United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 1 1 2010

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM 10-3

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Interventions in Proceedings of the Federal Energy Regulatory Commission (FERC)

1. PURPOSE

This memorandum describes the procedures to be followed in the Department for intervention in the formal proceedings of FERC. These procedures are in accordance with 452 DM 2.3 A (1) and apply to hydroelectric power and natural gas projects under consideration by FERC.

2. POLICY

It is the Department's policy that FERC intervention actions are delegated to bureau Regional Directors and Regional Solicitors with only occasional elevations to headquarters as appropriate and as described in Part 5 below.

3. PROCESS

Timely Intervention

A. The Regional Director, or equivalent official, of a bureau requesting intervention will circulate a proposal to intervene (with supporting information) to the Regional Solicitor (RSOL), the Regional Environmental Officer (REO), and regional officials of other bureaus in the region. Bureau supporting information shall include the status of consultations with State, local, and other appropriate entities regarding their concerns with the project and their intervention intentions.

The initiating bureau usually arrives at a decision to seek intervention during the application review process conducted by the Office of Environmental Policy and Compliance (OEPC) under 516 DM 4. The initiating bureau should use the circulation list contained in the OEPC distribution memorandum. In some cases the initiating bureau may make a decision to seek intervention before or after the formal application review process. In these cases the initiating bureau is advised to consult with the REO to determine which other bureaus may have an interest in the matter.

B. The bureau circulation will request comments and recommendations from other bureaus within five working days. It is the responsibility of the initiating bureau to deliver the circulation documents as expeditiously as possible. It is strongly recommended that e-mail, hand delivery, and fax transmission be used to meet this requirement. Timing is important because late filings at FERC require preparation of additional documentation to make a case for our late intervention. Late filings also mean the decision must be made by the Commission. Intervention is automatic if the Department is on time.

C. Other bureaus may provide "no comment" responses to the initiating bureau by telephone. All substantive comments and recommendations in support or opposition shall use either e-mail, hand delivery, or fax transmission to meet the five working day requirement. If the initiating bureau receives no comment within the review period from a particular bureau, it may assume that there are no comments.

D. The RSOL will review the proposal for legal issues and advise the initiating bureau of these findings. This advice and the remainder of the regional record will form the basis of the later decision to (not to) intervene by the Office of the Solicitor.

E. The REO will review the proposal for intra-Departmental, Federal-State, or potential environmental policy issues and advise the initiating bureau of these findings. This advice and the remainder of the regional record will form the basis of the later decision to (not to) intervene by the Office of the Solicitor. The REO shall receive a copy of the record as supplied to the Office of the Solicitor whenever the REO has made substantive comments and/or recommendations.

F. Both sets of findings in "D." and "E.", along with other bureau comments, will serve to guide the initiating bureau regarding potential elevation within the Department. It is at this time that it should be clear whether or not elevation of the request within the Department is needed.

G. If no comments are received by the initiating bureau, that bureau will request the Office of the Solicitor to decide the issue and, if appropriate, file the notice of intervention in accordance with 18 CFR 385.214 [452 DM 2.3A(5)].

H. If the initiating bureau and other bureaus determine that intervention is necessary and there are no inter-bureau conflicts, the initiating bureau will request, on behalf of other bureaus, the Office of the Solicitor to decide the issue and, if appropriate, file the notice of intervention in accordance with 18 CRR 385.214 [452 DM 2.3A(5)].

I. If the initiating bureau and other bureaus determine that intervention is necessary and there are inter-bureau conflicts that cannot be resolved, the procedures in Part 5 below will be followed.

J. OEPC shall notify the Office of the Solicitor at the appropriate time of its concurrence (non-concurrence) with the intervention request in accordance with 452 DM 2.3 A (5). In most cases, this will likely occur under "E." above but may occur later in controversial cases where the record takes

longer to develop.

Late Intervention

A. If FERC's filing period has been exceeded by the Department, 18 CFR 385.214 requires that a motion to intervene be filed.

B. In developing the motion to intervene, the RSOL may require appropriate bureaus to supply additional information to fully support their positions and strengthen the overall motion. Bureaus are expected to cooperate in a timely manner to facilitate the completion of the motion.

C. Following any appropriate review and consultation with the requesting bureau and the concurrence of the REO, the RSOL will proceed with the filing of the motion to intervene in accordance with 18 CFR 385.214 [452 DM 2.3A(5)].

4. RELATED MATTERS

A. Post-licensing proceedings often involve compliance matters which provide limited time frames for Departmental responses. In such cases, the Office of the Solicitor is authorized to file intervention petitions as necessary to protect and advance the Department's interests in that project proceeding. Such interventions may be made on behalf of any bureau(s) for which the Department intervened in the underlying licensing proceeding, and are made with the concurrence of OEPC [452 DM 2.3A(5)]. Bureaus not seeking intervention in post-licensing matters may be removed from future intervention petitions by notice to the attorney of record.

B. The Office of the Solicitor shall keep track of all FERC intervention activities and include OEPC on the official service list for a copy of any intervention notice or petition filed at FERC. This copy need only be furnished to OEPC headquarters for the central project file.

5. ELEVATION AND CONFLICT RESOLUTION

The assistant secretaries are responsible for reviewing and deciding intervention actions which involve intra or inter-bureau conflicts unresolved by the bureau directors. The Assistant Secretary - Policy, Management and Budget is designated to serve as the Department's Dispute Resolution Specialist and will apply alternative dispute resolution techniques as necessary when a conflict involves more than one assistant secretary. In addition, the Assistant Secretary - Policy, Management and Budget acting through the Office of Environmental Policy and Compliance (OEPC), is responsible for advising bureaus on the policy aspects of intervention related to environmental issues and, when intervention is contemplated, the Office of Environmental Policy and Compliance must be consulted in this regard. [452 DM 2.2 B.].

A. Any intervention request may be elevated to headquarters for Secretarial or other senior management approval upon the recommendation of the RSOL or the REO acting through their respective headquarters' offices whether or not inter-bureau conflict is involved.

B. If bureau conflicts cannot be resolved in the field, the initiating bureau (with the concurrence of RSOL) shall forward a request for resolution to the bureau director who will seek resolution with other bureau directors.

C. If resolution cannot be achieved by the bureau directors, the initiating bureau will seek resolution with the assistant secretaries and the Assistant Secretary-Policy, Management and Budget serving as the Department's Dispute Resolution Specialist will apply alternative dispute resolution techniques.

D. If necessary, any assistant secretary seeking to resolve an intervention issue and not fully satisfied with the dispute resolution process may request that the Secretary review the issue.

E. The Secretary may address bureau conflicts at any stage in this process and resolve the matter as he or she may determine to be appropriate.

F. Upon completion of the dispute resolution process, the Office of the Solicitor will proceed with the filing of the intervention petition unless the decision was not to intervene.

6. REISSUE

This memorandum replaces ERM 05-2.

Attachment

TYPICAL LANGUAGE FOR A NOTICE OF INTERVENTION

By a notice dated _____, the Federal Energy Regulatory Commission (Commission) has solicited motions to intervene and protests on the licensee's (or applicant's) new (new or original) license application for the _____ project.

The United States Department of the Interior (Department) hereby provides notice pursuant to 18 C.F.R. § 385.214(a), as amended at 68 Fed. Reg. 51069 (February 9, 2004)(Rule 214) that it is intervening in this proceeding. The Department intervenes for the purposes of becoming a party, and to ensure its interests and those of its bureaus are included in this proceeding.
Service of process and other communications concerning this proceeding should be made to:

Provide names and addresses of appropriate persons.

Notes:

1. This attachment may be revised as necessary without revising the entire ERM.
2. This attachment is dated: January 27, 2010.