

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Panel Member List for Hydropower
Licensing Study Dispute Resolution

Docket No. AD04-4-000

NOTICE REQUESTING APPLICATIONS FOR PANEL MEMBER LIST FOR
HYDROPOWER LICENSING STUDY DISPUTE RESOLUTION

(July 8, 2004)

On March 12, 2004, the Commission requested applications to be included on a list of resource experts willing to serve as a third panel member in the study dispute resolution process of the Commission's hydropower integrated licensing process (ILP). We are reopening the application period until September 30, 2004, to afford interested parties more time to respond to the original request. Respondents to the initial request need not reapply to be considered.

BACKGROUND

The Commission's ILP encourages informal resolution of study disagreements. In cases where this is not successful, a formal study dispute resolution process is available for state and federal agencies or Indian tribes with mandatory conditioning authority.¹

The ILP provides that the disputed study must be submitted to a dispute resolution panel consisting of a person from Commission staff, a person from the agency or Indian tribe referring the dispute to the Commission, and a third person selected by the other two panelists from a pre-established list of persons with expertise in the disputed resource area.² The third panel member (TPM) will serve without compensation, except for certain allowable travel expenses to be borne by the Commission (31 CFR 301).

The role of the panel members is to make a finding, with respect to each disputed study request, on the extent to which each study criteria set forth in the regulations is or is

¹ See §5.14 of the final rule, which may be viewed on the Commission's website at <http://www.ferc.gov/industries/hydropower/indus-act/hydrerule-part-v.pdf>, and see excerpted attachment describing the formal dispute resolution process.

² These persons must not be otherwise involved with the proceeding.

not met,³ and why. The panel will then make a recommendation to the Director of the Office of Energy Projects based on the panel's findings.

TPMs can only be selected from a list of qualified persons (TPM List) that is developed and maintained by the Commission. Each qualified panel member will be listed by area(s) and sub-area(s) of technical expertise, for example Fisheries Resources-instream flow. The Commission is seeking the service of individuals with technical expertise in specific resource areas. While such individuals should be able to promote constructive dialog among the panelists, the Commission is not seeking the services of a mediator or arbitrator.

The TPM list will be available to the public on the Commission's web site. All individuals submitting their applications to the Commission for consideration must meet the Commission's qualifications.

APPLICATION CONTENTS

The applicant should describe in detail his/her qualifications in items 1-4 listed below. *To expedite processing of the application and to ensure accurate identification of areas of interest and expertise, the applicant **must**, in response to item 1, list the specific resource area(s) for which he/she wishes to be considered, such as "Aquatic Resources: water quality and instream flow" or "Recreational Resources: whitewater boating and general".*

1. Technical expertise, including education and experience in each resource area and sub-area for which the applicant wishes to be considered:
 - Aquatic Resources
 - water quality
 - instream flows
 - fish passage
 - macroinvertebrates
 - threatened and endangered species
 - general
 - Terrestrial Resources
 - wildlife biology
 - botany
 - wetlands ecology
 - threatened and endangered species
 - general

³ See §5.9 of the final rule.

- Cultural Resources
- Recreational Resources
 - whitewater boating
 - general
- Land use
 - shoreline management
 - visual/aesthetics
 - general
- Geology
 - geomorphology
 - erosion
 - general
- Socio-economics
- Engineering
 - civil engineering
 - hydraulic engineering
 - electrical engineering
 - general

2. Knowledge of the effects of construction and operation of hydroelectric projects.

3. Working knowledge of laws relevant to expertise, such as: the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act, the Wild and Scenic Rivers Act, the Federal Power Act or other applicable laws.

4. Ability to promote constructive communication about a disputed study.

HOW TO SUBMIT APPLICATIONS

Applicants must submit their applications along with the names and contact information of three references. Applicants will be individually notified of the Commission's decision.

DATE: The application period closes on September 30, 2004. Additional future application periods may be announced by the Commission.

ADDRESS: Applications must be filed electronically via the Internet. See the instructions on the Commission's web site (<http://www.ferc.gov>) under the "e-Filing" link. Applications should reference "DOCKET No. AD04-4-000, NOTICE REQUESTING APPLICATIONS FOR PANEL MEMBER LIST FOR HYDROPOWER LICENSING STUDY DISPUTE RESOLUTION".

Docket No. AD04-4-000

4

OTHER INFORMATION: Requests submitted must be in Word, Times New Roman 13 pt. font, and must not be longer than ten pages in length. Complete individual contact information must be provided.

FOR FURTHER INFORMATION CONTACT:

David Turner
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, NE
Washington, DC 20426
(202) 502-6091
david.turner@ferc.gov

Magalie Salas
Secretary

ATTACHMENTS:

§5.14 of the final rule: Formal Dispute Resolution Process

ATTACHMENT

Docket No. RM02-16-000

§ 5.14 Formal study dispute resolution process.

(a) Within 20 days of the Study Plan Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA Section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA Section 18, 16 U.S.C. 811, or any agency or Indian tribe with authority to issue a water quality certification for the project license under Section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under Sections 4(e) and 18 of the Federal Power Act or Section 401 of the Clean Water Act.

(b) The notice of study dispute must explain how the disputing agency's or Indian tribe's study request satisfies the criteria set forth in § 5.9(b), and shall identify and provide contact information for the panel member designated by the disputing agency or Indian tribe, as discussed in paragraph (d) of this Section.

(c) Studies and portions of study plans approved in the Study Plan Determination that are not the subject of a notice of dispute shall be deemed to be approved, and the potential applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff who is not otherwise involved in the proceeding, and who shall serve as the panel chair;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. The two panelists shall make every reasonable effort to select the third panel member. If however no third panel member has been selected by the other two panelists within 15 days, an appropriate third panel member will be selected at random from the list of technical experts maintained by the Commission.

(e) If more than one agency or Indian tribe files a notice of dispute with respect to the decision in the Preliminary Determination on any information-gathering or study request, the disputing agencies or Indian tribes must select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's website. A person on the list who is requested and willing to serve with respect to a specific dispute will be required to file with the Commission at that time a current statement of their qualifications, a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Indian tribe which filed the notice of dispute will be borne by the Commission or the agency or Indian tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's web site.

(i) No later than 25 days following the notice of study dispute, the potential applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) Prior to engaging in deliberative meetings, the panel shall hold a technical conference for the purpose of clarifying the matters in dispute with reference to the study criteria. The technical conference shall be chaired by the Commission staff member of the panel. It shall be open to all participants, and the panel shall receive information from the participants as it deems appropriate.

(k) No later than 50 days following the notice of study dispute, the panel shall make and deliver to the Director of the Office of Energy Projects a finding, with respect to each information or study request in dispute, concerning the extent to which each criteria set forth in § 5.9(b) is met or not met, and why, and make recommendations regarding the disputed study request based on its findings. The panel's findings and recommendations must be based on the record in the proceeding. The panel shall file with its findings and recommendations all of the materials received by the panel. Any recommendation for the potential applicant to provide information or a study must include the technical specifications, including data acquisition techniques and methodologies.

(l) No later than 70 days from the date of filing of the notice of study dispute, the Director of the Office of Energy Projects will review and consider the recommendations of the panel, and will issue a written determination. The Director's determination will be made with reference to the study criteria set forth in § 5.9(b) and any applicable law or Commission policies and practices, will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected, if applicable. The Director's determination shall constitute an amendment to the approved study plan.