

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CH. 801]

General Policies; Final Rule

Summary: This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to provide rules for agency procurement and bid protest procedures and for updating the general policies of the Commission to include climate change and environmental justice, revising the procedures regarding the adoption of the comprehensive plan and adding language to memorialize the Commission’s Dry Cooling Resolution.

Dates: This Rule is effective immediately upon publication in the *Federal Register*.

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Supplementary Information: Notice of proposed rule-making was published in the *Federal Register* on March 21, 2024; *New York Register* on April 10, 2024; *Pennsylvania Bulletin* on April 13, 2024; and *Maryland Register* on April 5, 2024. The Commission convened a public hearing on May 2, 2024 to hear testimony on the proposed rulemaking. A written comment period was held open to May 13 and extended upon request to June 10, 2024.

During this official public comment period, only one comment was received. The comment focused exclusively on the language added to new paragraph § 801.12(d) regarding dry cooling and electric power generation. The commenter asked that the nuclear power industry be wholly exempted from this requirement, stating that the Commission’s regulatory review regulations at Part 806 fully covered the use of water and impacts of water use by industry and that dry cooling was not practicable for nuclear power plants. The commenter also noted that the Commission did not provide a definition of “significantly modified power generation plants” in the rulemaking.

The Commission will continue to require the power generation industry, including the nuclear power industry, to evaluate water use and utilize readily available technologies to reduce water use. The Commission believes that smaller nuclear power plants may be able to use dry cooling and hybrid dry cooling systems in the future. In light of the comment, the Commission does amend the original language proposed in paragraph (d) of § 801.12 to focus on the requirement that project sponsors of power generation plants must evaluate their projected water use and consider all available and feasible technologies, including but not limited to dry cooling, that could lower overall consumptive use of water. This change broadens the focus not just on dry cooling but also on other technologies that may be more feasible for the nuclear power industry as well as the power generation industry as a whole. The Commission also added clarity on what a “significantly modified power plant” would be in the context of this paragraph.

The Commission received no other comments on any other aspects of the proposed rule or Part 801 and therefore made no additional changes to the language in this final rule.

List of Subjects in 18 CFR Part 801

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 801 as follows:

PART 801—GENERAL POLICIES

1. The authority citation for part 801 continues to read as follows:

Authority: Secs. 3.1, 3.4, 3.5(1), 15.1 and 15.2, Pub.L. 91-575 (84 Stat. 1509 et seq.)

2. Amend § 801.2 by revising paragraph (b)(9) as follows:

§ 801.2 Coordination, cooperation, and intergovernmental relations.

* * * * *

(b) * * * * *

(9) Coordinate and cooperate with the appropriate agencies of a member jurisdiction on implementing actions to address resiliency in the face of changing climatic conditions and to support the aims of environmental justice.

3. Revise § 801.5 to read as follows:

§ 801.5 Comprehensive plan.

(a) The Compact requires that the Commission formulate and adopt a comprehensive plan for the immediate and long-range development and use of the water resources of the basin.

(1) The plan will include existing and proposed public and private programs, projects, and facilities which are required, in the judgment of the Commission, to meet present and future water resources needs of the basin. Consideration shall be given to the effect of the plan, or any part of the plan, on the receiving waters of the Chesapeake Bay. The Commission shall consult with interested public bodies and public utilities and fully consider the findings and recommendations of the signatory parties, their various subdivisions and interested groups. Prior to adoption of the plan the Commission shall conduct at least one public hearing in each signatory State.

(2) The plan will reflect consideration of multiple objectives, including economic growth; sustainable regional development and environmental resilience; coordinated study and consideration of water quantity and water quality and the nexus with existing and proposed land uses; and the promotion of cooperation and collaboration between all levels of government and non-governmental entities.

(3) The Commission will strive to complete a comprehensive update of the comprehensive plan every 20 years. If adjustments are needed during the life span of the plan to address emergent priorities, goals, or objectives, the comprehensive plan will be revised in accordance with requirements of the Compact.

(4) Projects requiring Commission review and approval will be included in the comprehensive plan after formal

action is taken at Commission business meetings. Approved projects will be incorporated into the comprehensive plan and accessible via the Commission's Water Application and Approval Viewer or successor viewer applications.

(b) The comprehensive plan shall provide for the immediate and long-range use, development, conservation, preservation, and management of the water resources of the basin. The plan will be presented in a form and order as determined by the Commission and shall include but not be limited to the following:

- (1) Statement of authority, purpose, objectives, and scope.
- (2) Identification of priorities, goals and objectives of the Commission.
- (3) Inventory of the basin's water resources and existing developments, projects and facilities.
- (4) Projection of immediate and long range water resources needs of the basin.
- (5) Outline of plan implementation measures.
- (6) Procedures for updating and modifying the plan.
- (7) Necessary appendices.

4. Amend § 801.12 by adding paragraph (d) to read as follows:

§ 801.12 Electric power generation.

* * * * *

(d) Project sponsors proposing new or significantly modified power generation plants in the basin shall submit to the Commission for review an evaluation of their projected water use and consider all available and feasible technologies, including dry cooling, that could lower the consumptive use of water at the plant. For the purposes of this evaluation, a significantly modified power plant is one that is changing its fuel source or substantially increasing its consumptive use of water.

5. Add § 801.15 to read as follows:

§ 801.15 Commission Procurement Procedures; Protests.

(a) *Procedures.* The Commission shall maintain a policy entitled "SRBC Procurement Procedures" that outlines the details and procedures related to the purchasing and procurement of goods and services by the Commission. Any revisions to this policy shall be consistent with § 15.9 of the Compact and undertaken in accordance with appropriate public notice and comment consistent with the requirements of § 808.1.

(b) *Right to Protest.* A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract, may protest to the Commission in writing.

(c) *Filing of Protest.* A protestant shall file the protest on a form and in a manner prescribed by the Commission. A protest shall be filed within ten calendar days after the aggrieved protestant knew or should have known of the facts giving rise to the protest, except that in no event may a protest be filed later than ten calendar days after the date the contract was awarded. The failure to file a timely protest shall be deemed as a waiver of the right to protest by any bidder or offeror, prospective bidder or offeror or a prospective contractor. Untimely filed protests shall be disregarded by the Commission. The Executive Director or his/her designee shall be the presiding officer to hear the bid protest. The awardee of

the contract, if any, will be informed by the Commission of any bid protest that may affect the contract and the awardee may intervene as a party in any protest filed.

(d) *Contents of Protest.* A protest shall state all the grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

(e) *Response and Reply.* Within 15 calendar days of receipt of a protest, the purchasing officer may submit to the presiding officer and the protestant a response to the protest, including any documents or information deemed relevant to the protest. The protestant may file a reply to the response within ten calendar days of the response.

(f) *Evaluation of Protest.* The presiding officer shall review the protest and any response or reply and may request and review such additional documents or information as they deem relevant to render a decision and may, at their sole discretion, conduct a hearing consistent with § 808.3. All parties will be provided with a reasonable opportunity to review and address any additional documents or information deemed relevant by the presiding officer to render a decision. Additional documents and information deemed relevant by the presiding officer will be included in the record.

(g) *Findings and Report.* Upon completing an evaluation of the protest, the presiding officer shall prepare a report of their findings and recommendations based on the record. The report shall be served by electronic mail or certified mail upon each party to the proceeding. Any party may file objections to the report. Such objections to the report shall be filed with the Commission and served on all parties within 20 calendar days after service of the report. A brief shall be filed together with the objections. Any replies to the objections and briefs will be filed and served on all parties within ten calendar days of service of the objections. Prior to its decision on such objections, the Commission may, in its sole discretion, grant a request for oral argument.

(h) *Action by the Commission.* The Commission will review the findings and recommendations of the presiding officer and the objections and render a determination. The Commission's determination will be in writing and will be served by electronic or certified mail upon each party to the proceeding.

(i) *Appeal.* Any final action by the Commission may be appealed to the appropriate United States District Court within 90 days as set forth in § 3.10(6) and Federal reservation (o) of the Compact.

(j) *Record of Determination.* The Commission's record of determination for review by the court shall consist of the solicitation; the contract, if any; the administrative record of the protest before the presiding officer; the report of the presiding officer, along with any objections and replies filed; transcripts and exhibits, if any; and the final determination of the Board of Commissioners.

(k) *Stay of Procurement During Pendency of Protest.* In the event a protest is filed timely under this section, the purchasing officer shall not proceed further with the solicitation or with the award of the contract unless and until the Executive Director makes a written determination that the protest is clearly without merit, or that

award of the contract without delay is necessary to protect substantial interests of the Commission, or until the Commission enters a final determination under paragraph (h) of this section.

(1) *Exclusive Procedure.* This section shall be the exclusive procedure for protesting a solicitation or award of a contract by a bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract by the Commission.

Dated: September 18, 2024

ANDREW D. DEHOFF,
Executive Director

Fiscal Note: Fiscal Note 72-17 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

**PART IV. SUSQUEHANNA RIVER BASIN
COMMISSION**

CHAPTER 801. GENERAL PROVISIONS

§ 801.1. Incorporation by reference.

The regulations set forth in 18 CFR Part 801 (relating to general policies) are incorporated by reference and made part of this title.

§ 801.14. [Reserved].

[Pa.B. Doc. No. 24-1461. Filed for public inspection October 11, 2024, 9:00 a.m.]