

BEFORE THE
REGULATORY ENERGY REGULATORY COMMISSION

-----x

POST-FORUM STAKEHOLDER :

MEETING : Docket No.: RM-202-16

-----x

Commissioners Meeting Room 2C

Federal Energy Regulatory

Commission

888 First Street, NE

Washington, DC

Tuesday, December 10, 2002

The above-entitled matter came on for meeting,
pursuant to Notice, at 9:15 a.m., before the Office of
Energy Projects, Office of the General Counsel.

APPEARANCES:

JOHN CLEMENTS

Federal Energy Regulatory Commission

RON McKITRICK

Federal Energy Regulatory Commission

TIM WELSH

Federal Energy Regulatory Commission

ANN SMITH

Federal Energy Regulatory Commission

PARTICIPANTS:

DAN ADAMSON

Davis Wright Tremaine

ART ANGLE

Enterprise Rancheria

HENRI BARTHOLOMOT

Edison Electric Institute

RICHARD F. BECHTEL

Oregon Office of the Governor

LOU BEIHN

N.A. Consultant Pacific Legacy

PATRICK BEIHN

Northfork Mono Rancheria

MIKE BOOTS

State of California

BRANDI BRADFORD

DOI/NPS

JAY CARRIERE

Pacifcorp

DONALD CLARY

Holland & Knight, LLP

APPEARANCES (Cont'd):

KATHRYN CONANT

National Marine Fisheries Service

JACK CRAVEN

U.S. Forest Service

STEPHANIE DAMIANI

Department of Interior

Fish & Wildlife Service

BOB DEIBEL

U.S. Department of Agriculture

Forest Service

DAVID DIAMOND

Department of Interior

WAYNE DYOK

MWH

ANDREW FAHLUND

American Rivers

Jen Frozena

Department of Interior/Solicitors

DENNIS M. GEARY

Normandeau Associates, Inc.

KERRY GRIFFIN

National Marine Fisheries Service

JAMES H. HANCOCK, JR.

Balch & Bingham

JOAN HARN

Department of Interior/NPS

TED HOWARD

Shoshone Paiute Duck Valley Reservation

BRETT JOSEPH

NOAA

APPEARANCES (Cont'd):

MONA JANOPAUL

U.S. Department of Agriculture

Forest Service

JULIE KEIL

PGN.COM

JULIA LARSON

Duke Energy

JEFF LEAHEY

National Hydropower Association

CHUCK LINDERMAN

Edison Electric Institute

TERRI LOUN

Southern California Edison

PHIL LUCAS

Progress Energy (CP&L)

NINO J. MASCOLO

Southern California Edison Company

MATTHEW MAUCIERI

Association of California Water Agencies

JIM McKINNEY

California Resources Agency

JOHN MEISINGER

Shoshone Paiute Duck Valley Reservation

KEVIN MENDICK

Department of Interior/NPS

CATHY MESSERSCHMITT

Northfork Mono Rancheria

EILEEN MOOREHEAD

Troutman Sanders

APPEARANCES (Cont'd):

NICOLAS PROCOS

California PUC

GEOFFREY L. RABONE

Southern California Edison

ANGELA RISDON

Pacific Gas & Electric Company

RICHARD ROOS-COLLINS

Natural Heritage Institute

WILLIAM SARBELLO

NYSDEC, Div. Fish, Wildlife &

Marine Resources

ANDREW SAWYER

California State Water Resources

Control Board

CHARLES SENSIBA

Van Ness Feldman

REBEKA SHERMAN

American Rivers

ANDREW SIMS

Kleinschmidt

NANCY J. SKANCKE

On Behalf of NHA

GORDON SLOANE

U.S. Department of Agriculture

Forest Service

GLORIA SMITH

Department of Interior/Solicitors

ALAN SONEDA

Pacific Gas & Electric Company

MARK R. STOVER

National Hydropower Association

APPEARANCES (Cont'd):

JOHN SULOWAY

National Hydropower Association

MIKE SWIGER

Van Ness Feldman

SUSAN TSENG

Federal Energy Regulatory Commission

JEFFREY VAIL

U.S. Department of Agriculture

Office of the General Counsel

CHRIS WATSON

Department of Interior

ANNA WEST

Kearns & West

P R O C E E D I N G S

(9:15 A.M.)

WELCOME AND INTRODUCTIONS

MR. McKITRICK: Good morning. My name is Ron McKitrick. I am with the Commission's licensing staff. I have been with the Commission since about 1980. Just to make correct everybody knows this is December 10th, and we are here for the Post-Forum Stakeholder Meeting. I like to welcome you all, and I think we have got a good, meaty agenda today and look forward, hopefully, to sharing some information with you as well as listening your comments.

What we will be doing today is just a very brief introduction of some information that I happen to have. The most of the morning will be given to John Clements. John will tell us the types of things that we have heard in these fora that we have been attending and the results of some of the comment letters that were filed last Friday, so there will be an update on that and some ideas of what we are going to be doing and where we are going to be going with that.

Later in the morning and the rest of the afternoon will be a discussion with you all to talk about some of the big issues that you have and we would

like to hear your comments with that, then we will close. Tim will give us a brief introduction of what we will be doing tomorrow and how we will be breaking up and we will be able to adjourn for the day and come back tomorrow and do some good work.

We got started with this process with the notice that went out September 12th of this year. It was a public notice requesting comment from the public, the agencies, the tribes dealing with the potential for a new rule dealing with the licensing process. With that we set up some public fora that we held regionally.

We went out to Milwaukee, Atlanta, we held one in Washington here, in Bedford, New Hampshire, Sacramento, and Tacoma. We will hear some of what we heard at those meetings today and also than the comments that were filed, as I said, December 6th this Friday.

Today, we are here with the first of the stakeholder meetings and tomorrow and the following day with the drafting sessions.

John, brief comments and now it is your show.

PUBLIC, TRIBAL FORUMS AND COMMENTS

MR. CLEMENTS: How does this gizmo work? This (indicating) is forward, that is backwards?

MR. McKITRICK: You've got it.

MR. CLEMENTS: Yes.

MR. McKITRICK: Forward. Just point it at the black box. That is technology.

(Laughter.)

MR. CLEMENTS: My mother taught me to read, but she didn't teach me computers.

(Visual slide presentation in progress.)

MR. CLEMENTS: Wow. Okay, this is based on the public forums that we had out in the regions, and also our feverish reading of the comments that came in on Friday. We think we have captured pretty much everything that was in there. These are of course very big picture.

My current comment summary runs to almost 100 pages, and I am trying to squeeze it down to about 80, so there are lots of specific suggestions associated with these things you are going to hear and see that aren't reflected in here, but that doesn't mean that people aren't aware that they are there. This was just to see if we could capture the essence of what we got.

There is general agreement that we need to do some kind of new process, and that doesn't necessarily mean an integrated process voila by IHC or NRG, but it indicates of course of great, wide dissatisfaction with

with the existing process and how it works. Everyone had suggestions for how we should change it, so you could call that a new process. Key issues that people identified are early FERC involvement, sort of more public participation early on, not so much post-licensing, but during the pre-filing consultation.

There was a lot about schedules and deadlines, and we will get into details about that as we go to the slides. Of course, study development and dispute resolution are probably the biggest thing that people talked about and people have a lot and diverse opinions on what we ought to do about studies.

Integration I think that is actually a bad word in this context. What it should say coordination of pre-filing consultation with development of NEPA and the federal, state agency, tribal information needs. You will hear a lot more about that as well. Then, a combination of settlement agreements. I don't think we have a more key issues.

These are things on which we had general agreement: Early FERC involvement, pretty much everyone wants the Commission's there during the pre-filing consultation process. There are varying degrees to which people want the Commission there, and there are differences of course over the role that the

Commission should play when it gets there, but everybody wants us there. There was, I think, very broad agreement that pre-filing consultation ought to encompass all of the interested entities, stakeholders, resource agencies, the public, basically anyone that has an issue related to the process or the project itself.

There was a lot of support for a pre-NOI letter from the Commission to the licensee sort of explaining that, "You know, your relicense is coming out, and there are issues that you need to think about. Here are basic information needs that need to be developed," suggesting something in the way of a pre-filing for pre-NOI consultation activities. I don't think anybody spoke against that. A lot of people greeted it very favorably.

People wanted better coordination of federal and state agency and tribal study needs. There were of course a variety of opinions on what that consists of, some of them are substantive, some of them are process-oriented, but certainly people think that the Commission and the other relevant agencies and tribes should be working better together right from the beginning.

People wanted more clearer study criteria, and

people wanted a more effective dispute resolution process. Although, there were a few voices speaking out in favor of the existing dispute resolution process. There were big differences on studies, what study criteria should be. The IHC criteria, no one really spoke against those, but it was, "This is a good start. Here are other things that you should add to that."

Then, there was some concern about the study criteria, how they ought to be developed in terms of NGOs where you are not talking about, necessarily, scientific studies, biological data, but things that might be more recreation-oriented, that type of thing. People wanted to see more on that.

There were differences on the need for site-specific criteria, that is the old, "Do we use extrapolated data on fish going through turbines, or do we do site-specific for each project," a lively discussion about that.

There were big differences on post-application, additional information requests. There is one sort of school of thought that goes, if there is a study plan that is approved and we go through dispute resolution and we have done what comes out of the dispute resolution, then we should be

presumed to have done everything that we need to do in terms of gathering information. There is another school of thought that says, well, those things are fine, but, you know circumstances may change or new information may come to light during the studies, or just things may happen. So there is a lot of tension there.

We had some people who said, "You should build the process around basinwide studies," which implies that you are building it around multiple license applications, and that of course gets you into the business of, you know, when do licenses expire and how long should license terms be, not universality by any extent. I think a significant minority of people wanted to build studies around basins, or river basins, and then of course there were differences of opinion about that, too.

The baseline issue continues to rear its ugly head. I don't think need to say too much about that because everybody knows where everybody else stands. Study dispute resolution, we had a lot of dissatisfaction with the current process, as I said, but a few licensees said it, "It worked pretty well for us, even if we didn't get everything we wanted or we had to do stuff we didn't want to. So you could just

really leave it alone, and everything would be fine."

but I think there is a majority opinion that we have a cat to do something to try to bring some finality to the study disputes.

Differences on a new process for dispute resolution and who should be allowed to initiate, most people seem to think anyone should be allowed to initiate a dispute. There were some opinions expressed that it should be limited to agencies or that it should be open to licensees, not necessarily other entities, depending on whether issue was.

There was a lot of discussion about whether the idea that is floated in NHC -- pardon me, IHC and I think NRG of a dispute resolution panel with a neutral is a good way to go. Some people endorse it, and some people say the Commission itself could do the job of deciding if it had right kind of process.

Whether dispute resolution should bind the parties, I think there is some significant differences of opinion on that. Some industry representatives would like to see it binding, and I gather some industry representatives would not like to see binding. I am not sure quite where states or NGOs stand on that.

A lot of people to relate directly addressed a question, so it is a bit of a muddle. More differences

on a dispute resolution process, for there ought to be some kind of informal process that precedes it, that could be in the form of some kind of an all parties get together a technical conference or you would try to hash it out before, you know, panel or some other kind of dispute resolution mechanism, but not everybody supports that.

Then, there were a lot of views, not necessarily differences, that may be a misnomer, about how information ought to be disseminated to whoever is resolving the dispute to. Some people thought that there ought to be, like, mini trials, others thought that there ought to be the sort of like a technical conference. Some people said there ought to be a single, a neutral entity that is brought in to sort of sit here and that at bias, kind of like a mini one-session ADR. Some people thought a lot of be done on paper.

Then, there is sort of an ongoing issue about what happens when you have a dispute resolution, where the finality should lie. There are some people that suggest that there ought to be some kind of an interlocutory appeal process going up to various levels, depending -- and then there are some that support the notion that you have a dispute resolution

mechanism, that is finality for that purpose, but then anybody has the right to reserve their right to appeal it or to seek rehearing before a judicial appeal at that point.

Schedules and deadlines -- very, very broad support for firm schedules and deadlines, also very broad support for flexibility on deadlines. For settlements to gather data, some people wanted it for basinwide studies, that you ought to stretch out your schedule to make sure that you get everything in the basin.

Some entities pleaded human and financial resource constraints which they said would make it difficult for them to stick to deadlines imposed from the outside. Some states and tribal entities expressed concerns about their own internal processes and how those could possibly be melded with sort of the snappy deadlines that appear in some of the proposals.

Then, there was some desire on the part of some of the parties to have sort of a time out while an intra-agency appeal of a mandatory condition goes forward at least for -- not forever, but for some period of time, depending on what the conditioning agency has in terms of an appeal process and a schedule.

The state, we didn't hear a whole lot about state processes in the sense of diversity of opinion. It was pretty much from the states, "We need better accommodation of our 401 or CZMA data and process needs," that we should work better with them to get better water quality data, and that we should support their data requests to the licensees.

Tribal issues, probably the number one was recognition of tribal sovereignty and government-to-government relations, although there is not by any means unanimity on what that means. Lots of tribes seem to think that just meant if they got a fair shake at the consultation process, then that would be enough for them.

Some tribes were insisting that as a sovereign national government they would speak to no one but the Commission, that they would no longer speak to licensees, and then there is sort of a diversity of opinions on what that ought to constitute between those two.

Everybody seemed to want early consultation with the Commission, you know, again, during the pre-filing process. A common suggestion was about the time of the NOI or maybe earlier, there ought to be the Commission directly reaching out and educating the

tribes about the existing process, whatever it is for that licensing proceeding or the Commission's processes in general, but some kind of proactive outreach for education purposes.

Another common theme was consideration of limited tribal resources and unique decision-making processes. That largely constituted comments along the line of, "There are not many of us. We have a system of chiefs, and we have tribal councils."

Individuals on the ground are not really authorized to just speak for the tribe. They have to go through a process of their own in order to get a paper signed or, you know, an opinion given to the Commission or to the licensee or to anyone else. The Commission needs to have more respect for those internal processes as it sets deadlines and things like that.

A few parties made the suggestion that we either have a specific person or persons designated as a tribal liaison, and that would help with the government-to-government relations thing. There were actually some suggestions that we set up a separate office within the Commission -- sort of an, if you will, an analogy to BIA within the Interior Department -- that would handle these things.

Then, finally, a lot of the tribes suggested that the Commission ought to fund their participation at various levels and for various things. Process options, there wasn't any agreement on whether to adopt a separate integrated process la IHC or NRG or some of the others.

There was no agreement on whether we ought to retain, delete or modify the traditional or ALP processes, if we do have an integrated process. Those go all over the map. There are some that say, "Do an integrated process. Get rid of the ALP and the TLP."

And then there are some that said, "Do an integrated process, but keep the ALP as a backstop."

Or, "Allow the ALP, but keep the TLP as a backstop."

"Have all three processes, let the licensee choose."

They just sort of go all over the map. There is no way you can associate any particular position with what you would call -- there is not, like, an environmental group position and there is not, like, an industry position, a lot of variety there.

Licensees generally, however, favor multiple processes with the option of choosing the one that they believe best suits the project specifics. In general,

NGOs and states seem to want one flexible process.

Multiple processes are said to be confusing to the public and difficult for states and NGOs with minimal resources to try to cover all of these various things, keep up with the various process potentials and explain things to their staff.

Some folks recommended modifications to the traditional and ALP process, if we keep those. This is by no means a comprehensive list. But the early FERC involvement in any process. Early NEPA scoping could be incorporated in. A lot of people -- not a lot of people, but some people thought the ALP rules of engagement need to be clarified, that they don't really know what their roles and responsibilities are. They can't look at the Commission's regs and get a clue, that it is sort of a negotiation in every individual case, and to some people that is troubling.

Some people thought that there ought to be new dispute resolution process and when we get it allow it to be used in any process -- ALP, TLP, integrated -- or allow it to be used in ongoing processes.

Settlements, this is pretty universal. Everybody wanted flexible timelines for the Commission to accommodate settlement efforts. They wanted flexibility on content. Essentially, it was sort of,

if I can say it in a few words, defer to the settlement policy, absent some blatant illegality. Then, people wanted some guidance on what is acceptable content in a settlement agreement, at least some people wanted that.

Okay. I think that was it. That is my entire morning.

(Laughter.)

MR. CLEMENTS: No, after this is over and at some point during the day, I will go over this whole thing with you; okay. Obviously, the floor is open to questions.

MR. McKITRICK: John, in being so efficient and setting the example of how to move something forward, has given us the time here. We are recording this. We have a court reporter. So we do have a little bit of time for questions.

I would like to focus, if we can, on John's slides, either clarification of those, and not really get into a full-blown discussion of these things. We will have that a little bit later. If you would like to ask John some questions, if you would raise your hand, wait for the microphone to come, give your name, and we will be glad to clarify anything we can.

MR. CLEMENTS: Yes, Kathryn?

MS. CONANT: John, could you just give us a

little --

MR. CLEMENTS: Yes, you want a breakdown of sort of the food groups?

MS. CONANT: Yes.

MR. CLEMENTS: We had, roughly, 100 comments, just about 97 or 98, and I think a couple may have straggled in that I haven't actually seen yet. Maybe I would say 40 or so from the industry: 15 tribes; a dozen NGOs or more; a few individuals; a few consultants, some of whom I lumped together with the industry and some not; state governments, not that many, maybe six or eight. That is pretty much it. But they sure said a lot.

Yes, Mona?

MS. JANOPPAUL: Your summary also includes our verbal comments at our regional meetings; right?

MR. CLEMENTS: Yes.

MS. JANOPPAUL: Okay. Any numbers you want to share with the groups?

MR. CLEMENTS: When I got to the end, I didn't break down between who showed up at public forum and who had filed written, a lot of people did both.

MS. JANOPPAUL: So your 100 number includes both written and verbal comments?

MR. CLEMENTS: Yes, you don't get counted

twice.

Yes, Nancy?

MS. SKANCKE: We have been listening. Will there be any ability to pull these data into one unit because they are dribbling?

MR. CLEMENTS: In one unit? Boy.

MS. SKANCKE: No, not necessarily one unit, but at least have them in one place because they are dribbling in into FERRIS.

MR. WELSH: I am sorry, Nancy, I didn't quite hear you.

(Laughter.)

MR. WELSH: What have you done to me?

MR. CLEMENTS: No, I didn't do anything.

MR. WELSH: Oh.

MR. CLEMENTS: No. She wants to know if there is one place that you can go on FERRIS to get them all together instead of trying to look them up individually, something like the hydro portion on the FERC Web site that you could go to get comments.

MR. WELSH: Yes. Well, actually we talked about trying to get them on the Web site, but logistically it is really difficult to get that many -- I mean, some of the filings are quite large. So on the Web site we will have instructions for FERRIS. I mean,

they will all be under the RM docket, pretty sequential.

MS. SKANCKE: As of this morning, I think maybe 12 were on FERRIS.

MR. WELSH: Okay. I mean, it takes a while. We will talk to people and get things moving there.

MR. MCKITRICK: Anything else as far as clarification of questions?

MR. CLEMENTS: Yes, Gloria?

MR. MCKITRICK: Gloria, wait for the mike.

MS. SMITH: Gloria Smith, Interior. John, how did you factor in, I think, the December 7th D.C. meeting and what was said there?

MR. CLEMENTS: I just treated it as though it were one of the regional forums. So, for instance, Bill Sarbello here came and made comments in his testimony. Those have been read and those are in my comment summary, which of course none of you can see because it is attorney work product, but just to give people assurance that everything has been read.

MR. MCKITRICK: Yes?

MR. FAHLUND: John, as far as things that --

MR. MCKITRICK: Your name?

MR. FAHLUND: Oh, I am sorry. Andrew Fahlund from American Rivers. As far as filings that have been

made perhaps not under this docket, but that are related or useful or referenced in public meetings -- I was thinking of the state forums, for instance, as an example of this -- would those need to be filed under this docket in order to be considered by you in your deliberations?

MR. CLEMENTS: All of the related stuff that has been filed like ITF, things like that --

MR. FAHLUND: Exactly.

MR. CLEMENTS: -- we are bringing into the record, you know, so that they are there for our consideration.

MR. FAHLUND: Great, okay.

MR. McKITRICK: Anything else?

(No verbal response.)

MR. CLEMENTS: This is an easy audience.

MR. McKITRICK: Yes, I know. Okay, thank you, John.

We have a little bit more time before we have a scheduled break. My recommendation would be to kind of continue with this, and then in another half hour or hour take a short break. If anybody strongly disagrees with that, you can feel free to leave when you want.

(Laughter.)

MR. McKITRICK: What we would like to do is we

had a series of pretty broad questions that we thought was important for the entire group to address, to hear that discussion as opposed to putting this into the small stakeholder forum that we will be having tomorrow and the following day. So we are very interested in your comments on this. As you can then frame them from the standpoint, if you do have comment of why you think a position or the answer to this, to back it up with some information would help us a lot. Many of these are overview questions that would help us in putting together a rule in the future. So the response of why you think this is important to us -- the questions, let me just briefly so you aren't thumbing through this, read through them and then we will go back and start from the top.

First of all, Should FERC an integrated licensing process? If FERC does adopt this new licensing process, what in the current regulations should be changed, and what should be kept? Should the integrated licensing process apply to relicenses or new licenses as well as original licenses? Should FERC cooperate with other federal agencies in the NEPA document process? Should the licensing process begin before the five to five-and-a-half-year deadline for filing the Notice of Intent? Lastly, how should the

new licensing process accommodate settlements?

That is kind of our discussion. As we exhaust this, we are coming to conclusion of today, and then Tim will give us some remarks about what we will be doing tomorrow. But there is no pressure here. We are here until, what, we've got till 5:00, to 4:00, if it takes that long.

Again, I would just like to say there is a court reporter here, so if you would, raise your hand, wait for the mike, and then state your name. As you respond to the first question, we will stay focused on that as we hear various opinions and then move on to the next. The first question that we have is:

Should the FERC adopt the integrated licensing process?

MR. MCKITRICK: John, outlined some of the comments that we heard dealing with that. We would like to hear yours. All you have to do is raise your hand.

MR. MASCOLO: Thanks, Ron. Nino Mascolo, Southern California Edison Company. I am going to throw it back to you and John and others with a question. Could you define for me what you interpret to be an "integrated licensing process"? What do you mean by that? When I read some of the comments, it

seemed that different people had a different impression as to what that meant. I would like to get your thoughts on it and John's thoughts.

MR. McKITRICK: Sure. That is an excellent, excellent question. I think what I will do just to not stray is go back to our comment, our Notice, that talked about what we considered the integrated licensing process. If John and Tim or anybody else who would like to weigh in on that, that would help maybe further define or you could ask some clarifying questions.

The paragraph in the Notice says a common theme that underlies all the efforts described in the above is to reduce time and costs, it says: "One of the reform concepts that shows particular promise is the licensing process that integrates an applicant's pre-filing consultation with resource agencies, Indian Tribes, and the public with the Commission's staff NEPA scoping, which would define the integrated process."

It says, "Further clarification," it says, "such an approach would differ from the ALP or 'alternative licensing process' in several ways. First of all, Commission staff would be involved in all stages, there would be an establishment of deadlines for all the participants, provide an effective vehicle

for study and dispute resolution than what currently exists in the ALP, and to better integrate the Commission staff on the Federal Agency Statutory Rules."

So that in our Notice kind of set up what we thought the ALP was -- excuse me, the integrated process was. If there is any additional clarifications from Commission staff with that, I would appreciate --

MR. WELSH: No, that is pretty much how we handled it.

MR. McKITRICK: Okay. Any follow-up?

(No verbal response.)

MR. McKITRICK: Okay. I guess the question is then:

Should such a process be put in place?

MR. McKITRICK: Over here (indicating).

MR. CLARY: Thank you. Don Clary representing the Shoshone Paiute Duck Valley. I just wanted to ask, you have indicated that the two proposals at this point are not going to be -- or excuse me, not necessarily not going to be followed, but you are not wedded to them at this point in time. Is there a particular approach that will be used for an outline for a regulation in, say, the drafting sessions tomorrow? Or, are you focused on any approach at this point?

MR. McKITRICK: Tim?

MR. WELSH: Tim Welsh, FERC staff. This afternoon or maybe later on this morning I am going to introduce a worksheet that the participants in the drafting sessions will use. It is a worksheet that we put together that includes almost all of the proposals that we have received thus far, many of which are integrated processes. We have sort of a guideline for people to work from tomorrow so they kind of see everything.

MR. CLARY: The Commission is not at this point in time fixed on any one?

MR. WELSH: No, we are not.

MS. MILES: Ann Miles, FERC staff. I wanted to say one more thing on that. The idea isn't to choose one of the proposals that is before us. It is to look at what is the best out of each of those proposals that would really work for everyone.

It is much more this is an opportunity where we have got everyone in the room and tomorrow we will have people in drafting sessions to really have a discussion about what parts of what you have seen or what you have read from other people or have heard over the forums, the other forums, comments from folks, what works for you group and what doesn't work for your

group.

MR. McKITRICK: John?

MR. SULOWAY: John Suloway, president of NHA.

NHA's position on a question one is that FERC should adopt an integrated licensing process, but at the same time we want to see FERC retain the TLP and the ALP. That is what we said in our comments. The one thing I wanted to say, Ron, as we go through this, NHA and a number of the other stakeholder groups have discussed how we would like to proceed in this workshop. One thing that I think we all agreed on is we would like to get past kind of restating what we have in our written comments and what we have said earlier and focus on kind of moving ahead and trying to resolve some of the tougher issues.

MR. McKITRICK: John, I think we appreciate that.

One of the things that we are actually trying to do is -- I think we to understand positions that have been taken that there should be a single process or a multiple process or pick and choose. One of the things we would like to understand is why you think that would be helpful to have multiple processes and how that would not only benefit you, but benefit the licensing community. We can all take positions here. But, as we can understand each other's positions, is

their common ground it would confine that would be beneficial for all? Your comments that were to us, I think we fully understand that. But if there is some more information of why you think that would be helpful for all participants or if it is for the licensing community, I think we would still like to understand that a little bit better.

John?

MR. SULLOWAY: Again, I don't even remember if we put this in the comments, we went over those common so many times. As far as the retention of the TLP and the ALP, on the first level there are folks that are already in these processes now, and they don't want to get caught in the transition. I think that is kind of obvious. Then, there are other folks with the industry that are comfortable with the traditional process. It has worked for them in the past. It is not perfect, but they are hoping that there are some improvements that they can incorporate. But they feel that it best meets the characteristics and needs for a particular project.

Also, I heard it from folks that want the ALP retained. And I am sure that there are some people also on the TLP that are a little concerned, that even though they see maybe 80 percent of what they like in

an integrated process, they are afraid that when the actual rule gets finished that the 20 percent that gets inserted there that they don't like it is really going to be very problematic for them. So they are little concerned about kind of throwing in a process that may be is a perfect but they have learned to adapt to and works for them and then have to use a process that they have never used before that, in fact, they see as flawed from their perspective.

MR. MCKITRICK: Assuming that we could get past the transition part somehow, I mean, for people that are already in that we wouldn't yank them one way or the other, the point is that from your discussions with others that they like components of even the ALP, the alternative, or the traditional that they for whatever reasons they don't want to forgo. I mean, they are just afraid of the future, that if there is only one process, that they may not be able to work within that?

MR. SULOWAY: I think that there are several reasons, if you will, within that answer. One that you just honed in on, the fact that the new process may not work for a particular group or particular licensee or several licensees, is one of them. But, again, the traditional licensing process, which is to some extent

a paper process, is not quite as intensive as some of the alternative processes. It works for some licensees that have smaller projects, that have limited resources, and also again it has worked for them.

MR. MCKITRICK: Right.

MR. SULOWAY: The same thing with the ALP, there are some folks that really had very good success with the ALP. They like the flexibility that is in there to kind of invent your own process, if you will, and so they feel very comfortable with the process and they want that retained.

I think what I heard from Chair Wood, though -- you know, I can't tell all that going on in his head -- is that in the November 7 forum he basically said, "Well, let's try to put something out there that is really good and see if people will migrate there." I think a lot of folks and all the stakeholder groups kind of look at it and say, "Well, yeah, let's see."

I mean, that is what happened with ALP in a way. I mean, there are several of us that started ALPs before the ALP regs were there, and then more and more people migrated to it as it worked for those other folks.

MR. MCKITRICK: Okay, good. Thank you, John.

Yes?

MS. MESSERSCHMITT: My name is Cathy Messerschmitt, Northfork Mono Rancheria, California. In our experience, it hasn't been so much which license they decide to go with, which license they process, whether it is ALP or TLP, to me a process is only as good as its participants.

We have a participant, a licensee, that is working very well in the ALP and then we have a licensee who is not. I think the process is only as good as the players. What I want to know is if you decide to adopt a hybrid, if you do "buffet style," as I want to call it because you have all of these different selections, I am more concerned about who would choose what process they have? Why would they choose it?

Then, after that, can they change in midstream, like, say, "I want the ALP," and then they get halfway down the line and they say, "Hey, I don't like that so I'm going to go to the TLP"? So, you know, there are questions that I think that need -- in my opinion, these might be remedial, but they need to be answered before we even say, "Well, wait a minute, let's pick a hybrid." First, why?

MR. MCKITRICK: If I can preface all that with one thing, and I should have said this to start off

with, we need to keep this as generic discussions and not as personal experiences dealing with a particular project here. That applies to everyone.

Yes, go ahead.

MR. ANGLE: Art Angle, Enterprise Rancheria, Oroville, California. I am involved in the process, ALP process, now. My question is, If this new process is developed, how is that going to affect the process that I am involved in today?

MR. McKITRICK: Let me answer that first, and then I will seek some help. I don't think any of us anticipate pulling anybody out of an existing process and moving them into something that is different. So that won't change.

The other question dealing with the "buffet style" and why, I am not sure if we -- I mean, one of the things that we are looking for is how this should work. I mean, that is the question, Should there be one, or should there be many? I think the anticipation at least in the past, and I would certainly be interested in comments on it, when we had the TLP and the ALP the licensee came to us if they wanted to do the alternative licensing process. If you don't think that has been working, there should be other types of decisions in that, I think we would be interested in

hearing that. We have not reached conclusions on these things, that is why we are here.

I'm sorry.

MS. MESSERSCHMITT: I want to be clear here.

I am not making mention of which applicants we are dealing with.

MR. McKITRICK: No, no, I understand that.

MS. MESSERSCHMITT: That is not my intent, and it is irrelevant anyway. I am just saying that, you know, we are the ones that have to handle the fallout from whatever licensing process that they go through. We need to figure out, you know, which road they are going to take so we can be prepared, because we can't get ready for a licensing process if we are hitting a moving target.

MR. McKITRICK: So the issue is really if there is this "buffet style" that everyone should be notified very early in this process so you know where you are?

MS. MESSERSCHMITT: (Nodding head) Yes.

MR. SARBELLO: Hi, Bill Sarbello, New York State DEC. Should FERC adopt an integrated licensing process? I think yes. It is kind of an evolutionary step that we have had a couple of processes in the past and there have been some problems with each, so I think

it makes sense to propose a new process.

I don't really have an answer for, you know, Should you be dropping the other processes? I think it will kind of depend what the new process looks like. If it is unquestionably the best thing that has come along, then I think it may be a logical step.

On the other hand, the point has been made that there are some projects that are halfway through one of these other processes. I imagine you will have to grandfather in some way those that are there. The statement that was just made in terms of who decides what process is used and if there is an option to switch partway through, I think that is a question we are going to need to explore over the next few days.

Sometimes you find you get into an alternative licensing process and you hit a stonewall someplace along the way. And then what happens? Is it drop back and start a traditional? It may be a good solution or it may be a real headache for everybody who has invested the time, but it may be the only way out. I think they will be good questions to explore. I don't know if there is any good answer yet.

MR. McKITRICK: Yes. Bill, from the standpoint of -- I am sure you have dealt with both traditional and probably alternative process in the

state, is there anything, as you understand, with the integrated process that you think that may be a little bit different or should be codified in some sort of regulation that you see as helpful from the state perspective?

MR. SARBELLO: Well, I think front loading the process, as we have said before, I think will be very helpful, particularly for studies trying to identify the study needs, speaking from a state perspective, information that a state needs to make its statutory decisions. It will be tremendously helpful having all of the studies and all of the work working together early in the process and trying to avoid as much as possible having to mop things up late in the process.

I think that will benefit everybody and provide more certainty and more coordination for an applicant and for the NGOs who are investing time in the process, that they will get the information that they need, and the states who really have obligations of their own that they need to meet. I think it will just increase the efficiency.

MR. McKITRICK: Okay. John?

MR. CLEMENTS: I just wondered, Bill, if you have any thoughts about whether there is actually a downside to having an off ramp from an ALP, if for some

reason you get into the process and it is not working to the satisfaction of what I call a "critical mass of people"?

It strikes me that compared to the existing process if you start an ALP, then you are going to start with the early involvement of all parties including the NGOs that don't have that much of a role in the traditional process. You should have the states there, you should have the federal agencies, you should have the Indian Tribes, and whoever else is interested. At some point even at the beginning you have already got more under an ALP than you would have if you just went traditional.

If it goes for, I don't know, two years or something and kind of falls apart for some reason, it just strikes me that the parties will already have accomplished more in terms of getting the kind of information on the record about what they need or think they need in terms of data or studies. They will have established a much greater understanding about issues that need to be resolved than they would have if they had never even started it. It seems to me that if it does collapse and goes off the off ramp into a traditional, you are still better off than you would have been. I just wondered, you know, if that makes

any sense to you?

MR. SARBELLO: Yes, it does make sense. We had one alternative process where one party wasn't satisfied. They did use a dispute resolution mechanism, and basically weren't happy with the answer. One of the lessons learned was that we didn't really have, and this was before I think there might have been alternative regulations, some of those things clearly laid out. You probably need to talk to the aggrieved party to get their opinion.

Everybody else did come to agreement eventually, but it did cause some major disruption and hard feeling. We did not break down to the point where it went to a traditional process. The aggrieved party felt that it should have at that point. That I think was part of the problem that continued was kind of, you know, what happens when you don't have complete consensus.

MR. MCKITRICK: Would it be helpful from the standpoint of if the regulations did leave the TLP, ALP in place and we came up with an integrated process to within that regulation have some sort of what will happen if this doesn't work kind of thing, or leave that to the people involved to figure out what to do?

MR. SARBELLO: I think it would be helpful to

have what happens if this doesn't work. My own opinion is I think it is helpful to have a decision-maker. At some point, somebody has got to make a decision and then you go forward. If some law or something has been violated, there are remedies to take that. But if it is just a case of an otherwise unresolvable difference of opinion, you need some sort of decision-making process. That is my view. As a regulatory agency ourselves, that would be our perspective.

MR. MCKITRICK: Okay, good.

Mona?

MS. JANOPAUL: Mona Janopaul, Forest Service.

In thinking back over what I just heard from NHA and the Mono Lake Rancheria and maybe some of the other comments, we put up one criteria in the list up there as maybe an original license or a new license. Another criteria that we heard while we were out in meetings is, and I particularly remember it from the November 7 meeting here, "size, complexity, controversy." Maybe that should be a criteria that we look at if we are going to talk about when an integrated versus a traditional or an alternative licensing is appropriate.

I just heard the NHA representative talk about TLPs maybe being appropriate for small projects where maybe there is not the great controversy or complexity

and a paper process might be appropriate. Now, FERC does have a lot special regs for small projects, and then even exempted projects. In the IHC Proposal, we talk about maybe a separate NEPA track going straight to a single NEPA document, again, for small, non-complex, non-controversial projects.

Maybe I would ask the NHA rep and Mono Lake and whoever else has discussed this if that is another criteria that you would be interested in discussing over these next few days about whether that is a criteria that might be applied when a TLP is appropriate or not appropriate? Maybe it is just simply not appropriate for larger projects? Is that what you were saying, or do you think it should be retained for all kinds of projects? I am just asking for a clarification. This is an issue that came up through the regional meetings.

MR. MCKITRICK: If we keep these to really set up some criteria to establish what process is appropriate for what type of project?

MS. JANOPPAUL: That might go to the issues of, How does a process get elected for each licensing. How does that happen? There are certain regulations for the ALP in approving when a licensing can go forward with an ALP.

MR. McKITRICK: Right.

MS. JANOPAUL: Maybe we need the same kind of things for these other two processes, just a thought and just asking for clarification. If people want to comment of if they want to save it for discussion over the next few days, maybe that is something we could do is develop the criteria for when these three processes might be appropriate, other than just original or new licensing.

MR. McKITRICK: I understand.

Mark, you want to?

MR. ROBINSON: Yes, real quick.

Mark Robinson, Office of Energy Projects. This falls under the category of timing is everything. Who up here asked the question about, "If I am in a process, am I going to get yanked out of it and go to another process?"

MS. MESSERSCHMITT: (Raised hand.)

MR. ROBINSON: Well, you asked that just at the right time. The chairman walked in just as you were asking that and he heard your question. He asked me to let you know that is off the table. If you are in a process, whatever we are doing here will not affect that, and so nobody should have that concern. It is just too bad that some of the rest of you didn't

ask your favorite question at exactly the right time.

(Laughter.)

MR. ROBINSON: We might have resolved several things at once, if you had done that. He unfortunately had to go off to, believe it or not, ethics training. So if he comes back in, I will give you the sign. I will do something and everybody ask their question real quick and we will see if we can't get a lot of this resolved. Yours is taken care of.

(Laughter.)

MS. MESSERSCHMITT: Thank you.

MR. McKITRICK: Thank you, Mark (laughter).

Is there a button you can push to have him walk in?

(No verbal response.)

MR. McKITRICK: John?

I'm sorry, Allison.

Let me let John respond first, if you don't mind, Rich. It seems like your question may have been addressed from Mona.

MR. SULOWAY: Yes. Mona, from the industry perspective, although I gave that example of a smaller, less controversial, less issues project for a TLP, I think there are also some licensees that would prefer to use the TLP, even if they had a larger project, a more controversial project. Again, it may just boil

down to resources and the complexity of the issues that have to be addressed, and that licensee may feel that the best way to get those issues addressed is to use a traditional process.

MR. McKITRICK: Richard?

MR. ROOS-COLLINS: Richard Roos-Collins on behalf of the Hydropower Reform Coalition. You know, the discussion of this first question has moved from coordination of application development and environmental review. It is really focused on the question, Should the alternative, traditional and hybrid processes be retained, and should an additional process be added.

You have heard comments from most of the parties in this room in the course of the workshops and now written submittals. I think it would be helpful if Commission staff gave us a window into your thinking. You know the comments, so what are the sticking points between you and the draft rule that you have to publish in February 2003 as you move towards a decision whether you will retain alternative processes or unify them?

MR. McKITRICK: I see.

MR. SULOWAY: Then, state those sticking points and our comments, hopefully, will move the record forward, and the same for the all of the

question we will discuss today.

MR. McKITRICK: Sure. Is there anybody that -- I mean, from my standpoint, I don't want to keep throwing this back and forth, but from our standpoint we have not made a decision of where to go. We are looking for rationale. Not only do we understand what you were saying and we can read the comments, but we are still looking for the rationale of why you believe that we should go with an integrated process and not the TLP or ALP, or why we should keep all three. We are searching for the rationale behind those statements. We can read the statements. We are still looking for help to help us decide what seems to be appropriate. I see John has the microphone and maybe he is going to bail me out of this.

MR. CLEMENTS: Actually, the first thing I want to say is I thought the comments that we got did an excellent job providing rationales why people want things. Of course, they are not reflected up here, because when you are trying to squeeze this much paper down to a few slides a lot has to get dropped, but it is not forgotten and I think we understand that.

Then, another prefatory remark about the big picture questions. There are probably a lot of people sitting here saying, "Those aren't necessarily all of

my big picture questions." But the genesis of that slide is I was sitting there and I tried to just sort of sit down with the existing regs and dope out what -- and the example I did was what would the IHC process look like if you just did a standalone?

Then, I kind of mentally went through that and then I started to look at the others and I said, "Gee, I don't know what to do." It is just nuts and bolts drafting and, "I don't know what to do, unless I have real specific direction."

So I started thinking up questions that I thought would affect structurally, you know, just what the rule would look like. To heck with the content. Once you have some specific direction, for instance, original or relicensing, well, how does that affect what happens during the pre-NOI period or at the NOI? If you are going to have a notice that goes to the existing licensee, should that only go -- if there is no existing licensing, what do you do?

I was just going through these, and these questions just build and build and build. I was just trying with this to get some sense of direction as to where there might be a consensus to help me figure out what to structure. Just from a drafting point of view, these are sticking issues for the most part for me.

MR. McKITRICK: John, then with the first question, I mean, "Should FERC adopt an integrated licensing process," the thing that would help you move forward with that are what types of things?

MR. CLEMENTS: I am here to listen.

(Laughter.)

MS. MILES: John, can I say something here?

MR. CLEMENTS: Sure.

MS. MILES: Ann Miles, FERC. I think we are getting at Richard's 20 percent. Many of you who were at the November 7 meeting here at the Commission, the Chairman asked the question, "Where do we have agreement, and where don't we have agreement?" How do you parse that out? Richard Roos-Collins answered that he thought we had 80 percent agreement on a lot of areas and 20 percent not. I personally can't figure that out yet.

When I look at all of the comments we have had, I see a lot of people saying they want early FERC involvement. They want to study plans early. They want everybody at the table together. There are a lot of things where there are agreements. Maybe it would be a useful thing if we figured out where the disagreement lies, because I am not sure you can answer that question without knowing that.

You know, we hear a lot of people wanting flexibility, but we hear a lot of people wanted certainty, wanting schedules. I don't know if we in this room could come up with what is the 20 percent. I am not sure which side you go to. We tried to, John, in what we have heard put where we saw agreement and where we saw there was still disagreement.

I guess a question to you all is, Would it be a useful thing to try to figure out where we have got that disagreement? Would that help us move forward toward answering that question, or is the answer just simply to leave all the processes, you know, leave what we have got, add a new one, and then look at the end at what the new one looks like? I mean, the way we have divided up the next couple of days is to look at the integrated process.

A lot of people said, oh, they would like things changed in the traditional also. If you look at where we want those things changed in the traditional, do they end up looking like an integrated? I am not quite sure yet from what we are hearing. Any thoughts on that, whether the 20 percent is worth looking at, I guess?

MR. ADAMSON: Dan Adamson, Davis Wright Tremaine. I think that is a good question, Ann. I

just want to respond quickly to what Mona said. I think another reason why some licensees want to retain the traditional process is there are some projects that are very complex and the issues are so polarized that really no useful purpose would be served by being in an ALP. You might not even benefit that much from having an integrated process because it would just sort of extend the period of time over which parties are disagreeing with one another. So it is not just the simple projects that benefit from the TLP, but also sometimes the very large ones.

MR. McKITRICK: Thank you.

Richard?

MR. ROOS-COLLINS: Ann, let me apply the 80/20 rule to this first question based on the oral comments and also the written filings. There is broad agreement about the best functions in the traditional process, in the alternative process, and there may even be broad agreement about additional functions that should somehow be integrated into Parts 4 and 16.

The disagreement appears to be on the packaging of those functions. Specifically, NHA and other industry representatives prefer that we keep the package of functions now known as "traditional" and the separate package now known as "alternative" presumably

on the theory, "If it ain't broke, why fix it?"

Others including the Hydropower Reform Coalition take the position that these functions can be better integrated into a unitary process that then would be applied flexibly. So I view the dispute that is behind this first question as going to what is given, what applies across all proceedings and what is flexible, depending on the choices of the licensee and other participants. That is what I think we should be discussing.

A PARTICIPANT: Can I just make a quick response to that. This is a window into the mind of one FERC staff member. Richard, if you say you looked in that window and there is nothing there (laughter), I am going to kind of really object. I think that one model that might be available to us, and it has some appeal to me at least, is the idea that we would focus on a new process, integrated process, and see if we can design that to take the best of everything that is out there.

All of these processes are actually make up of components. It is not just a thing. There is a component for study identification, there is a component for dispute resolution, there is a component for notification. If during the development of this

integrated process there is a general consensus that, let's say, for dispute resolution, here is how it should work, we could take that component and modify the two other existing projects so that we have not different and less-adapted aspects of each process, but the best of what comes out of the integrated, insert it into the existing processes, preserving them in sort of their fundamental why they are there, but also developing this third.

There is another aspect of that. If we are successful in developing sort of a best process, that still may not be the best for all projects. If you have learned anything about hydro, all of these projects have their own life, their own thing. There is nothing alike or similar about any of them.

Over time I would like to think that the majority of projects would migrate towards one. Maybe ten years from now all of our folks that are following us up will look at this and say, "I wonder why those idiots kept that process nobody is using anymore?" Then, they can dispose of it.

I have always been sort of an evolutionary type of let's see what works and let it evolve. That is kind of what my thinking is at least now is focus on the new one, get the best thing there. If we come up

with a component that is really good, stick it in the other ones and then let all of them sit there and go from there. I hope I didn't screw up your meeting.

(Laughter.)

MR. MCKITRICK: You are always helpful.

MR. JOSEPH: Brett Joseph, National Marine Fisheries Service. No, I think that was very helpful. In a way, it got to the point that I was going to raise. I agree with Richard that it is a good question to put out there at the outset. It helps to focus our thinking down to what are the underlying concerns that we have that could be resolved through reforming a single process and what would be left unaddressed in terms of areas where a new process may work better for some but not other entities, and what do we want to retain from the old ones.

Up to a certain point, I don't think that question can be answered. I am sensitive to John's concerns about structuring the drafting and all of that. Obviously, that is a big challenge. However, there are certain threshold questions that were raised by some of the earlier comments such as, When is it decided? Who decides, you know, whether you are going to take alternative pathways? What are the off ramps if the process doesn't work?

Also, the question that came out of the comments which is, Should the existing ALP and TLP processes, if they are retained should they be reformed by taking the best elements that are cross cutting? I think those are the real key questions underlying this "big picture" question, if you will, regarding whether we retain the existing processes.

So I think it would be a mistake to presume in trying to address that question that at the end of the day the current TLP and ALP would be retained as is without change. I would anticipate from what we have seen in the comments a large number of issues that if they are the best ideas we address them across the board, and they would apply to all processes equally. I appreciate that insight into the mind of FERC. I think that is helpful.

MR. McKITRICK: That helps. We have actually kind of moved. We are working in between the first two bullets here, so don't feel constrained.

MS. MESSERSCHMITT: Thanks, Brett, that actually helped bring me back because I wanted to address what Ms. Janopaul had said. Thank you for hearing me and bringing that concern because I think that is the underlying issues of what is on the table. The gentleman that talked about the polarization, that

is part of the problem.

If it polarized, in my opinion it is not working. We are trying to minimize that polarization by trying to work together. That means in our interpretation bringing everybody to the table at the beginning. As far as the 20 percent goes, I still think we need to go back and answer those questions.

MR. BARTHOLOMOT: Henri Bartholomot with Edison Electric Institute. I think, just picking up on a point Mark made, one of the reasons we have advocated retaining the traditional and the alternative licensing processes is not only familiarity with them and seeing that they do each in different projects for different applicants, different ones of their projects, one or the other, they work better and may be a better fit. And that is a for a variety of reasons.

It may be, following up on the idea that we have gotten a lot of comments on ways in which we might improve the process, that we make those improvements available as options that can be added onto those two.

The two processes, the traditional and the alternative, really define a pretty good array on a spectrum of an approach to licensing. The one model that is missing from that is a very traditional federal and state licensing or permitting model, which is an

applicant develops their application, preparing information and putting it together; submitting it to an agency; and following that gets public input, resource agency input, NGO input.

No, no, I am just saying that is the one model that is not in that spectrum defined by the current traditional and alternative process. There may be situations, for example, on a watershed where prior projects have been licensed, the watershed has been very heavily studied and everybody's positions are very well known. You may have situations where that very simple model that works well even for things like nuclear power plants and very complex projects and transportation projects would fit quite well. That is a new model that is not in the mix.

But for things like pre-application scoping, pre-application study plan development, and so forth, those could be done as options to fit either the traditional or the alternative license process, you have the framework there. What you do is you say right now in the alternative license process part of what is going on is an early identification of issues.

Well, when it comes to the NEPA part of the Commission's regs you could say, "One option, whether you are in TLP land or ALP land, would be to do this

pre-filing scoping very early on and it would have the following attributes and it would have the following advantages."

One thing we have agreed with a lot of other stakeholders on is that early issue identification, early study requests identification, is going to be beneficial whatever process you are in because that can drive a lot of what happens in the traditional process in terms of consultation and post-application NEPA work, and so forth. But you could make this pre-filing scoping available whichever process you are in.

I agree with Mark that this ought to be evolutionary. You know, if we have learned one thing from the Standard Market Design Rulemaking, it is that if you try and say one approach is going to fit all and it is a radical change from the current status quo, you are going to lose a lot of people turning that corner. It is much better to do this in an iterative fashion and give people rational selection, choices that are building on the comments you have gotten, but not mandate any one.

Let's see, I think it is a process that is going to take time. And maybe in ten years, Mark is right, we will see a few of them drop away. But let's evolve to that and do it in a smart way. Pick the ones

where there is agreement and don't worry so much about the 20 percent, if that is what the number is or isn't.

Let's just do the smart ones.

MR. McKITRICK: So if there is something that comes out of all of this, you would have really no objection of defining early consultation, defining that better in the ALP or the TLP, but you are still saying that maybe there should be even a simplified process that may or may not include those elements?

MR. BARTHOLOMOT: (No microphone.) Yes. I just gave an example based on this issue of pre-filing and scoping and NEPA work. If you made that an option, it could fit either the ALP or the TLP, but it ought to be an option.

We have certainly said that applicants are the ones that are going to have to work through the process in fundamental ways, and there are a lot of costs in that and resources and effort. What they view as work from their project and their situation, they should have some ability to say, "This is the way we would like to go with it."

MR. McKITRICK: John?

MR. CLEMENTS: I would like to hear a little more from the group about the applicant choice thing that Henri was talking about. There are aspects of

that that concern me when you just turn it into a sort of applicant chooses any and all components. For instance, you say you want to keep the traditional process, but you want to have greater public participation as a component. Why would you put that particular one in there and then let the applicant decide whether the public should be allowed to participate during the pre-filing?

When I go back to where we all started at the beginning of this, the idea was to get something that accomplishes the conclusion of the licensing process in a more expeditious manner and, hopefully, in a more cost-effective manner.

If the licensee can say, "Oh, gee, we don't want to deal with that group of NGOs," and then the license application is filed and then the NGOs come in, where have we gotten? While the idea of the applicant having some choices here is fine with me conceptually, when you get down to the nuts and bolts, I have a lot of concerns.

MR. BARTHOLOMOT: I don't know if we have batted around the industry table the specific issue you are asking, which is sort of mechanically, how do you get that early issue identification, and so forth, if you don't bring the NEPA scoping forward as a mandatory

piece?

I think they are separable because the NEPA analysis can be a fairly complex piece. It may be that for a given project, one thing is it certainly pulls a lot of pre-filing work and resources onto the table. For projects, they may depend on where the applicant is in terms of what is going on in their state with requirements to divest or to deal with renewable aspects in their portfolio; the market is changing and FERC is pushing a lot of that change; and the economics for individual projects.

It depends on how marginal that project is in terms of its current economic viability as to whether a particular applicant is going to feel comfortable taking on additional big pieces of work in the pre-filing stage as opposed to doing consultation.

If the issue is that there is currently the perception of not having an opportunity for NGOs or others to provide inputs earlier in this stage, let's focus on addressing that. However, you don't necessarily have to import the entire NEPA part of the process into that pre-filing stage as a mandatory fixed piece that everybody has to do.

We are looking at ways to provide flexibility so that people can still move forward and dialogue,

issue identification, and so forth, without having to all fit into one mode, especially if that is going to cause cost and resource problems for the particular applicant for their project.

It is not a size issue, and it is not a complexity issue. It is going to be very fact-specific for individual projects and it is going to depend on an array of issues including where we are in the SMD and the resource adequacy part of that and all of this stuff; it is an evolutionary thing. That is why I think caution and care in moving forward is really advisable here. It is too, too complex.

MR. McKITRICK: Andrew?

MR. FAHLUND: Andrew Fahlund, American Rivers.

I guess listening to sort of what is being said around the room I am hearing two things at least from the industry. I kind of interested in getting some clarification about some that we are needing a little bit on some of it, because I hear sort of sound bites and I am not getting at sort of what is the underlying interest in some of this.

I mean, I hear that, "Choice is a really good thing. I mean, we really like choice. We want choice." You have heard us. You know where we are coming from on the choice matter. You know, you guys

having choice leaves us with resource concerns, with certainty concerns, and so forth.

I also hear that change is scary, that something new and unknown is threatening and something that is known and predictable is not. Both of those things are pretty reasonable emotions and reasonable positions or interests to have. What I am curious about, though, is when it comes to choice how would the industry respond in terms of the need to -- how would the industry respond in trying to prevent disadvantaging other participants, other interest groups?

Then, the other question that I have relating to change is, Isn't it possible to incorporate enough flexibility and enough variability within an integrated process, within a single process that you can take the smallest of projects and run it through the same process as the biggest, most complex of projects and simply just spend more time on each step or less time on each step as is necessary? I guess I have asked a couple of questions to the industry, and I would kind of like to get a little bit of response to those.

MR. MCKITRICK: Thank you, Andrew.

Well, I have been told a couple of things.

One, make sure that you do state your name; and the

second, make sure you do have a microphone not only for the court reporter, but this is being broadcast.

Evidently there are people listening.

(Laughter.)

MR. McKITRICK: If you don't have a microphone, they can't hear your important comments. As much as you like to jump in, wait for the mike.

MR. JOSEPH: Okay. Brett Joseph, National Marine Fisheries Service. I am going to try to perhaps simplify this question. I appreciate John bringing up the question and Andrew's evoking underlying principles because I think there is an underlying principle here, which is fairness, fundamental fairness in the process.

I think if there are any criteria that would apply to this question of who decides between alternative processes that would be it. The concern that we are hearing from industry regarding not retaining choice, and choice is a good thing, if I understand that concern, the concern is that it is going to work for some entities but not for others. In other words, it is not going to be balanced, not going to be fair across the board with regard to all entities in terms of the allocation of burdens.

I think the same issue arises in an individual project case in terms of how it is chosen. If the

choice between alternative processes is one that creates winners and losers, then I think it has failed to meet an underlying objective of why you have that choice. Likewise, if retaining and being so rigid that there is no choice creates winners and losers, that defeats fairness. My thinking at least is that the underlying issue is one of fairness.

MR. MCKITRICK: John, did you--?

MR. SULOWAY: John Suloway, president of NHA. Whew, I am just going to try to comment on a number of things that were said. Richard, you should not presume that the industry says with regard to the ALP and TLP that they aren't broken, so it's not necessary to fix it. We have been saying since 1994 that the relicensing process needs work. You and I have worked for years (laughter) in various fora to try to come up with improvements, and I think a lot of them are reflected in the IHC Proposal and the NRG Proposal.

What I was trying to say was there is concern among many industry representatives, applicants and licensees that before they leap into a new process they would be more comfortable knowing that they can use a TLP or an ALP if they are not comfortable with the new one.

The other thing is that, and I think it is

clearly reflected in our comments, we are not saying that the TLP and the ALP shouldn't take advantage of new improvements. That is clearly stated in our comments.

We agree with what Mark Robinson had to say about that point. You know, as far as all of these different processes, what we tried to put forth in our proposal was actually a single process that everybody starts, if you will, the same way. There is a letter that comes out from FERC in the beginning banging the licensee on the head saying, "Notice of Intent is in a year. Here are the stakeholders that we see that you are going to need to be involved with."

Then, the licensee cohosts with FERC a public meeting with all of the stakeholders involved in which FERC describes the different options that are available within this process, whether it is an ALP or a TLP or an integrated process or a "boo-boo" process, basically what the roles are of various stakeholders within those processes, so they get a sense of what their role is. It is an opportunity for the applicant to also find out what the issues are, to make a more informed decision of what track within the process makes sense for that project that they want to license.

Then, after that meeting takes place, and

again I am cutting this real quick because again we already wrote it down, but the idea is you start from the same place, you have that initial meeting, you find out what the issues are, you find out what people are interested in, how much information they can help you with, and also you get a sense of how they are reacting to different process choices, whether an ALP or a TLP.

Then, the applicant based on that makes a decision on which process they would like to use. They write that down and they submit it to FERC. They have a rationale for why they want to use that process, and they also make sure that they distribute that proposal including a schedule to all of the stakeholders.

MR. MCKITRICK: With that, I mean, this is something that happens no matter, before the process takes place?

MR. SULOWAY: Right.

MR. MCKITRICK: Andrew, does that help you with your question at all?

MR. FAHLUND: No. My question gets at what are the concerns underneath that. Where I am confused is somewhere in between sort of what Dan Adamson wants with his complex project that he doesn't want to have people disputing any longer than they already are, or the really small project that really doesn't want to be

burdened by a whole lot of extra steps.

What I am trying to get at is, What is it that that is underlying, really is undergirding, some of those concerns? I am not hearing that. All I am hearing are sort of these hypotheticals that to me don't seem to be congruous with the possibility of an integrated process, of a single integrated process, with some manner of flexibility.

Maybe we are not all that far off. Maybe it is a little bit more akin to what Mark was describing, it's different components that you fit in and it is a tree with a lot of different branches. However, I still don't quite understand the underlying interests here. Maybe I am just dense.

MR. SULOWAY: I won't touch that one (laughter). You know, I think, Andrew, we are probably going to get to the bottom of it by having a beer afterwards or something like that, because we kind of keep saying the same things. It's like I take everything you say at face value that you really don't understand, but these feelings about retaining certain processes are not hypotheticals.

These are based on applicants' experiences with the TLP, with an ALP, really very strong feelings about they want to have the flexibility to after

attending this meeting and looking at all of the stakeholders and hearing what the issues are going to be and hearing about a new process, if you will, that the licensee then wants to stand back for a second and have that debate internally about what process they think is going to work best for their project.

MR. FAHLUND: One last back and forth. This is again Andrew Fahlund. I guess, you know, to me when I hear that, John, I come back to what Brett was talking about before, and that is, the question of fairness. When you talk about retaining, you know, sort of the old processes, and maybe it is because I am only thinking of them the way they exist today and not the way they could exist in the future, but when I hear that, I hear, "I want to retain the status quo because it is an advantage to me and it is a disadvantage to other people."

I don't believe that is probably true for everyone. I don't mean to impugn everyone in that belief, but I do think that some people are really interested in retaining -- I am concerned that people are interested in retaining a status quo because it does advantage them.

I mean, I have a lot of sympathy for license applicants in the choice that they have to make. You

guys have the responsibility to submit an application two years prior to expiration, and you have no choice in that matter. I really do sympathize with that, but I think it is really important that whatever we design gets you to that point in a way that you are going to be able to meet your needs.

(Simultaneous discussion.)

MR. McKITRICK: Yes, go ahead. I'm sorry, Andrew.

MR. FAHLUND: But there has got to be this fundamental fairness involved. We can't simply cling to the past in an effort to advantage some and disadvantage others. That is where we are coming down.

MR. McKITRICK: I saw three hands here real quick. Yes, Julie over here (indicating) and Anna. I will just take those three and then take a break and then come back.

MR. ANGLE: Art Angle, Enterprise Rancheria. From a Native American perspective, I am involved in an ALP. Early on in the process we have seen a tremendous amount of involvement from the local communities. As the process continued on, we noticed a decline in participation.

The fundamental process of funding for participation was very obvious there. Meetings were

conducted during the evenings and during the day, so the business community and the environmental local community was at a disadvantage because they could not take time off from work continuously to be at different meetings. So there is a fundamental resource issue in relicensing, specifically in large projects where many issues are really intense. I would like to have that put on the record that there is a disadvantage to local entities that do not have the resources for proper participation in the ALP.

One of the other comments I would like to make in regards to the ALP is that the FERC's, the Commission's, early involvement in there I think it would help in creating the definition of the stakeholders' positions and also the responsibilities of the stakeholders. There is quite a bit of confusion in regards to exactly what their positions should be and their responsibilities. So, I just wanted to comment.

MR. McKITRICK: Good.

Julie?

Oh, Anna, you've got the mike (laughter).

MS. WEST: Yes. Let me take over. Anna West from Kearns & West. At the end of the day, we will struggle with how would you invent the criteria to go

from an integrated process and justify why you go to the TLP and the ALP. But I think a lot of our work will be done in defining Track 1 and Track 2 and then later we can answer the second part of the question.

MR. MCKITRICK: Let me put something to the group real quick. Just from the standpoint of taking a break and going to lunch, we had scheduled a break at 10:45 and actually not taking lunch until 12:30, would you all like to take a break now, continue this discussion and break early for lunch, or just stick with the schedule and take a break now and come back?

(A show of hands.)

MR. MCKITRICK: Let's take a break now and come back in maybe 10 minutes.

THE PARTICIPANTS: Yes.

(Whereupon, there was a pause in the proceedings from 10:53 a.m. to 11:10 a.m.)

DISCUSSION OF GENERAL ISSUES

MR. MCKITRICK: That is not bad. The 10-minute break only went about 20, so we are on schedule.

Julie, I think you are next. Do you remember your train of thought, Julie?

MS. KEIL: I think you do this on purpose, Mr. McKitrick. Now I have forgotten what I was going

to say.

(Laughter.)

MS. KEIL: I guess two points. I wanted to react briefly to Brett Joseph's point about fairness in that I do think it is a very good one. We need to make sure in this process that is being crafted where choices are made at the beginning that whatever path is chosen by the licensee or the applicant that it is, indeed, fair to all participants. I think there are ways to craft improvements to the traditional, improvements to the ALP. If you keep an ALP and an integrated process, to provide those points of fairness to all participants. I think that was it.

MR. MCKITRICK: I mean, is that something that you would like to work on later, or are there kind of some specific ideas of fairness, how we can do that? What would be the --

MS. KEIL: I think actually you need to hear a little bit from folks who believe that the existing processes are unfair to their interests. At that point, you would probably be able to go back and fill in the pieces about what would make them more fair. You know, if it is the level of consultation required, well, how do we address that in the rule, for instance, without making it overly complex.

MR. McKITRICK: I understand. Thank you.

Okay. Again, the rule is to make sure we state our name and use the mike.

MR. SARBELLO: Excuse me. Hi, Bill Sarbello, New York State DEC. Yes, I just wanted to get back to Andrew Fahlund's comment that if we do go with the single process, for argument sake, an integrated process or whatever process is selected, if you do have a project that is simple for whatever reason, either the impacts aren't bad or it has been well studied, I would expect that with whatever process you had that it should fly through. Relatively, it should be a lot simpler.

If there isn't a lot of controversy, a lot of people -- you know, you won't have a lot of people showing up, and you should be able to meet the information needs and all of the other milestones. I don't really see that having the choice of processes necessarily helps you.

I am concerned about the fairness issue, I guess, of who chooses the process. I guess my concern is that yes, there are burdens upon the applicant, but the applicant is also the person receiving the revenue stream from the project. The other stakeholders are making financial commitments to participate in time and

travel and resources.

I don't necessarily think that it should be the applicant that chooses. Everybody, all of the stakeholders, really have a stake in which process is chosen, if there is a choice of processes. I guess it would be simpler if there was only one process in that everyone -- you know, you wouldn't have that decision to make and you wouldn't have to have another milestone to go through. I just wanted to make the point that other people are making significant allocations of time and resources.

MR. McKITRICK: If I do understand, I mean, our template that we have now with the ALP is choice that we have, but you would see this change from the standpoint of, for lack of a better word, that it is a consensus agreement in regulation as opposed to strict choice but from the licensee?

MR. SARBELLO: Yes. Either from a consensus agreement or perhaps, as I think Anna West said, some set of criteria -- or someone said, maybe it was Mona Jonapaul, that there might be a set of criteria that if you meet criteria in A, B and C, then such-and-such process would be indicated or would be open as an option maybe, but to avoid the situation where someone is choosing a process because it is going

to disadvantage other parties.

I would like to address an earlier comment that I think was by Mr. Bartholomot. In choosing a traditional licensing process without changes, you are also going to choose all of the baggage that goes along with that such as you are not really front loading the process. It will be a longer process, I think, and you will have the opportunity for people to come in late in the process and perhaps identify things that were missed, which is going to drag out the process.

If you keep that one on the table, realize that you will be perpetuating or at least having the potential to continue some of the problems that were identified as the reason for why we are looking at changing the process now.

Again, if all of the stakeholders aren't brought in early in some manner, even if it is contentious, I think that is the kind of stuff that FERC and the applicant needs to hear. If there are issues, genuine issues, that aren't bogus, if they are real resource issues or whatever, they need to be identified up front and dealt with or else they will bite you in the end.

MR. MCKITRICK: Okay. Bill, thank you.

MR. HOWARD: Ted Howard of the Shoshone Paiute

Tribes. We have been listening to fairness, talking about fairness. As a Native American, I really have a problem with the approach that is being taken here.

When we talk of fairness and in reference to Native American people, back in the beginning when our people were put on reservations there were certain stipulations, certain things that were reserved by the tribes before they moved to the reservation or during that time. Now, when we speak of the relicensing of these dams, it seems like there is no consideration for the treaties and those trust obligations that the Federal Government has towards Native American people.

Native American people and Native American Tribes are not stakeholders, per se. We are stakeholders but of a much higher standing. We are a sovereign entity. My particular reservation where I live on the Duck Valley Indian Reservation was chosen because of the plentiful resources that were there including salmon, which no longer comes to our area because of the dams that has shut it off.

In speaking of the different processes, right now the process that we are involved in with Idaho Power they tell us and FERC included, I visited some with Mark Robinson, that they will not consult with the tribes until the application is filed, which in my

opinion is after the fact.

Tribes need to be consulted early on. Also, the process that they have chosen is what they call a "collaborative process," which has reduced the tribes to just one face in the crowd. We are a sovereign government that needs to be dealt with in that way. I think when we come and talk about fairness, you need to back up and consult with tribes. There are many issues that we have that, like I say, are addressed in treaties.

Also, the loss of salmon was not only a loss of a fish, but it was also a loss of our culture because the way Native Americans view salmon it is a very spiritual icon. Ceremonies are performed for the salmon, for their well-being and they are taken in a ceremonial way.

Thank you.

MR. MCKITRICK: Thank you. That was one of the issues that certainly came up that was brought forward to us in the discussion as well as the letters, and it is very important.

Is that going to be addressed in some of the stakeholder -- I mean, the meetings tomorrow as far as issues of consultation and that type of thing?

MR. WELSH: Well, first, many of the proposals

had some ideas about tribal consultation. As you are going through some of the steps in the process tomorrow, we would really like to hear especially from Native Americans about what is appropriate to meet your needs in that process.

MR. McKITRICK: We appreciate it.

MR. CLARY: Yes, Don Clary also from the Shoshone Paiute. I just wanted to say with regard to our comment on our 20 percent, I think that what is holding us back a little bit from the process is we want to be as cooperative as we can, but by the same token we want to state that the process as it currently exists really hasn't served our interests obviously.

Our concern would be that, for example, government-to-government consultation, we really think that the Commission should consider including that in the traditional and alternative processes in addition to any new process, so that when it comes time to look at or examine a proceeding, tribes aren't put a position where if they go from one alternative to another they are foregoing their rights to a government-to-government consultation, for example, or any financial assistance that might be available. Those concerns I think should be dealt with uniformly between all of those approaches.

MR. McKITRICK: So as better ideas come out, as Mark alluded, we incorporate those into existing processes?

MR. CLARY: Exactly. I also think that it might be possible that we might want to consider, since you have indicated there was some disagreement between some of the tribes as to just how to best incorporate those, perhaps there might be some time worked into the process so that perhaps there might be some discussion between the tribes as to how these things could be best addressed so that we could formulate a more community acceptable alternative.

MR. McKITRICK: I understand.

Mona?

MS. JONAPPAUL: Mona Jonapaul of Forest Service. In thinking about the traditional licensing process, it certainly has been a magnet for a good deal of criticism over the last 15 years. You know, we are hearing this morning some issues of fairness for participants, appropriateness. Some of the other complaints we have heard over time is, Does it result in a good license? Does it result in a certain license or lead to post-licensing litigation?

But the main complaint that has been focused on and was focused on by the USDA representative at the

November 7 meeting was the time issue. I mean, apart from all of these other things what we hear most about, I know what was complained of to Congress, to the White House Energy Task Force, and was responded to in the national energy policy was the time issue, that licensing would taken 10, 20, 30 years.

So I am interested in having a reaction to the proposal by the USDA representative at the November 7 meeting, that indeed perhaps we should stick to the two years that FERC had in its model licensing for the traditional licensing process. I think you first used the phrase, "Deem the matter settled by a time certain." That is, put in some hard deadlines for the traditional licensing process. That would satisfy the national energy recommendation, which is put on deadlines and make the process certain. I don't know if that is a criteria.

I am kind of curious -- for those who want to retain the TLP I have heard so many complaints and it is difficult certainly for resource agencies and others to stay in a licensing 10, 20, 30 years -- how can we take care of that issue with the TLP? What do you think of the proposal by the USDA representative that a license be issued two years after the application is filed? You know, how do we take care of that issue if

we keep that process?

MR. McKITRICK: I understand.

John, did you have a --

MR. SULOWAY: No, let's let John go first.

MR. McKITRICK: Oh.

MR. SULOWAY: Go ahead.

(Laughter.)

MR. CLEMENTS: I think my initial response was we can't issue a license unless we have all of the pieces in place. The big piece is , those of you who have been following the old dogs meetings go, getting the Clean Water Act certifications. That is the principal reason that some projects take so long. The other is you can't just arbitrarily issue a license after an arbitrary period under any theory, unless you are confident that you have got the evidentiary basis to back it up so that you can make a rational decision based on the record.

The Commission doesn't really lose on the merits in these cases when they go to court; we lose on procedural things, failure to state the basis for our actions. That is how the Commission has danger in litigation. So we have got to have a process that comes up with an evidentiary record that will support what we do. I am not sure that we can just arbitrarily

issue a license after two years under any process.

MR. McKITRICK: John, did you want to add to that or--?

MR. SULOWAY: Actually, I had a different question.

MR. McKITRICK: Oh.

MR. CLEMENTS: We are on this one.

MR. McKITRICK: Yes.

MR. CLEMENTS: Let's keep this one going, and I will just come back.

MR. McKITRICK: I didn't know if John Suloway had, reluctantly.

MR. SULOWAY: John Suloway, NHA. FERC has spoken.

MR. McKITRICK: Yes.

MR. SULOWAY: So Mona's question has been answered. You like that?

MR. CLEMENTS: In my dreams.

(Laughter.)

MR. SULOWAY: That being said, I said this a little earlier, although we want to retain the traditional process, if there are improvements in the traditional process, and actually we have suggested some as I mentioned earlier, including at several points in our proposal the applicant has a schedule,

publishes a schedule, updates the schedule so we do keep track.

But as John indicated that if for some reason beyond the applicant's control or FERC's control or whatever, that the necessary information isn't available to make the decision, then you can't arbitrarily just say, "Your two years are up and that's it."

MR. MASCOLO: Nino Mascolo, Southern California Edison Company. I wanted to respond to the issue raised by both Brett and Andrew dealing with fairness. I think a lot of it is what is the perspective of a particular individual or organization or agency of fairness.

If we go back to a normal NEPA process, as Henri was alluding to earlier, I think most people believe that following the NEPA process is fair. That is what most federal agencies do when they issue permits. An applicant files an application with a federal agency, the agency processes the application pursuant to NEPA, there is public involvement, that is fair.

John, you expressed a little bit of surprise, "Well, then the Commission would have to do the scoping process." Or, at least it sounded like there was

surprise at Henri's suggestion that, "Well, then the Commission would have to do a lot of things at that point in time." Maybe I misread or misinterpreted what you had said. But that to me is a fair process.

What the Commission has done with the TLP is they have taken that and they have said, "Well, all right let's go now and do even additional consultation prior to filing an application." Well, that should be more fair because now we have more parties involved for a longer period of time when they otherwise wouldn't have been involved in the normal NEPA process.

Then, we went to an ALP, and an ALP requires even further consultation and more collaboration. Well, from a licensee's perspective, that might be a little bit more time consuming, it might cost a little bit more, but obviously it would be more fair from Andrew's perspective.

When the licensees are saying we want to have some change to the licensing process, we are not looking to disadvantage anybody. We are looking to come up with a license that is best for the applicant. We have to serve our customers.

A comment was made that, "Well, you are just worried about an income stream." Well, the income streams that we create really aren't income streams.

What we are doing is we are providing electricity to customers under cost-based rates.

We are not making money to the extent that we are a normal private corporation. We are a public utility. We provide service to the public, and we are trying to do that at the least cost possible. We are trying to be fair to our customers.

You are looking at it from a public utility perspective, and that might be different from, say, an American Rivers' perspective. We are not trying to disadvantage any other entity. In fact, we feel with the TLP that other entities are getting a greater say in the licensing process than they would have under a normal NEPA process, and that is not a bad thing. At the same time, we need to look at what do we need to do to assure our customers low-cost electricity. So, it is a matter of perspective.

MR. MCKITRICK: John? Just use the mike, John.

MR. CLEMENTS: She is educating me. Can you hang on a second?

(Laughter.)

MR. MCKITRICK: We are trying to bring John into the new century here.

MR. CLEMENTS: Wow, gee. Actually nothing

Henri said surprised me. What did trouble me was he was suggesting it would be appropriate for the licensee in the traditional process to be able to preserve, if it wanted, one of the elements which has been identified as a primary culprit in licensing cases that drag on, which is the lack of requirement for public participation during the pre-filing consultation period.

I mean, it seems to me that kind of idea is going to be troublesome kind of going up the line. There is flexibility, and then there are things that may or may not make sense, depending on what your goals are.

MR. BARTHOLOMOT: I think I clarified --

MR. McKITRICK: Name, if you don't mind.

MR. BARTHOLOMOT: Oh, Henri Bartholmot. I think I clarified that I wasn't suggesting that if there is something that could be improved with the traditional process we wouldn't explore that. If there is a perception or a reality that there isn't sufficient opportunity for some of the stakeholders to participate, then we look at that issue. You know, I don't think I was saying that you preserve every dotted "i" and crossed "t" of the existing process without an option for some improvements, so don't misread what I

said on that.

MR. McKITRICK: Thank you.

MR. BARTHOLOMOT: Thank you.

MS. MESSERSCHMITT: If Mr. Sarbello will permit me, I don't think the gentleman from SCE, I don't think he was saying that you guys are only in it for the money. I think he said it a little differently.

Let me preface saying you mentioned to the group earlier that you don't want people bringing up the applicants.

MR. McKITRICK: Right.

MS. MESSERSCHMITT: I am just going to do it in a very general way. As I said earlier, it depends on your quality of participation. Sometimes you have applicants who are very willing to go that extra mile. If that is what you consider the extra mile is to consult and consult and consult, then that is good.

The problem is it is a choice, and some applicants choose not to do that. You have to keep that in mind on a holistic view. You are looking at it from SCE's perspective, and as a tribal government we are looking at it from every applicant's perspective, just keep that in mind.

The other thing that I wanted to address is --

well, actually two things -- when you guys are throwing out consultation, I was listening to a group at break and they were talking about the consultation process. I think there are two definitions of consultation going on. There is the traditional consultation definition, then there is the tribal consultation definition, and they are two different things. That is being flown around the room, so I wanted to make sure that was noted for the record.

MR. McKITRICK: I understand.

MS. MESSERSCHMITT: Okay. Now, to answer Ms. Jonapaul's original comment, to go back to that, we had to rewind. I thought it was interesting that she brought up the USDA reps issue on hard and fast timeline. We are in a process right now where the Forest Service has stopped the process; they have delayed the process by six months.

If they stick to their hard-and-fast rule, they have just thrown it out the window in our area. So I just want to caution you when you talk about "Let's do this in two years," that is if somebody doesn't disrupt the process. I am sorry I had to mention the Forest Service, but that is just the case in our area.

Thank you.

MR. McKITRICK: I think that goes to John's earlier comments of having both deadlines and flexibility.

MR. CLEMENTS: You missed the slide where we talked about settlements and time periods. The essence was that everybody wanted schedules and deadlines, but everybody wanted flexibility for a whole laundry list of things of use to them, which is to be expected and something we need to work with.

MR. McKITRICK: Yes?

MS. BEIHN: Hi, I am Lou Beihn. I am a Mono consultant in our area in California. I just feel like it needs to be said today, because of the comments from Mr. Howard, that the government agencies such as FERC, et cetera, have a responsibility to our tribes. But, in order to fulfill that responsibility, they need to know the tribes.

We are all so different throughout the United States that there needs to be some kind of process for FERC all the way down to the licensee as to every project that they are working on to learn about the Native Americans in that area, because we are all so different.

My suggestion is to have more, you can call it consultation or just actually it would be learning

about them personally. That would help the process so much if that could happen. I don't know how it could happen. You guys come up with a neat plan, and we will go from there.

You know, that really needs to be said is that we are so individual, but then every tribe that is a federally recognized tribe is their own government, their own sovereignty. They all have different ideas and different ways of dealing with things. It would help a lot if you could get personal with the tribes and learn about them in every process.

MR. MCKITRICK: That was one of the issues that had been brought up, and I appreciate you bringing it up again. I think it is one of the things that we will be talking about in the next couple of days. As you can, help us with how we might be able to do that. We are looking for suggestions.

Andrew?

MR. FAHLUND: Andrew Fahlund from American Rivers. I was wanting to get back to something Nino and Henri had been talking about before, and I think I am understanding where they are coming from but I am not entirely sure.

I mean, Nino, you were talking about an interest in exploring the fact that NEPA is inherently

fair or that people would recognize that within the NEPA process in and of itself is a fair process, and that if you sort of filed the application ignoring what happens pre-consultation that NEPA in and of itself should provide that level playing field, so to speak? Is that more or less what you are saying?

MR. MASCOLO: Yes. That is the first part of what I was saying.

MR. FAHLUND: Okay. I want to get at a concern that we have expressed many times before that doesn't really get captured in that, and that is, the NEPA process in and of itself may, in fact, be fair and have a level playing field, although we do have some concerns about who is controlling the pen and what information is included or not included.

If you fail to do your job early on in the pre-filing stage, you have only got two years to do NEPA, and if someone has failed to provide the information they needed to provide, if they are withholding requests for information or whoever is doing whatever, it delays the process and you end up dragging things on and end up in annual licenses.

That is where we run into a pretty significant problem, and some licensees run into problems with that. I think one of the things that we are interested

in, in an integrated process and one of the reasons why we are interested in that and really interested in getting away from situations where there is only an application filed with very little, if any, consultation in the beginning is to avoid that sort of constant delays.

I wouldn't be supportive of the idea that Mona described where you just make the decision no matter where you are at the two-year mark. I think there are few people that would be supportive of that as a hard-and-fast rule.

I think it is a good goal, but I don't see it as a good rule. If you are going to talk about fairness, I think it is fair to make sure that people are heard early enough so that we don't end up with this delayed license issuance and delayed mitigation.

MR. MASCOLO: Nino Mascolo, Southern California Edison. Andrew, just so you are aware, because I know there are a lot of comments that have been filed, the SCE comments did support a process in the very beginning where five, five and a half years before the license expiration there would be time for all applicants and stakeholders to get together and talk about what is important, similar to what the IHC says. We are support that aspect, we think it is a

good idea. NHA has proposed something similar to that.

Ron, the question I had is truly a question where I would like to get a little bit more educated. I would like to have somebody explain to me what the government-to-government consultation process is like with the tribes. What normally happens? It is not something that SCE has watched previously. What goes on? What is normal? Is there a standard government-to-government consultation?

Maybe it doesn't take place at FERC right now, but maybe it takes place with other agencies, and we can use those as an example. I want to get educated on that process, because I am assuming that tomorrow those issues will be brought up in the various panels or workshops, and I want to be able to understand it, know what it means so that we can work intelligently to address that issue.

Maybe this is a three-day seminar in itself?

MR. MCKITRICK: (Laughter) No.

MR. MASCOLO: I just don't know, and I would like to understand.

MS. SMITH: I will give you the brief version of what we are doing right now. I have to say that I think we are learning in this. FERC has a lot to learn in this area, and we really appreciate the tribes

coming and speaking to us about it. What we assumed is, given the traditional process, that during that pre-filing process the licensee would be the one that would be consulting with the tribes.

We have had a lot of tribes come in and say that doesn't work for them, that they really want to speak first with FERC. We don't have any policy where we are doing it routinely, but where we are asked to consult with the tribes -- and let me just step back one second. We are looking at what we need to be doing and through this rulemaking may be doing some different things. What we do is go out, then, and talk with the tribes, individually with them or as a group. If a group of them want to meet with us together, they are all involved in one process. We will do that.

We have found we are more typically asked to meet individually with the tribes, that it is a two-way street. They would like to educate us about who they are and what their issues are, what their concerns are, and then learn from us about what the FERC process is about. Now, this is as I understand it. We are looking to you all to tell us if we have got it right or wrong.

This is where there seems to be differences among the tribes. After an initial consultation with

FERC, some tribes are then willing to participate in work groups or whatever sort of pre-filing consultation is going on with touchstones with us as need be, but it is very diverse right now with what is going on pre-filing.

What we do post-filing is with our notice, we initiate consultation under Section 106, which includes tribes and whatever else needs to be consulted under that. That is a formal initiation of consultation, and it is under 106.

The tribes may not consider it the appropriate level of government-to-government. Then after that point we would be consulting with them as a part of the process. So if we are asking for additional information that involves the tribes or something like that, it would go to them.

In many instances, we have found we need to go further than the written back and forth, and it may be an actual face-to-face meeting. It is a little bit of wandering around, but that is because that is where we are, wandering around.

MR. McKITRICK: Thank you, Ann, that is helpful.

MR. HOWARD: Ted Howard of the Shoshone Paiute Tribes. When we talk about consultation, the tribes,

all tribes, are involved with many federal agencies on consultation. First, I think I would like to point out the sovereignty of tribes. In recognition of sovereignty, that the tribes as a sovereign government may choose to consult differently than their neighbor tribe or someone else.

What I see in the agencies is they are always looking for a blanket process, a one-size-fits-all for all tribes; and then, on the other hand, they want to acknowledge tribal sovereignty. In order to acknowledge tribal sovereignty, you must consult with the tribes on how they choose to consult.

We have a process, which is called the "Wings and Roots process." We are engaged in consultation with several different federal agencies. In fact, we requested that the licensee in our area adopt our process, and they refused.

This Section 106 was mentioned as the mechanism used for tribal consultation. There are many laws in place for the federal government to fulfill in their consultation. Some of those are the Executive Order on Sacred Sites, the American Religious Freedom Act, NAGPRA, et cetera.

I see a lot of the agencies address Section 106, but only to a certain point. They stop short of

Bulletin 38, which is involving the tribes and pointing out their traditional cultural properties. This assessment can only come from the tribes; it cannot be done by a scientist. I would like to point out those things.

Consultation, as I say, is between whatever tribe you are dealing with and this varies. We vary in cultures, in traditions, et cetera, even geographical locations may be different, and how even the same tribe handled a certain area may vary from that geographical area to another area.

MR. McKITRICK: Now, within the tribe consultation would probably be defined the same over and over again, I mean, it wouldn't be changing? I understand from one nation to another it may be different but--?

MR. HOWARD: Yes.

MR. McKITRICK: It would be consistent within--?

MR. HOWARD: Well, not necessarily because certain areas maybe our elders will point out an area that is very sacred, so how you dealt with that area may not be the same as this one. Do you see what I am saying?

MR. McKITRICK: Yes.

Go ahead.

MS. MESSERSCHMITT: What Mr. Howard is saying is true. But when you are dealing with tribes, they do have some basic similarities in that we do have projects that are not on tribal lands that have cumulative effects, meaning you have a project area but in order to get into that project area you have to build a road. You have things where they bulldoze burial grounds or they are digging up artifacts that are not in the project area and FERC can come back and say, "Well, our trust responsibilities don't affect anything out of the project area." Then, you have issues with the tribes, the licensee has issues with the tribe.

Mrs. Beihn, who is sitting over here (indicating) to my right, when we were in Sacramento mentioned "tribal liaisons." What that concept would be is that an applicant in a certain project area would look to a Native American tribal liaison to help them work with all of the tribes in the area. It is not perfect and certainly needs some work, but it is doable. We do have Section 106 definitions and things like that that we can provide and would be happy to do that. I guess what I am trying to articulate with Mr. Howard, and jump in here if I am saying it wrong,

is that we do have different definitions of what consultation means to a tribe and those are what we need to get at in order to work with the particular tribe that you are with.

You cannot expect to work the same with a Seminole in Florida as you would with a Mono in Northfork. Also, there are four different tribes in Northfork that are considered Mono that have different processes, because they are either federally recognized or they are not. It can be overwhelming, and that is why we recommend a tribal, a Native American, liaison because they seem to work the best. That is one solution, and we will be happy to explore more options.

MR. McKITRICK: Okay. Thank you.

Before people start to leave, somebody dropped a Hyatt door card, so if you can't get back in your room, it is sitting up here (laughter).

Richard?

MR. ROOS-COLLINS: Richard Roos-Collins. I am continuing to puzzle over our different answers to the first and second questions. John, I am bearing in mind that you want to get some help in choosing direction as you draft between now and February. It seems to me we need to look for the functional differences which are behind the different answers.

Just to compare two answers, NHA expressed its support for a new process as a track to supplement the existing, and the HRC supports a unified process with flexibility. Well, what is the functional difference behind those different answers? It is perplexing because if you look at our proposals as submitted on Friday they are more alike than different in their functionality.

NHA proposes that a process plan be submitted that specifies the track after a consultation with the participants. We thought that was an excellent concept when presented November 7, so we have a process plan in our proposal. At some level of generality the proposals look alike, yet the answers are very different to this question.

I think the functional difference behind the different answers is we require that a collaborative effort occur at the outset of every proceeding. In other words, the licensee and the participants try to reach consensus on a study plan and presumptively on the PME measures that will follow, whereas, as I understand in NHA's proposal, it doesn't require such collaboration.

It requires consultation but not collaboration on the presumption I suppose -- and correct me if I am

wrong, John -- that in some circumstances a licensee does not want to be compelled to try collaboration for any period of time over the course of the proceeding. John, my advice based on the discussion so far is you have got to first figure out whether the Commission should require collaboration in every proceeding to develop the process plan, to develop the study plan, to develop the PME measures. If your answer is yes, that leads you one way; if your answer is no, that leads you another. It leads you to the next functional difference that then has to be resolved.

MR. McKITRICK: John Suloway, I guess, is that an appropriate dichotomy between collaboration and consultation, is that?

MR. SULOWAY: I wouldn't --

MR. McKITRICK: I'm sorry, go ahead. We have got two Johns sitting together. I was actually addressing John Suloway.

MR. CLEMENTS: I think he was talking to me, too.

MR. SULOWAY: Do you want to answer it?

MR. CLEMENTS: Sure. See, I've got my own microphone.

MR. SULOWAY: Yes, a permanent one.

(Laughter.)

MR. CLEMENTS: They will never take it away.

MR. McKITRICK: Although, it may not be working, John.

MR. CLEMENTS: Yes. They told me it is.

MR. McKITRICK: Oh, it is.

MR. CLEMENTS: Actually, I would like Richard to provide a little more clarification on "collaboration" versus "consultation." What I think I am hearing is that there ought to be something that results in some kind of an agreement on a process and a schedule, that the parties would work towards that. I am not sure what the outfall would be if they weren't able to achieve it.

It seems to me that consensus under your definition is what happens when collaboration doesn't get to an agreement. Everybody walks away and says that they did attempt, they didn't get there, but they did consult. Does collaboration assume some kind of a majority agreement or something to that effect?

MR. McKITRICK: Richard?

MR. ROOS-COLLINS: Richard Roos-Collins. Again, you have to look at the function in context. I wasn't referring to collaboration in some general sense. I was referring to collaboration as the first thing you do in any proceeding. Under the HRC

Proposal, the licensee and the other participants are required to try collaboration, which does mean leading to some form of consensus, not necessarily a written agreement, but some form of consensus on what the process should be including the study plan.

Under the NHA Proposal, and specifically the track that is called "traditional," consultation is required. "Consultation" appears to be defined more or less as it is under the existing rules, and that means that the licensee has to hear the resource agencies; it doesn't mean that the licensee has to make an effort to reach a consensus with the resource agency, the tribes and other participants. That is the functional difference that I see between those two proposals at least with respect to this initial question.

MR. CLEMENTS: I see practical difficulties in how the Commission would distinguish between a licensee that is collaborating and a licensee who is consulting at this point. I am not sure where that gets you when you say they should be sort of "forced" to collaborate or at least attempt to collaborate.

MR. ROOS-COLLINS: Well, I have in mind exactly what Commissioner Brownell said on this exact issue on November 7. There is no requirement that the licensee and the participants reach a final settlement,

but there is a very strong presumption that they will try because the disputes that arise in licensing proceedings are settleable, as a general matter.

Now, again, you have to look at this function in the context of the whole proposal. We are not asking for the Commission to judge the bona fides of a licensee or for that matter any other participant. We are not asking the Commission to evaluate the negotiation style. Sooner or later the applicant has to make a choice within the framework established by the rule for fairness and for other reasons what process it will use.

If for any reason -- good, bad or indifferent -- it decides to pursue what we would call a "non-collaborative process" that falls within the framework of the rule, that is its choice. We are just asking that the first thing it do be is a deliberate and systematic effort to reach consensus with all of the participants on the process plan, the study plans and the things that follow.

MR. SULOWAY: John Suloway, NHA. Richard, our proposal does not prevent an applicant from using a collaborative approach. I am sure that there are many applicants that will use a collaborative approach. To be forced to use a collaborative approach, I don't

think that would have much support at all within the applicant community.

For example, a company may have already relicensed a project in a particular area and had a very difficult time, and having done that would say, to put it in a very personal way, the president of that company would say to the licensing manager, "There is no way we are going to use a collaborative approach based on the history, the experience."

Again, I think kind of like market things if it is attractive, if it works, it will be used. That is the approach that we are suggesting that an applicant would have an opportunity to use a more consensus-based approach or could use for its own purposes to use just a consultation approach.

MR. McKITRICK: Mona?

MS. JONAPPAUL: I wanted to go back to the tribal consultation. If people have comments on this, I don't want to interrupt it, but I do want to get back to that sometime.

MR. McKITRICK: Okay.

You want to follow up?

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board. I wanted to speak to the need to integrate the state and tribal water

quality certification procedures. FERC in its 603 Report claims that 401 certification is the primary factor in delaying relicensing.

California's experience is quite different where the longest delays have been projects where water quality certification or waiver has long since been issued. In either case, if your purpose is to avoid delays or avoid duplication of efforts, whatever process you put together ought to ensure that the states and where tribes have water quality certification authority that the tribes have the information, the environmental documentation, before them so that they can promptly and without duplication of effort of what is going through the FERC process issue water quality certification.

John Clements talked about how if most of the litigation challenging FERC is on procedural violations. If my state were to issue water quality certification at the point contemplated by FERC's traditional licensing regulations, we would unquestionably be sued and we would unquestionably lose, because we can't conceivably issue water quality certification without the studies and without the environmental documentation. California has proposed amending the traditional licensing process.

One of the keys is to have certification occur at a time when that information is available. That requires both that the 401 certification application be filed much later in the process and that the earlier stages in the process be developed in order to make sure the state has the information it has on hand in time to issue the license on a timely basis. I think when we are talking about timeliness the key is to make sure that a new license can be issued before the old license expires, and that depends upon making sure that all agencies with approval authority have the information they need in order to make a timely decision.

MR. CLEMENTS: Can I respond to Mr. Sawyer?

MR. McKITRICK: Yes.

MR. CLEMENTS: Just one little technical thing. I didn't say we lose on -- we win on substance. If we ever lose a case, it has been on procedure; okay. What kind of troubled me in the comments we got from the states is the states would say, "FERC, your job is to make sure that we get the information we need and that we want to issue a 401, not the information you think we need, but the information we think we need."

When we have come back and talked to people, off the record we say, "It is your 401 process. Why

don't you just tell the license applicant to give you the data?"

And the answer we get is, "Well, we want to see if we can work it out."

I get frustrated when I see comments from states that say, "FERC, exercise your authority to make the license applicant do what we could tell them to do but don't want to do."

Can somebody help me out with that?

MR. SAWYER: I have to pass the microphone to other states because our problem is we ask for the information, and it is not produced. It is not a question of not being willing to ask. It is important for you and us to work together so that the licensee, if at all possible, has one information request that covers it all instead of two that are a little bit different and make them duplicate the effort.

I mean, we want to work together, but ultimately you are absolutely correct. We have to tell the applicant what we want, what we need, and if we can't agree with you, that means the applicant does have two requests instead of one.

MR. MCKITRICK: Within the existing processes that is not presently the case? Is that what you are telling us, that the state--?

MR. SARBELLO: Yes. I think I can answer the question and also get maybe to the point about the functional differences between the "consultation" and "collaboration." Maybe I should start there. In the case of consultation, our experience in one particular case was that there was an early reaching out. The applicant did more -- by the way, it was a regulated utility -- than the minimum required to reach out. We identified the information needs that we wanted and why we wanted them and I think why we needed them.

When we got to Stage II, the answer was, "Well, we heard what you said, but, you know, we disagree with you so we are not giving it to you." This is an example of where there was consultation, there wasn't collaboration nor was there the opportunity to identify.

There wasn't any kind of responsiveness summary that said, "We heard what you said and we are not going to do this because -- now, you will know about this in advance, so you have the opportunity to appeal or initiate dispute resolution." There wasn't that kind of opportunity.

To get to John Clements' question, with the study design and other considerations, that is being done really at FERC's behest very early in the process.

We do not have an application for a state water quality certificate at that point. We do not actually have state action before us, so we can't ask for information until we have an action before us.

That is why we are saying, you know, "FERC, we know it is coming. We know you are going to ask us for a water quality certificate. We understand that you have to comply with the Clean Water Act down the line. Please let's get this information up front. And you are in the position, FERC, to require and request it."

The alternative to that is that when we finally do get a water quality certificate application, if the information is lacking, then we are put into the position where we did what we did; we denied water quality certification.

We didn't do something that was untimely, just nobody liked what happened, but we were put between a rock and a hard place. We didn't have the information that we needed to make our decision, and so we denied without prejudice until such time as we got the information we needed.

In that particular case, we asked for an additional information request, and it went on from there. That is how the states get put at the end of the process, unless FERC recognizes their needs up

front and takes them somehow to assure that legitimate requests are implemented early.

MR. MCKITRICK: Are you telling me that the states have no authority to require the production of specific data or do studies?

MR. SARBELLO: No, not until we have an action before us. Until I have a water quality certificate, what handle do I have on the applicant? Once I have an application, then I can make a decision whether it is complete or not. Our statutory requirement is that one of the things that makes it a complete application is having a complete federal application and the supporting documentation.

Essentially, it puts us at the point that you have to technically declare the application complete, tender the application, before we have a complete application. So if the applicant gives us a request for a water quality certificate, they file an application with us, we are then watching statutory clocks. We have the state statutory clock under our Uniform Procedures Act, and the federal one year clock to mind.

If we don't have the information as the one year approaches, in the past we have denied without prejudice and now we will offer the opportunity of

saying, "Would you like to withdraw your application and reapply because we don't have the information." If you front load the process and get those needs dealt with up front, then I think everybody is in the position to move forward logically.

MR. SAWYER: Several of the states have talked about this issue among themselves and your choice of words was good, "require." Most of us can ask, but really the only enforcement mechanism that most states have to require is to turn down the certification. That does, if you will result in the "train wreck," that very late in the process the only remedy that will be available to the state, no matter how early it started asking for the information, is to turn down the request for certification.

MR. McKITRICK: You could requesting under our consultation regs where we ask to go to the state, federal, resource agencies and others, whatever, you will participate at that point as far as asking the questions that you may need in order to go through the certification process? The problem seems to be that sometimes you get the information and sometimes you don't?

THE PARTICIPANTS: (Nodding heads.)

MR. McKITRICK: The answer nodding heads is

yes.

Mona?

MS. JONAPPAUL: Mona Jonapaul, Forest Service.

I want to get back to the issue of what is tribal consultation in the FERC process that Southern California raised, and then the follow-up discussion raised two issues that are very important to the Forest Service.

Just to let you know, in some cases the secretary of Agriculture receives the same letter from the tribes as the secretary of the Interior, Commerce and other departments receive, which is a request for consultation regarding our terms and conditions and even our comments on occasion.

Usually, we work with BIA to respond on a government-to-government basis to get back to that. It is sometimes a little unusual when the tribe is also the licensed applicant and yet wants consultation on our comments and terms and conditions.

That is kind of the big thing. The difficult thing for the Forest Service with regard to private consultation is usually we are the decision-makers with regard to activities and uses of National Forest. With most tribal governments or tribal nations, we have all sorts of agreements and memorandums of understandings,

and we see that we do have a trust responsibility.

Often, we have either lands adjacent to tribal lands or we have cultural resources on National Forest lands that we have a responsibility for.

Now, where this comes into play for the licensee is if we are following those memorandums of understanding or those agreements or our trust responsibilities we may be putting in terms and conditions that are related to those or requesting studies that are related to those.

This gets back to in the discussions two real questions for the Forest Service that are truly problematic in a licensings right now, and these are tied together, cumulative impacts analysis and where is the project boundary. In a lot of cases, where is the project boundary effects where we have 4(e) authority and where we don't, the same for the other land management agencies and the tribes.

Is that something that we want to address in licensing? I know it is important to licensees for that issue and also land rent issues. I mean, that is something the Forest Service may wish to pursue in this licensing, should there be a standardized way to identify where a project boundary should be, should there be more irradiation about how project boundaries

should be established and should there also be a standardized way to record project boundaries.

That is very problematic for almost everybody in this room when they approach a licensing is that there is not a standard way to establish a GIS system or some other system as to where the project boundaries are. You know, one of the questions that came up in the national energy policy, How many acres of National Forest lands are impacted by hydropower? I have got no way to answer that.

The other issue of cumulative effects analysis, that was addressed by the Commission in a policy statement. Perhaps, we want to take that up again and have some kind of criteria, either in the studies group or in one of the licensing groups about where is it appropriate if you are approaching this on a project-by-project basis or a river basis where you have cumulative impacts.

But the Forest Service has difficulty in switching from being the decision-maker to not being the decision-maker in responding to its obligation to the tribes in FERC licensing, particularly when it comes to 106 consultation. That we would be happy to discuss and maybe see if we can resolve in this process.

MR. CLEMENTS: Mona, I appreciate the question. I am having a little hard time pulling that back to the first two questions, but that may be something that needs to be resolved in some consultation outside of this or within the next couple of days, but I did get the high sign that we have about six more people that wanted to discuss topics dealing with the first two questions that we have. We are also at about 12:15. Would we like to go through those six people and then adjourn for lunch, or does anybody else have a better way to do this?

MS. KEIL: I am starting to take this personally, Ron, because I am the only one still in the queue, this time before lunch.

(Laughter.)

MR. McKITRICK: You are number seven.

MS. KEIL: I am going to write it down this time.

(Laughter.)

MR. McKITRICK: Duly noted here.

Maybe go through the six people that we have and then break for lunch, does that seem okay? Somebody is keeping track of this.

MR. CLEMENTS: Ron, continuity, can I just break in here first at the front of the line?

MR. McKITRICK: You have got your own mike.

(Laughter.)

MR. CLEMENTS: Yes, I know. I hope they take it away. If we can go back to the states consultation issue for just a minute, do you, Bill or Andrew, think that states would have a problem if we had a process where the FERC was involved with pre-filing consultation and we were attempting to integrate pre-filing consultation with NEPA?

Do you think state water quality agencies would be able to or willing to participate in that so that we could actually get on the record what it is specifically that you are asking in terms of information?

We don't see that now under traditional. We don't see anything until the license application is filed, because it has to have a water quality certification application filed with it. Prior to that, we know almost nothing about what it is you want, so water quality data issues don't even get considered until after the application is filed.

MR. SARBELLO: It might be different -- Bill Sarbello, New York State -- in other states. I can only speak from our own experience, but we participate right from Stage I consultation. We may be

unusual in that we are both the state fish and wildlife agency and the state water quality agency. We bring both to the table when we come.

We get involved early, and most of our water quality issues are directly involved with project operation. It flows to the bypassed reach; it is base flows downstream of the project, reservoir fluctuations, and we usually directly tie them to fish propagation and survivals. We tie them to water quality issues as well as fish and wildlife issues. We operate in both arenas. We comment to FERC at the various stages as the fish and wildlife agency, but we are building also towards, and we are consistent with, I believe, our actions under the water quality certificate.

Again, I don't want to talk a lot because we may be a different case. But there are comments that we can put into the FERC process that go beyond, as the Fish & Wildlife comments they may go beyond, they may be considered enhancement or restoration depending on your viewpoint, but they would maybe get marginal to the issue of what could we bring into a state water quality certificate and defend in court.

We participate in both processes. We start early and we have a standard sheet that we give people

when they walk in the door in terms of identifying our issues up front at the earliest consultation, and we stay involved throughout.

MR. SAWYER: What we from California have proposed is a very intense effort up front after which a schedule is issued for determining studies. We would much prefer that to the current situation. What would not work is we have an intense effort up front that doesn't reach any results and the issues keep getting put off, and it ends up being an intense effort for the entire 5, 10, 15 years.

We see that a proposal like you suggested would require more work up front, and we would prefer that to what we have now which is continuing uncertainty, greater effort over the long term, but only very late does it really come down to determining what the studies are.

Many of the states have severe resource problems, but that is going to be a problem at any stage. We have talked to other states, and there is general agreement on this idea of an intense effort up front and then try to get a study schedule established in a FERC order that gets the necessary studies.

MR. MCKITRICK: Okay. I am glad you mentioned that. What I have been getting in the comments is what

I regard as mixed signals from states, because I am hearing almost universally to front load it. We get especially our water quality issues addressed. Then, on the other hand, I am hearing from some states, not yours, "We don't have the resources for these things."

Then, the other one is, "By the way, of course you can't bind us, so take your dispute resolution process and whatever, because we are not interested in that."

So it is, "Give us what we want and get us into the process, but we are going to stay back and make sure we get what we want."

So I'm going, "Well, gee, whiz."

MR. MCKITRICK: I have been kind of taking people as they raise their hands, and, therefore, we have been kind of jumping around from topic to topic. Maybe if we try to put the 401 consultation as the issue we will follow that through and then move back into questions one and two. Is there someone--? Okay.

MR. BECHTEL: Richard Bechtel from Oregon. I basically second what California and New York have said. We have all learned an awful lot since 1986, the amendments in 1986 and 1987. I guess one of our problems is the lack of information and our experience there. Why we like the California approach and what a

lot of the other states suggest is that we do get that information early.

John, you mentioned the problem that you need an evidential record to make that decision and that sort of thing. That is sort of what the states are confronted with. I think one our problems throughout all of these years since 1987 was your order 464 in which the Commission reinterpreted when that one-year clock began under the Clean Water Act. That has been a problem for us since 1987.

If you remember, I think the Commission through that order waived, like, 235 to 237 401-certification projects under certification. It affected 32 states. At that time, I worked for Montana and not Oregon and we testified before the Congress on a couple of occasions. All of the states were unanimous that that just did not work with 464.

I think our experience since the class of '91 -- '93, excuse me, is that if we all work together the timelines all collapse and everything is much, much more efficient. I guess what I would like to add to this all is we really need to have your reconsider when you start that clock for 401.

MR. McKITRICK: Any other comments dealing with the 401 consultation?

Julie, go ahead.

MS. KEIL: One of the things that is going unsaid here is study needs is that at least in my experience licensees say no to some state requests because they believe they are in violation of FERC policy on what licensees or applicants should be required to study. In particular we run up against the baseline issue quite frequently.

I don't think you will find a lot of support in the industry community anyway for a set of rules that requires applicants to do what the states request to the detriment of keeping the baseline policy in tact. We feel that we really ought to be looking forward not back in these kinds of situations.

That being said, my experience is Oregon-based, as is Rich's. The state there does have the ability to put its information requests on the table in the state process. I don't see anything in the Clean Water Act that would prevent states from doing that, so that if there are things that the state requires that FERC is unlikely to require, I think that is a state process and a state statute issue more than it is trying to drive that issue back up and run back into the FERC process and the FERC policies.

MS. RISDON: Hi. Angela Risdon from Pacific

Gas & Electric Company. We are supporting the integrated licensing process. In particular when it comes to the 401, what we are suggesting is that at the time the applicant files the NOI and the initial scoping document, that the applicant may also file a preliminary water quality certificate to both the state and let the FERC know, so that it could help also support the scoping so that you can get those issues out on the table.

MR. McKITRICK: Good.

MR. SARBELLO: Yes. Bill Sarbello, New York State. To get to Julie's comment, then I think you essentially are going to be at deadlock because until we have, until as a state we have, an application before us we have no state law that enables us to go out and put a "collar" on somebody's operating hydropower project and say, "We need this information. We want you to do these studies."

So, it will be a case of timing when the application comes in. If we don't have the information, we will have no alternative but essentially to identify any shortcomings at that time and potentially deny the certificate. I would put the onus back on FERC in this particular case, that FERC needs to comply with the Clean Water Act.

Your licensing process incorporates a number of statutes. It is like saying that you can't require someone to collect endangered species data, because that is the Endangered Species Act and not the Federal Power Act.

If you have got a narrow interpretation of what the baseline is for the Federal Power Act, it does not carry over, it should not carry over to the other statutes that you are required to meet in rendering your ultimate license decision.

As I say, this will be deadlock because the stated purpose of the Clean Water Act is the restoration of the nation's water quality. You are already diametrically composed. If you are going to say, "We are only going to be forward looking," how can you be forward looking when the act charges you with restoration and recognizes that the water quality is already degraded."

MR. CLEMENTS: Well, I hate to be a lawyer here, but the Act charges us with including in the license a Clean Water Act certification from the state. It leaves entirely to the state the contents of that certification. It imposes no requirement on the Commission.

MR. SARBELLO: I agree. What I am saying is

that --

MR. CLEMENTS: But I hate to be a lawyer.

MR. SARBELLO: -- you will be putting the states in the position that they won't be able to act until they have an action before them. If you want to get their input up front and avoid having to go through another round of studies late in the process, then again what we are recommending is that you include that input up front and find a way how it can be incorporated.

Again, I would urge the applicants that, again if you are looking for a swifter decision and not having the process drawn out, take it to heart. We are not going to jerk you around and ask for information we don't need. At least I will speak for my state, we won't do that. We will have a good reason for what we ask for, but if you want to have it done early and just do one set of studies, front load it if you can.

MR. MCKITRICK: Nino?

MR. MASCOLO: Nino Mascolo, Southern California Edison. A little bit of good news in California. I do have a question for Andy, so I am glad that he grabbed the Mike next. In California, the little NEPA process, CEQA, allows for an exemption for existing hydroelectric projects when they are being

relicensed, so that the state doesn't have to go through the same type of NEPA process. The State of California law is the baseline is the same as it is today, the same type of baseline that FERC uses. That is helpful.

My question for Andy is, Assuming that FERC receives all of the completed studies and everything is done to the satisfaction of both FERC and to the state water board -- at that point in time, that is when FERC issues its notice that the application is ready for environmental analysis, and then the agencies under the existing regulations have so much time, 60 days, to file their comments and their mandatory prescriptions, which would include the water quality certificate.

My question, Andy, is if all of the environmental data is in and is ready, wouldn't the state be able to issue, at least in California and I understand other states are different, but in California wouldn't the state water board be ready to issue its water quality certificate within that one year timeframe of when you had the notice, the REA?

That means that all the environmental information is in and the state has got everything it is going to need in order to make a determination as to what the appropriate conditions are or a waiver is for

a water quality certificate.

MR. SAWYER: There may be cases. The difficulty is whatever environmental documentation the state needs is going to have to be completed before the state can issue a decision. If it is a negative declaration, it will be very difficult to get that done. If it needs an environmental impact report, it will be impossible to get it done within a short period after the ready for environmental analysis. It depends upon the facts of the particular case.

MR. MASCOLO: Could you do it within one year after the REA?

MR. SAWYER: Well, if it needs an environmental impact report, and we are going to have a joint document, then that would require that the EIS or a combination EA/EIR -- excuse me, FONSI for the federal and environmental impact report for the state to be completed. It depends upon the environmental documentation required under state law.

That, in turn, will depend on how the project will be modified from its current operations, so it is case-by-case, but I think in most cases it will require something more than just an exemption. When it does only require exemptions, then it could be done very quickly after the ready for environmental analysis.

I want to get back to something John Clements said. He said he hates to be a lawyer. I won't say that because I am a lawyer. But FERC is required to consider the applicable comprehensive plans. Those include the water quality control plans, which set the water quality standards. There is nothing that prevents FERC from requiring development of the same information the states need in order to consider water quality certification.

I would add that the baseline for NEPA or the little NEPA is not the same as what the baseline is for determining what information you need to comply with the Endangered Species Act or the Clean Water Act or other environmental standards. It isn't as though NEPA preempts other federal environmental laws, and the cases have in fact said so.

FERC can as part of its own effort, and should be as part of its own effort, looking at the same kinds of information the states need. Now, if FERC won't do it, then we will do it as part of our separate processes. However, that creates the delays and duplication we are all trying to avoid.

MR. CLEMENTS: I didn't suggest that we are constrained in any way. I was just trying to see if I could get the states to kind of step up to the plate on

these things a little more.

MR. McKITRICK: I think that is all that we have on 401 at this point. It is certainly going to be a good conversation over the next couple of days, and something that I would encourage people to try to find some middle ground on, as well as collaboration versus consultation, that maybe we could resolve in some fashion and find some common ground in both of these issues.

My recommendation, then, would be that if somebody has this (indicating) to pick that up. Second, maybe we come back and have a short discussion more from tribal consultation, quickly see if there is anything dealing with these next two questions that we haven't mashed and remashed, but maybe can find some sort of answer with that over lunch, maybe somebody will come back with solutions, and then move on. With that, I would suggest that maybe we break for lunch for an hour and then get back here at 1:35.

(Whereupon, at 12:35 p.m., a luncheon recess was taken, to reconvene this same date and place at 1:35 p.m.)

AFTERNOON SESSION

(1:45 P.M.)

MR.. MCKITRICK: It looks like we may have a few people who are enjoying their lunch of little longer, but I think we will go ahead. There was some discussion, as you might have expected, during lunch and I think what we will try to do is a couple of things. One, have the reality that at the end of the day Thursday, after we have sat through a couple of days talking about some of these questions in detail, we will come back and revisit these questions that we have here to see if there is any change of opinion or maybe some solutions that have come out of this. So we will not spend the time right now, let's say, revisiting questions number one and two, but we will come back to that after we have had a chance to talk in small groups and maybe discuss it then.

The second thing is that we are going to this time tried to stay on topic a little bit better and stay on point with the questions that we have and try to respond to the lowest questions. You can help me in that regard as opposed to go off on something that just charges being interesting. After we get through these questions, if there is still time and there are things that folks would like to talk about and that are

burning questions to them and big issues, then we will have some time perhaps to do that.

What I would like to do is the tribal consultation was something that came up that we cut off prior to lunch, and I would like to pick up on that, finish that as a discussion point, and then will move on to the third question dealing should an integrated licensing process apply to read licensing and the original licensing, go through that list. As you can help focus your discussion on those topics, that will make my job a lot easier and I will not have to rip the microphone out of your hand. But I would like to originally start with I thought tribal consultation, but I have got a comment here.

MR. BARTHOLOMOT: It was just following up on the process suggestion. I mentioned to a few folks before the lunch break the idea that it is actually pretty helpful, from my perspective to hear -- I am Henri Bartholomot -- inputs from everybody here when we focus on each topic that we discussed this morning. It is really a way to get a sense of the different perspective and look for areas of agreement at responses and suggestions in terms of what others have suggested.

I was wondering if as one option for the next

couple of days, and I would be interested in the group's reaction to this. I also, as a prefatory remark, understand that the majority of the folks that have signed up for the panels has signed up for the study and dispute resolution panel. There is a heavy focus by sign-ups in that area.

I was wondering if the group would be interested in working through the pre-filing, the post-filing, and the study dispute resolution issues and logical blocks, but as an entire group rather than breaking into smaller panel discussions of that for two reasons: One is that sort of interplay and cross-fertilization of ideas, but the other is to recognize that the pieces of the licensing process are fairly well tied together and you don't touch of gone one without pulling on another.

It might make for a more logical sort of approach. But, you know, as a fallback, the idea of integration, careful and effective and complete integration, is helpful. I would be interested in reactions to that.

MR. McKITRICK: I think the thing is that we were coming back to report back to the group at the end of the day, as far as telling everyone what was going on, and then to come back and then report back as a

whole and then rediscuss some of these questions.

There has been something brought up. Is there anyone who would rather move this as one big group over the next couple of days as opposed to three? We have not contemplated that.

MR. CLEMENTS: I would kind of rather defer that issue until the end of today.

MR. McKITRICK: And see what we come up with?

MR. CLEMENTS: Yes, just talk about it later in the day.

MR. McKITRICK: Is that okay?

MR. BARTHOLOMOT: (Nodding head.)

MR. McKITRICK: Thanks.

There are a couple of folks, I would like to go back, and as I indicated go back to the tribal consultation part.

MR. CLARY: Don Clary from Shoshone Paiute again. First of all, I just wanted to state briefly, and I have the benefit of having my client here in the room with me, our perspective is certainly as a tribe that consultation with BIA alone in lieu of the tribe is just not adequate and does not fulfill the statutory requirements. I wanted to pass that on.

Secondarily, I wanted to take a look at while there is not agreement amongst the tribes, and this

became apparent in the Tacoma forum, as to just what constitutes "government-to-government consultation."

It does not mean that there is not some consultant -- excuse me, some consistency with regard to what we hope to achieve out of the process.

I think very clearly there is a clear idea that there should be continuing involvement by the Commission in this process in that it should be directed to the Commission, because of the fact that ultimately it is the Commission that has jurisdiction over the licensee in the first instance, and, therefore, everything ultimately has to be manifested to the Commission. It should be a fairly obvious thing.

Therefore, there should be tracking. We have a concern that in many instances people have attempted to satisfy this requirement through a one-time discussion with parties on the reservation. There may be some form of memo at that point in time, but there is not a formal declaration of issues, for lack of a better way of putting it, from the tribal council.

There is no follow up on the part of either the applicant or the Commission with regard to what further developments can be achieved toward resolution of those issues, and there isn't the closure of some

type indicating that those issues have been resolved in some formal way. That I think is going to be very important for, I would assume, all of the tribes, the perception of fairness in the process.

It shouldn't be just a situation where the applicant has provided travel costs to a certain location of their choosing and where perhaps some of the ideas are discussed, but it ought to be a formal process where the tribes' considerations are taken into account, placed on the record and a formal closure is put to those considerations. That is the sort of thing we ought to be addressing. Again, I want to reiterate that this should happen in whatever form of regulatory procedure or forum.

MR. MCKITRICK: I understand. Thank you.

MS. MESSERSCHMITT: In talking with my counterparts here --

MR. MCKITRICK: If you don't mind, just restate your name.

MS. MESSERSCHMITT: Oh, I'm sorry, I apologize. My name is Cathy Messerschmitt, and I am with Northfork Mono Rancheria. I do want to reiterate what Mr. Clary said so that everybody understands and we are as clear as we can be.

When these agencies meet with BIA, like

Ms. Jonapaul was saying when the Forest Service meets with BIA, they are not meeting with the tribes. They are not meeting the definition of consultation. BIA does not speak for the tribes. That needs to be made clear, because we have heard that over and over and over, "Well, we have met with BIA." So what? It doesn't mean anything to us.

On that note, going on, I think one of the things that I heard earlier was that some of these issues maybe need to go into policy and not into the rulemaking. That concerns me because with the licensees what we are hearing from some of the licensees is, "We don't have to consult with you. We are not a government agency. We don't have those responsibilities, and we don't have to talk to you." We have an applicant who is actually doing that and is ignoring all of our concerns and saying, "We don't have to consult with you."

That is what I am saying, that a process is only as good as its participants. If you don't integrate something like that into the policy, it is not going to happen in some cases because it is at somebody's good will. Whenever you have people making a choice for that kind of thing, if they don't want to, they don't have to. That is what we are hearing from,

like I said one applicant saying, "We don't have to, we don't want to, and you're not going to make us."

MR. CLEMENTS: The regulations, even the existing ones, are very specific that during a pre-filing consultation period a licensed applicant or a prospective applicant has to consult with the tribes. It doesn't say BIA. I don't think anybody at the Commission considers an applicant talking to BIA to be the same thing as the applicant talking to the tribe. We expect them to consult with the tribe directly.

MS. MESSERSCHMITT: Some of the agencies that have trust responsibilities or oversight like, for instance, the Forest Service, and I am not meaning to pick on Forest Service, but saying, "We have met with BIA. We have consulted with the tribes." That is not going to happen? Like I said, we are using consultation again in two different contexts and everybody has a definition of what they want consultation to mean, not what the tribes deem consultation. Do you understand what I am saying?

MR. CLEMENTS: Yes, I do. But again, I can't address myself to what Forest Services practices.

MS. MESSERSCHMITT: Right.

MR. CLEMENTS: I can only say what ours are. I think the issue that we are FERC have to grapple

with, and sort of the overriding one is the government-to-government and what does that mean. In the comments, there are apparently a lot of different opinions, as you indicate, about what that means.

They go all the way from as long as the tribe gets a fair hearing and gets to consult properly with the licensee, they are happy. On the far other end of the spectrum is, "We are a sovereign government. We don't want to talk to anyone else but a sovereign government. We don't want to talk to the license applicant," which frankly, I think is an unrealistic position to take.

I mean, regardless of what the relationship may be between this Commission and the tribe, the applicant is out there. They are the developer or the existing operator of a project, which, you know, affects your interests so you need to find a way to talk to them. I am not going to try to dictate the specifics of that, but something needs to be done in order to open up those lines of communication between the applicant and the tribe.

MS. MESSERSCHMITT: Well, I think Congress would agree that when you have people on opposite ends of the spectrum they have to come toward the middle. We do have responsibilities to come toward the middle

and to be reasonable. I don't think it is any tribe's wish to be unreasonable and say, "This is what we want." It may appear that way with some tribes. I can't speak for other tribes.

I can only say that with our tribe, in particular, we want this thing to work. We want to help lessen the damages that impact us with the hydroelectric project. Our interests are preserving cultural heritage and resource issues. We don't have uncommon interests with other stakeholders, it is just how we are treated in the process: when, how and why. Do you understand?

MR. CLEMENTS: Yes.

MS. MESSERSCHMITT: Okay.

MR. CLARY: Don Clary, again, with the Shoshone Paiute. I just wanted to ask a quick question. Our tribe, as we expressed earlier, has had success with other federal agencies working through these government-to-government consultation issues, and has basically an approach which has been effective for that purpose. We would like to share that with the group at the appropriate time. I understand this may not be it. So, I would like to ask when would be a good time for us to address that, which workshop we might bring that up in and who would like to talk about

that and make that offer? Is this a good time?

MR. CLEMENTS: We will try to find a place to do that in the pre-filing.

MR. MCKITRICK: There is a pre-filing group, assuming that is what we stay with, and that will be talking about those types of things. I think that would be a good issue at that point.

MR. CLEMENTS: That is where the consultation starts, so that is the logical place to start that discussion.

MR. MCKITRICK: It would be beneficial to hear that.

Yes, sir?

MR. ANGLE: Art Angle, Enterprise Rancheria.

In regards to the consultation, the tribes are sovereign nations and so, consequently, we feel that we have the right to consult on our own as a tribal unit. No other entity needs to take the consultation burden from our tribe. We stand firm on that issue.

One of the other issues that I was going to talk about earlier was in the process, the consensus issue. In the collaborative forum, who has consensus? When we have a plenary meeting, at that level in the consultation, who are the entities that have the right to be on a consensus board, or who votes basically?

We have some issues in regards to that, due to the fact that at the table the tribes have maybe one or two representatives that attend these meetings, and the permittee has maybe 25 or 30 or 40. If you take a consensus in the room, the permittee, you know, the table is stacked in their favor. So, I have a real concern about that consensus.

MR. MCKITRICK: Okay. Is there anything else dealing specifically with tribal consultation that needs to be brought up?

MR. CLEMENTS: Are you going to speak, John?

MR. SULOWAY: (No microphone.) I was just going to mention that really that subject needs to be discussed. It is not on topic as far as the one issue we run into with regard to tribes.

(Microphone) John Suloway, NHA. This, with my New York Power Authority hat on, one of the issues that we have run into with regard to tribal consultation where the tribe wants to speak to FERC one on one after we have filed our final license application. There is the issue of ex parte where you guys have to publicly notice meetings.

We ran into a situation where the tribe wanted to speak only to FERC, and FERC was finding it difficult because it had to notice that meeting. I

don't have an answer for that question, but that is an issue that I think needs to be dealt with.

MR. MCKITRICK: Ann?

MS. SMITH: Actually, I am going to ask that question back. If in the integrated process we are going towards concentration with the tribes at the very beginning, and FERC would be doing that, so we wouldn't have an ex parte situation. Is there any objection to FERC among the industry or agencies with FERC meeting one on one with the tribes?

Really what they are asking for they are asking, what I hear is one on one so that FERC understands what their consultation process is and a little about them and that we educate them on what ours is. How do you all feel about it? I guess on both sides, Can that be done individually between FERC and the tribes, or does it need to be done as a part of a group process?

MR. SULOWAY: John Suloway again. If FERC and the tribe meet separate from the rest of the parties, based on our experience we don't have a problem with it, provided that there is some kind of a summary of what went on in the meeting. It doesn't have to go into the gory details, but just to have a sense of what the scope of the meeting is. There is, as you probably

have experienced in any individual proceeding, when two parties get together and exclude the rest of the parties in the proceeding, there is always a concern that something is going on.

MS. SMITH: Can I ask the tribes, How do you feel about having a summary of a meeting between FERC and the tribes?

MR. HOWARD: Thank you. Ted Howard, Shoshone Paiute Tribes. Consultation is something that is mandated to all federal entities including the Federal Energy Regulatory Commission. I don't see where you have to ask any private entity or licensee if you can meet with tribes. That is what you are mandated to do.

I think this is something that is based on starting right from the Constitution, it is spelled out in treaties, various policies, mandates, executive orders, et cetera.

You have to comply with all of your mandates that all federal agencies are required to comply with, not only NHPA or NEPA or those that you choose to recognize, but you must fulfill each and every one of your mandates that is laid out for all federal entities to follow.

I think, in closing, I know a lot of times we talk about things, and there is one comment that you

made and someone else made it before, is to call the tribes in so you can educate them. I think education is a two-way street, because our culture and how we view our environment is something that you need to learn as well.

Thank you.

MR. McKITRICK: We appreciate that. Would there be any problems if we had the tribe-to-FERC consultation meetings, that there be summaries of those meetings that would then be made available to all, or are those considered strictly private?

MR. HOWARD: Can I just make one quick comment?

MR. McKITRICK: Sure.

MR. HOWARD: A lot of times in tribal consultation between an agency and a tribe, sometimes there is sensitive information that is discussed. I think if the tribes are given the opportunity to withhold some of the sensitive information, I don't see a problem with it.

MR. McKITRICK: Okay. That should be defined. John?

MR. CLEMENTS: Even now in the regulations, we have provisions providing for confidential treatment of cultural information. I didn't want anyone to get the

impression that we were saying that the licensee needed to have our permission to talk to you, or we needed to have the licensee's permission. It is just a question of when we do talk to you one on one, is there a problem with memorializing, at least in outline, the record of that?

The genesis of that question is there is a long history of people being concerned, people across the spectrum, about the Commission staff having private meetings with parties to proceedings. We have done an awful lot to try to diffuse those problems. We changed our ex parte rules a few years ago, and we think it is working much better now. The tribes are a distinct issue to deal with here, and we are just trying to help close that loop.

MR. McKITRICK: Yes, sir?

MR. ANGLE: Art Angle, Enterprise Rancheria.

I think the process of education for the governmental agencies and also the tribal agencies and how this consultation works is very important. I know that some of the tribal members that I deal with I am a foreign object to them. The conversations I carry on at the tribal council, the definitions are very vague to them because they are not really up on what I am doing.

I think an early meeting with the FERC agency

and with tribal councils will be excellent for the education process. I think that we could identify our needs as a tribal unit with FERC and that educational process can be a two-way street so the benefits at the end of the road to the process, it could be very beneficial at an early stage of education.

MR. McKITRICK: Thank you, Art.

Brett?

MR. VAIL: Jeffrey Vail with the General Counsel's Office at Agriculture.

MR. McKITRICK: Okay.

MR. VAIL: On the consultation issue, I just wanted to mention, I am sure the tribes are aware and many agencies to, but for a number of years there has been an executive order on consultation. The most recent one in November 2000 directed all federal agencies to develop a consultation policy that would set out a process for how you consult with tribes. A number of agencies have developed that in consultation with tribes.

It is an opportunity for FERC, who as an independent regulatory agency is encouraged, though not required, to develop that policy. But it is an opportunity for FERC to work with the tribes on a consultation process that you could then use at least

as a baseline for how you consult with tribes. You could develop that process with the tribes' involvement. At least have some framework for how this might work out in the future.

MR. MCKITRICK: Thanks, Jeff.

Dealing with tribal consultation? Is there anything else?

MR. BARTHOLOMOT: Just an observation on the ex parte. When EEI raised that, the concern about that, not in this particular setting, but I think the goal of the ex parte regulations and the case law that it is sort of founded on is to ensure that a licensing or permitting process, whether it is this one or any other federal communication, is done in a way that is fair and open to especially any competing applicants for a license and other stakeholders. I think we just need to be sensitive to that.

As John mentioned, the Commission's current version of their ex parte regs allows pre-filing discussions fairly robustly because you don't have a proceeding underway. But once you have a proceeding underway, and in some of the variations that have been proposed in this notice and comment process, we might have a proceeding starting somewhat earlier than it does now.

Then, it is important that we make sure that any information that is going into that decision-making process is on the table. The idea is to have prior notice of meetings, and so forth, and to run it in as open a way as possible.

I understand the concern about tribal, cultural and historic resources concerns and the need for confidentiality on some of those issues. I think the idea of the written summary, taking that into account, is a good tool. We need to be sensitive because there is a balance, there is a fairness and due process aspect to this. That is all.

MR. JOSEPH: Brett Joseph, National Marine Fisheries Service. I wanted to respond to the question that Dan raise and also to the discussion from the standpoint that our agency. First of all, we fully are supportive and recognize our obligation to conduct government-to-government consultations with tribes so far as we are exercising the role of a decision-maker. We are a decision-maker in this process. We recognize that FERC likewise is a decision-maker, the overall decision-maker in terms of licensing.

We are, therefore, supportive of FERC meeting with the tribes in whatever manner is determined best to work for FERC and relevant tribes one on one. It

would be probably constructive and helpful for us to be aware that this is going on, but we will not insist on being at the table.

We also ask and would expect the ability to do so as well. We do occasionally get requests from tribes to meet one on one with them, and that would be our practice. I would also say that we fully support the idea that has been raised regarding the use of a tribal liaison. That is something that we could do better. We have begun to institute in our agency, and it has so far worked well, so we encourage that approach.

MR. MCKITRICK: Okay, good. Dealing with tribal consultation specifically, was there --

MR. MCKINNEY: Jim McKinney, State of California, the Resources Agency. One of the current initiatives of the State Resources Agency is to more fully integrate tribal concerns into various state regulatory processes, and these include our California Environmental Quality Act issues over sacred sites. Now we are finding there is lots of common ground on hydropower licensing issues.

As a state agency, we would fully support tribal interaction with FERC early in the process. I found that when we met with the representatives on

September 20 in Sacramento that they were fully versed on FERC licensing, and they had a number of issues that were surprisingly similar to state issues in terms of recognizing state authorities, state rights, and the state need to be more fully integrated into the front end of this process.

If the goal of this rulemaking, and specifically these three days here, is to find a way to make the process more efficient, and a key way to do that is to more fully integrate the legitimate concerns of the states and parties and tribes that are involved here, I think front loading, fully integrating tribal interests early in the process would really meet the theme of this three-day session.

MR. MCKITRICK: Thank you.

MS. MESSERSCHMITT: Cathy Messerschmitt, Northfork Mono Rancheria. I agree with Mr. McKinney, and I think we are pretty vocal in saying that we did like the State of California's proposal because it does integrate and include everyone at the beginning.

I think that the licensees need to understand from our standpoint it is not our intention to hide anything or to keep someone out of the loop. That is not what these requests for government-to-government consultation with FERC are all about.

For us, as Mr. Howard said, there are confidentiality issues that we will not share with the applicant. You know, we have had experiences in the past where we had a hydroelectric company that kept artifacts that belonged to the tribe. We have merit and reasons for meeting on a consultation basis to protect confidentiality issues.

A summary I don't see as a problem as long as it is made very clear at the onset that confidentiality issues will not be in any summary. I think the licensee applicant could do well and would minimize their litigation process if they would learn how tribal governments work and how tribes work in general.

I think with FERC's help -- I think you would be a good liaison to help facilitate that. As a trustee, I think that, you know, in my opinion that is probably part of your responsibility of gaining knowledge is to pass that knowledge on to your applicants.

MR. McKITRICK: Thank you.

I think we have got a good beginning of maybe trying to resolve some of these issues and to flesh those out in the upcoming groups. I think there is a lot of common ground that we can reach. If there is one last statement here, I think we will finish that

and move on to the next question.

MS. BEIHN: Hi. Lou Beihn, Mono. I just wanted to make the comment that we are very pleased with the efforts that FERC has been making in our area. We are very happy with the representative. He comes and he is like a real person. You know, he doesn't just represent the bureaucracy. In other words, he gets out there and he goes with us and does things with us, and we have become friends along with all of the legalities that go with it.

Also, FERC has made it clear to us that they will meet with more than just the federally recognized tribes, they meet with the state-recognized and they meet with organizations and groups, whoever feels the need to meet with them and discuss the issues that are going on in our area. We are thankful for that.

We know that we have a long way to go, but it is a good start anyway. We want all of you to know here that is what we want. That is the goal we would like to reach with all of the agencies to get to know each other on a better level.

MR. McKITRICK: I understand. Thank you.

John has agreed on the questions that are coming up to give us kind of a FERC perspective to kind of help you frame some of your questions or comments to

us. The first one that we are going to bring up next is, Should an integrated licensing process apply to relicenses as well as original licenses? So, to kind of give you an idea of where we are coming from with that, John is going to get miked up again.

SHOULD AN INTEGRATED LICENSING PROCESS APPLY TO RELICENSES AS WELL AS ORIGINAL LICENSES?

MR. CLEMENTS: I think that the question is kind of obvious, but when I was first thinking about this all of the licensing processes that people have been thinking about were in terms of relicensing where it is pretty obvious. I started thinking, Should you apply it to an original license? So, I asked people, "What were you thinking about that?" The answer is most people weren't thinking too much about it.

I got some statistics from inside the Commission going back for the last ten years, and I said, "How many originals are there versus how many relicenses?" Because I was assuming there would be this vast disparity, that there would be only a few original license applications. I was actually surprised to find the number of original license applications that have been filed and are continuing to be filed, which was kind of surprising to me so I think it is a real, live issue.

Then I said, "Well, okay, if you are going to do that, how do you structure it when you don't have a notice of intent, there is no statutory deadline for filing an application? If part of sort of fundamental aspect of an integrated licensing process is the pre-NOI letter from the Commission with the information needs and the issues that people should start thinking about, you don't know when to send that.

Then, that lead to the question of could you kind of link it with preliminary permits, and maybe you could do that, too, which leads to the question of, Do we need to do something with the preliminary permit program in this context?

Instead of sort of handing them out like lollipops, Should we put more stringent requirements on what you have to do as the holder of a preliminary permit? Should we force people to do some kind of an integrated process where they have to bring everybody in where there is much more specific requirements to it?

I don't have any answers for any of these things. Some of the feedback we got was people thought we ought to try to link whatever we do hear with the preliminary permit program. Then, the other one was you need to recognize that study needs are going to be

very different because there isn't an existing project in place.

There is probably not going to be a lot of useful background data in place, and maybe that is going to take more time. Maybe if it is an original license application you ought to set up something a little separate that makes that start long before the license application is filed.

Then, there might be more time needed for studies in original license application cases, again, because there would be a lack of existing studies or just that studies would take longer just to get up. I am still kind of scratching my head going, "What should we do?" I would love to get some feedback from that, if people have ideas about how to move that football forward.

MR. McKITRICK: Okay. For those who may have come in a bit late, where this morning's discussion was fairly rambling, we are trying to stay on topic today. I appreciate you all trying to do that. John brought up a couple of real good questions here about should we even consider original licenses in this reg, and if you do, how do you go about doing that?

Is that almost a hand up, Richard, or were you just scratching your head?

MR. ROOS-COLLINS: (Shaking head.)

(Laughter.)

MR. DEWITT: Good afternoon. Tom Dewitt with FERC. John, I am sort of surprised, too. It is too bad we didn't have a chance to talk about this earlier. Did you subtract out those ULs where the projects was existing and operating? Because they would be original licenses also.

MR. CLEMENTS: It was a quick look, and I didn't draw any conclusions.

MR. DEWITT: We do a lot of ULs where there is existing project, whether operating or not operating, that are essentially original licenses.

MR. CLEMENTS: There were some ULs in the data set I looked at, but I have no clue as to how many relative to the total number. I just looked at it, and I was surprised. I thought that it would be, like, ten to one to relicense versus original, and it is not like that at all.

MR. MCKITRICK: Are we going to leave this up to John to figure out?

MR. CLEMENTS: Hey, you take what you get.

(Laughter.)

MR. MCKITRICK: The hands came up, ah.

MR. ROOS-COLLINS: Richard Roos-Collins.

John, as I understand, it is first in time, first in right; correct?

MR. MCKITRICK: On preliminary permits or--?

MR. ROOS-COLLINS: On original license application or preliminary permit.

MR. CLEMENTS: The first permit applicant in the door, you know, everything else being equal.

MS. SMITH: Municipal preference.

MR. CLEMENTS: Yes. On original license, there is a municipal preference. Yes, that applies to permits, too. Yes.

MR. ROOS-COLLINS: Does first in the door, then, establish a priority for a license, leaving aside the municipal preference?

MR. CLEMENTS: Well, if you get the permit, then it establishes your priority in terms of competing applications. It gives you the right once the application is filed to basically sort of match the other fellow's offer.

MR. ROOS-COLLINS: Well, at this point I am going to have to go off the HRC bandwagon, since you are asking a question that we haven't specifically discussed. Have you considered an arrangement where an original license application must be preceded by a preliminary permit? If you had an arrangement like

that, then the coordination which we have been discussing in the context of relicensing would occur between the issuance of the preliminary permit and the license application.

MR. CLEMENTS: I hadn't personally thought of that, other people may have. What I had thought of was just maybe putting in some pre-filing consultation requirements for original licenses that are just much more strict than what we have now, that actually require either the holder of a permit or not the holder of a permit to do much more in terms of pre-filing consultation. I hadn't developed it deeply. I hadn't personally tied it to whether that entity held a permit or didn't.

MR. JOSEPH: Brett Joseph, National Marine Fisheries Service. John, I take that as evidence that you may have read our comments at this point as you said you have, because your suggestion that the original license context is one that implies perhaps a greater need for studies, and consequently more time to conduct those studies is precisely a concern that our agency has.

We are supportive of, and we would answer the basic question in the affirmative. Yes, we believe that the integrated concepts that we are discussing

should apply to original licenses with the consideration of additional time to conduct studies. Specifically, with regard to preliminary permits, I think the consultation requirements there need to be beefed up to ensure that the stakeholders and the resource agencies are involved early on in the process to help shape those studies, because in many cases the information needs will be much greater, you are starting from less information, baseline information. Those concepts as you have laid out I think are on track with where we are coming from.

MR. CLEMENTS: Yes, I actually do read the comments. We didn't get a whole lot of comment on this. We had a specific question in the notice about, "Are there unique circumstances pertaining to original licenses?" There wasn't a whole lot of response I think probably because for the most part the industry is looking at their existing projects and has no intention of building anything new for the time being. It just wasn't a big issue for them, but for some other people I guess it would be.

MR. McKITRICK: Nino?

MR. MASCOLO: Nino Mascolo, Southern California Edison. John, I think your idea of expanding the regulatory requirements for filing a new

application is probably the right way to go only because just because an individual has a preliminary permit doesn't mean that they are not going to get competition from somebody else. A lot of times it takes a preliminary permit to bring a site to the attention of other individuals who may then also want to evaluate that particular site.

The question I have for you is, Is this similar, the dilemma that you are facing, of what you require of an applicant for an original license, is it similar to a dilemma as to what you would require for the relicensing application of a competitor, one who would not file an NOI as an existing licensee but would come in as a competitor to an existing license?

MR. CLEMENTS: I really am not quite sure where we should go with that, too. There has been so little competition on a relicensing, and I don't expect that to change, that it is just not something that looms very large but sort of my innate sense of what is appropriate. Of course, I am not making any decisions here, so I can talk.

The competitor should basically face the same set of hurdles as the existing licensee, and neither party should have an advantage, all of course consistent with the statutory framework. That is just

sort of in gross my sense that if there are competitors they should tow the same lines.

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board. There are unique circumstances with respect to original licenses, but the important thing to recognize is that the similarities with relicensing greatly outweigh those unique circumstances.

The same kinds of problems we see with relicensing occur just as frequently with original licenses. You wouldn't think that would be the case, because our perception is the reason there is no hurry to do the studies on relicensing is, well, then you get an annual license if they are not done anyway. Wouldn't there be a rush on an original license, since they can't go ahead until they finish the studies and have gotten the approval?

I think Mr. Roos-Collins' comment sort of hit the nail on its head. We see this a lot in our own Water Rights Administration, that since your priority is determined by your filing date, once you have got in a state water right system your application filing or in FERC licensing your preliminary permit, you have preserved your priority; you may not be ready to go with your project.

We see a lot of cases where there is a lot of resistance to doing the necessary studies in preliminary permits. We think the structure of setting a schedule to do the necessary studies is as much, if not more, necessary in the original licensing context than in relicensing to make sure the process keeps moving.

MR. McKITRICK: You would structure the preliminary permit with more studies as opposed to the existing regulation for original license and change that to --

MR. SAWYER: I think the first step is to recognize the need. I mean, once you recognize that we need this structure, then you can start looking towards the mechanism. The preliminary permit sounds to me like a good mechanism; but, as I said, once you recognize this is what has to be done, there are several different ways to structure it.

MR. McKITRICK: Okay.

Nancy?

MS. SKANCKE: Nancy Skancke. In connection with preliminary permits, I think one thing the Commission needs to really focus on are what one might call "rogue preliminary permit applicants," who come filing applications for preliminary permits on multiple

sites for which they have no ownership and really in many cases, a number of which I have been involved in, they have not even contacted the owner of the site.

You get this kind of situation, then, where the owner of the site may have for various reasons, whether they be environmental reasons or economic reasons, have decided not to go for a license but they are pushed into the process. They have to, however, react to the filing of preliminary permits by somebody who may not really have an intent to develop the site; they may have an intent to get a business benefit out of it.

You really need to address that, because what it says to me is you aren't going to want the FERC and the resource agencies to commit the resources for a consultation process early in the process in that kind of situation. Frankly, in trying to develop comments on this issue, I wrote out a number and threw them away because I couldn't quite plot them all out under the statutory confines.

Whether you have a permit process that somehow puts in a maximum preliminary permit if somebody has provided a certain level of studies and consultation, therefore indicating a real intent to do something, that may help or a shorter preliminary permit where

somebody really has done no work at all, whether it is a two-page application, what you bump up against is the need at the end of that process to have an application filed. That is probably far less than is necessary for the kind of analysis that would be for original license.

I am not sure if this a clean solution that retains the priority for a preliminary permittee and gets all of the front-end collaboration in. I am not giving an answer, but it is something that I think could track certainly the NHA process and some of the others that are similar with the front-loaded NOI type of meeting and interaction, if the applicant for preliminary permit and the preliminary permittee are really serious. I think you could track it, but you have just got to weed out the loose cannons.

MS. SWIGER: Mike Swiger, Van Ness Feldman. I don't have a lot of dogs in this fight, but a few little dogs. I think we are losing track of what the purpose of the preliminary permit is. I don't think, Andy, that it is the mechanism. I think the mechanism in the Part 4 regulations, possibly in the substantive requirements for license application or in the 4.38 consultation requirements, but not in a preliminary permit.

The purpose of a permit is not an intent to develop; a permit is just an intent to study. Yes, there is a lot of speculative, you know, preliminary permit applications that are filed, but that is what preliminary permit applications are for.

At the point when a developer gets serious about developing a project, then they will move into that three-stage pre-filing consultation process. Their permit gives them the priority of application, if there is a competing application. That is really the only purpose of the permit.

I think if we focus on what parallels do we want to draw between the relicensing rules and changes to the rules that apply to initial licensees, I think the only other point about that is probably at least with initial licenses the importance of preserving some flexibility for applicants in choosing their process. Integrated process is a very front-loaded process, and it requires a big commitment of resources.

There are a lot of people that get permits that never develop projects; there are a lot of people that get licenses that never develop projects because the market changes or the company circumstances change or whatever. You know, you get the license so you can get a power sales contract, so you can get financing,

so you can get your project built. However, people don't always have the resources to do the front-loaded project when they are developing a new project.

That is why some people developing a new project it might be more appropriate for them to use the TLP, which is not as front-loaded, where you can spend a few years consulting with the agencies and trying to figure out if you have a viable project or if there are insuperable environmental objections or whatever. So, I think we need to preserve that flexibility for the initial licenses.

MR. McKITRICK: If I understood you, I mean, you would keep the preliminary permits pretty much as they are now, just kind of first in time kind of thing, but you would be in favor of incorporating some of the integrated process into the original licensing, figuring out that even though we don't have an NOI, but to get them started earlier?

MR. SWIGER: I think it makes sense to give them the option of doing that. If someone has the resources and they are committed to developing a project, they may very well want to do an integrated NEPA project and put those resources into the front end of the project and get their license quicker rather than later. What I am saying is that not all

developers are in that situation.

MR. McKITRICK: I understand that, yes.

Mona?

MS. JONAPPAUL: Mona Jonapaul, Forest Service.

I think Mike just said a lot of points I was going to make about the purpose of the preliminary permit and what happens to a lot of these licenses. As opposed to Mr. Swiger, the Forest Service does have a lot of "dogs" in this issue. We have somewhere around 100 preliminary permits or things pending on National Forest lands, a lot of them through California up through the Pacific Northwest, going from almost zero to about three handfuls around Montana, Utah, also many up in Alaska.

I want to bring out for a process point, whereas for some existing projects in a new license situation, the Forest Service may or may not have special use permit authority. For all original projects on National Forest lands, we do have special use authority and we will be working with the applicant on a special use permit. If we are going to do an integrated licensing situation, that would be a key feature.

You know, just as licensees aren't monolithic, Forest Service regions aren't necessarily monolithic.

A number of regions will be looking in that special use permit for a construction bond or they will be looking at the finances of the licensee in determining whether a special use permit is appropriate.

MR. MCKITRICK: Mona, do you get involved in the preliminary permit stage with special use permits, or just the application? So you are just talking about when they file?

MS. JONAPPAUL: (Nodding head.)

MR. MCKITRICK: Okay. Good, that is what I thought.

MR. DEIBEL: This is Bob Deibel with the Forest Service. They have to get a study special use authorization. It is not as detailed and some of that does require compliance with our Sensitive Species Program and the Endangered Species Act, I think, depending on the amount of disturbance the studies will do.

MR. MCKITRICK: Okay.

MS. JONAPPAUL: I wanted to go back to the timing issue. You know, some unconstructed projects, some proposed projects on National Forest lands have been the subject of complaints to Congress, to USDA, and are the subject of the FERC 51, FERC 37 group. Again, timing is an issue in these licensings.

I will go back to my issue this morning with the TLP. We want to come out of this, Forest Service wants to come out of this, that we are not going to have a situation where an original licensing is going to go on for 10, 15, 20 years because that is not doing any of us any good

MR. McKITRICK: Okay.

MS. JONAPPAUL: Somehow I want to figure that out in this matter.

MR. McKITRICK: Okay.

MS. JONAPPAUL: That is a real issue for us.

MR. McKITRICK: That is good. As I understand the issue dealing with the original licenses at this point, it is maybe two -- and correct me if I am wrong -- but I think we are dealing with should we look at if there is an integrated process for original licenses, then should it be part of the existing regulations that are then expanded.

Then, there was an argument that perhaps we should look at preliminary permits and putting more requirements in there. If that is the focus of the discussion, if there is any resolution or any other ideas with that, we certainly want to hear it or if there is any conceptually that original licenses just shouldn't be considered, we should just leave it alone

as it is and just deal with relicensing.

Brett?

MR. JOSEPH: Brett Joseph again, National Marine Fisheries. I think, I mean, this is obviously a complex issue. I think a balance needs to be struck because under the existing regulatory format, yes, the preliminary permit serves a slightly different purpose but the first time we see the application is when it is filed. We run into a situation where the information development is less than we have, especially with some of the things we are talking about here with an integrated process, then from a resource standpoint that is a real problem for us.

I mean, the gentleman here said it right. The purpose of the preliminary permit is studies. However, part of those studies need to include, you know, if there is a way that we could have, like, certain standard types of resource studies that are done in virtually any licensing situation or any original situation, I mean, just some baseline information that needs to be developed. This may be one means to address this problems of the speculative entity that may abuse that process without having any serious intent.

I mean, I understand the concerns on the other

side, but I think we need to find a balanced approach that doesn't stack an excessive burden either on the prospective applicant or the agencies, who don't want to be spending time on permits that are never going to materialize, but at the same time that ensures that enough lead time is built in where there is the requirement for studies and consultation before suddenly an application pops up out of the blue without any information behind it.

MR. MCKITRICK: You as an agency spend quite a few resources on preliminary permits even as they exist now?

MR. JOSEPH: I am thinking in terms of perhaps the idea of levels of preliminary permits, depending on how serious the applicant is. However, at the relatively more serious level, in other words the level where it looks like it is going to move forward, I think the preliminary permit is an appropriate vehicle to require standard types of studies, studies that are done in virtually any case and that pertain to information that will be required in virtually any licensing scenario.

Of course, that is something that would have to be developed. I mean, there have been some good ideas about that developed in the hearings, and I am

sure we will get to those. However, that is one area where I think a concept that we are looking at in the integrated process could apply equally with the preliminary permit for an original license.

MR. McKITRICK: Just for my clarity, it has been a while since I dealt with a lot of preliminary permits, but doesn't the permit require the permittee to consult with all of the appropriate agencies to start defining those studies, or am I just wrong?

MR. JOSEPH: Actually, it really doesn't matter.

MR. McKITRICK: Okay.

MR. JOSEPH: The preliminary permit regulations address that because the pre-filing consultation regulations in 4.32 or 4.38?

MR. McKITRICK: It is 4.38.

MR. JOSEPH: Okay, 4.38 requires consultation with the resource agencies anyways.

MR. McKITRICK: Thank you.

John?

MR. CLEMENTS: So it will never be a complete surprise.

MR. McKITRICK: Thank you, John.

MR. SWIGER: I don't want to belabor it too much, but what Mona said made me realize, you know,

there are hundreds of these things out there. Agency resources are spread thin enough as they are, and I don't think any of us in this room have an interest in diverting those resources toward requiring preliminary permit applicants to consult with the resource agencies. Secondly, FERC has a mechanism for getting rid of speculative projects that linger on and on, and that is just don't issue, continue to issue, consecutive preliminary permits in this case.

MR. MCKITRICK: Okay.

MS. SKANCKE: Nancy Skancke. Again, one thing that Brett was talking about that also came to mind was the idea that FERC might -- the risk of the repeated preliminary permits which may be used as a way of trying to get into consultation, and, therefore, try and do an integrated process before the application as opposed to just doing the TLP raises the problem about priority.

When you get to the end of your preliminary permit, then other people can come in because you have done all of the legwork and maybe somebody else will step in. There is a risk there. One thought that came to mind in going through this was the idea that perhaps FERC has the flexibility of issuing up to 36-month permits.

Maybe FERC issues an 18-month permit. If you are really serious, you will start showing some evidence of work and you get an automatic extension that gives you priority. It is the whole interplay with the priority that is the problem. I would hate to think that the integrated process couldn't be used for a preliminary permit original license. I think there is a way, it is just going to take some creative thinking to preserve that priority.

MR. MCKITRICK: I think that is some of Tim's line later which is, "Be creative with these things." May we have one last thing on integrated licenses, original and relicensing?

MS. HARN: Joan Harn with the National Park Service. In the Department of Interior comments, the suggestion was made that the preliminary permit result in a pre-scoping document that would begin the initial consultations, rather than resulting in a license application. That would give the resource agencies and others the opportunity to suggest additional studies that might be needed and allow the time for all of that to happen.

MR. MCKITRICK: Very good.

If we can move on to the last question on the slide, which is: How should FERC cooperate with other

federal agencies in NEPA documents? Maybe, John, if you could kind of give us a--?

HOW SHOULD FERC COOPERATE WITH OTHER FEDERAL AGENCIES IN NEPA DOCUMENTS?

MR. CLEMENTS: Yes. The big thing there was the MOU's. If you are familiar with the NRG Proposal, they suggested that the Commission should basically sort of have an umbrella MOU with each of the other federal agencies, and then in specific cases there would be an MOA to work out the nuts and bolts of how the agencies would work together as cooperating agencies in developing the NEPA document, and the NEPA document would be something called "non-decisional" and would have some other bells and whistles.

I didn't want to go to quite that part of it. I just wanted to think about how practical is it to have that kind of a requirement. I can only speak basically sort of from past experience for myself, but I know that cooperating agency agreements have not always been a panacea. Sometimes they result in things taking a lot longer, and sometimes there are a lot of sort of fundamental analytical differences between agencies.

I can see how people's resource allocations, you know, just within their agency would affect their

ability to timely act in a cooperative agency document.

Then, there is sort of the "horse to water" question.

An agency might not want to be there, and if it was there, notwithstanding, how much priority would it give to it?

There were, I think, a fair number of comments along those lines of people questioning whether that is a good idea, or, if so, how it ought to be implemented. So I would kind of like to see if we could get some sense of that.

MR. McKITRICK: That was putting something about cooperating agency status in the regs, is that, as opposed to--?

MR. CLEMENTS: Yes. That particular proposal contemplates that the Commission would enter into these things and that the regulations would provide -- and I it wouldn't necessarily be mandatory, the proposal is more flexible than that, but it is sort of the assumption that the default case is that there would be a cooperating agency agreement.

MR. McKITRICK: I understand.

MR. CLEMENTS: Some commenters even suggested we try to do that with the state 401 agencies as well and kind of roll every agency with some sort of decisional authority into this one thing.

MR. McKITRICK: Good.

MR. VAIL: Jeffrey Vail with the General Counsel's Office at USDA. I guess the first thing I would say about the whole aspect of cooperating with FERC as a federal resource agency is that you don't need an MOU to do it, and that has been proven in a number of projects.

I don't want to disparage the idea, but more so ask FERC to comment on where FERC sees the difference between the ability to work with the resource agencies where the resource agencies are designated cooperating agencies as that term is understood under NEPA regulations, and cooperating with resource agencies where they are not designated cooperating agencies, where you simply work together to the extent your regulations allow?

If John or somebody could comment on what, if any, impediments would exist where we work together, but we are not a designated "cooperating agency." The reason why I ask that is because I know unless there is a change in policy that Agriculture has no interest in giving up its right to intervene, and I don't believe the other resource agencies have an interest in that outcome, either. I don't hear FERC volunteering to change that policy.

MR. CLEMENTS: Oh. That issue is definitely in play. I mean, everybody -- not everybody, but a lot of people have brought it up. As I recall the comments, they weren't just from other federal agencies, but there were people sort of across the spectrum that thought we ought to revisit that policy, and, just for discussion purposes, kind of just assume that it was reversed and then try to go on to the more sort of practical nuts and bolts things. That is kind of where I was coming from.

MR. VAIL: Okay. But if you wouldn't mind, assume that the policy is not changed. What in your view are the disadvantages to working with a federal resource agency on NEPA process for licensing where we are not a designated cooperating agency?

MR. CLEMENTS: Well, I don't see a specific disadvantage to that, but then I have been lawyering for a little while now. Maybe somebody from our actual office ought to address that?

MR. McKITRICK: As far as still interested in using our NEPA document and tiering off of that, you could do that. My understanding is as a cooperator in the official NEPA sense or not, it is out there. If there are other types of things that you are having problems with, maybe bring them to our attention.

MR. VAIL: I am just thinking that there would be some ex parte concerns if we are not designated as a cooperating agency. Am I wrong?

MS. SMITH: No. Ann Miles. No, there would be ex parte concerns if you were not designated as a cooperating agency so that everything, any conversations or information needs, that you would have need to be done publicly. Discussions? I think we could try to set it up so that our document became usable by you, that you could adopt it at the end, and that is the goal of an integrated process is to actually have that happen.

However, it would have to be done on the record, you know, what you need, what you need to see analyzed, things that you might need that we wouldn't necessarily need. We would need to get that all out through the record. Then, you would be reviewing it at the same time that everyone else was reviewing the draft.

MR. ADAMSON: Dan Adamson with Davis Wright Tremaine. Just in response to the question, I think it might be useful for FERC and the resource agencies to have overarching memoranda, even though those would be very difficult to get to. I think those could serve a useful purpose.

I think in terms of individual projects I am concerned that could take as long, just getting agreement on that memo could take as long, as drafting a NEPA document. There are a lot of differences of view between the Commission and the agencies about the scope of their respective jurisdiction. I am just not sure that would be a constructive exercise. It might be constructive in one or two limited cases, but I don't think you would want to do it as across-the-board policy.

I read the NRG Proposal to contemplate kind of dividing up the drafting of the NEPA document, and I also don't think that is necessarily the way to go. I think we get a real benefit from having one agency take a look at all the conditions, whether they are reasonable and how they fit together, and I think if you divide that up you lose that.

You also get into a situation where, let's say, the drafting is divided amongst four agencies and three of them are timely and one of them is not, then you are in a position where you are just waiting for that outlier. That agency may have a good reason for not completing it, maybe they didn't have the funds or maybe there was some kind of crisis. I think that FERC does a reasonably good job of moving NEPA processes

along, and I think it is sort of a forcing mechanism also. So, I am very concerned about any kind of step that would involve, you know, dividing up the drafting responsibility.

Thanks.

MR. McKITRICK: Okay.

Richard?

MR. ROOS-COLLINS: Richard Roos-Collins.

John, you asked how practical would it be to implement the NRG Proposal or something like it. My question back is, How practical is the status quo? I mean, we are here in this room. This rulemaking is ongoing in part because the Commission, federal agencies, state agencies and tribes do not cooperate as a matter of course in drafting the environmental documents they need for their decisions and routinely dispute both the substance and the procedure that is used.

Essentially, all the NRG is asking is, and the HRC supports the question, Is that the best we can do? Now, a cooperating agency relationship doesn't have to be 50 percent drafting by FERC and 50 percent drafting by the cooperating agency. In fact, it could take an almost infinite variety of forms.

The key is that FERC and the cooperating agency agree from the get-go on who is going to do what

on what schedule. It is about transparency. It is about giving up your complaining right in exchange for sharing the responsibility of preparing the environmental document that you need for your decision.

Yes, if you think of it as red tape, it is not worth doing; if you think of it as transparency, all we are asking for is that the Commission and the agencies which must have environmental documents as the basis for their decisions systematically decide, and early, how they are going to do it.

MR. CLEMENTS: Boy, you make it sound so easy.

(Laughter.)

MR. ROOS-COLLINS: I am just saying it is easier than the status quo. That is why we recommend it.

MR. McKITRICK: Tom?

MR. DEWITT: Just I guess a couple of observations, I am not sure if they make any sense any more. We do have an MOU with the Corps of Engineers. Certainly the Corps is not in the middle of all of the projects that we work on, but we don't have problems with the Corps of Engineers or we don't have long protracted negotiations with the Corps of Engineers, so I think there is something that can be said about those MOUs.

As to the MOA or the individual project MOA that was part of the NRG Proposal, I am wondering, those who sort of proffered that, how different is that from a communications protocol or an operations protocol that we require now for an alternative licensing process?

If you are in it for the collaboration and try and get through this in a reasonable way so that everybody comes out with something, then I would think that it is an MOA that can be crafted fairly easily and it is no easily and it is no different than a communications protocol or an operations protocol that I know that Interior uses.

MR. MCKITRICK: What we are looking for specifically I think is the post-licensing aspect of this, right, the MOUs or dealing with the NEPA documentation?

MR. CLEMENTS: I think that is what is in there.

MS. CONANT: Kathryn Conant with the National Marine Fisheries Service. I support the concept that Jeff made earlier about USDA's interest in trying to ensure that the NEPA document covers the issues for our federal agencies specifically dealing with fish issues and flows. We have a strong interest in making sure

that the NEPA document adequately covers the resources that we are concerned with.

On the other hand, we also do support FERC in reevaluating the ex parte concern on the intervention in the cooperating NEPA conflict as currently exists. We are probably unlikely going to be changing our preference towards intervention in lieu of cooperating NEPA documents.

We have had success cooperating on NEPA documents with other federal agencies, and would like to continue that. We would like to have that opportunity with FERC. Our concern is that, from a staffing standpoint, we don't want to be put in a situation where we are obligated to cooperate on all NEPA documents, especially even if we are having mandatory conditioning authority because we don't have the staff resources to be able to do that.

We would like to be able to retain the opportunity of deciding on what specific projects we would cooperate on. That would be one of the concerns that have on this general, overarching NEPA or MOA, if that would obligate us to specific obligations on projects that we wouldn't necessarily have the interest in cooperating.

(Simultaneous discussion.)

MR. CLEMENTS: I'm sorry, let whoever was, go.

MR. FENFER: Larry Fenfer (phonetic) with Interior. To echo some of what I have heard, but to come up with some other points, my recollection is that CEQ guidance strongly suggests that you do have an MOU if you are going to pursue cooperating status.

That said, cooperating status can take many forms, from cooperation on every aspect of a document to something that is much more narrow. The important thing is that be out there as an agency that agencies can act on or not.

They can choose to be cooperators or not, and they can choose to cooperate in any way long that continuum. I think that is what is important, and that is part of what you are hearing from my colleagues. Because it is going to vary depending on the circumstance.

The other part of that, though, is that progress in this area is going to be a lot easier if the role of the NEPA document is somewhat recast, not just to try and incorporate the purposes and needs of all of the agencies, but also to make it much more sharply and clearly the kind of document that we are more familiar with working on, that is: a document that is analytic and disclosure-oriented as opposed to one

that is decisional or that makes specific judgments and pronouncements on proposals.

It is that thing that I think is hard for a lot of the agencies and leads to a lot of the other problems and issues that we run into. If we can make progress on that, I think that may radiate outwards and help us on a lot of the other areas.

MS. MESSERSCHMITT: Cathy Messerschmitt, Northfork Mono Rancheria. I was trying to get my comment in last because it is sort of a blanket issue. I know you are talking about whether or not you want to do an MOU or an MOA with NEPA, but I would like to give you an example where I think FERC needs to consider doing MOUs or MOAs with these federal agencies.

I noted that Mr. Vail said USDA is not willing to give up its power of involvement in NEPA. But, like, for instance, in one of the projects that we are working on the Forest Service was able to stop the project for six months, which is going to make the whole ALP process even longer.

If FERC had an MOU with them, they could say, "Come on, you guys need to be reasonable here. You need to open the lines of communication and fix this issue." But because you guys don't have that or you have no way of getting USDA to cooperate, you know, we

are stuck. I think that is something maybe you need to consider about, you know, working in partnership with these agencies instead of just allowing, you know, blanket power to be able to stop a process like that.

MR. CLEMENTS: I am not quite sure how to respond to that. What we basically have is the power of persuasion on these things, and I guess that is the same power that they have; it doesn't always work.

Just one other thing I would mention with respect to the cooperating agency thing is that I can see that if, for instance, agencies had different views of what the baseline ought to be, and I hate to keep bringing that but everybody else does, it would be difficult to work with that agency cooperatively to develop a joint analytical NEPA document if you couldn't get over the first hump of what the baseline is going to be for studies.

That would be a very difficult thing to do, and that could bring something to a grinding halt. There may be ways to work around that, you know, outside of the cooperating agency context that can help get you to the end, but I don't know where the answers lie to this.

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board. We strongly support the

development of both the joint NEPA and little NEPA or what we call CEPA, "California Environmental Quality Act," documents in part because that is what our own environmental statute calls for and in part because we see that as one of the most important efficiencies that is possible to improve the decision-making process.

As far as the baseline is concerned, at least in our state, our little NEPA baseline and the FERC NEPA baseline are the same. What is key to us is to recognize that the baseline for the environmental impact statement, environmental impact report is not somehow a ceiling for what issues need to be studied to comply with other environmental laws.

As for the need for an MOA, if there is a willingness to cooperate, if the goal is to prepare a joint document, you will get there. I think it is going to vary depending on whom you work with whether you need a master memorandum of understanding or can deal with it case by case. We have a lot of successful experience with other federal agencies in preparing joint documents without the need for a master agreement covering all of them.

The only thing I would say is it tends to be developed on the federal agency schedule and not ours in our experience, and that is some frustration to us

because their schedule is much slower in most cases, in fact in all cases I can think of. Nonetheless, we do get to a joint document.

The one point I would stress, though, is to get to a joint document we need to work together on it. That requires, as some of the other federal agencies have said, an informational document. One reason we very strongly support cooperation between FERC and the other federal agencies is if it works for the other federal agencies, it is much more likely to work for us as well. However, we have to be working together on it.

In our state, we can use a document prepared by somebody else, but only if we make a finding that that document represents our independent judgment. That does mean that we need to be participating in the final stage in preparing the responses to public comments, because otherwise we cannot honestly say that the final document represents our independent judgment.

We have worked with other federal agencies that may have a different preferred alternative than we. I mean, we can work it out, so long as it is an informational document we can work it out, so that the document as a disclosure document represents our independent judgment as well as the other agencies or agency, usually it is one federal agency, that are

working together on the joint document.

With that willingness to cooperate, recognition that that means we do have to be involved in the final NEPA is possible and is successful and is much better than a process where each agency is preparing its own document.

MR. McKITRICK: We can certainly work with cooperating agencies. Do you believe that there should be something in the regs that either talk to that, either require it, or make it an option or the ability that we have to do now is okay? Do we need to change anything in regulations to do that?

MR. SAWYER: Well, certainly it is not working now. To some extent it needs to be specific in the regulations versus something flexible in its application, but it is not going to work if our participation in preparing the joint document is ruled under an ex parte interpretation.

MR. McKITRICK: I understand that, I understand.

MR. CLEMENTS: We have got 20 minutes, and then another slide.

MR. McKITRICK: Okay.

MS. WEST: I will be real quick. I think it maybe has been said. I think the intent is that the

joint document would be serving all agencies' needs, that is the intent, and that it be informationally and analytically based as opposed to a decisional document. Don't get hung up on the details of who is drafting, because it could be still a third party contractor drafted, but everybody has to have the sense of ownership, joint ownership.

MR. McKITRICK: Good.

John, brought to my attention that according to the schedule we have got about a half hour left and a couple more questions.

Andrew?

MR. CLEMENTS: Another slide.

MR. FAHLUND: I just have a brief comment on this subject. First of all, I think the idea of differences in agencies baselines is a bit of a red herring as far as this question is concerned. If the document is analytical, you are basically focusing on reasonable alternatives, some reasonable alternatives. They are maybe all forward-looking, that is fine.

I think that if FERC is the lead agency even in a cooperating sense, they have the option of identifying what is the preferred alternative for the NEPA document. They can preserve that right, and other

agencies may choose to disagree.

I guess I wanted to make one point or ask one question of you all based on something that Larry said, and that is, at least a couple of proposals had suggested that the Commission issue a draft record of decision or draft license articles for public comment. I wondered what the reaction of staff to that proposal was at this stage of the game?

MS. MILES: Ann Miles. I think that is certainly a possibility. Issuing draft license articles seems to be a way that might give everybody a heads up to see specifically what is there. We try to spell it out in the final environmental document now, but it is not the same as reading an article, we realize that. That is certainly on the table.

I have one thing, and this is really just a question that I can't get by, and I am not sure we put it in our worksheet for tomorrow, so the group that is dealing with this is would be great if you could take it up. It has to do with having an environmental document that is strictly analytical, not decisional.

What I couldn't quite figure out is how you then do what is needed under 10(j) without having a preliminary determination, do your Endangered Species Act consultation which requires an option, a

recommended option, and how you integrate the findings of the various agencies that need to make the findings. At what point, do you then pull it together? So, if the group dealing with that tomorrow, that is a really hard thing for us, and we need for you all to put your heads together on that.

MR. McKITRICK: Well, that is a question for tomorrow?

MS. MILES: Yes.

MR. McKITRICK: Okay. Thanks.

Is there anything dealing specifically now, before we move on, with cooperating agency status?

Mona?

MS. JONAPPAUL: Mona Jonapaul, Forest Service. I just want to point out in our other sort of MOUs with other agencies like Federal Highway Administration when we give terms and conditions to them to go into something, they go in there. They don't get judged by FHA; they go in there. That is very different from the experience we have at FERC.

You know, I think Larry described it pretty well. We will see an analytical document, we will see our terms and conditions in there, and that will be it. It starts becoming a, FERC's NEPA document starts becoming, decisional when we start seeing FERC staff's

opinions on our terms and conditions.

Right there it becomes a document that is difficult, and we see it as an agency as predecisional right there or else decisional. That is something that is very difficult for us to continue to use, the FERC NEPA document. We have to get past that somehow. The joint drafting I agree is something that can be worked out one way or the other.

MR. McKITRICK: Okay.

MS. JONAPPAUL: But for us to use it, this is not our experience in other circumstances. I also would take issue with the statement that there has to be a preferred alternative. I certainly would defer to those who are more experienced with CEQAs, but my understanding from our NEPA people is that you "may" have a preferred alternative, you don't have to have one. Again, this is something that I think we should visit somehow in this rulemaking because that preferred alternative, again, looks like it makes it a decisional document as far as our agency goes.

Bob, do you have something to add on?

MR. McKITRICK: One last thing, and then we will have to move on.

Bob, okay, well I will give you two.

MR. DEIBEL: Okay. Thanks, Ron. This is

Bob Deibel with the Forest Service. Just to follow on what Mona says in addressing some of Ann's comments, I think the difference is when folks are talking about a disclosure document it is saying that, you know, an applicant proposes to go with 5 CFS and then the agencies or the state has recommended 10 CFS. Like Mona said, FERC's staff will come in in the disclosure statement about aquatic effects and say, "10 CFS is unneeded." Just display what the relative difference is in terms of the resource of interest.

Ann, in my experience with FERC documents on the 10(j) issue, you have a section on balancing in 10(a). You can go through all of that without tainting the disclosure of effects in the respective resource sections. So, I think it is an easy fix. It is just that my experience in seeing these documents is that they are loaded with judgments in the middle of the resource discussion.

MR. MCKITRICK: Thank you, Bob.

Then, one last thing dealing with cooperating status or--?

MR. DIAMOND: This is David Diamond with Interior. I have just a quick open-ended question to finish this off here just to take a look at the gas side of FERC. I know that Interior bureaus have

cooperated successfully there including states as well.

I don't know what the prevalence is of MOUs or how that has been gone about, but we probably should look into that.

MR. McKITRICK: Dan?

(Laughter.)

MR. CLEMENTS: You have got to go to the next slide, Ron.

MR. ADAMSON: Yes. On the gas side with MMS, BLM or, for example, California Lands, those agencies seem to be comfortable with the current Commission policy of, you know, choosing either to be an intervener or a cooperator. I think that is certainly a precedent that I think is a good one.

SHOULD THE LICENSING PROCESS BEGIN BEFORE THE 5
TO 5.5 YEAR DEADLINE FOR FILING THE NOTICE OF INTENT?

MR. McKITRICK: Thanks, Dan.

Next to the last question, 15 minutes. Should the licensing process begin before the five to five-and-a-half-year deadline for filing the notice of intent?

MR. McKITRICK: John, again, what is your thinking?

MR. CLEMENTS: Well, that one came up in the context of the California presentation. As I

understand it, the basic thinking behind it was that you wanted to make sure that you had sufficient time to conduct the necessary studies. That might take two years or three or years or however many years it might take, but that you needed to start even earlier than the notice of intent in order to get those things done.

The premise that the other proposals go on is that you have got sort of a basic two-year study design concept, and that there might be additional information after that, but that would be the exception rather than the rule. I am not sure that the California one quite goes there, if people have thoughts about that.

The other concern is one of our fundamental objectives earlier on, or at least one of our fundamental objectives, was to try to reduce the length of time that the process takes. If you go back farther and farther before the NOI, are you ever going to get there?

MR. MCKITRICK: Addressed to California -- oh, I'm sorry.

MS. CONANT: This is Kathryn Conant, National Marine Fisheries Service. I kind of have a related question to this, because it is something that I have been thinking about since participating on the IHC but also looking at the NRG proposal.

I mean, California I know is proposing a more formal approach to the beginning, but the NRG and the IHC have also proposed this informal of just FERC sending a notice before the license expires, the pre-NOI letter.

The concern that I have or the question that I have is, Are people concerned with that? Like, for the bean counters, are they going to consider that just as lengthening the process almost as much as maybe a more formal approach that California is taking or has suggested?

MR. CLEMENTS: I am not going to speak for the bean counters.

(Laughter.)

MR. MCKITRICK: (Laughter) Who is a bean counter?

MR. CLEMENTS: No, I think one thing if there was some hypothetical bean counter listening in is they might be interested to know that there seems to be a lot of support for that letter and maybe more prior to the NOI, and that seemed to come from across the board. That tells me that there is kind of a substantial school of thought out there from all the interest groups that there ought to be more going on before the NOI.

MR. McKITRICK: Ann?

MS. MILES: I wanted to say one thing. I don't think there is going to be a lot of -- I won't speak for the Commission I will just speak for me -- when the complaint for years has been time, how long it takes to actually lengthen what is out there, I just don't know that has a chance of flying. I mean, somehow I think we have to -- this new process needs to do good things, but it needs to do it in a very reasonable period of time. What am I looking for? I am looking for schedules. We need to be --

MR. CLEMENTS: We need to keep the train moving.

MS. MILES: That is still not the word I am looking for, but it is too late for me to think of it. Anyway, I am not sure there is going to be a lot of interest in making longer on the books. You know, something may happen that requires it to need to go to a longer timeframe, but what we are looking for is how to do this in a more condensed timeframe.

(Technical audio interruption.)

MR. McKITRICK: We have a plan that batteries will die on all of these things in 10 minutes.

(Laughter.)

MR. SAWYER: I should have asked permission or

something. I would take strong exception with the suggestion that we are lengthening the time. The key here is to finish on time, not to start as late as possible and then have year after year of annual licensing because you haven't done the process right.

If you want to have enforceable timeframes, you need to start with realistic timeframes. If you start with the idea that we want to make it look like a five-year process, even though it may take ten because we have skipped processes and we ended in the annual licensing, you are doomed to failure. You need to set a reasonable schedule so then you can live by it.

Again, in going to 6.5 years we are shortening the time. There is simply no question about that. We believe you need a structure that allows sufficient time and hard work up front to determine the scope of the studies, a two-year period for those studies, and then work them into the environmental documentation.

We think the time we have suggested for that is realistic. If you instead say, "We are not going to start until five years before," then you either set a schedule that is not realistic and you are just going to be missing things and then at the end you will need extra studies, or you are going to be agreeing to multiple extensions along the way. Either way it is a

longer time frame. I think you need to set a realistic timeframe and then live by it.

MR. CLEMENTS: Andrew, refresh my memory.

When does the 401 application get filed in your process?

MR. SAWYER: A year before the license is issued.

MR. CLEMENTS: Okay.

MR. BARTHOLOMOT: Two observations. Was I next?

MR. McKITRICK: Oh, there, I'm sorry (laughter). Yes?

MR. BARTHOLOMOT: Henri Bartholomot. One point EEI made in our comments is to encourage the Commission to avoid duplication in the licensing process. I think one thing I took from your remarks, Ann, is a good starting point in thinking about this.

If we can make the process address some of the concerns about early issue identification and early study identification and work within the current five to five-and-a-half-year timeframe pre-licensing, I think that ought to be the goal because it is looking at a way to make the process within the existing timeframe work, work better.

It is hard to generalize. I understand the

sense that, gee, that may be tight for individual projects, but it is hard to generalize that for all projects. I would actually hope that when you have three to three and a half years from that NOI stage to when the application goes in that would be ample time to do that -- issue identification of study requests, process and actually do the studies -- and have that incorporated in the license.

The other point is that as we are looking at offering options to applicants that that timeframe is going to depend in part on which process, and so if you are talking about a heavily pre-filing scoping and NEPA-loaded process, that may put a little more pressure on folks. That is why I think we have said, yes, the idea of early notice to applicants so that they can factor that into their decision process makes sense. But, again, not one size is going to fit all.

MR. MCKINNEY: Jim McKinney, the State of California, the Resources Agency. I want to echo some of the comments of my colleague Andy Sawyer. In my view, the difference between 5.5 years and 6.5 years is a political difference; it is not a substantive difference. It is not a difference that is based in the data on how long it actually takes to move to a relicensing, to come to agreement on what the study

plans are, to implement the studies, to analyze the results, to prepare a draft application.

As California said in our written comments, relicensing is hard work. When you are working at 30 to 50-year intervals, it takes a lot of data, it takes a lot of good science, it takes a lot of good analysis, and a lot of discussion afterwards. On a 50-year timeframe, a one year difference between 5.5 and 6.5, in my mind, is just negligent.

Well, a couple of more points. In California, we have had annual licenses renewed for 25 years, for 18 years, and we have two that are now at the 10-year mark. That is quite a bit longer than this five or 5.5 years, and they generally tend to run over.

One of the concerns we had with the FERC 603 Report is that there were a lot of assertions that the process takes too long, but there wasn't methodologically sound data upon which to make those assertions. That was our finding from the State of California, and Interior and the GAO all reiterated those findings.

What we are trying to offer with our proposal is some regulatory certainty. All the proposals on the table thus far call for a shorter, cheaper timeframe, yet there is no mechanism to force applicants/licensees

to do the studies that need to be done so that state and federal regulatory agencies can make the decisions they need to make based on state and federal law on a sound evidentiary record that uses good science.

Until you have enforcement of timelines and FERC stepping up as a federal lead agency, the 5-year, 5.5-year goal, I think, is going to be politically expedient, but we are not going to get to our common goal.

I think all licensees, state agencies, tribes and federal agencies share this, which is to have a process that results in better decisions that is more administratively efficient and doesn't waste utility dollars or ratepayer dollars.

MR. McKITRICK: Good. I would suggest as we go through this to realize I think -- the point is it is going to be hard for us to codify some of this in regulations, extending time periods, not that there may not need to be additional studies, but help us find ways that maybe we can do that and not make it so that we have a six- or seven-year process pre-filing.

Let's have one last question and then move on to settlements, with the reality that as we start to come back to this and have an ability to discuss this over the next couple of days, to come back Thursday and

maybe have some actual resolution of some of these questions.

MR. BECHTEL: I don't want to be last, I saw Andrew as well.

MR. McKITRICK: Okay.

MR. BECHTEL: Only that I represent the governor of Oregon and the State of Oregon and have coordinated a lot of states since the eighties. When we go before the congressional committees, we are always criticized basically because of late, late licensing that have long expired or they are in annual licenses. They could be 5, 10, 15 years late. No one complains if they are actually done on time.

Our point is that the states and many of our colleagues are criticized through all of these years for not having licenses to be completed on time. Then, we have seen legislative initiatives that have also set very difficult timelines and benchmarks within those processes that were almost doomed to trigger and fail.

Where California is coming from and where almost all of the folks that I work with are coming from is that we really want a process that really works and makes all look good and fair. So, you have got to have reasonable times there and allow the process to move forward. We think California is that, because the

timeframe also scopes down. If you have agreements, it doesn't take that entire six years, six and a half years.

MR. McKITRICK: Okay.

Andrew, you have the NGO perspective on this, so we will let you have the last word.

(Laughter.)

MR. FAHLUND: I wanted to support the interests of the state of California. I mean, I think we have expressed similar interests in the past and share the interest in actually getting to a resolution in a timely manner, but actually having a process that is realistic.

We, I think, recognize the political challenge of the optics of extending that time period. Our proposal really focuses on a really hard and, arguably, more rigorous set of requirements up front, in other words, than notice of intent and the initial consultation document -- I forget what we called it -- has to have a lot more in it in order to really meet the schedule of five and a half years. If you don't have that, then you are kind of lost.

There is going to need to be some kind of an enforcement mechanism that if somebody comes in the door with an initial consultation document or a notice

of intent that is incomplete, that there are consequences for that, and that the delay that results in the end is not laid at the feet of the states through political means or at the feet of the environment or tribal interests or whomever is victimized by delay.

I am not suggesting that licensees ought to be held responsible for all delays, no by any means. I think everybody has got to have responsibility for that. However, right now, as far as I can see, there is not very much accountability for folks who aren't willing to come forward with really robust information right from the get-go.

HOW SHOULD A NEW LICENSING PROCESS
ACCOMMODATE SETTLEMENTS?

MR. McKITRICK: I understand.

The last question is, How should the new licensing process accommodate settlements?

John?

MR. CLEMENTS: Well, I guess mentally I will just go back to the slide we had. Virtually a lot of comments, virtually everybody commented on this. People wanted guidance for us, first and foremost, but we didn't get a lot of specifics about what kind of guidance we were supposed to give.

There were some people that said you should have guidance that tells people a settlement should have an adaptive management plan for the project. Then, we have had other comments that said, from people that surprised me that said --

MR. MCKITRICK: They can't hear, John.

MR. CLEMENTS: -- that, "We don't want anything to do with adaptive management plans because they sap our post-license resources, and they are just used as an excuse not to do something at the time of licensing." We had a divide on what the guidance ought to be for that.

We had a lot of generalized requests for guidance about what the Commission will and will not accept in a settlement agreement. We have issued orders that deal with that. I am not sure if people are aware of that and want things to be translated into a rule, or if people are saying, you know, "We just are not aware of your guidance." There is guidance out there, so I am not sure what it is that people want there.

People wanted a lot of flexibility on the ability to reach a settlement in terms of timing and also flexibility on content. Basically, in a nutshell, people would say, "Defer to the settlement, end of

discussion," which isn't always a practical thing, and people put a lot of stuff into settlements these days that don't specifically relate to the license. They have side agreements that they work into the settlement.

We don't have objections to those, but there are limits to what we can actually put in the federal license which applies to the licensee. I am kind of hoping we can get some better guidance, some more specific guidance about how we can accommodate settlements.

MR. McKITRICK: Specific things just from the standpoint of we are looking for guidance or we are looking that this settlement should somehow be incorporated in regulations?

MR. CLEMENTS: Well, not incorporated into regulations, but people want guidance, I guess, in the regulations as to what will and will not be acceptable in a settlement.

MR. McKITRICK: I understand.

MR. CLEMENTS: That is something that I think is kind of doable, although it is out there in the form of orders. But the one thing that kind of everybody said was, "You have to allow time for people to settle." There seemed to be kind of an assumption

there that settlement discussions could not go on simultaneously with the processing of the license application because people's resources would be tapped out, and they wouldn't be able to talk settlement while the process is going on, or they wanted the Commission to stop issuing NEPA documents or taking other procedural steps.

Sometimes there were sort of requests for open-ended, just freeze the Commission process while we talk settlement, and then we will get back to you. Then some said, "Well, freeze the process for, say, a period of 12 to 18 months while we work it out. If we haven't done something within 12 to 18 months, you can go ahead."

People are sort of all over the map on this, so I am trying to figure out how to bring all of these concepts into something that is fairly workable and that can be sold.

MR. McKITRICK: Can I have about 10 minutes of your time, Tim, to talk about this? Stop me; okay?

MR. WELSH: (Nodding head.)

MR. McKITRICK: Tim is going to have some closing remarks to talk about the interesting things that we are going to be doing tomorrow, but maybe we can go for about 10 minutes or so dealing with

settlements.

Brett?

MR. JOSEPH: Brett Joseph, National Marine Fisheries. I think there is a common theme between these last two questions. It goes back to the basic problems that we are trying to solve here or basic objectives, that is, to achieve timely licensing and to achieve quality decisions. I think those two themes are really brought to the fore particularly on the question of settlements.

Having dealt with a number of settlements and gone through that process, as have many in the room, it is clear that successfully achieving a settlement is really the best way of ensuring a quality outcome and a fair outcome.

However, just to put on the table in addition to the question pertaining to the cutoff point, you know, I think there is also an equally important question as to when settlements begin. The bottom line is the adequacy of information. It goes back to the same issue that was raised in the preceding question.

There has to be adequate information developed before settlement negotiations begin with any chance of a timely and successful outcome. Putting in interim benchmarks or strict timelines is not a substitute for

having quality information underlying the decision-making process, nor is any formal window of opportunity to conduct settlements because as certainly any attorney knows settlements can be reached virtually on the way to the courthouse. In those types of situations, people know what the issues are and you know where you stand.

However, from my experience, oftentimes settlement negotiations have dragged out precisely because of the lack of information. Unfortunately, there have been instances where it appears, or at least the impression is left, that FERC is encouraging settlements in lieu of adequate development of information by signaling that where there is consensus between the parties the requisite record does not have to be as robust.

That may be the case, but before we can get into settlements, the settlement still needs to be supported by an underlying record, if there is any aspect that would be built into the regulations themselves.

I think much of this is going to happen on its own, the part that needs to be I think reflected in the regulations is a clear requirement that before settlement negotiations will be accommodated through

flexibility in the process there needs to be a determination that the studies have been completed and provided adequate information to support those negotiations.

MR. MCKITRICK: I'm sorry. Go ahead.

Richard?

MR. ROOS-COLLINS: Richard Roos-Collins.

John, you asked two question, and I'll take them in order. First with respect to guidance, what settlement condition is approveable and what is outside your jurisdiction, this same question arose at the informal workshop which John Katz (phonetic) facilitated in May. He made the same comment, that your decisions establish guidance.

We heard from the resource agencies and NGOs that your case law may not be as consistent in our eyes as it is in yours. The request that we made, I still think it is a good one, issue a two- to five-page document that you amend periodically that deals with those settlement conditions that tend to cause trouble.

Settlement conditions that establish licensing duties for operation of the project are no-brainers. Settlement conditions that cause trouble are those that establish reciprocal rights between licensee and non-licensees. You could say an adaptive management

condition would be more likely to be more acceptable if it were stated in the following form. I mean, that is all that the HRC was asking for in our request for guidance on settlement conditions.

With respect to the question that is on the board, again I think the key here is for the licensee and the participants with the support of the Commission to design a process that allows adequate time and the right time for settlement negotiation and deals with the contingencies that inevitably arise in negotiations.

The licensees and the participants plan on 12 months of negotiation and in the 11th month they run into trouble then. They shouldn't wait for the 11th month to figure out how they will deal with that contingencies. There should be a process plan from the get-go that estimates what time is needed for settlement and when that time will occur and what will happen if a delay occurs, whether it is because the study isn't completed or for some other reason.

MR. McKITRICK: Thank you, Rich.

MR. CLARY: Don Clary from the Shoshone Paiute. We just wanted to note that whatever is implemented with regard to the settlement procedure that the tribe should be included in the negotiations,

that they should be included as a signatory to any ultimate agreement.

MR. McKITRICK: Okay. Good.

Dan?

MR. ADAMSON: Dan Adamson, Davis Wright. Just that I think you have to make these decisions on a case-by-case basis whether to extend a process to allow for settlement. I think that in the past the Commission was probably a little too permissive in terms of extending proceedings. I think then the Commission then kind of went the other way to maybe being not accommodating enough, so I think there is a happy medium there that you need to hit.

MR. McKITRICK: Thank you.

John?

MR. SULOWAY: John Suloway, NHA. Maybe I am overreacting to what Brett said about having all of the studies completed before you start settlement negotiations. I think you need to be a little bit more flexible than that.

I do recognize that sometimes you can actually damage settlement negotiations because you haven't completed enough of the work, but to kind of say, "Well, you can't even start settlement negotiations until, say, you have the notice ready for environmental

analysis" or something like that is counterproductive.

I think there should be a little bit more flexibility, but maybe I was reading too much into what Brett was saying.

Conceptually, I think it is important to have as much study information as possible. But, again, I have seen some cases where we started the settlement negotiations long before all of the studies were done. It was mainly because of the momentum that was built up in the team. Actually, the people that were in the room, whether it was agency person or it was a consultant who was a specialist in a particular area, they used their professional judgment to help fill in the record, if you will, to reach a settlement.

Again, I don't want to seem internally inconsistent, but, you know, there needs to be flexibility. I think somebody said that you do it on a case-by-case basis, and I think there is a lot of validity to that statement.

I think also, and this again may sound a little contradictory, having deadlines in settlement negotiations is very helpful. I think most of us have gone through this that if you have "X" number of months to fill, we usually fill them. You know, it is too easy. So having deadlines is useful, it is good.

On the other hand, and NHA said this in their comments, the application of some common sense sometimes, particularly lately with FERC, I think would be helpful. Sometimes I think in some cases we feel that FERC has kind of arbitrarily stuck to a deadline, if you will, when all of the folks in the process said, "Look, we need a few more weeks. Don't issue a DEIS or anything like that, because then everybody who is working on the settlement negotiations is going to have to drop that and fire off a whole bunch of letters."

Again, this sounds a little contradictory or could sound contradictory, deadlines are good, but it is the use of common sense in enforcing those deadlines I think that is important.

MR. McKITRICK: Thank you, John.

Maybe one last question up here, Brandi.

MS. BRADFORD: This is more of a comment. Brandi Bradford with the National Park Service. I was just looking at the timeline for the IHC Proposal right at this moment, but there is not a place in here, a regulatory place, where, as Dan suggested, you make that decision on a case-by-case basis whether this is going to settlement or whether it is not.

There was not also, as Brett suggested, any time put in here to actually have those settlement

negotiations. Maybe that is one option is to put a placeholder in here to determine at some point whether it is likely to go to settlement. This could be after all of the studies are completed or it may be at some point before that. Maybe that is something we can look at tomorrow is to put that placeholder in there.

MR. McKITRICK: Okay, good.

Art?

MR. ANGLE: Art Angle, Enterprise Rancheria.

In regards to the settlement agreement, in my experience with relicensing I am dealing with when the question was asked, "With regards to the settlement agreement, if the tribes do not sign onto this agreement, what happens?"

The answer was, "Well, they just simply get another year extension."

My question was, Well, how many years extension do they get?"

And they said, "Well, you know at least 20 years."

(Laughter) If they get 20-year extensions, why are we working so hard to get a settlement agreement? You know, I think the 6.5-year extension or the 6.5 years to come to a conclusion in the settlement agreement would be ideal, but at 6.5 years we want that

settlement agreement and the signatures signed onto that and the permit issued; if not, maybe we shouldn't be licensing them.

MR. McKITRICK: I understand. Supporting deadlines for these things, yes.

I certainly appreciate you all participating in this. I think it was helpful to all of us here. Hopefully, it will help in some of the workshops tomorrow, seeing some of the questions that have come about.

I would like to let Tim give some idea of what is coming up and what we are going to be doing and some information that will be available to you. Yes, and I will restate that we will revisit these questions on Thursday afternoon.

MR. CLEMENT: I think he is asking about his question about how we work tomorrow and the next day.

MR. McKITRICK: Oh.

MR. CLEMENTS: Let's let Tim go through what the Plan A was and take it from there.

MR. McKITRICK: All right.

INTRODUCTION TO POST-FORUM STAKEHOLDER

DRAFTING SESSIONS

MR. WELSH: Yes. What I would like to do is, first of all, finish Ron's slides that he didn't

finish, which is what is coming up next as far as the entire process goes.

(Laughter.)

MR. McKITRICK: Oh.

MR. WELSH: After this, our next will be working with our drafting partners, the federal agencies, in preparing a Notice of Proposed Rulemaking, which we are targeting that would be issued in February of next year. Following the release of that NOPR, there will be more technical conferences where I will actually bring the Notice of Proposed Rulemaking and ask for people to comment very specifically on it.

We have chosen the cities, although we don't have the dates quite yet, we will be visiting in: Portland; Sacramento; Milwaukee; Charlotte; Manchester, New Hampshire; and here in Washington, D.C. The technical conference will be coming to a city near you.

Then in April, the very next month, we will have some stakeholder drafting sessions similar to what we are having tomorrow. Again, as the process moves along we get more and more specific, and we will actually get more specific, we will actually be looking at the NOPR at that time. Then, once again, we will be working on the final rule and our target is to have a final rule in July 2003. Once again, I think in your

packets you have our little flow chart with all of this information on there.

Nino, I saw your hand, go ahead.

MR. MASCOLO: How are the technical conferences going to be different than the stakeholder drafting sessions?

MR. WELSH: Well, I don't think we have really fleshed that out yet, Nino. I think though that they will be very similar to the sort of post-forum licensing stakeholder workshops; although, we have talked about once again doing maybe breakout groups and that type of thing as well.

MR. MASCOLO: Will the technical conferences occur before or after comments are due on the NOPR?

MR. WELSH: Before. It will be during the comment period, essentially.

Okay. Now what I would like to do next is, first of all, I would like to go over -- and this should be in your packet -- those of you who have registered for our drafting sessions tomorrow will take note here. I would like to go through the agenda for tomorrow and talk a little bit about how things are structured, the types of things we are looking for, then I would like to over a few, I will call them, some groundrules or just some suggestions for how things

should work, and then I would like to talk a little bit about our worksheet.

After I get those three things done, then I would like to visit some questions that were brought up earlier about what is happening tomorrow. Henri brought up one idea, and I would like to sort of pose that to the group for a little bit of discussion.

We are hoping that the drafting groups, there are going to be three, we have proposed three drafting groups, as you have seen from our Web site: Sort of the Early Application Development Group, which is from the beginning of the process to a little bit after scoping; then the Study Development/Study Dispute Resolution Group, which sorts of takes through sort of the development of the study plan and dispute resolution all the way up until around the draft license application; then the third group is sort of the Post-Filing Group, sort of what happens after you file your application. Those would be the three groups.

Depending on what group you are on, and you probably want to find out, "Well, where am I supposed to go," we are asking that everyone that is preregistered go to Room 3M-2A and B. We would like for people to kind of show up there maybe around 8:30,

so that you can sort of find out where your group is and find out how to get there so you can get to your room.

I mean, they are all in this building. They are not scattered around Washington, D.C. You don't have to worry about that, they are all in this building. So around 8:30 you should go to Room 3M-2A and B, which is a third-floor conference room. Right now, we are on the second floor so you just go up one other floor. Then, find out where you are supposed to go, and then at 9:00 your sessions will begin.

Each session will have its own facilitator. I would just like to introduce them to you right now. After I go through this, they might want an opportunity to kind of say a few words about the types of things that they are looking for.

Now, the pre- or the Early Application Development Study Group will be facilitated by Tom Dewitt over here (indicating).

Tom, raise your hand.

MR. DEWITT: (Raising hand.)

MR. WELSH: There you go. The Studies Development and Dispute Resolution Group will be facilitated, if you are not sick of him already, by Ron McKitrick.

(Laughter.)

MR. WELSH: Finally, the Post-Application Filing Group will be facilitated by John Blair over there (indicating).

Anyway, we will spend the morning in our groups sort of going through these worksheets that I am going to go over in a minute, then have lunch. Then after lunch, around 1:00 continue in your groups. Now, around 3:45, the groups will break and you will have 15 minutes to get a drink of water or whatever and to get back to 3M-2A and B for a drafting group progress report. Now, that is so that everybody can hear what the other groups have been doing, and we can have a little bit of a discussion around that as well. I will facilitate that myself.

It will just give you an opportunity to just, as I said, find out how far people have gotten, some of the issues that have been brought up so you can sort of take that information with you for the second day.

Now for the second day the idea would be the same. You would be going to your groups at 9:00, we would have lunch at 12:00, then the drafting groups will continue after lunch until 3:00, and then we will once again convene for what probably will be the most important part. Each group will give a final report on

sort of the areas of common ground that they identified and where some of their areas of agreement and disagreement were with their particular part of the process. That is a very important aspect of it which I will explain in a few minutes.

We have reserved some time, as Ron mentioned earlier, to sort of revisit some of these general, overarching questions. Thinking that now you have sort of been through the process a little bit, a new licensing process, and how it would work, we want to see if maybe some perspectives may have changed a little bit on some of those overarching questions. I think that would be an interesting aspect to this.

I would like to go a little bit and talk about some of the groundrules here. Okay, just a little bit of things we are looking for here. The first and most important part is, as Ron said earlier, this is not a negotiated rulemaking, so this isn't any kind of a negotiating with FERC staff.

What we have here is we wanted something that sort of goes beyond the typical rulemaking, you know, file your comments, we look at them, "Thank you very much." We wanted to take a little step further anyway. We thought that this would be a unique way to get a bunch of stakeholders together to talk about their

ideas and see if they could find some common ground around the process itself, rather than just around the questions.

However, it is just important to note that it isn't a negotiation with FERC staff. We will be acting as facilitators to answer any questions about the process, about the current process and that type of thing, but we are going to be still in sort of our listening mode.

The idea of these drafting sessions is to once again look for common ground and identify areas of agreement and disagreement. This sort of goes along with the next bullet, which is that we are expecting that the group should address all of the process steps as we outlined in our worksheet.

We don't really want people to get too hung up on one particular aspect of it. We kind of want you to move through the process, once again, looking for the common ground, but then also identifying areas of agreement and disagreement.

The fourth bullet is we are asking for no attribution for whoever you are representing. In the final report, it would come that several individuals believed that the process should start six and a half years prior to the NOI, and there were two individuals

that thought that was too long of a period of time.

That is the type of no attribution that we are looking for.

Now, as I mentioned earlier, the final report, each group will have a facilitator and a notetaker, but the notetaker is strictly to serve the group itself. There is not going to be any kind of a stenographer or any kind of open record in the groups themselves. As I said, the notetaker is just to serve the group, to sort of keep a general record of kind of where you are in the process and what people have said.

The part that will be on the record will be the final report. Your little summary at the end, when we all reconvene again in the third-floor conference room, there will be a stenographer there to record those final reports. Only the Drafting Group Final Report will be on the record.

Now, these final reports, as I said, these are another method of getting stakeholder comments. These will be considered along with all of the other comments that John mentioned this morning. They are just going to be sort of in a different format. We will be considering them along with all of the information in the record.

I guess the most important part, we are really

out on a limb here with this, so we are asking you to really be creative and use this time effectively to sort of work through the process and get some of your issues out there and look for some kind of common ground.

Now, to help you with the process a little bit, we have put together this worksheet. This is a much more developed worksheet that we put on the Web site than what we put on the Web site last week. This is not in your packet right now. But on your way out if you see Susan, she will be at the table, and they will be available for you to pick up, and so you can all run back to your hotel rooms tonight and go through this very carefully and think about it. So, you have homework to do.

Anyway, this is about a 30 -- I don't know, about a 35-page document. What it does is, as you all know we have about six different proposals in front of us right now that advocate new processes, some integrated and some not so integrated. This sort of takes each step in the process and sort of lays out the information from each proposal.

Now, as Ann mentioned earlier, we are not asking you to vote and pick one, these are just to get the ideas in one little spot so that you can see the

types of ideas that have been brought forth, so that you can either invent your own ideas or maybe meld them or maybe you do want to pick one. Anyway, each little box in the process we sort of tried to match up as best we could each of the different proposals time-linewise so you will see this little table here.

Then, underneath there are key issues, comments and questions that sort of go to maybe some of the differences between here. I got together with Ann and John and we sort of posed some of these questions, and we want the facilitators to sort of help you address and will sort of help you to make the types of decisions that your group will have to meet.

At the top, like this (indicating), the first one is for the Early Application Development Group, it is almost divided into about a third so that group has about 10 pages, Study Development has about 10 pages, and then Post-Application has about 10 pages. You will go through, and, as I said your group will be up here (indicating) in the right-hand corner, and this is just to sort of guide you through the process. By no means, do not feel restricted in any way; it is just some sort of a guidance document for you.

Before we get into our open discussion, are there any questions about what is going to be happening

tomorrow and how we have proposed things to work?

Yes, Cathy?

MS. MESSERSCHMITT: I have seen the IHC Proposal and the NRG Proposal and the State of California, I have not seen the other three. I am assuming that I can read those?

MR. WELSH: All of the proposals are in your packet.

MS. MESSERSCHMITT: Wonderful. Thank you.

MR. WELSH: We Xeroxed them all, and they are all in there. You can read them tonight before you go to bed (laughter).

MR. BARTHOLOMOT: I will reiterate my process proposal.

MR. WELSH: Yes, please.

MR. BARTHOLOMOT: I have actually found it helpful to walk through the general questions you posed today. I think now you are turning to some subgroupings of maybe more specific questions on various topics, and I think today's discussion and being able to hear the various state and tribal and NGO and industry perspectives is very helpful. What I pitched earlier as at least one option would be to continue working through these areas of questions, but as an overall group to be able to continue to get that

interplay.

MR. WELSH: Okay. Let me just say that one of the reasons we sort of split things up was just the notion that we felt that you could work more efficiently in smaller groups than a larger group could work.

I guess, Henri, the fear was that we would get, like, 200 people, but obviously we didn't get 200 people. Does anybody have any comments about what Henri is proposing here?

Brett?

MR. JOSEPH: Yes. I had another comment I just wanted to put on table. I know this morning there was a lot of discussion about the question of whether there should be a new process or revisions to the old processes. I want to make sure that we carry that discussion forward, because that is really a cross-cutting issue across all three of the categories that will be taken up.

If we can presume that there are good ideas that can be developed in each of these three groups, that they may be worth considering as refinements to the existing processes, again on the assumption that they continued in some form.

I would make the recommendations that the

groups be asked to consider in addition to these issues in the context of a new process also consider what, if any, of the ideas have been generated through this consensus-building, non-negotiation whatever, however you want to characterize it, would be appropriate to consider as reforms to the existing licensing process. Then, maybe report that back as well.

MR. WELSH: Okay. Good, fair enough.

Anna?

MS. WEST: I was just going to ask on the small groups, Aren't the small groups going to have representatives from each of the sectors here, the three groups as currently designed?

MR. WELSH: Yes, I mean --

MS. WEST: Tribes, NGOs--?

MR. WELSH: I mean, we didn't do any kind of manipulation with the group. We just gave everyone their first choice.

MS. MILES: It is representative.

MR. WELSH: It is representative.

MS. WEST: The diversity that Henri is looking for that we are achieving in the group of whatever we are, 50 or 60, will also be achieved in those three groups?

MR. WELSH: Right. It will essentially be a

subset of this group.

MS. WEST: You get three times as much work.

MR. WELSH: Mr. Suloway?

MR. SULOWAY: John Suloway, NHA. We talked, Henri and I talked, about this. At first I thought, "Well, that is a pretty good idea." Seeing what has happened today, I still think 50 or 60 people is a lot of people, I really think we will be more efficient and more productive if we work in smaller groups.

I think also, though, that at the same time our facilitators really have to keep us on the mark, they need to push things, need to ask questions, follow-up questions, and not let a group kind of meander because we will tend to do that. The job of the facilitator should be to keep us on course.

MR. WELSH: Okay.

MR. ADAMSON: Just a quick comment, I think that you can't assure that each subgroup is going to request every point of view, and so I think there should be an understanding that it may be that a particular subgroup comes up with something. Let's say, you know, there are some differences of opinion even within the three sectors that Anna outlined. I think that one shouldn't assume that if there is agreement in one group that necessarily extends to

every other entity that is in that particular class.

MR. CLEMENTS: That is our assumption, and that is one of the reasons that periodically the big group will come together again so that everyone can hear what is happening in the other groups, because we recognize that not everybody can have somebody in each of the groups.

We also wanted to keep them small to give each group a smaller thing to work with than the entire soup-to-nuts process. We figured if you can kind of focus on a few big issues within your area, you can have a better chance of actually getting somewhere and coming back with something that is really useable for all of us.

MS. BRADFORD: Just a clarification question.

MR. WELSH: Brandi Bradford.

MS. BRADFORD: Brandi Bradford, National Park Service. What Dan was saying was absolutely on the mark. Are we going to also be reporting on that final report the areas of disagreement where we couldn't come to resolution in a given area?

MR. WELSH: Most definitely. Bullet number two, look for common ground, identify areas of agreement and disagreement, very important.

MS. BRADFORD: Thank you.

MR. WELSH: Thank you, Brandi.

MR. BARTHOLOMOT: One of the reasons I raised the idea was because there is quite a bit of interplay between the various phases of a licensing process. As I said earlier, even if you have multiple tracks you can choose them on, whichever track you are on what happens in the early stage is going to affect what is going to happen in the study stage, which is going to affect what happens post-filing.

That interplay, I guess I just don't know how you are going to divide it up. I didn't understand, you know, that the Pre-filing Early Application Group would run just up to the study request time frame. I am sort of sitting here -- well, how do I draw that dividing line? I will be interested to see the packet, but I have a hard time thinking abstractly about one little piece of the puzzle and not thinking about how it interplays with the others and which track you are on. You know, maybe others are more sophisticated and capable than I.

MR. MCKITRICK: We were kind of aware of that.

(Laughter.)

MR. BARTHOLMOT: Yes, no doubt.

MR. MCKITRICK: But we thought the lesser of the evils was that than having 50 or 60 people trying

to go through it from page 1 to page 30, which just seemed undoable in the time that we have to do whatever we are going to get done.

MR. WELSH: I think, Henri, those issues can surface in two ways. Number one, hopefully, during the progress report other groups can hear what the group that is doing the process preceding them maybe the direction they are going in, and maybe then they can factor that in the next day.

Then, on the other hand, maybe during the final reports there can be some discussion about, "Well, heck, that doesn't really fit together very well." That is sort of an inherent flaw, but, as John said, that was sort of the lesser of two evils.

Any other comments on tomorrow?

(No verbal response.)

MR. WELSH: If you haven't declared what particular group you want to be in, we would ask you to do that tomorrow when you come to 3M-2A and B at 8:30.

Dave?

MR. DIAMOND: Do you need more people in?

MR. WELSH: Well, I can't read your lips, so say it in the microphone.

MR. McKITRICK: Just about even.

MR. WELSH: All right. Thanks everybody.

(Whereupon, at 4:15 p.m., the meeting was
adjourned.)

* * * * *