

**Forest Service Handbook  
National Headquarters - Washington Office  
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**Forest Service Handbook 2709.15 – Hydroelectric Handbook  
Chapter 50 - Section 4(E) and Other Reports**

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## **51 - Federal Power Act**

See the Zero Code Introduction for background information on the Federal Power Act.

Section 4(e) of the Federal Power Act states:

". . . Provided, that licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation. . . ."

This provision in the act allows the Forest Service, acting for the Secretary of Agriculture, to require that the license for a hydroelectric project include conditions deemed necessary to protect the National Forest's resources while allowing the wise development of the energy resource.

In addition, section 4(e) requires the Federal Energy Regulatory Commission (FERC), if it is going to issue a license, to license only those projects that it finds are not inconsistent and do not interfere with the purpose for which the National Forest (reservation) was created or acquired. In making this determination, FERC relies heavily on the recommendation of the Federal Department which manages the reserved land (sec. 54.4 and sec. 54.41).

## **52 - Section 4(e) Reports**

The response to the Federal Energy Regulatory Commission (FERC) under section 4(e) of the Federal Power Act is called a "4(e) report".

As delegated (FSM 2770.4), send a 4(e) report to FERC or the Washington Office Lands Staff, in response to receiving notification of an application for license or amendment for projects proposing to occupy National Forest System lands. A 4(e) report may also be sent at other times, up to the time the license is issued, to change previous input based on negotiations with the applicant or changes the applicant makes in the application for license.

### **52.1 - Timing**

Generally, the Forest Service has only 60 days to prepare the 4(e) response. Considering the amount of time necessary to get the notification to the forest and the time required for the Regional Office review, the forest really only has about 30 days to prepare a 4(e) response. Lengthen this response time by maintaining close coordination with the applicant during the preapplication consultation period so that the forest can do most of the evaluation before receiving notification from FERC. As

required in stage 2 of the FERC consultation process, and to expedite Forest Service review, ask the applicant to send the forest the draft and final applications for license and special-use as soon as they are completed (sec. 32.41).

### **52.11 - Adjustments in Timing When an Environmental Impact Statement is Necessary**

When the analysis shows the necessity of an EIS, send FERC an initial 4(e) report containing a complete justification for the need of an EIS. Send no conditions or draft special-use authorization; however, while cooperating with FERC on the EIS, supply conditions and other information in draft form so they can be incorporated into the EIS. It is not necessary to make the recommendation concerning compatibility with National Forest purposes until the EIS is complete. When the EIS is complete, send in the final 4(e) report with appropriate enclosures (sec. 32.53b and 54.43). See diagram in exhibit 1, section 32.41.

### **52.2 - Procedures**

Draft the 4(e) report based on the forest's environmental analysis and forward it to the Regional Office for Regional Forester approval and signature, and for transmittal to the Lands Staff, Washington Office or to FERC, depending on delegated authority.

The specific routing procedure for those Regions whose 4(e) reports are to be transmitted to FERC through the Washington Office Lands Staff is as follows (1) the Region creates a final draft of the 4(e) report package and sends it electronically to the Washington Office Lands Staff member responsible for FERC coordination; (2) the Lands Staff reviews it and sends comments back to the Region; (3) the Region makes appropriate corrections and the Regional Forester signs the appropriate documents; (4) the Region sends the original package to the Washington Office Director of Lands for forwarding to FERC; (5) the Region immediately sends a copy to the applicant and others who expressed interest in receiving it; (6) upon receipt of the 4(e) package, the Washington Office Director of Lands forwards it to FERC.

#### **52.21 - Cover Letter**

The cover letter for the 4(e) report contains:

- 1) The Forest Service recommendation on project interference or inconsistency with the purposes of the National Forest reservation and the associated decision regarding issuing a special-use authorization, if FERC licenses the project;
- 2) The Forest Service position on the project;
- 3) The fact that comments on the project are enclosed (Enclosure I);

- 4) The decision as to what license conditions the Forest Service requires in the license and the fact that these conditions are enclosed (Enclosure II),
- 5) That the documentation to support the decisions is enclosed (Enclosure III);  
and
- 6) That the draft special-use authorization is enclosed (Enclosure IV).

#### **52.22 - Comments on the Application**

In Enclosure I, include comments resulting from the review of the application for license or amendment and of the independent evaluation of the applicant's environmental report. Also in this section, explain the necessity for license conditions and include any information for their use. The comments should include any additions or deletions found necessary as a result of the independent evaluation, for such things as concerns, alternatives, impacts, and recommendations. When the comments are used to supplement the applicant's environmental report, together they become the environmental assessment, upon which the Regional Forester could base a decision.

#### **52.23 - Conditions for the License**

In Enclosure II, include license conditions that the Forest Service has determined through environmental analysis are necessary to protect National Forest resources. This is especially important for factors that affect power production capacity and economics (such as instream flows) because such factors are not to be part of the special-use authorization for a licensed project.

Ensure that the conditions are reasonable, enforceable, and within the scope of section 4(e) of the Federal Power Act, and that they pertain directly to matters affecting National Forest resources. Clearly mark them as conditions for the license. Do not include information supporting the need, use, or effectiveness of the conditions in Enclosure II as this information belongs in the comments section (Enclosure I) of the 4(e) report.

The Federal Energy Regulatory Commission (FERC) does not have authority to alter the conditions imposed by the Secretary. Agency "comments" and "position" are recommendations and are not mandatory, but the "conditions" are.

Before developing additional conditions, review FERC standard form license articles in chapter 80 and the standard Forest Service 4(e) conditions in section 55.

#### **52.24 - Decision Notice, Finding of No Significant Impact, and Environmental Assessment**

Include as Enclosure III, the decision notice, finding of no significant impact, and environmental assessment prepared in support of the decision concerning license conditions and the issuance of a special-use authorization.

## **52.25 - Draft Special-Use Authorization**

Include as Enclosure IV, a copy of the draft special-use authorization that the Forest Service intends to issue if the project is licensed by FERC.

## **52.26 - Intra-Departmental Coordination**

Before submitting the 4(e) report to the Federal Energy Regulatory Commission, the Regional Forester or the Chief incorporates into the report any comments other Department of Agriculture agencies, such as Soil Conservation Service or the Rural Electrification Administration, have provided concerning the application.

## **52.3 - Format**

Use the following format for the 4(e) report:

1. Reference to project under consideration.
2. Statement that "the following comments and conditions comprise the report of the Secretary of Agriculture in accordance with section 4(e) of the Federal Power Act."
3. Statement, as appropriate, that the proposed project does or does not "conflict with any project of which we are aware that should be or has been constructed by the United States."
4. Recommendation concerning whether or not the proposed project "interferes or is inconsistent with the purposes for which the <name> National Forest was created or acquired." Cite legal grounds for stating that, "the project as currently proposed would interfere or be inconsistent with National Forest purposes." See section 54.4 for determining consistency.
5. Statement concerning whether or not the Forest Service is opposed to the project. (This is a recommendation only, it is not binding). Please note that the Forest Service may recommend that a project is not inconsistent with National Forest purposes and still recommend against the project for other reasons, leaving the final decision appropriately to FERC.
6. If the Forest Service recommends that the project is not inconsistent or would not interfere with National Forest purposes, then make the statement that the Forest Service will grant a special-use authorization if FERC licenses the project (sec. 32.6).
7. Enclosure I--Comments on the application.
8. Enclosure II--Conditions necessary for the protection and use of affected National Forest lands, in the form of articles to be included in the license.

9. Enclosure III--Decision notice, finding of no significant impact, and environmental assessment.

10. Enclosure IV--Draft special-use authorization.

#### **52.4 - Interventions in Federal Energy Regulatory Commission Proceedings**

(18 CFR 1.6-1.8). If circumstances warrant, the Forest Service may intervene in a FERC proceeding. Generally, the Forest Service would choose to intervene only in situations where, although a project does not include National Forest System land, indirect project impacts may adversely affect the National Forest resources. The decision to intervene must have the Chief's approval.

The FERC staff reviews all comments on projects it is considering and reports its findings to the Commission. The comments of intervenors will also be seen in their original form by the Commission.

#### **52.5 - Recommending Federal Takeover of a Project**

(FSM 2774.4). Section 14(b) of the Federal Power Act (16 USC 807(b)) provides that a Department may recommend takeover of a project no earlier than 5 years or later than 2 years before expiration of a license, if the Department files the recommendation no later than 9 months after FERC has issued a notice of application for new license. See 18 CFR 16.8 for FERC procedures. Takeover means that the United States wishes to take over the facilities and operation of the project from the licensee. The Forest Service seldom recommends takeover of a project, and such a recommendation must have the Chief's approval.

#### **52.6 - Sample 4(e) Report**

Exhibit 1 is a sample 4(e) report. Review the plans listed in Chapter 62 and decide which plans should have the force of a license article in addition to or instead of being in the special-use authorization. Enclosures I and III would need to be appropriately adjusted if an environmental impact statement was prepared.

### **EXHIBIT 1 IS A SEPARATE DOCUMENT**