken and the steps that remain to be taken to acquire franchise or other rights from states, counties, and municipalities before the project or projects can be completed and put in operation.

(2) Applications for permits or licenses shall include information as further described in this section. Information shall be in sufficient detail to evaluate the potential for cumulative impacts with other existing, approved and proposed projects in the basin and to allow the Commission to make sufficient findings of fact on all applicable standards. An application shall be deemed incomplete and shall not be accepted for filing if it lacks any of the following required information:

(a) Exhibit A. An accurate description of the project, including the location of all dams, reservoirs, canals, pipelines, forebays, penstocks, and all other project facilities. The location of all reservoirs should be given in reference to some corner of the Government Survey, giving the quantity of water to be stored in each, the maximum surface area in acres, and a general statement describing the method of release of stored water to accomplish the purposes of the appropriation. This exhibit shall also include a statement with details on the applicant's plans for acquiring title to or the right to occupy and use lands other than those owned by the applicant, or by the United States, essential for carrying out the project or projects covered by the application. If the applicant owns all or part of the project lands, evidence of ownership shall be provided. If the applicant has, by easement, lease, franchise, or otherwise, acquired the right to occupy and use the lands owned by others, the statement should show, with respect to each separate right of occupancy and use:

- (A) From whom acquired;
- (B) The date acquired;
- (C) The nature and extent of the right acquired;
- (D) Whether perpetual or of limited term; and
- (E) If of limited term, when the term expires.

(b) Exhibit B. A statement of the nature and extent of the

proposed appropriation of water, the available water supply and how it will be used, the head to be used and the number of THP to be developed. This statement should include a description of each diversion point and quantity of water to be diverted at each point. The description shall give reference to a Government Land Office (GLO) survey corner. If the project is located on unsurveyed public lands, reference shall be made to natural monuments from which a GLO corner can be definitely determined. In addition to the normal amount of water to be diverted, a statement of the proposed operation of the project facilities during times of low, normal, and flood flows of the stream. This statement shall include a description of when, where and how the power is to be sold. An estimate of the dependable power capacity and average annual energy output to be generated by the project shall be submitted, accompanied by the data upon which the estimate is based, and including the correlation of this project output with other generation facilities owned or controlled by the applicant.

(c) Exhibit C.

(A) A detailed construction schedule, including estimated dates of beginning and completion of:

- (i) Site access and preparation;
- (ii) Individual project facilities;
- (iii) All in-water work related to specific project facilities; and
- (iv) All proposed compensation, enhancement, and mitigation measures.

(B) Project operation schedule.

(C) Project maintenance schedule.

(D) If the ultimate development is to be completed and put into operation in two or more phases, the time desired for beginning and completing construction of each phase and the specific work to be performed under each phase shall be given.

(d) Exhibit D. An economic analysis of the project including:

(A) An estimate of the cost of developing each project feature, showing specific tasks, materials, quantities, and unit costs, in sufficient detail to determine all elements of project costs.

(B) An estimate of the annual costs, including the following:

- (i) Cost of debt service;
- (ii) Local, state, and federal taxes;
- (iii) Depreciation;
- (iv) Insurance;
- (v) Operation and maintenance;
- (vi) General or administrative expenses; and
- (vii) Per kilowatt hour cost of average annual output expressed in cents or mills.

(C) An estimate of project revenues including:

- (i) Gross annual income;
- (ii) Percentage return on investment;
- (iii) Net annual income;
- (iv) State and Federal tax credits; and
- (v) Net operating income over the usable life of the

- project.
- (D) Source(s) of financing for the proposed project including:
 - (i) Identity of each source; and
 - (ii) Amount and terms of financing from each source.
 - (E) Market for the power including:
 - (i) Purchaser of the project output;
 - (ii) Length of power purchase agreement and initial power delivery date; and
 - (iii) Purchase price of power expressed in cents or mills per kilowatt hour.
 - (F) An analysis of the need for power with a description why the need can't be met by more cost effective conservation or generation.
 - (G) When required by the Commission, information on the method used in evaluating the power output from the project or the cost of obtaining an equivalent amount of power from an alternate source expressed in terms of dollars per kilowatt year of capacity and mills per kilowatt hour of average annual energy.
 - (H) For multipurpose projects, the economic relationship between hydropower and other project purposes.
 - (I) An estimate of usable project life, including a planned method of project retirement and method of financing the retirement.
 - (J) Statement showing the financial ability of the applicant to carry out the project or projects.
- (e) Exhibit E. A discussion of environmental and social considerations in the project vicinity including a description of:
- (A) Topographic, geologic and soil stability factors related to project construction and operation which may adversely affect land and water use;
 - (B) Flood plains;
 - (C) Climatological factors, such as flooding and ice formation, which may pose hazards to project construction or operation;
 - (D) Spoil and borrow areas;
 - (E) Sources of water, maximum quantity diverted or used from each source, schedule of diversions, and available water based on annual flow-duration frequencies and monthly occurrence statistics;
 - (F) Existing water use in the project vicinity;
 - (G) Effects of proposed water diversion, project operations and/or storage on streamflow;
 - (H) Project effects on aquatic life, fish life and wildlife, including provisions for mitigating potential adverse impacts;
 - (I) Consistency of the project with state and federal fish and wildlife programs;
 - (J) Project effects on recreation, including provisions for mitigation;
 - (K) Project effects during construction and operation on water quality, including measures for protecting, maintaining and enhancing water quality;
 - (L) Project effects on scenic and aesthetic resources,

- including measures for mitigation;
- (M) Adverse or beneficial project effects on other beneficial uses of water;
- (N) Ownership of project lands;
- (O) Compatibility of the project with present and planned uses of all project vicinity lands based on comprehensive land use plans and land use regulations of affected jurisdictions and federal land management policies or programs;
- (P) Provisions for protection of special management areas as defined in OAR 690-51-170(2) or areas otherwise restricted from development within the project vicinity;
- (Q) Project effects on public facilities including provisions for mitigating adverse effects;
- (R) Provisions for identifying, preserving, and protecting known historical, cultural and archaeological resources or recovering artifacts or the informational content;
- (S) Project effects on other identified social and environmental resources and resource uses including provisions for mitigation of adverse impacts;
- (T) The locations of all other proposed or existing hydroelectric projects in the same river basin as the proposed project; and
- (U) A technical evaluation of the potential for cumulative impacts on the natural resources listed in OAR 690-51-190 through 690-51-250 resulting from the proposed project when considered with other existing, approved and proposed hydroelectric projects in the river basin.
- (f) Exhibit F. Drawings as Specified in OAR 690-51-110
- (g) Exhibit G. Maps as Specified in OAR 690-51-110
- (h) The names and mailing addresses of all property owners, as can reasonably be determined from records in the office of the County Assessor, whose land is:
 - (A) Adjacent to any portion of the stream in which the quantity of water will be affected by the project; or
 - (B) Borders or is within the project vicinity.
- (i) Such additional documents or data as applicant may consider pertinent to submit.

Drawings and Maps

690-51-110 Drawings and maps as described in this section shall accompany each application filed under OAR 690-51-100.

(1) Drawings

(a) The applicant shall provide general design drawings showing plans, elevations, and sections of all principal structures and appurtenant works or other features of the project. These drawings shall be in sufficient detail and shall be accompanied by sufficient information relating to controlling factors (such as character of foundations and explorations thereof, materials, types of construction, important elevations and water levels, etc.) to enable the Commission to understand the project and determine safety, practicability, adequacy, and desirability in the development of the resources involved, to preserve the public interest.

(b) Scales should be no larger than necessary to show clearly the information required. Drawings should be simple. Details are desired only to show important features for determining safety, adequacy, and suitability of design. Working drawings and any changes must be filed with and approved by the Commission before construction work is begun. (One tracing and one print.) This section applies to:

(A) Dams and appurtenances such as spillways, fishways, outlet works, etc.;

(B) Navigation structures, including locks, lock gates, and operating machinery, etc.;

(C) Conduits, including forebays, intake works, surge tanks, and other pressure relief devices, etc.; and

(D) Powerhouses and substations.

(c) A general description and general specifications of mechanical, electrical, and transmission equipment and their appurtenances shall be provided in sufficient detail to enable the Commission to understand the project or projects and to determine safety, adequacy, and suitability for the development and utilization of the resources involved.

(2) Maps

(a) The applicant shall provide a general map covering the entire project showing on a single sheet at an appropriate scale:

(A) Principal structures and other important features of the project, including roads, railways, tramways, and bridges proposed as a part of the project works;

(B) All transmission lines and all telephone lines which are proposed as a part of the project works to be licensed, as well as the entire or principal part of the transmission system, if any, with which the project or projects may be connected, indicating prominently by appropriate symbol the portion or portions of the transmission lines or system covered by application for license;

(C) State and county boundaries, towns, streams, railroads, power plants, irrigation systems, and other features in the vicinity of the proposed development, and any information which will aid understanding of the project;

(D) Reference to the detail map, indicating by outline the portion shown on each sheet; and

(E) If all features cannot be shown with sufficient detail on one sheet, two general maps may be furnished; one for the power plant and appurtenant works and one for the transmission system. (Furnish one tracing and one print of all maps filed as "Exhibit G." Maps shall not be smaller than 11 by 17 inches and not larger than 24 by 36 inches.)

(b) The applicant shall also provide a detailed map covering the entire project. Scale shall be sufficient to show clearly, but without unnecessary multiplicity of sheets, the essential details of surveys and of notes on ownership or right of occupancy of lands within the project area. In general, a scale of approximately 400 feet to the inch is appropriate for features containing a relatively large amount of detail, and scales of 1,000 or 2,000 feet to the inch is appropriate where there is little detail with respect to transmission and telephone lines, roads, railways, and large reservoirs. Elevations shall be tied

to government bench marks whenever available, and shall refer to mean sea level, except that in the case of projects on navigable waters having a datum accepted for local use by the United States Department of the Army, Corps of Engineers, such local datum shall be used. If more than one sheet is used, the sheets shall be numbered consecutively, and each shall bear a small diagram showing the entire map and indicating the portions shown on each sheet. Several sections of a conduit, transmission line, telephone line, road, railway, or other linear feature may be shown upon a single sheet if placed or limited to avoid crowding or confusion.

Except as expressly waived or modified by the Director, the detailed map to be filed in "Exhibit G" shall show:

- (A) The project boundary;
 - (B) The ownership status of each parcel of land to be occupied by the project facilities, designating separately lands owned by the applicant, lands for which the applicant holds rights of use and occupancy for purposes of the project, reservations (indicating separately each reservation), and public lands (indicating separately lands, full title to which remain in the United States, and lands in which the United States retains only an interest). Where the project facilities occupy lands not owned by the applicant, but for which the applicant holds only an easement, franchise, lease, or other right of occupancy and use, the map shall state the nature of such right, and shall give appropriate reference to "Exhibit A" for further details; and
 - (C) The location of all project facilities such as:
 - (i) Dams;
 - (ii) Reservoirs. Show contour lines with a contour interval of not more than ten feet for the area above the minimum elevation to which the water may be drawn down, indicate the flow lines for maximum and minimum water levels and for elevation of spillway crest, and give tables or diagrams of areas and capacities for maximum and minimum water levels and for each contour line;
 - (iii) Water conduits, indicating the center line of each flume, ditch, tunnel, pipe, or other conveyance facility and grade and elevation of bottom at each change of grade;
 - (iv) Power houses and substations;
 - (v) Transmission line and appurtenances, telephone lines, roads, railways, trails, tramways, and bridges; and
 - (vi) Navigation structures.
- (3) All maps, plans, and drawings are required to be certified by a professional engineer registered by the Board of Engineering Examiners of Oregon as required by ORS 672.010 to 672.340 and shall bear the date and the number of the certificate of registration of the professional engineer.

Notice of Application

690-51-120(1) After an application for preliminary permit, license or

permit to appropriate water for hydroelectric power is filed, the Commission shall give notice of the application to:

- (a) All affected incorporated cities and counties;
 - (b) All affected Indian Tribes as identified by the Legislative Commission on Indian Services; and
 - (c) Property owners listed by the applicant under OAR 690-51-070(32) or 690-51-100(2)(h).
- (2) The notice shall be by first class mail and shall be in addition to any notice of hearing required under ORS 537.145 or 543.220. Failure to receive such notice shall not nullify any proceedings under these rules.

Notice of Hearings

690-51-130(1) A hearing shall be held on any application in excess of 100 THP, and on any application for 100 THP or less for which the Commission determines it is in the public interest.

- (2) Notice of hearing shall be given to:
- (a) The applicant;
 - (b) Interested parties;
 - (c) Property owners as described in OAR 690-51-120;
 - (d) The affected Tribe(s) as identified by the Legislative Commission on Indian Services;
 - (e) The governing body(ies) of any affected county(ies) or city(ies); and
 - (f) The planning department(s) of the affected county(ies) or city(ies) as provided by ORS Chapters 183, 537 and 543.
- (3) The Commission, through press releases or additional notices, also shall endeavor to provide general notice to individuals or organizations who have expressed an interest in the outcome of the proceedings.

Time and Place of Hearings

690-51-140 The time and place for holding the hearing shall be fixed by the Commission. In case no protest or objection against an application is filed by the time announced in the hearing notice, the Commission may hear the matter at the Director's office in Salem.

Filing of Protest and Remonstrances

690-51-150 All protests and objections must be filed with the Commission within the time specified in the notice.

NOTE: Rules pertaining to preparation, filing and service of protests are found at OAR 690-01-010 to 690-01-020.

Standards for Evaluation

690-51-160 The standards in OAR 690-51-170 to 690-51-290 implement the provisions of ORS 537.160, 537.170, 543.017, 543.225 and 543.255 for the review of all hydroelectric applications. To be approved, a project must meet the general and resource specific standards in OAR 690-51-170 to OAR 690-51-260. Economic and need for power standards in OAR 690-51-270 and 690-51-280 must be met as well. When required, a project must also be reviewed with other projects pursuant to OAR 690-51-290.

Protection of Designated Resource Areas and Special Management Areas

690-51-170(1) Proposed projects having adverse effects on a designated resource area listed in OAR 690-51-030(1) or special management area listed in section (2) of this rule, shall be consistent with the authorized use of the area. The Commission shall decide if a project is consistent only after review of input from the managing agency. If the Commission approves a project that is not consistent, it shall make findings that support the action.

(2) Section (1) of this rule applies to the following special management areas:

- (a) National wildlife refuges;
- (b) National recreation areas;
- (c) State wildlife management areas;
- (d) State forests;
- (e) County parks;
- (f) City parks;
- (g) Special district parks;
- (h) Sites listed in or determined eligible for inclusion on the National Register of Historic Places;
- (i) Areas managed by federal agencies for study, inclusion or designation as a protected area under federal law or regulation; and
- (j) Areas under study by state agencies for inclusion in or designation as a protected area under state statute or regulation.

(3) All applications for projects in or adversely affecting the Columbia Gorge as designated in ORS 390.460 shall be consistent with the policy in ORS 390.415 as determined by the Commission after considering the recommendation of the Oregon Columbia River Gorge Commission.

Mitigation, No Net Loss

690-51-180(1) The following standards on mitigation and no net loss are minimums. They apply to all natural resources in general. Resource specific rules may impose stricter standards. In order to approve an application, the Commission shall have due regard for and enter appropriate findings on the following standards:

- (a) Proposed mitigation must be in the project vicinity;
- (b) Proposed mitigation must be acceptable to the Commission;
- (c) All mitigation measures which reasonably can, shall be fully functional when the project begins operation; and
- (d) The collective benefits of all mitigation measures must equal or exceed the collective adverse impacts on natural resources so there is no net loss of natural resources.

(2) In applying the standards in section (1), the Commission shall:

- (a) Consult with federal, state, and local resource agencies, and the appropriate affected Tribe(s); and
- (b) Prefer mitigation that benefits the natural resource(s) affected, over mitigation that benefits some other natural resource(s). If mitigation that benefits the affected natural resource(s) is unacceptable or not possible, mitigation that benefits some other natural resource(s) may be considered.

(3) The standards in section (1) shall apply to the following natural resources: water quality; wildlife; scenic and aesthetic resources;

historic, cultural, and archaeological resources; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Commission's discretion, the standards in section (1) may apply to natural resource(s) not identified in section (3) that an applicant or interested party can demonstrate to be of value to the public. Anyone making a showing of value for a natural resource not listed in section (3) shall also propose, for the Commission's consideration, a standard for the protection of the natural resource. If agreed by the Commission, and upon acceptable showing of public value, an applicant may propose enhancement or other mitigation of an unlisted natural resource to offset impacts on natural resources listed in section (3).

Water Resources

690-51-190 The Commission shall have due regard for water resources. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

- (1) There is available water to provide for reasonable operation of the proposed project;
- (2) The proposed use will not preclude or interfere with any existing rights or permits for the use of water;
- (3) The proposed use is consistent with the applicable water resources program or, in the absence of a program, the proposed use is consistent with the policies set forth in ORS 536.300-350;
- (4) The project is consistent with achieving maximum economic development of the waters involved;
- (5) The project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity;
- (6) The project will not constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved;
- (7) The project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes;
- (8) The project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control; and
- (9) Construction and operation of the proposed project shall comply with water quality standards established in OAR Chapter 340, Division 41. Exceptions to this standard may be allowed if permitted by Division 41 rules, granted by the DEQ and approved by the Commission.

Fish Resources

690-51-200 (1) The Commission shall have due regard for fish resources in general. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

- (a) Project facilities and operations will not have significant adverse impacts on fish populations;
- (b) Project facilities and operations will not unreasonably interfere with upstream and downstream passage of fish through the project vicinity. The Commission may make exceptions to this standard in special cases where fish populations have been significantly damaged by past activities and the proposed single-

or multiple-purpose project development will improve existing fish populations;

(c) Project facilities and operation have been designed to mitigate, to the greatest extent practicable, adverse impacts upon spawning, rearing or other habitat areas necessary to maintain the levels and existing diversity of fish species.

(d) Unavoidable adverse impacts on fish or to fish management programs will be mitigated;

(e) Project construction, timing and procedures are designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbance;

(f) All fishery protective measures are scheduled to be fully functional when the project commences operations; and

(g) The proposed project is consistent with ODFW management programs in force on the effective date of these rules.

(2) The Commission shall have due regard for wild game fish. No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

(a) A project, any part of which is located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish, shall include mitigation measures which:

(A) Are located in the project vicinity;

(B) Are in effect at the time of adverse impact or start of project operation, whichever comes first;

(C) Will prevent a net loss to individual species of wild game fish;

(D) Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource;

(E) Are consistent with ODFW management plans and programs in force on the effective date of these rules; and

(D) Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource(s).

(3) The Commission shall have due regard for salmon and steelhead fish and habitat. No project shall be approved that may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

(a) If proposed at an undeveloped site, it is not reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat; and

(b) Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include measures that:

(A) Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river;

(B) Comply with wild game fish standards in paragraphs (2)(a)(C) and (D) of this rule if the affected salmon or steelhead populations contain wild fish;

- (C) Are consistent with ODFW fishery management plans and programs in force on the effective date of these rules;
- (D) Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project; and
- (E) Are in effect at the time of adverse impact or start of project operation, whichever comes first.

(4) In order to approve an application for a project within the Columbia River Basin, the Commission shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the NPPC's Columbia River Basin Fish and Wildlife Program. Certification of compliance by the NPPC shall satisfy this standard.

Wildlife

690-51-210 The Commission shall have due regard for wildlife. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

- (1) The location, design, construction or operation of the proposed project shall not jeopardize the continued existence of animal species which have been:
 - (a) Designated, or officially proposed by the USF&WS, or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973; or
 - (b) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon; or
 - (c) Identified by the Oregon Fish and Wildlife Commission as threatened or endangered in Oregon.
- (2) The location, design, construction and operation of project facilities will minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes;
- (3) Project construction methods and scheduling will minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity;
- (4) Unavoidable adverse impacts on wildlife or wildlife habitat will be mitigated in the project vicinity by methods such as replacement of vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights;
- (5) The project is consistent with applicable ODFW management programs in force on the effective date of these rules; and
- (6) If, within the Columbia River Basin, the project is consistent with the provisions of the NPPC's Columbia River Basin Fish and Wildlife Program. Certification of compliance by the NPPC shall satisfy this standard.

Plant Life

690-51-220 The Commission shall have due regard for plant life. In order to approve an application, the Commission shall find that the location, design, construction or operation of the proposed project shall not jeopardize the continued existence of plant species which are:

- (1) Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973; or

(2) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon.

Recreation

690-51-230 The Commission shall have due regard for recreation. No project may be approved that would result in a net loss of recreation opportunities. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

(1) Project facilities will be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities or opportunities;

(2) The proposed project will not reduce the abundance or variety of recreational facilities or opportunities available in the project vicinity;

(3) Unavoidable adverse impacts on non water-dependent recreation facilities, activities or opportunities will be mitigated in the project vicinity by providing replacement facilities or opportunities of the same or similar nature and abundance;

(4) The project will not have significant adverse impacts on any unique, unusual or distinct natural feature which provides the focus or attraction for non water-dependent recreational facilities or activities;

(5) Unavoidable adverse impacts on any water-dependent recreational opportunity will be mitigated with replacement by or enhancement of another water-dependent recreational opportunity available in the project vicinity;

(6) The proposed project will not cause the loss of or significant adverse impact to any water-dependent recreational opportunities of statewide significance; and

(7) Adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water-dependent recreational opportunity of statewide significance, will be offset by enhancement to other element(s) of the same water-dependent recreational opportunity in the project vicinity.

Historic, Cultural and Archaeological Resources

690-51-240 (1) The Commission shall have due regard for historic, cultural, and archaeological resources. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

(a) The project will not result in significant adverse impact(s) on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places;

(b) The project will comply with state laws to protect Indian graves (ORS 97.740 - 97.760), historical materials (ORS 273.705 - 273.711) and archaeological objects and sites (ORS 358.905 - 358.955);

(c) Unavoidable adverse impacts on historic, cultural and archaeological resources will be mitigated in accordance with generally accepted professional standards; and

(d) Archaeological data of significance associated with a site

not eligible for inclusion in the National Register of Historic Places will be recovered in accordance with generally accepted professional standards.

(2) Before filing an application, developers shall consult with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate Tribes about Indian historic and cultural resources in the project vicinity.

Land Resources

690-51-250 The Commission shall have due regard for land resources. In order to approve an application, the Commission shall enter appropriate findings on the following standards:

- (1) Adverse impacts on prime farmlands as defined in the Federal Register, Volume 43, January 1978, shall be avoided, minimized or offset by mitigation acceptable to the Commission;
- (2) Adverse impacts on prime forestlands as defined by the Oregon Forestry Department shall be avoided, minimized, or offset by mitigation acceptable to the Commission;
- (3) Adverse impacts on wetlands as defined by OAR 141-85-010(20) or identified by the Oregon Natural Heritage Data Base will be avoided, minimized, or offset by mitigation acceptable to the Commission;
- (4) Project facilities shall be designed and located to avoid or minimize adverse impacts on:
 - (a) Outstanding scenic and aesthetic views and sights inventoried in local comprehensive plans as required by Statewide Planning Goal 5; and
 - (b) Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection.
- (5) Project facilities will be designed and located to blend with adjacent features;
- (6) Mechanical noise caused by the project complies with applicable noise standards in OAR Chapter 340, Division 35;
- (7) The location, design, construction or operation of the project will not:
 - (a) Disturb fragile or unstable soils; or
 - (b) Cause soil erosion which would impair other water uses.
- (8) Design, location, construction and operation of the proposed project will avoid or minimize adverse impacts on natural communities or geological features identified by the Oregon Natural Heritage Data Base as threatened or endangered in Oregon;
- (9) Project facilities located in geologically unstable areas are designed with appropriate safeguards; and
- (10) Project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation are designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions.

Land Use

690-51-260 (1) The Commission shall consider input on land use from affected counties and cities. When approving a project, the

Commission shall be consistent with action the local government recommends, except when:

- (a) The recommended action conflicts with the development, use and control of the state's water resources; or
 - (b) The recommended action conflicts with the Commission's integrated, coordinated water use program for the affected basin.
- (2) If inconsistent with the decision of a local government, Commission approval shall be supported by findings showing cause for the contrary action.
- (3) When land use approval is granted by a local government, an applicant shall give evidence of approval to the Commission before a permit or license will be issued. This does not apply to preliminary permits.
- (4) In order to approve an application, the Commission shall enter appropriate findings on the following standards:
- (a) The project complies with statewide goals; and
 - (b) Either the project is compatible with the acknowledged local comprehensive plan; or local government application of the comprehensive plan conflicts with the Commission's control over, or policies for, the state's water resources.

Economics

690-51-270 The Commission shall have due regard for project economics. In order to approve an application, the Commission shall find that the applicant, along with all co-owners, possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction, maintenance, operating, mitigation and compensation costs.

Need for Power

690-51-280 In order to approve an application, the Commission shall find:

- (1) There is a need for project power based upon:
 - (a) The forecasts of the Regional Conservation and Electric Power Plan of the NPPC or state energy demands under OAR 345-78-030; or
 - (b) Evidence of a contract for the sale of power.
- (2) Section (1) of this rule shall not apply to applications for the following types of projects:
 - (a) Small facilities intended to supply power for on-site uses;
 - (b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;
 - (c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or
 - (d) Projects by public or municipal utilities which will serve only the applicant utility's customers.

Consolidated Review

690-51-290 (1) After an application is filed, but prior to a hearing on the application, the Commission shall enter an order on the potential that the proposed project may contribute to cumulative impacts with

other existing, approved or proposed hydroelectric projects in the same river basin. It is presumed that if there are other existing, approved or proposed projects, in the same river basin, there is a potential for cumulative impacts. This presumption may be rebutted by showing the impacts of the proposed project are so small in extent, short-termed or localized that there is no reasonable likelihood of cumulative impacts. The Commission shall consult with the agencies listed in OAR 690-51-060 on cumulative impacts. Natural resources on which the potential for cumulative impacts will be considered are listed in OAR 690-51-190 through 690-51-250.

(2) If the Commission determines the proposed project may have unacceptable cumulative impacts, a consolidated review shall be conducted. The review will cover all existing, approved and proposed projects in the same river basin. Existing and approved projects shall not be subject to any action by the Commission resulting from the consolidated review. If an applicant for a proposed project does not wish to be included in the consolidated review, the application may be withdrawn and refiled at a later date. The application may be subject to a later consolidated review if refiled.

(3) If two or more of the applications are competing for the same site, only one will be chosen to proceed in the consolidated review. Preference will be given to the project best suited to the site. Suitability shall be based on the criteria in OAR 690-51-320.

(4) The consolidated review shall be conducted as a contested case hearing. Applicants and owners of all existing, approved and proposed projects in the affected basin will be advised of the need for a consolidated review contested case hearing. Applicants and owners shall be advised not less than 90 days before the hearing so they may prepare. Notice advising of the need for a consolidated review shall be sent by registered or certified mail. Separate notice will be given when the hearing actually is to take place. This notice will be as provided in OAR 690-51-130 and required by ORS 183.415.

(5) The consolidated review shall include a study of the individual and cumulative impacts each project would cause on the natural resources discussed in OAR 690-51-190 through 690-51-250. Cumulative impacts on any given natural resource shall be considered unacceptable if the level of impact would exceed any of the natural resource standards set forth in OAR 690-51-190 through 690-51-250.

(6) The purpose of the consolidated review will be to determine if the individual and cumulative impacts of proposed projects meet the natural resource standards in OAR 690-51-190 through 690-51-250. If the individual impacts of a project would exceed any of the resource standards, the application shall be rejected. When cumulative impacts on a natural resource would violate the natural resource standards, proposed projects in the consolidated review will be chosen for further consideration on the basis of the following criteria:

(a) Contribution to cumulative impact(s) - projects exhibiting lesser potential contribution to cumulative impact(s) will be preferred over projects exhibiting greater potential contribution to cumulative impact(s);

(b) Individual impacts on natural resources - projects potentially causing impact on a lesser number of natural resources and/or having a lesser degree of impact on a given resource shall be preferred over projects potentially affecting a greater number of natural resources or having a greater degree of

impact on a given resource;

(c) Project suitability - projects making more efficient use of water, developing more capacity, having greater annual output or producing more revenue will be preferred over projects that are less efficient, develop less capacity, have less annual output or produce less revenue;

(d) Mitigation - projects proposing more desirable mitigation in terms of restoration, improvement or enhancement will be preferred over projects proposing less desirable mitigation; and

(e) If no distinction can be made on the criteria in (a) through (d), the final basis of decision will be priority of filing.

(7) Following the conclusion of the consolidated review contested case hearing, the Commission will enter an order stating its findings on each proposed project included in the review. Applications for projects not selected for further consideration on the basis of criteria in section (5), shall be rejected.

(8) Any application not filed in time to be included in the notice of contested case hearing for a consolidated review shall not be reviewed until after the Commission has entered its final order on the proceeding.

(9) The Commission need not have multiple pending applications in a given basin in order to conduct a consolidated review. If there is only one proposed project in the river basin, the Commission may initiate consolidated review proceedings at the applicant's request.

Interim Orders

690-51-300 If, after reviewing an application for a permit under ORS 537.170, the Commission determines there is insufficient information to address the standards of OAR 690-51-170 to 690-51-280, the Commission may either enter an order rejecting the application without prejudice or enter an interim order continuing the hearing and specifying the nature of any studies or information necessary to complete its assessment. An interim order may also contain provisions for coordination or consultation with applicable federal, state or local governmental resource agencies and owners of all lands in the project area.

Record of Expenditures Under Preliminary Permits

690-51-310 Each permittee shall keep an accurate and dependable record of all expenditures made under the permit. If a license is issued for a project covered in whole or in part by a permit, any and all items properly includible in the actual legitimate cost of the project representing expenditures made under the permit and before the date of the license shall be supported by proper vouchers or other records, in the same manner required of a licensee when no permit has been issued; and any vouchers or records, or certified copies in support of an item properly includible in the cost of the project shall become a part of the records of the project and shall be kept and retained by the licensee in the manner required by the Commission. Records kept by standard accounting methods are acceptable.

Competing Applications

690-51-320 (1) When filed with the Commission, a competing application

shall also be served on other applicants for the same site.

(2) A competing application shall be filed with the Commission within 180 days of the time the original application is filed. If a hearing notice for the original application has been published before 180 days have passed, a notice of intent to file a competing application shall be filed. The notice of intent shall be filed prior to the closing date for comments as stated in the hearing notice. The competing application itself shall be filed within 60 days of the comment closing date.

(3) When determining which competing application should be given preference, the Commission shall consider:

(a) Conservation of the waterpower involved including:

(A) Efficiency within the system;

(B) Effect on instream fisheries;

(C) Water quality; and

(D) Other factors as the Commission may deem appropriate.

(b) Use of the waterpower involved including:

(A) Availability of water;

(B) Existing rights;

(C) Development of the available hydroelectric potential;
and

(D) Other factors as the Commission may deem appropriate.

(4) If the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and are equal in every other way, preference shall be given to the application with the earliest filing date.

(5) If the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is a municipal corporation and the other is a private developer, preference shall be given to the municipal corporation.

(6) If the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is the holder of a valid preliminary permit and has priority under ORS 543.250, preference shall be given to the holder of the preliminary permit.

(7) Where one application is determined to be best adapted to conserve and utilize the waterpower involved and the other applicant is either a municipal corporation or has priority as the holder of a preliminary permit, the municipal corporation or holder of the preliminary permit shall be informed of specific reasons why its application is not as well adapted and shall be afforded a reasonable period of time to amend its application to be at least as well adapted as the competing application. If its application is amended to be at least as well adapted within the time allowed, preference will be given to the municipal corporation or holder of the preliminary permit.

System of Accounts for Public Utilities

690-51-330 Each license issued by the Commission, where the applicant is a public utility, shall be conditioned upon the establishment by the licensee of a system of accounts in conformity with the Uniform Classification of Accounts for Electrical Utilities as prescribed and required by the Public Utility Commissioner of the State of Oregon. The licensee shall be required to file with the Commission one copy of all of its accounts as filed with the Public Utility Commissioner, duly certified, and such other statements, accounts, or records as the

Commission may require in order to furnish the Commission a full and complete knowledge of the facts necessary to carry out the provisions of ORS 543.010 to 543.620.

Accounts When the Licensee Is Not a Public Utility

690-51-340 When the applicant for a license is not a public utility, the Commission will not require the establishment and maintenance of a system of accounts as prescribed for public utilities. The licensee shall be required to keep and maintain books, records, accounts, and/or memoranda which will show the actual legitimate cost of construction of the project or any improvements. The licensee shall file with the Commission, under oath, when called for by the Commission, a statement of costs, except that a cooperative electric association shall establish a system of accounts as may be required by the Commission. A cooperative electric association shall file with the Commission each year, one or more copies of the accounts duly certified and other statements, accounts, or records as the Commission may require for a full and complete knowledge of facts necessary to carry out the provisions of ORS 543.010 to 543.620.

Minor Projects, Waiver of Provisions of Act Where the Licensee Is Not a Public Utility

690-51-350 For minor projects of not more than 100 THP, where the applicant for license is not a public utility, the Commission, in issuing licenses, will waive the following conditions, provisions, and requirements of ORS Chapter 543:

- (1) ORS 543.510 which requires the licensee to establish and maintain amortization reserves to be applied in reduction of the net investment.
- (2) ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.
- (3) ORS 543.520 which provides that on amortization of the net investment the project shall become the property of the State of Oregon.
- (4) ORS 543.550 relating to liens against the project and providing that any sale shall be of the whole property embraced in the project unless a partial sale is approved by the Commission.
- (5) ORS 543.560 which requires the licensee to execute to the State of Oregon a bond to the effect that the licensee shall promptly make payment to all persons supplying labor, material, machinery, etc.

Minor Project by Public Utility

690-51-360 Where the applicant for license for a minor project of not more than 100 THP is a public utility, the Commission will treat the application the same as an application for a major project and may waive the requirements of the Act identified in 690-51-350.

Transfer of Project to Public Utility

690-51-370 Whenever a project, or any part thereof, covered by a license issued to a licensee who is not a public utility, is transferred or conveyed to a public utility and becomes the property of the utility, or whenever a licensee who is not a public utility changes status to that of a public utility by the sale of electricity to the public, the license issued shall terminate. In such a case, the Commission may issue a new

license with provisions necessary to carry out the intents and purposes of ORS 543.010 to 543.620.

Water Rights

690-51-380 The right to the use of the waters of the State of Oregon in connection with the development of any water power project for the generation of electricity under a license issued by the Commission shall be vested in the licensee while the license or any lawful extension is in force. Each license will be conditioned so the right to use water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the license, the right to use water shall revert to the public. In case a project is taken over by the state or a municipality under the provisions of ORS 543.610, the right to use the waters previously used by the project shall continue in the state or the municipality until lawfully terminated or transferred. In case of a project falling to the state by amortization under ORS 543.520, the right to use the waters previously used by the project shall continue in the state until lawfully terminated or transferred.

Failure to Construct Project or Utilize Water

690-51-390 (1) When starting construction, a licensee must notify the Commission using the form attached to the license. Similar notice must be sent to the Commission when the project is completed.

(2) Whenever a licensee fails to begin or complete construction work within the time fixed in the license or as lawfully extended or fails to proceed with construction with due diligence, or, after completing the work, fails to use or operate the project for any period of five consecutive years, the Commission shall, after due notice given, terminate the license by a written order. If, after two years' nonuse of the licensed project there is a conflicting application for or claim to the use of the water, the licensee may be required by the Commission to show why the conflicting application should not be granted and the license in question terminated.

(3) The holder of a preliminary permit may request an extension of time to complete feasibility studies and prepare a license application. A licensee may request an extension of time to begin or complete construction under a hydroelectric license. Extension requests shall be made on forms provided by the Commission or on an acceptable substitute prepared by the applicant.

(4) Applications for extensions of time must contain the following information:

- (a) Name, address and telephone number of the applicant;
- (b) File number and type of permit or license;
- (c) Length of extension requested; and
- (d) Work previously completed.

(5) In considering applications for extension of time, the Commission shall consider:

- (a) Preliminary permits (additional one-year maximum) including:
 - (A) Adequacy and timeliness of required six-month reports; and
 - (B) Studies completed within the term of permit.
- (b) Beginning of construction under license (one extension for

- maximum of two additional years); and
- (c) Time to completion of construction (no statutory limit) including:
 - (A) Whether an extension is in the public interest; and
 - (B) Whether construction has been carried on in good faith and with reasonable diligence.
- (6) No legally allowable request for extension of time shall be denied if the reasons for delay are litigation or required actions by other state and federal agencies.

Fees: Filing and Annual

- 690-51-400 (1) A fee of \$50 shall be paid to file a preliminary permit application. An additional sum, not to exceed \$200, also shall be paid to cover costs of recording, publishing notice, and making investigations to determine if a preliminary permit should be granted.
- (2) An examination fee shall be paid to file an application to appropriate water for hydroelectric power. The fee rates are described in ORS 536.050(1).
- (3) Prior to issuance of a permit to appropriate water for hydroelectric power, a recording fee shall be paid pursuant to ORS 536.050(2)(b).
- (4) A filing fee of \$1.00 per THP shall be charged for license applications for minor projects. The minimum charge to file a minor license application shall be \$25.00. An additional sum of \$1.00 per THP shall also be paid to cover the cost of recording and making investigations to determine if a license should be granted. The minimum fee for this purpose shall be \$25.00.
- (5) Filing and recording fees for major license applications shall be the same as described in section (1) for preliminary permits.
- (6) An annual fee as described in ORS 543.710 shall be required for each permit issued under ORS chapter 537.
- (7) Each license issued shall be conditioned to require the payment of an annual fee as follows:
 - (a) For the first 25 THP or fraction thereof, \$1.00 per THP; and
 - (b) For each THP in excess of 25, 20 cents.

Agreements Between Municipal and Private Applicants

- 690-51-410 (1) A district or municipal applicant and a private applicant may contract together for the purpose of developing hydroelectric power. The joint project may receive the benefit of municipal preference and proceed under the municipal application process if the benefit, interest and control retained by the district or municipal corporation is as follows:
 - (a) A minimum of 10% of the gross or 30% of the net project income annually, at the option of the applicant, unless excepted by the Commission;
 - (b) The proprietary interest in the project lands; and
 - (c) Control over the operation of the project to the extent the district or municipal corporation can assure:
 - (A) Compliance with all regulations conditions and orders of the Commission affecting the project;
 - (B) Maintenance of flow, fish passage facilities, screening devices and other structural facilities and operational

measures required by the Commission or the Oregon Department of Fish and Wildlife; and

(C) Payment of annual fees required by ORS 543.710 and 543.720 and expenses required by any agreement developed under ORS 543.265.

(2) Any changes in the terms of a contract between a district/municipal corporation and private applicant that affect OAR 690-51-410(1), shall first be approved by the Director.

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