

Division 52 DECOMMISSIONING RULES FOR NON-FERC PROJECTS

Amend

690-052-0000

Purpose and Applicability

- (1) The purpose of this division is to establish a process, create definitions, standards, procedures, filing requirements, and appeal rights for the decommissioning of hydroelectric projects operating solely under state authority and not under the authority of the Federal Energy Regulatory Commission.
- (2) These rules apply to projects where the holder of a license, certificate, or claim, operating solely under state authority:
 - (a) Voluntarily requests to decommission; or
 - (b) Fails to advise the Department regarding project reauthorization, according to ORS 543A.300.
- (3) ~~These rules do not apply to projects that voluntarily requested license cancellation prior to June 30, 1997, the effective date of Oregon Laws 1997, Chapter 449.~~ These rules shall apply to decommissioning processes where the public notice of decommissioning is filed on or after October 1, 2026. Decommissioning processes where the public notice of decommissioning was filed before this date shall be subject to the rules in effect at the time of the public notice.
- (4) Other rule divisions and statutory chapters may also apply to the decommissioning of a hydroelectric project subject to these rules.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) ~~& OL 1999, Ch. 873 & Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, ~~&~~ ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0010

Definitions

As used in OAR 690-052-0020 to 690-052-0160:

- (1) "Dam" means an artificial barrier constructed above ground to impound or divert the natural flow of water in a river, stream or intermittent drainage, or to otherwise create by artificial barrier constructed above ground a pool for storage of water regardless of purpose or intent in creating the artificial barrier.
- (2) "Director" means the Director of the Water Resources Department.
- (3) "Injury" has the meaning given in OAR ~~690-015-0005(5)~~ 690-380-0100.
- (4) "Instream water right" has the meaning given that term in ORS 537.332.

(5) "Operator" means a person who owns or operates a hydroelectric project under the authority of a time-limited water right or a certified water right, including a registered claim for hydroelectric purposes that has a pre-1909 priority date.

(6) "Project" has the meaning given that term in ORS 543.010(2).

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873 & Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, ORS & 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0020

Initiation of Decommissioning Process

(1) If an operator does not submit a notice of intent to reauthorize under ORS 543A.030, the Department shall within 60 days after the deadline for filing the Notice of Intent, request from the operator information regarding the decommissioning of the project pursuant to 543A.030(2), if the information has not already been filed. If the Department is unable to contact the operator, the Department may proceed with the decommissioning process, complying with the provisions of this chapter, as practical, in the absence of the operator.

(2) The Department does not have to initiate the decommissioning process upon receipt of the information requested in subsection (1) of this section. However, the Department shall initiate the decommissioning process at least one year prior to the expiration of the project's license.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0030

Public Notice and Comment

(1) After contacting the operator pursuant to OAR 690-052-0020 above, or if the Department is unable to contact the operator, the Department shall ~~cause to be issued~~ issue, in its weekly public notice, a public notice of the decommissioning of the project.

(a) The public notice shall include:

(A) The name of the operator;

(B) The county, basin and stream, and the township, range and section, within which the project is located;

(C) The license number of the project;

(D) A brief description of the project and the action prompting the decommissioning; and

(E) Information on submitting comments and on receiving notices in the future.

(b) The public notice shall be provided to:

(A) The operator, ~~who will cause it to be published in a newspaper having general circulation in the community where the project is located;~~

(B) The Department's weekly ~~bulletin~~ public notice;;

(C) The watermaster's office in the district where the project is located; and

(D) Natural resource and other appropriate agencies.

~~(2) Publication of the notice, according to subsection (b)(A) of this section, shall be in a newspaper of general circulation in the area of the project, and shall be for a period of three consecutive weeks. A copy of the notice along with an affidavit of publication must be filed with the Department following completion of the notice period. The operator is responsible for the cost of publishing the notice in an appropriate newspaper.~~

~~(32)~~ Within 60 days of the issuance of the public notice, any person interested in the decommissioning of the project may submit written comments to the Department and may request future notices about the project.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2), ~~& OL 1999, Ch. 873 & Sec. 26,~~
Statutes/Other Implemented: ~~ORS 543.092,~~ ORS 543, ~~& ORS~~ -543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0040

Process Determination

(1) After the close of the comment period in OAR 690-052-0030, the Department shall determine whether the decommissioning plan will be developed through a standard or expedited process. In making the determination, the Department shall consider any information received from the operator, comments received from agencies and the public pursuant to 690-052-0030, and the following guidelines:

(a) The expedited process shall be used for projects without dams or other permanent structures in the stream, projects which use pipes or other easily removable works to divert or withdraw water from the stream.

(b) The standard process shall be used for projects using dams or other large permanent structures in the stream to create a reservoir or divert water.

(2) Notwithstanding subsection (1) of this section, upon good cause, the Department may deviate from the guidelines in subsection (1) of this section when determining which decommissioning process to use.

(3) The Department shall promptly notify the operator and any person who provided comments, of its process decision.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0050

Expedited Process

If the Department decides to conduct the decommissioning using the expedited process, within 120 days of making that decision, the Department shall develop an initial draft plan considering available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0060

Standard Process; Decommissioning Application Review Team

(1)(a) If the Department decides to conduct the decommissioning using the standard process, the Department shall establish a Decommissioning Application Review Team (DART). The Department shall participate in and invite to the DART, representatives of the Departments of Environmental Quality, Fish and Wildlife, and any other agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the project.

(b) Within 60 days of establishing the DART, the Department shall enter into an initial consultation with the operator and the DART to gain information about the project, evaluate possible decommissioning methods, and identify potential environmental impacts of a project decommissioning.

(2) Following the consultation, the Department shall develop an initial draft plan considering the information gathered during the consultation and any available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0070

Decommissioning Plan; Standard for Review

(1) When developing an initial draft plan under OAR 690-052-0050 or 690-052-0060, or a draft decommissioning plan under 690-052-0090, the Department shall include terms and conditions in the plan to protect the public health and safety and the environment.

(2) In developing the terms and conditions of the decommissioning plan, the Department shall consider impacts to the items listed below if they are identified by comments or otherwise identified in the Department's record for the project:

- (a) Fish and wildlife during and after decommissioning;
 - (b) Water quality;
 - (c) Water use and the disposition of the water right for the project;
 - (d) Wetlands;
 - (e) Geohazards;
 - (f) Dam safety, including the protection of the public health and safety from the failure of any hydraulic works during and after decommissioning;
 - (g) Other resources including recreation; scenic and aesthetic values; historic, cultural, and archaeological sites; and botanical resources; and
 - (h) Instream water rights.
 - (i) Federal and local plans, including the plans of local watershed councils;
 - (j) Economic costs to the operator;
 - (k) Local and community economics;
 - (l) Tribal issues; and
 - (m) Overall environmental impact.
- (3) The Department shall consider all other relevant issues raised by comments received.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0080

Agency Comments

(1) Upon development of an initial draft plan under either OAR 690-052-0050 or 690-052-0060, the Department shall distribute the plan to the DART, if created, appropriate natural resource agencies, and any other agencies that provided comments under 690-052-0030, for a 60-day review and comment period.

(2) The Department shall consider all comments received under subsection (1) of this section and determine if the initial draft plan needs to be revised.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2),

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0090

Draft Decommissioning Plan

Upon completion of the agency review process and any revisions, the Department shall issue the plan, as a draft decommissioning plan, for public notice and comment according to OAR 690-052-0100. The terms and conditions of the plan shall satisfy the standard set forth in 690-052-0070.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Amend

690-052-0100

Public Notice and Comment for Draft Decommissioning Plan

(1) Department shall give public notice of the draft decommissioning plan in ~~the-its~~ weekly ~~bulletin~~public notice, and shall notify any person who requested notice under OAR 690-052-0030(~~32~~). The public notice shall include information on obtaining a copy of the draft decommissioning plan, on commenting on the draft plan, and on receiving notices in the future. The Department shall supply the operator, each member of the DART, and any agency supplying comments under 690-052-0080, with a copy of the draft decommissioning plan.

(2) Within 60 days after the public notice given under subsection (1) of this section, any person may submit written comments to the Department and may request future notices about the project.

(3) The Department shall consider any comments received under subsection (2) of this section and may revise the draft decommissioning plan.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) ~~& OL 1999, Ch. 873 & Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, ~~& ORS~~ 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01.

Amend

690-052-0110

Proposed Final Order: Findings and Criteria; Protests

(1) Within 90 days of the close of the comment period in OAR 690-052-0100, a proposed final order, containing the draft decommissioning plan, shall be prepared by the Director. The plan shall comply with the standard set out in 690-052-0070.

(2) The proposed final order shall:

- (a) Cite findings of fact and conclusions of law;
 - (b) Include a brief statement that explains the issues considered relevant to the development of the decommissioning plan; and
 - (c) Contain the date by which protests to the proposed final order must be received by the Department.
- (3) The Department shall mail copies of the proposed final order to the operator, the DART if established, agencies providing comments, and to persons who have requested copies and paid the fee required under ORS 536.050(1)(e). The Department shall also give public notice of the proposed final order in the Department's weekly ~~bulletin~~public notice.
- (4) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:
- (a) The name, address and telephone number of the protestant;
 - (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
 - (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - (e) Any citation of legal authority supporting the protest, if known; and
 - (f) ~~For persons other than the applicant~~ The protest fee required under ORS 536.050(1)(g).
- (5) Protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly ~~public notice~~bulletin published by the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050(1)(e), unless the person has previously requested copies and paid the required fee.
- (6) If a protest was timely submitted, the Water Resources Director shall:
- (a) Issue a final order if the operator has not filed a protest and the director finds that there are no significant issues related to the decommissioning; or
 - (b) Schedule a contested case hearing. Within 120 days after the close of the period for receiving protests, the director shall:
 - ~~(a) Issue a final order as provided under OAR 690-052-0130; or~~
 - ~~(b) Schedule a contested case hearing if a protest has been submitted and if:~~
 - ~~(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed decommissioning of the project; or~~

~~(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.~~

~~(7) At the request of the applicant, the Department may extend the time periods set forth in subsection (6) of this section for a reasonable period of time.~~

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2) & ~~OL 1999, Ch. 873 & Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, & ORS 543A

History:

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Amend

690-052-0120

Contested Case Hearings

Contested case hearings will be conducted according to OAR chapter 137, division 3 and OAR chapter 690, division 2. ~~the terms and conditions set forth in Oregon Laws 1999, Chapter 849 (House Bill 2525), the rules adopted pursuant to that chapter, and any applicable Department rules.~~

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2), ORS 183 & ~~OL 1999, Ch. 873 & Sec. 26~~

Statutes/Other Implemented: ORS ~~543.092~~, 543, & ORS 543A, ORS 183

History:

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Amend

690-052-0130

Exceptions to the Administrative Law Judge Proposed ~~Final~~ Order; Director's Final Order

~~(1) Any party may file exceptions and arguments with the Department within 20 days following the date of service of the proposed order on the parties to the contested case proceeding. Exceptions and arguments must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission statutes, rules, and policies to which modifications are sought in the exceptions.~~

~~(12)~~ WhereIf exceptions are timely filed to the proposed order of the administrative law judge, the Director shall ~~either grant or deny~~ consider the exceptions and issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

~~(23)~~ WhereIf no exceptions are filed within the time period allowed in the proposed order of the administrative law judge, the Director shall issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

~~(4) If a contested case hearing is not held, the Director shall issue an order either affirming or modifying the proposed order.~~

Statutory/Other Authority: ORS 536.027, 543A.300(2), ~~ORS 183 & OL 1999, Ch. 873 & Sec. 26,~~

Statutes/Other Implemented: ORS ~~543.092,~~ 543, ~~& ORS~~ 543A, ORS 183,

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0140

Final Order Needed to Decommission

An operator of a hydroelectric project operating solely under the authority of the State of Oregon may not make physical changes to decommission the project except in accordance with a final order issued by the Water Resources Director under OAR 690-052-0130, and shall decommission the project according to such order. This section does not prohibit the operator from complying with the requirements of other state agencies.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0150

Disposition of the Water Right

The hydroelectric water right for a project is subject to the provisions of ORS 543A.305 regarding the conversion of a hydroelectric water right to an instream right. Nothing in these rules or in 543A.305 prevents the operator from transferring a hydroelectric water right to an instream right according to 540.505 through 540.530, prior to conversion.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

690-052-0160

Modification of Time Limits

The Department, for good cause, may extend the time limits set forth in this division for a reasonable period of time.

Statutory/Other Authority: ORS 536.027, ORS 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A

History:

WRD 4-2001, f. & cert. ef. 5-7-01

Adopt

690-052-0170

Final Orders on Default

(1) If no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(2) If all timely filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to the proposed final order, the Department, if the matter has not been referred to the Office of Administrative Hearings, or the assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

(3) If a protestant defaults as provided in OAR 137-003-0672(3)(b) or OAR 137-003-0672(3)(c), the assigned administrative law judge shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

(4) Notwithstanding subsection (1), not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 536.027, 543A.300(2)

Statutes/Other Implemented: ORS 543, ORS 543A, ORS 183