

U.S. Department of Energy Water Power Technologies Office Guidance on Implementing Section 242 of the Energy Policy Act of 2005

December 2021

General Announcement

This Guidance incorporates the recent amendments to the program’s statutory authority included in the Energy Act of 2020 and the Infrastructure Investment and Jobs Act to clarify the definitions of existing and new terms, eligibility window and incentive period, incentive payment calculations, application content requirements, and the duration of payments available to generation facilities.

I. Purpose and Scope

- (a) This Guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to section 242 of the Energy Policy Act of 2005, Pub. L. No. 109-58, as amended (“section 242”).
- (b) The Secretary may make incentive payments, subject to the availability of appropriations, for electric energy generated and sold by a qualified hydroelectric facility during the incentive period, to the owner or authorized operator of such a facility. Incentive payments may only be made upon receipt by the Secretary of an incentive payment application that demonstrates that the applicant is eligible to receive such payment and satisfies the other requirements as deemed necessary.
- (c) Any determinations under section 242 with regard to an incentive payment are not subject to the provisions of 10 C.F.R. Part 600, and any incentive payment in connection with section 242 shall be considered a benefit.
- (d) This guidance may be revised in a future rulemaking.

II. Authority

Congress established a program under section 242 to support the expansion of hydropower energy development at existing dams and conduits through an incentive payment procedure. See 42 U.S.C. § 15881, as amended. Congress amended section 242 through Section 3005 of the Energy Act of 2020 (Pub. L. No. 116-260) and revised the term “qualified hydroelectric facility,” among other changes. Congress further amended section 242 through the Section 40331 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) and revised the term “existing dam or conduit,” among other changes.

III. Definitions

Added means to install a turbine or other generating device where none existed before. In addition, “added” can mean to repair or replace an existing turbine or other electricity generating device that has been offline because of disrepair or dismantling for at least five consecutive years immediately prior to October 1, 2005 and is subsequently repaired or replaced on or after October 1, 2005, and on or before September 30, 2027.

An area in which there is inadequate electric service means a geographic area that lacks access to an interconnected electric grid; is subject to frequent electric outages, based on common reliability metrics; or where the cost of electricity is significantly above the typical residential electricity cost.

Calendar year means a period beginning on January 1 and ending on December 31.

Common reliability metrics means metrics including but are not limited to the System Average Interruption Frequency Index, that are used to quantify the frequency of outages.

Conduit means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. *See* 16 U.S.C. § 823a(a)(3)(A).

Dam means any structure for impounding water, including any diversion structure that is designed to obstruct all or substantially all of the flow of a natural body of water.

DOE means the U.S. Department of Energy.

Electric grid, as used in this Guidance, means the interconnected and contiguous high voltage transmission network where robust transmission assets connect to regionally or nationally interconnected transmission system. In the continental United States, the electric grid consists of three regional transmission systems: the Eastern Interconnect, the Western Interconnect, and the Texas Interconnect.

Eligibility Window means the period of 22 fiscal years for which a hydroelectric facility must be placed in operation in order to apply for an incentive payment for electric energy generated and sold by that facility. This period began on October 1, 2005, and concludes on September 30, 2027.

Eligible Applicant means the owner or authorized operator of the qualified hydroelectric facility who applies for incentive payments for net electric energy generated by and sold from its operation during the eligibility window.

Existing dam or conduit means any powered or non-powered dam or conduit completed before the date of enactment of the Infrastructure Investment and Jobs Act on November 15, 2021, which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device. A temporary increase in dam height that does not expand reservoir topographic area and is for purposes of flood control, hydroelectric generation efficiency improvement, and/or health and safety improvements is allowable and does not render a hydroelectric generation facility ineligible for the hydroelectric production incentive. However, an increase in dam height, expansion of reservoir topographic area or expansion of a previously existing conduit cross-section, other than generator penstocks associated with a new generator, after November 15, 2021, would render a hydroelectric generation facility ineligible for the hydroelectric production incentive.

FERC means the Federal Energy Regulatory Commission.

First eligible for payment means the first fiscal year, after August 8, 2005, that a hydroelectric generation facility generates hydroelectric energy for sale.

Fiscal year means the period beginning October 1 and ending on September 30.

Hydroelectric energy means energy generated from a water-powered turbine or other generating device, including marine energy or hydrokinetic devices, and sold by a hydroelectric generation facility.

Incentive payment means the payment which a qualified hydroelectric facility owner or authorized operator may receive upon successfully proving eligibility and is based on the eligible kWhs produced by the hydroelectric generation facility and the statutory incentive rate. Incentive payment shall not exceed the statutory limit established in 42 U.S.C. 15881(e)(1) per applicant per calendar year and shall be adjusted should total appropriations for incentive program be insufficient to make full payments on all eligible production to all successful applicants.

Incentive Payment Application means an application for an incentive payment for electric energy generated and sold in a specified calendar year that is submitted during the application period. Applications for incentive payments must be properly completed and submitted to DOE each year by the deadline for application submissions announced by DOE in the Federal Register annually.

Incentive Period means a period of 10 consecutive years that begins with the first fiscal year hydroelectric energy was generated and sold by a qualified hydroelectric facility, regardless of funding appropriated for section 242 or an application submitted by the applicant. Receipt of an incentive payment by an eligible applicant is limited to this 10-year period.

Major Event Days (MED) means days in which major events occurred such as hurricanes, wildfires, or severe storms.

Net electric energy means the metered kilowatt-hours (kWh) generated and sold, and excludes electric energy used within the hydroelectric facility to power equipment such as pumps, motors, controls, lighting, heating, cooling, and other systems needed to operate the facility.

Not-for-profit electric cooperative means a cooperative association that is legally obligated to operate on a not-for-profit basis and is organized under the laws of any State for the purpose of providing electric service to its members.

Qualified hydroelectric facility is a hydroelectric generation facility that:

- (a) is located in a State or in U.S. jurisdictional waters;
- (b) has a water-powered turbine or other generating device (including conventional or new and innovative technologies capable of continuous operation);
- (c) is owned or solely operated by a non-Federal entity;
- (d) began producing hydroelectric energy for sale on or after October 1, 2005; and
- (e) that either:

- (1) added generation capability, excluding maintenance, through the incorporation of new equipment, refurbished equipment, or both to an existing dam or conduit that was completed before November 15, 2021; or,

- (2)

- (i) has a generating capacity of not more than 20 megawatts;
 - (ii) for which the non-Federal entity has received a construction authorization from the Federal Energy Regulatory Commission, if applicable; and
 - (iii) that is constructed in an area in which there is inadequate electric service.

Qualified kilowatt-hours (kWh) means the number of kWh identified by DOE to receive payment, as calculated based on the criteria set forth in 42 U.S.C. 15881(e) and discussed in Section VIII.

Sale means a transfer of currency between two unrelated parties in exchange for delivered electrical current. Not-for-profit electric cooperatives and municipal utilities shall be considered unrelated to their members for purposes of incentive payments.

Secretary means the Secretary of the U.S. Department of Energy or such officers or employees of the U.S. Department of Energy as designated by the Secretary of the U.S. Department of Energy.

Significant Changes means changes consisting of the incorporation of new equipment,

refurbished equipment, or both at an existing hydroelectric generation facility. Significant changes may include, but are not limited to, the addition or installation of the mechanical equipment installed to enable the capture of kinetic energy from moving water, such as equipment used to transfer that energy; addition or installation of the electric generator driven by the energy transfer; and addition or installation of control equipment to manage the entire facility for safe and reliable electricity output. Other changes to existing facilities and equipment, such as maintenance that replaces damaged or worn equipment or causes incremental increases in energy output from facilities, do not qualify for payment.

State means the District of Columbia, Puerto Rico, and any of the States, Commonwealths, territories, and possessions of the United States.

System Average Interruption Frequency Index (SAIFI) is a common reliability metric used by electric power utilities and reported to U.S. Energy Information Administration (EIA) that measures the frequency of interruptions experienced by a utility in a one-year period.

IV. Who May Apply?

Any owner or authorized operator of a hydroelectric generation facility may apply for incentive payments for net electric energy generated by and sold from its operation during the eligibility window.

V. What is a Qualified Hydroelectric Facility?

To qualify for an incentive payment, an eligible applicant must demonstrate that its hydroelectric facility meets all of the following criteria of a qualified hydroelectric facility:

- (a) Is located in a State or in U.S. jurisdictional waters.
- (b) Has a water-powered turbine or other generating device (including conventional or new and innovative technologies capable of continuous operation).
- (c) Is owned by a non-Federal entity and operated by a non-Federal entity. The owner or authorized operator must be applying on behalf of:
 - (1) A FERC-jurisdictional hydroelectric facility, as the holder of a license or exemption issued by FERC for the operation of such hydroelectric facility; or
 - (2) A non-FERC-jurisdictional hydroelectric facility, as the holder of the exclusive rights to the beneficial use of the hydroelectric facility, including legal title.
- (d) Began producing hydroelectric energy for sale on or after October 1, 2005.

(e) Has either:

(1) Added generation capability to an existing dam or conduit that was completed before November 15, 2021. Such facilities include:

(i) Hydroelectric generation facility that began operation at an existing dam or conduit between October 1, 2005, and September 30, 2027.

(ii) Hydroelectric generation facility that began operations at an existing dam or conduit prior to October 1, 2005, so long as the hydroelectric generation facility had been offline because of disrepair or dismantling for at least five consecutive years immediately prior to October 1, 2005, restarted operations prior to September 30, 2027, and underwent significant changes consisting of incorporation of new equipment, refurbished equipment, or both, prior to September 30, 2027. Or;

(2) A generating capacity of not more than 20 megawatts, must be a non-Federal entity which received a construction authorization from FERC, if applicable, and is constructed in an area in which there is inadequate electric service. To be considered an area in which there is inadequate electric service, the facility must demonstrate one of the following:

(i) A lack of access to the electric grid, as demonstrated by a lack of connection to a regional or national interconnected transmission system, such as the Eastern Interconnect, the Western Interconnect, or the Texas Interconnect;

(ii) A significantly high frequency of electric outages, as demonstrated by a reported annual common reliability metric, including but not limited to SAIFI without MED, that is in the highest 10% of total annual reported outages;

(iii) A significantly high cost of electricity, as demonstrated by a reported annual average price of retail residential electricity that is in the highest 10% of total annual reported average retail residential electricity price.

VI. Eligibility Window and Incentive Period

(a) Electrical power produced from a hydroelectric generation facility placed in operation on or after October 1, 2005, and on or before September 30, 2027, is eligible for consideration of incentive payments.

(b) The period for payment under this program ends with fiscal year 2036.

(c) Subject to the availability of appropriated funds, a hydroelectric generation facility may receive payments for a period of 10 consecutive fiscal years. Such period shall begin with the first fiscal year in which the facility began producing hydroelectric energy for sale. Any year in which a hydroelectric generation facility does not operate partially or fully will be considered an eligible year if the facility could potentially operate during in the 10-year period starting with the

first fiscal year in which the generator began operating a hydroelectric generation facility and the authorized operator sold the resulting electric energy, regardless of whether funds were appropriated in a given year for an incentive payment.

Example 1. A hydroelectric generation facility that began producing hydroelectric energy for sale on September 30, 2027, and continued to produce and sell hydroelectric energy through September 30, 2036, would be eligible to apply for incentive payments, subject to future appropriations, for fiscal year 2027 through the end of fiscal year 2036 but not beyond that time period.

Example 2. A hydroelectric generation facility that began producing hydroelectric energy for sale on October 1, 2006, and continued to produce and sell hydroelectric energy for 10 consecutive years would be eligible to apply for incentive payments through the end of fiscal year 2016 but not beyond that time period.

Example 3. A hydroelectric generation facility that began producing hydroelectric energy for sale on October 1, 2010, stopped producing hydroelectric energy for sale on September 30, 2012, and again began producing hydroelectric energy for sale on September 30, 2015, would be eligible to apply for incentive payments through the end of fiscal year 2020 but not beyond that time period.

Example 4. A hydroelectric generation facility that began producing hydroelectric energy for sale on June 1, 2020, and continued to produce and sell hydroelectric energy for 10 consecutive years would be eligible to apply for incentive payments through the end of fiscal year 2029 but not beyond that time period.

Example 5. A hydroelectric generation facility that has a generating capacity of not more than 20 MW, has a FERC construction authorization, and is not connected to a regional or national interconnected transmission network, such as the Eastern Interconnect, the Western Interconnect, or the Texas Interconnect would be eligible to apply for an incentive payment.

Example 6. A hydroelectric generation facility that has a generating capacity of not more than 20 MW, has a FERC construction authorization, and reported an annual SAIFI metric without MED of 2.5 outages during calendar year 20XX. According to EIA's data for Calendar Year 20XX, 90% of utilities reported having an annual SAIFI metric without MED of 2.3 outages or less. This facility would be eligible to apply for an incentive payment for Calendar Year 20XX.

Example 7. A hydroelectric generation facility that has a generating capacity of not more than 20 MW, has a FERC construction authorization, and reported an average cost of electricity of 20 cents/kWh from their utility in calendar year 20XX. According to EIA's data for Calendar Year 20XX, 90% of utilities reported having an average retail residential electricity cost of 19 cents/kWh or less. This facility would be eligible to apply for an incentive payment for Calendar Year 20XX.

VII. Application Requirements

(a) When and How to Apply

- (1) An application for an incentive payment for electric energy generated and sold in a calendar year must be filed during the application period defined by DOE in the *Federal Register* for a given year of incentive payments in which DOE will announce the schedule for accepting application and will establish a deadline for application submissions.
- (2) Applicants must report all net electric energy production from hydroelectric generation facilities for the calendar year stated in the application period.
- (3) Failure to file an application by the DOE-established deadline for any eligible year for payment for energy generated in the preceding year shall disqualify the owner or authorized operator from eligibility for any incentive payment for energy generated and sold from a hydroelectric generation facility in that calendar year.
- (4) Applications for incentive payments must be properly completed and submitted to DOE each year.
 - (i) Each application must include all of the information set forth in section VII(b). DOE will not consider previously submitted application materials. Applicants are required to submit new applications each year.
 - (ii) Applications that refer to previous application materials or statements in lieu of submitting current information will not be considered. Receipt of payment in any calendar year does not guarantee payment or automatically qualify an applicant in any subsequent year.
 - (iii) DOE will not assume that any incentive recipient intends to apply in a subsequent year. DOE will accept applications and make payments to qualified hydroelectric facilities in years when appropriations are available for this purpose.

(b) An application for an incentive payment must include:

- (1) The name of the hydroelectric generation facility or other official designation;
- (2) The name, mailing address, telephone number, and email address of a point of contact to respond to questions or requests for additional information, and notification of eligibility determination;
- (3) The location and physical address of the hydroelectric generation facility including nine-digit zip code;
- (4) A description of the type of generation source for the facility;

- (5) A FERC jurisdiction determination under Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817, to include a license, or declaratory order, Declaration of Intention, or a Petition for Declaratory Order, depending on the circumstances of the facility;
- (6) Documentation of FERC construction authorization, if applicable, for operating the specific facility;
- (7) A clear statement of how the applicant hydroelectric generation facility satisfies the required eligibility criteria described in this Guidance, including the criteria required of a qualified hydroelectric facility as set forth in Section V;
- (8) A statement documenting the generation capacity of the hydroelectric generation facility;
- (9) A detailed description of the new hydroelectric generation facility, including, but not limited to: the state of the site before construction, a listing of the equipment that has been installed (whether the equipment is new or refurbished), and the type of turbine or other generating device that has been installed;
- (10) If the application is for new hydropower capability at an already existing hydroelectric generation facility, the date and circumstances the old hydroelectric generation facility went off-line;
- (11) Details on how the hydroelectric energy generated from the new unit(s) is metered. This can include, but is not limited to: location of the meter, the meter manufacturer, industry standards the meter meets, independent verification of meter data, requirements for metering under power purchase agreements, interconnection tariffs, or other mandates;
- (12) If the application is for a hydroelectric facility located in an area in which there is inadequate electric service, a detailed description of the lack of access to an electric grid; a detailed description of electric outages compared to other customers within the same State, based on common reliability metrics; or a detailed explanation of the cost of electricity in the geographic area served by the applicant compared the typical residential electricity cost of other customers within the same State.

To demonstrate a significantly high frequency of electric outages, facilities may find their utility's reported SAIFI metric without MED through EIA's 2020 Annual Electric Power Industry Report <https://www.eia.gov/electricity/data/eia861/>, downloading the 2020 original zip file, and reviewing the "Reliability_2020" spreadsheet. If a facility's utility does not have reported SAIFI metrics and the facility wishes to be considered as having a significantly high frequency of electric outages, the facility operator must contact their utility to obtain their FY20 SAIFI without MED metric;

To demonstrate a significantly high cost of electricity, facilities may find their utility's 2020 reported average cost of retail residential electricity through EIA's 2020 Electric

Sales, Revenue, and Average Price report
https://www.eia.gov/electricity/sales_revenue_price/ and referencing Table T6
“Residential Sector”;

- (13) The total amount of electric energy for the calendar year in which payment is requested;
- (14) A statement, invoice, or bill of sale for the annual and monthly metered net hydroelectric energy generated and sold during the application period and a table summarizing monthly invoice amounts defined by DOE in the Federal Register notice for a given calendar year of incentive payments by the hydroelectric generation facility, measured in kWh, for which an incentive payment is requested;
- (15) A copy of an invoice, statement, or bill of sale that provides the date of the first sale of electricity from the hydroelectric generation facility;
- (16) A tax identification number of the hydroelectric generation facility;
- (17) The creation or update of a Federal System for Award Management (SAM) account is required and confirmed with the assignment of a Unique Entity Identifier (UEI) number created in SAM.gov;
- (18) A statement agreeing to retain records for a period of three (3) years which substantiate the annual and monthly metered number of kWh generated and sold and to provide access to or copies of, such records, for possible audit within 30 days of a written request by DOE;
- (19) A statement indicating that the applicant is the owner of the hydroelectric generation facility or is the authorized operator of the hydroelectric generation facility and has the written consent of an authorized executive official of the generator owner to file an application;
- (20) A statement from the owner or authorized operator indicating what the incentive has been used for in previous years and, if awarded, what the incentive will be used for in the upcoming year. Note: The response will not affect the eligibility decision or the amount of the incentive to be received;
- (21) A signature from an authorized executive official of the owner or operator claiming the payment; and
- (22) A statement signed by an authorized executive official certifying that the information contained in the application is accurate.

VIII. Calculation Payments and Documenting Eligible Production

(a) Payment Calculation --

(1) Incentive payments shall be calculated as follows: the amount of eligible kWhs produced by the hydroelectric generation facility is multiplied by the statutory incentive rate of \$0.018/kWh, which is adjusted as required by 42 U.S.C. § 15881(e)(2).

(2) A payment to a qualified hydroelectric facility shall not exceed the statutory limit established in 42 U.S.C. 15881(e)(1) per applicant per calendar year.

(3) Should total appropriations for the incentive program be insufficient to make full payments on all eligible production to all successful applicants, payments shall be adjusted using the following calculation:

$$\frac{\text{Total appropriations for the 242 program in a given calendar year}}{\text{Total dollar amount for all qualified kWhs}} \times \text{Statutory rate, as adjusted for inflation} = \$/\text{kWh rate}$$

(b) Documenting Eligible Production

(1) The net electric energy generated and sold (kWh) by the owner or authorized operator of a hydroelectric generation facility must be measured by a metering device sensor that:

(i) Meets generally accepted industry standards;

(ii) Is maintained in proper working order according to the instructions of its manufacturer; and

(iii) Is calibrated according to generally accepted industry standards.

(2) If a hydroelectric generation facility's eligible production is not specifically metered or is metered in a manner different from the requirements listed previously, an applicant must submit a reasonable, reliable, alternative method to document eligible production. Alternative methodologies must be reviewed, confirmed, and documented by a third party with valid and relevant industry experience and credentials and be submitted to DOE in accordance with section VII(b), Application Requirements, of this Guidance. DOE reserves the right to determine whether the alternative methodology sufficiently identifies the new electric energy generated to qualify under this program.

IX. Procedures for Processing Applications

(a) Processing applications:

(1) Applications and notifications to the Department shall be submitted to the Hydroelectric Production Incentive Program, at hydroincentive@ee.doe.gov, following

the instructions provided in the annual Federal Register notice opening the application period.

(2) Following submission of an application, DOE will review and consider the completeness of the application data and may request supplementary information relating to the application. When DOE has been satisfied that sufficient information has been reported, the application will be reviewed for eligibility consistent with this Guidance.

(3) Applicants must respond to any request for supplemental information relating to their application in a reasonable period of time. Delays exceeding 10 business days in response to a request for information shall constitute the basis for classifying a hydroelectric generation facility as ineligible.

(4) DOE may require the applicant to conduct at its own expense and submit an independent audit, or DOE may conduct an audit, to verify the number of kWh claimed to have been generated and sold by the hydroelectric generation facility and for which an incentive payment has been requested or made.

(5) DOE will determine the extent to which appropriated funds are available to be obligated under this program. Upon evaluating each application and any other relevant information, DOE shall further determine:

(i) Eligibility of the applicant for receipt of an incentive payment, based on the criteria for eligibility specified in this Guidance;

(ii) The number of kWh to be used in calculating a potential incentive payment, based on the net electric energy generated and sold from a hydroelectric generation facility during the application calendar year; and

(iii) The adjusted payment rate, as determined in accordance with the calculation set forth in Section VIII of this Guidance.

(b) Notice of decision:

(1) DOE shall issue a written notice of the determination to each applicant and for each hydroelectric generation facility with the following content:

(i) Disapproving or approving the application as eligible for payment in whole or in part; and

(ii) Setting forth the applicant's amount of qualified kWhs for the incentive payment.

(2) If the application does not meet the requirements of this program or if some of the kWhs claimed in the application are disallowed as ineligible for payment, DOE shall

issue a written notice denying the application in whole or in part with an explanation of the basis for denial.

X. Duration of Payments

Subject to the availability of appropriated funds, no incentive payment may be made under section 242 to any qualified hydroelectric facility after the expiration of the period of 32 fiscal years beginning with the first full fiscal year occurring after August 8, 2005, and no payment may be made to any such qualified hydroelectric facility after a payment has been made with respect to such facility for a period of 10 consecutive fiscal years.

XI. Administrative Appeals

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part, must file an appeal with the DOE Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with the procedures set forth below and in accordance with the procedural regulations codified at 10 C.F.R. Part 1003.

(b) If an applicant does not file an appeal in accordance with these requirements, the determination of DOE shall become final. If an applicant files an appeal on a timely basis in accordance with these requirements, the decision and order of the Office of Hearings and Appeals shall be final. If the Office of Hearings and Appeals orders an incentive payment, the Director of the Office of Hearings and Appeals shall send a copy of such order to the DOE Finance Office with a directive to make the required payment.

(c) The appeal shall contain:

(1) a concise statement of the ground(s) upon which the applicant contests the written notice of DOE;

(2) a copy of the DOE notice;

(3) contact information (i.e., name, telephone number, mailing and e-mail addresses) for a representative able to respond to questions and provide information relevant to the appeal; and

(4) any data, documentation, or other relevant information supporting a showing by the appellant that the denial of eligibility or disallowance of payment, either in whole or in part, is arbitrary and capricious.

(d) The appeal, including attachments, should be electronically filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, at: OHA.filings@hq.doe.gov. Upon filing, OHA will confirm receipt of the appeal and assign the appeal a case number.

(e) The following matters are not subject to appeal:

(1) the denial of an application on the basis of untimeliness and

(2) a proportional award of an incentive payment based upon DOE's determination that insufficient appropriated funds are available to make payments on all eligible production to all qualified applicants.

(f) The appeal process shall proceed as follows:

(1) An appeal under these procedures must be filed within ten (10) days of an applicant receiving the determination by DOE denying eligibility or a claim for payment, in whole or in part.

(2) In evaluating an appeal, OHA may require the submission of additional information by the appellant regarding any statement, data, documentation, or other information included in an appeal. OHA may also solicit and accept submissions of relevant information from other sources, including DOE, provided that the appellant is afforded an opportunity to respond to all such submissions. OHA may, on its own initiative, convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal. OHA will determine the scope and format of any conference or hearing convened under these procedures, as well as the parties allowed to participate.

(3) OHA may issue an order summarily dismissing an appeal if: (a) the appeal is not filed in a timely manner, unless good cause is shown; (b) the appeal is defective on its face; (c) the appellant fails to provide additional information requested by OHA within the time specified by OHA; or (d) for any other reason that the appeal would be subject to dismissal under the OHA procedural regulations codified at 10 C.F.R. Part 1003.

(4) OHA will provide DOE with the opportunity to submit a written response to an appeal within a period of time specified by OHA. OHA will provide the appellant with a copy of DOE's response and allow the appellant to submit a reply within a period of time specified by OHA.

(5) Within thirty (30) days of receiving all required information, including additional information requested by OHA subsequent to the submission of the appeal, OHA shall issue a written decision granting or denying the appeal, in whole or in part. The decision shall include a written statement setting forth the relevant facts and basis for the determination. Upon issuance, OHA shall serve an electronic version of the decision upon the appellant and the DOE Office of Energy Efficiency and Renewable Energy. The decision will also be published on the OHA website: <http://www.energy.gov/oha>. The decision of OHA shall constitute the final agency action and the appellant's final right of administrative review under the Hydroelectric Incentive Program.

(6) All expenses incurred by the appellant in pursuing any appeal before OHA shall be borne exclusively by the appellant.