BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of: :

HYDROELECTRIC LICENSING : Docket No.

REGULATIONS, NOTICE of : RM02-16-000

PROPOSED RULEMAKING :

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Red Lion Hotel

1401 Arden Way

Yosemite Room

Sacramento, California

Tuesday, March 25, 2003

Day 2 of 2

The above-entitled matter came on pursuant to notice at 9:00 a.m.

BEFORE:

JOHN S. BLAIR, Facilitator

Federal Energy Regulatory Commission

888 First Street, N.E., Room 51-19

Washington, D. C. 20426

PANEL:

Timothy J. Welch, FERC, Office of Energy Projects

John Clements, FERC, Office of General Counsel

Brett Joseph, National Oceanic and Atmospheric Administration, General Counsel for the National Marine Fisheries Service

Mona Janopaul, U.S. Forest Service

Elizabeth Molloy, FERC

Ken Hogan, Hydro Licensing

PRESENT:

Gary Liimatawcia, Kleinschmidt, Hutton and Broadway, MWH

Chuck Bonham from Trout Unlimited

Matt Parquette, Framatone ANP

Frankie Green, Framatone ANP

Brian Waters, Framatone ANP

Jim Canaday, State of California, Water Resources Control Board (WRCB)

Sharon Stohrer, State of California, WRCB

Ike Pressler, Mead and Hunt

Mark Connor, Northern Lights

Pete Bell, California Hydropower Reform Coalition.

Laura Wisland, California Hydropower Reform Coalition

Steve Wald, California Hydropower Reform Coalition

Alan Soneda, Pacific Gas and Electric Company

David Moller, Pacific Gas and Electric Company

Lorraine Marshall, State of Alaska, Office of the Governor; Alaska Coastal Management Program

Cyrus No , California Energy Markets

Dilip Paul, U.S. Forest Service

Jim McKinney, State of California, the Resources Agency

Nancee Murray, State of California, Fish and Game

Andy Sawyer, State of California, Water Resources Control Board

Caryn Craig, State of California, Department of Justice

Matt Campbell, State of California, Attorney General's Office

Walter Ward, Modesto Irrigation District

Terry Loun, Southern California Edison

Geoffrey Rabone, Southern California Edison

Wayne Dyok, MDWH

Jim Woodward, California Energy Commission

Jon Taylor, Kearns and West

Randy Baysinger, Turlock Irrigation District

Steve Felte, Tri-Dam Project

Ed Horton, Placer County Water Agency

Lon House, California Water Agencies

Karen Mills, California Farm Bureau Federation

Chris Williams, individual

Beth Paulson, U.S. Forest Service

Mel Berg, Bureau of Land Management

Karen Donovan, State of California, Water Contractors

Pam Nataloni, California Public Utilities Commission

Curtis Knight, California Trout

Nicolas Procos, California Public Utilities Commission

Tom Johnson, YWCA

Robert Hughes, CDTG

Alan Zanetta, Pacific Gas & Electric Company

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P R O C E E D I N G S

(9:06 a.m.)

FACILITATOR BLAIR: Good morning. Can everyone hear me okay? Good. Welcome. If you're -- this is FERC's Notice of Proposed Rulemaking, a Regional Workshop. I'm John Blair. I'm going to be your facilitator. I work for the Federal Energy Regulatory Commission.

I understand some people had some problems this morning finding the Red Lion. It used to be the Doubletree and now it's moved locations, or some such, so hopefully everyone got here okay.

The purpose of today's meeting is to discuss FERC's proposed changes in its regulations for licensing hydroelectric projects. And the fundamental issue today is by adopting a new licensing process can there be more efficient and timely licensing, and can we ensure environmental protection. And those are the key issues why we're here today.

I've already introduced myself, again John Blair. I'll be your facilitator throughout the day.

I'd like for our head table to introduce themselves. Before the head table starts, I'd like to recognize Ken Hogan in the back of the room. And Ken will be, throughout the day, providing you a microphone to address issues. And Ken's been instrumental in working on

this new rulemaking.

So if I may start on my left and start with Tim. Tim.

MR. WELCH: Tim Welch, FERC, Office of Energy Projects.

MR. CLEMENTS: John Clements for CG.

MR. JOSEPH: Brett Joseph with NOAA, General Counsel for the National Marine Fisheries Service.

MS. JANOPAUL: Mona Janopaul, Forest Service.

MS. MOLLOY: And Liz Molloy, FERC.

FACILITATOR BLAIR: I might note that all of these individuals have been intimately involved in the rule that you have before you today.

I'd like to introduce in the back of the room, a key player, George Palmer.

George, raise your hand.

George is going to be our reporter today. He will be recording every word said, and that'll be transcribed. It will be available on FERC's website in two weeks. If you have a need for acquiring that transcript prior to the two weeks passing, then you would have to purchase it from Ace Reporting. And how you do that is contained in your yellow book that we'll discuss in a minute, okay.

We have a small audience, about 35 people, so we

do have the luxury of time to quickly go around the room and have everyone introduce themselves. And if you just state your name, who you represent. Save any speeches or stumping until a little bit later in the day, if you would, okay?

We'll start in the back of the room.

MR. LIIMATAWCIA: Good morning. Gary Liimatawcia from Kleinschmidt, Hutton and Broadway.

MR. BONHAM: Chuck Bonham from Trout Unlimited.

MR. HOGAN: Use the mic, please.

FACILITATOR BLAIR: Pass the mic on down to Chuck, please.

MR. BONHAM: Chuck Bonham with Trout Unlimited.

MR. PARQUETTE: Matt Parquette with Framatone ANP.

MS. GREEN: Frankie Green, Framatone ANP.

MR. WATERS: Brian Waters, Framatone ANP.

MR. CANADAY: Jim Canaday, State Water Resources Control Board.

MS. STOHRER: Sharon Stohrer, State Water Board.

MR. PRESSLER: Ike Pressler with Mead and Hunt.

MR. CONNOR: Mark Connor, Northern Lights.

MR. BELL: Pete Bell with California Hydropower Reform Coalition.

MS. WISLAND: Laura Wisland with California Hydropower Reform Coalition.

MR. WALD: I'm Steve Wald with CHRC.

MR. SONEDA: Alan Soneda, Pacific Gas and Electric Company.

MR. MOLLER: David Moller, Pacific Gas and Electric Company.

MS. MARSHALL: Lorraine Marshall, Office of the Governor in Alaska. I'm with the Alaska Coastal Management Program.

MR. NO : Cyrus No , editor of California Energy Markets and of "Licensing Reporter," soon to be published. The flyer's around here. Thank you.

FACILITATOR BLAIR: Thanks for the commercial, sir.

MR. PAUL: Dilip Paul, Forest Service.

MR. McKINNEY: Jim McKinney, State of California, the Resources Agency.

MS. MURRAY: Nancee Murray, California Fish and Game.

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board.

MS. CRAIG: Caryn Craig, California Department of Justice.

MR. CAMPBELL: Matt Campbell, California Attorney General's Office.

MR. WARD: Walter Ward, Modesto Irrigation

District.

MS. LOUN: Terry Loun, Southern California Edison.

MR. RABONE: Geoffrey Rabone, Southern California Edison.

MR. DYOK: Wayne Dyok, MDWH.

MR. WOODWARD: Jim Woodward, California Energy Commission.

MR. TAYLOR: Jon Taylor, Kearns and West.

MR. BAYSINGER: Randy Baysinger, Turlock Irrigation District.

MR. FELTE: Steve Felte, Tri-Dam Project.

MR. HORTON: Ed Horton, Placer County Water Agency.

MR. HOUSE: Lon House. I'm with the California Water Agencies and the rural counties.

MS. MILLS: Karen Mills, California Farm Bureau Federation.

FACILITATOR BLAIR: Okay. Thank you very much. We have a good cross-representation of all interests, I think, in hydroelectric licensing.

A few housekeeping items. First of all, if you did not register at the break, if you would register out in the lobby, just outside the door.

I would like your cooperation on cell phones.

Please turn off all cell phones or pagers, and then you can use them at the break, if you would.

And when you speak, please wait for the microphone to be passed to you, and then please state your name so the reporter can get it into the transcript. I know as we go through the day it will be somewhat of a pain to keep restating your name, but if you would do so for the reporter.

I'd like to call attention to the yellow booklets you have and what you have in it and why you have it, okay? You'll see our agenda, about page 81, and I'll highlight that in a second. You have a preamble that discusses some of the comments we have received in our earlier workshops on what should be included in the new rulemaking.

And then you also have in the document a redline strikeout of the actual regulations and proposed changes of language in the regulations.

And then back on the yellow cover you have a schedule of the process. In the very back of the document you have a schematic of our proposed integrated licensing process.

And so that's your handout. We'll be referring to that. If you have some statements about the language that we struck and rewrote, and if you would refer to a particular page and hopefully a particular line so the whole

audience can follow through with any suggestions you might have.

Our meeting format for today. In a few seconds I'm going to have Tim Welch come up and give you an overview of the rulemaking, how we got to where we are today, why we're here, questions FERC would like to have some help in answering, and then any discussion and clarification of our process. That'll be the first part of this morning's program.

Then a little bit later this morning and perhaps earlier this afternoon we'll identify concerns that you may have about the proposed rule, have some discussion. And, most importantly, suggestions for solutions. Let me say that again: Suggestion for solutions. It's one thing to raise questions, but if we just get more questions then it becomes -- the onus becomes on us to provide the solutions of which perhaps maybe you would not be quite happy with.

So if you raise questions, hopefully you will follow that with some kind of solution. You know it's not how many ideas you have, but it's how you make them happen. That's the key to why we're here today. So, again, the key word, the watch word today is "solutions," okay?

So without any further conversation, I'm going to have Tim Welch come up give you an overview of how we got to where we are today and where we're going in the future.

Tim.

MR. WELCH: Thanks, John.

Before I begin, referring back to the yellow books, we have a couple pages transposed. Turn to page B-7, you'll see that it's followed by B-6. So just switch those -- I mean you can tear it out, or something, but just be aware that we're going to go from B-5 and skip over B-7, go to B-6, then back to B-5. So, anyway.

So I'm going to, as John said, I have a little sort of an overview of the rule that I'd like to present to you today. Try not to go into too much detail, but just sort of take you through some of the highlights of the rule. But before I do that, talk a little bit about our process, where we've been, where we're going. And then wrapping it up with a number of questions that we'd like to pose to you today, just to sort of stimulate your thinking about -- get you ready for this afternoon's issues discussion.

So talking first about our process. You can follow along basically with the process that's on the inside cover of your programs here. And we think that we've developed a process of public participation, you know, that allows us to really get, hopefully, get a good handle on a good cross-section of agencies and stakeholders to prepare this rule.

So, as most of you remember, -- I'm going to get

my laser pointer here -- back in September of 2002 we issued a public notice that sort of kicked off this rulemaking. And that outlined a series of FERC and Resource Agency co-sponsored public and tribal forums.

Of course, I can't find it. Oh, well.

Anyway, so last fall we were out here in Sacramento, along with several other cities throughout the U.S. before we did the NOPR, just to sort of get an idea of what people thought about a new hydroelectric licensing process.

So once we finished that up we had a two-day stakeholder drafting session in Washington, D. C. where we had invited a good cross-section of stakeholders to get together to sort of develop a language and different concepts of what a new hydro licensing process should look like. And a lot of the concepts that came out of that stakeholder drafting session you'll see in the proposed rule today.

Following the stakeholder drafting sessions, from about the middle of December to the middle of January, we convened a meeting with FERC and our sister federal agencies, with authorities under the Federal Power Act, that's NOAA, Fisheries under the Department of Commerce; the Forest Service under the Department of Agriculture; and the Department of the Interior. So we all got together and we

sort of put together the rule, most of which is the language that you see in here today.

So following that, back on February 20th the Commission unanimously voted to issue the Notice of Proposed Rulemaking that you have before you today. By the way, it was just printed in the Federal Register after much consternation with the Government Printing Office last Friday. So we have an April 21st, 2003 comment period. So we've got about another month or so for your written comments to come in.

So March and April, here we are once again crisscrossing the country with a series of regional workshops. We were in Portland last week. At the end of this week we're going to be in Charlotte, North Carolina. We're going to Milwaukee, Wisconsin and to Manchester, New Hampshire.

And we're having these series of workshops to sort of begin getting a higher level of specificity to the rule. So we're going to talk about some really specific issues, hopefully this morning, that we're going to pose to you, and then also take some of the issues that you might have.

So, once again, after this is all done we're going to have another stakeholder session. This time it's going to be a four-day session in Washington, D. C. People

are calling it "hydro hell week." So we're going to bring you to Washington, we're going to really work you to draft very specific changes to the rule.

So we're going to be opening the registration for that. That'll be an online registration. We're going to open it around April 15th -- what? Sorry. April 18th or so. From the 18th, I think, to the 25th we'll be having online registration for that. So I would encourage you, if possible, to come to Washington, D. C. for our stakeholder drafting session.

So, like we did before, after we've, you know, we've gathered all the comments from -- both the written comments, the comments we receive at our workshop, plus our stakeholder drafting session, we'll take all of that information and reconvene our FERC and Resource Agency Group. And we'll begin drafting the specific language for the final rule that we're targeting in July of 2003.

Now the proposed rule does two basic things. Number one, it creates a new license, a new integrated licensing process. And, number two, it proposes changes to the traditional process.

Now talking about the integrated licensing process. The comments that we received in the public forums, there was one theme that we thought emerged from all of those different venues: Integrate, integrate, integrate.

So, lo and behold, ta-da, we have an integrated licensing process, I'm sure to no one's surprise.

We think that with that licensing process we're going to improve both the timing of the process, the efficiency of the process, and we think we're going to come out with a better product at the end. So we think that we've got a process here that we think that all of you can sort of latch on to at least to a portion of it. But we realize that with most things, the devil's in the details, and that's why we're asking your help today to help us sort of cross the t's and dot the i's.

So a little bit about the integrated licensing process. That can be found very conveniently on the back cover of your program. We have our nice little -- little flowchart back here. We have a brief description of the stepdown in the left-hand corner, the specific section and section -- proposed section, Part 5 of the regulations, where you can sort of find the specific language that's sort of behind the box. We also have these little numbers in the upper left-hand corner which report the amount of days between each step.

So, as we're talking about the new rule today, you might want to -- excuse me -- refer to this quite often.

So it's sort of basically broken down into three distinct processes. The top row, and maybe -- most the top

row is the development of a process plan and a study plan. I'm going to talk a little bit more about that process plan and how important that is and talk a little bit about the study plan in a moment. So that's going to take about one year.

When that's all said and done, the second part, sort of the next two rows, it's sort of studies -- we're calling studies and application development. That's the actually conducting of the studies and developing the application. And we think that in many cases that'll take about two years. And we'll talk a little bit more about that timeframe for studies a little bit later.

Finally, the last row, the bottom row, this is when the application is filed with FERC, application processing. We think that if everything falls into place, that'll take about a year and a half.

So I'll take -- I'll say a little bit more in detail about these steps in a moment.

As I said, we've also proposed some changes to the existing traditional process. What we did was we took two aspects of the integrated process and applied them to the traditional process to hopefully make the traditional process more timely and efficient as well.

And those two items that we've changed, the traditional process, is increasing the public participation.

Not only will applicants be required to consult with resource agencies and Indian Tribes, but they'll be able to -- they'll have to consult with members of the public, such as NGOs, as well.

And also we've added to the existing study dispute resolution, the traditional process. We have enhanced that to make that mandatory. Okay.

So, as I said, the integrated process we think improves both the efficiency and the timeliness of the process. We think it improves the efficiency by requiring that the application is prepared in conjunction with the NEPA scoping.

Now contrast that with the traditional process where FERC's NEPA scoping takes place after the application has already been filed with FERC. So the application has already been developed in the traditional process, and then we have scoping. We thought that it would be much more efficient if we just did those two things simultaneously, at the same time.

Also the integrated process calls for coordination of other participants' processes primarily, and I'm thinking of the State's 401 Water Quality Certification processes, and we'll talk about that at length.

Also, like I just said about the traditional process, the integrated licensing process increases public

participation. And we think that's also going to add to the efficiency of the process by identifying all the stakeholders very early in the process. Okay.

Now timeliness. The cornerstone of the timeliness of the integrated process relies on early involvement of FERC staff. Other than the integrating the processes, that was the other thing that we heard a lot about at the public forums and in the written comments: Earlier FERC staff involvement.

So, once again, contrasting with the traditional process, when FERC staff is not involved in the prefiling and only gets involved after the application filing, FERC staff will be involved from the very beginning. And the major function of FERC staff is to develop this process plan and schedule that everybody can live with.

This process plan will happen, be developed at the very first public scoping meeting. We will invite all the other agencies that have different processes to come together and develop an overall process plan so everyone, right from the very beginning, understands what every agency's role is.

And we'll also develop a schedule of milestones that will apply to every one, including FERC staff.

Now the other part of the timeliness is how the study plan is developed. The integrated process calls for

early study plan development and early, both informal and formal, dispute resolution process in the beginning of the process.

Again, contrast that with the traditional process as it currently exists where studies -- disputes can linger for the two to three years of the prefiling, and then only gets resolved -- can get resolved when the application is filed with FERC and, if more studies are required, adding much more time in the process.

By the time, in the integrated licensing process that we're proposing, by the time the application comes from FERC, all the study dispute resolutions -- study disputes have been resolved.

Now just to show you what we think are going to be the dramatic results of the integrated process in regards to timeliness, we have presented this rather simple bar chart.

Looking up here at the traditional process, what we have is the application processing time. This is the time that the application is filed with FERC, represented by zero here on the x axis, to the time in months when the Commission issues the licensing decision.

Now this top bar is from actual data that we had in the 603 report, which reported a median processing time of 47 months under the traditional process.

Now the integrated process is -- this is -- this is not based on actual data. This is just a projection. And we think, given the savings and time that I just explained to you, for all those reasons we think that the integrated process would result in probably a median time of around 17 months. It would vary between 14 and 21, with a median of about 17 months. So you can see a dramatic decrease in the application processing time that we're looking for under the new integrated process.

Now the other thing I'll point out to you on this chart is this red line at the 24-month mark. The 24-month mark is the -- is the two-year period when the current license in a relicensing situation would expire. So, as you can see, under the current traditional process there are many, many instances where the Commission has to issue an annual license because the new license is not in place by the time the previous license expires.

We think that under the new integrated process that we will have a new license in place well before the time that the current license expires so that the Commission will not have to issue annual licenses.

Now that's sort of a brief overview of the integrated licensing process and sort of what's in the NOPR. I'd like to just spend the rest of the time talking first about some other aspects of the NOPR process: Selection;

cooperator agency, intervenor policy; tribal consultation; advanced information of licensed exploration; the preapplication document, the PAD, which is going to replace the initial consultation package. We'll talk a little bit about study dispute resolution and what we're proposing there. And just a little bit at the end about some application contents.

Process selection. We're proposing now that with the integrated licensing process FERC will now have three licensing process. The integrated process, we're proposing to keep the traditional process with the changes I just outlined and the alternative process, the ALP.

Now the keystone here is the integrated process will now be the default, not the traditional process. So the integrated process is the default. In other words, if an applicant wishes to use either the traditional or alternative, it must solicit comments, public comment in its notice of intent, file those comments with FERC, and the Commission staff would then either approve or deny the request to use either the traditional or the alternative.

So receiving nothing, a no-request from the applicant, all applicants will be required to use the integrated process.

Cooperating agency, intervenor policy. We're proposing a change here. And the reason we're doing that is

to promote more cooperation between federal agencies on the FERC NEPA documents.

Now recall that the Commission's current policy is that a cooperating agency cannot be a cooperator on the NEPA document and an intervenor at the same time. Our policy is that agency has to choose between cooperator or intervenor in the process.

We're now proposing to promote more cooperation because we found that agencies don't like to have to make that decision. They want to be a party. They also want to be cooperators. We're proposing to change that policy by permitting intervention by federal agencies that are cooperating on the NEPA document.

Now from the public comment on this issue we understand that there are concerns about ex parte. So we're going to modify the ex-parte rule to require that Commission staff must disclose any technical information primarily around studies that is passed between a cooperator, such as the Forest Service, and FERC.

So, in other words, if we're cooperating the Forest Service and a Forest Service person gives us some information on a study they have just conducted on sensitive plant species, we would be required, under our proposed modification, to disclose that information in the public record.

What we not be required to disclose would be exchanging of drafts between the two cooperators. You know, you can understand how difficult that would be for those of you who have ever worked on a NEPA document, knowing the number of iterations of drafts that you have to go through. So it would only be new technical information that would be placed on the record.

In this proposed rule we've gone to great lengths to improve our relationship with Indian Tribes, primarily under tribal consultation. So we're proposing, and this is explained in the preamble, to initiate early discussions with any affected Indian Tribes in order to develop the consultation procedures; as opposed to coming up with some very specific procedures for tribal consultation, because we understand and realize, after talking to many Indian Tribes, that different tribes look at consultation very differently.

So we decided that the focal point of this would be an early initial meeting between FERC and the Indian Tribes, and that would lay out the consultation process in a manner that both FERC and the tribe can live with throughout the licensing proceeding.

Now to help us do that we're establishing a position at FERC of tribal liaison. And that would be a contact person or persons at the Commission that would be dealing with all matters of Indian Tribes at FERC, not only

in the hydro arena, but in some of other FERC's functions as well.

Right now Liz Molloy is our tribal liaison just for the rulemaking, but we'll be -- we'll be looking to fill this position as soon as we sort of get our arms around it a little bit and define it more clearly. So one of the questions that we're asking in the NOPR and we're posing this to Indian Tribes, and we had a good conversation yesterday with some of the California tribes, exactly what that tribal liaison position should be. And we're also looking for input on that from you as well.

Advanced notification of license expiration. Because of sort of the plethora of relicensings that we have coming up, we thought it would be a good idea if FERC sort of sent out a letter well in advance of the required notice of intent as sort of a wake-up call to some of the applicants to say, you know, 'Dear Applicant, your license has expired and these are some of the things that you're going to have to start thinking about right now.'

So this letter would alert a licensee to the requirements of the notice of intent, the preapplication document, and the different processes that are involved. If you look at some of the requirements for the preapplication document, there's a lot of effort that an applicant, prospective applicant, there's a lot of effort to expend in

preparing that PAD. So we sort of want to give them a little bit of heads-up on that. Okay.

So now the preapplication document that I said earlier is now replacing under the traditional process the initial consultation package. Now the PAD would be required for all processes.

John, even the ALP?

MR. CLEMENTS: I'm sorry?

MR. WELCH: You aren't even paying attention. Never mind.

(Laughter.)

MR. WELCH: I'll ask you later.

It'll be required for -- I know the traditional and the integrated process --

MR. CLEMENTS: The PAD?

MR. JOSEPH: Yeah, it would be required for ALP.

MR. WELCH: For everything.

Now this PAD is sort of setting the stage for the entire process, and it's going to provide all the participants in the proceeding with the available environmental information. We wanted a very -- we want a very accurate, comprehensive description of basically the affected environment, any studies that have been done, a detailed description of the -- of the process. And that's to sort of get everyone on equal footing so everybody kind

of knows kind of what's out there.

And that will provide the basis for probably the most important thing here is issue identification, is going to be one of the first steps in the integrated process, is to identify the issues; and this would form the basis for that.

And then, of course, the next step that the PAD would be used for is study requests. You know, what are the information gaps, what studies need to be done. So the PAD would eventually form the basis for the NEPA scoping document that FERC will put together.

Now one of the things that we tried to do was we tried a concept of creating a document at the beginning of the process that was similar, similar in form and content to eventually a NEPA document. So instead of seeing under the traditional process sort of different documents floating around, what we're hoping is that we're going to start with this PAD and it's going to morph as it goes through the process eventually into the Exhibit E and then finally into the FERC NEPA document. So you'll just see the actual building of the application throughout the process.

So we've set up the PAD in distinct resource-area categories such that it can form the precursor to the Exhibit E. And we'll be talking in, I think, a few more slides later about our proposal for what that Exhibit E

should look like in the integrated process.

Study dispute resolution. As I said, under the integrated process we're proposing early study dispute resolution with FERC staff involvement. Now the whole cornerstone for the study dispute resolution process is a study request, study criteria.

We've come up with a series of seven or eight criteria that all study requesters will have to follow. And those study criteria can be found in Section 5.10 of the regulations. We'd like you to take a look at them and we'd like some feedback on whether you think that they're -- they're comprehensive enough.

So once an applicant receives a study request, based on that criteria, it will put -- the applicant will put together a draft study plan and send that out for comment. And those will be the studies that the applicant feels will be necessary for its application.

So one of the first stages of study dispute resolution is the informal study dispute resolution. Once that's out for comment, if there are differences, we will convene what we're calling a study plan meeting. That can be a one-, two-, or three-day intensive meeting focusing specifically on the study plan and any problems that anyone has. And we'll try to the best of our ability to, with FERC staff involvement, to resolve those differences and get a

study plan that everyone can live with.

So hopefully, if everything goes well, we'll put together a final study plan. The applicant will file it with FERC and then FERC will approve the study plan with any needed modifications. That is, any studies FERC feels are necessary to complete the record. Okay.

So now the next step would be the more formal study dispute resolution, and that would be available for resources agencies, including state and tribal water quality agencies that might dispute, continue to dispute an approved study plan. So once that kicks in, what FERC would do, we will convene what's called an advisory panel.

And that advisory panel will consist of three members: A member of the FERC staff, which is a different FERC staff member that had been working on the project, so we'll have some fresh eyes on there for FERC; a resource agency, or tribal person from the disputing agency; and what were calling a third-party neutral, which is another person that's acceptable to both FERC staff and the resource agency staff member.

So that panel will then convene, receive information and comments from the applicant, and look -- looking at -- specifically at the study criteria, make a determination on whether or not that -- that study plan adheres to the criteria.

So the panel will make a finding as to whether the study criteria are met or not met and then the panel will provide its finding to the FERC director of Energy Projects. And the OEP director will then make a decision on this dispute with respect to the study criteria or any applicable law or FERC policy.

Now we're changing a little bit about what's required in an application. One of the things that we did was went to FERC staff and we asked FERC staff, "Tell us some things that you typically have to ask for in an AIR request in almost every situation." And they gave us a list of a few things that they always have to ask for, and we're proposing to put that into the requirements in an application content so that we don't have to do that anymore.

And two of the things that sort of come to mind is we're requesting information on both minimum and maximum hydraulic capacity. Right now I think it's just required -- the requirement is just for maximum hydraulic capacity, we want them both.

We also want information on the cost to develop the license application. This is something we've been asking for more and more lately, the actual cost to develop the license application. For two reasons. One is we quite often use that cost in our developmental analysis section

when we're doing our -- our comprehensive development analysis under Section 10 of the Federal Power Act.

And also as a -- as a benchmark so we can sort of keep track of exactly how much these different processes are costing. So somewhere down the line we can kind of look at that and see how -- what aspect the cost is playing in these different processes, and then make any adjustments that are necessary.

So we're also proposing that the project boundary information be more consistent. Right now under the regulations minor projects are not required to provide project boundary information, but we're proposing to change that to provide -- to make sure that everyone understands where the project information -- project boundary information is for both licenses and exemptions. Okay.

Finally, as I said earlier, we're proposing that the Exhibit E be revised in sort of how it's organized. Now, as I said earlier, this is again the theme of the -- of the sort of evolving document that will be throughout the process. So we would like the applicants to put the Exhibit E more in a format of an environmental document that most of you in this room are sort of used to seeing.

So for each resource area, where it be cultural resources or fisheries or terrestrial resources area, the applicant would have to describe the affected environment,

present its environmental analysis based on its studies, and then its proposed environmental measures identifying any unavoidable adverse impacts, and then providing a developmental analysis. So this would form the Exhibit E in the application that FERC can then use when its preparing its NEPA document.

So that's about all I have as far as the -- sort of looking at the highlights of the proposed rule. So I just want to go through a series of questions.

Now at the end of the document on page -- help me out here, John. The questions are where?

MR. CLEMENTS: It's Appendix B.

MR. WELCH: Right. C-101. Thank you, John.

There's a series of specific questions with the reference of the paragraph number throughout the document. We ask a whole bunch of different questions throughout the preamble.

And I just sort of -- we sort of summarized just a few of them here today. One thing I want to stress is, you know, even though we're looking for information surrounding these questions here on C-101, don't feel that you have to restrict your comments just to these questions. You can comment on anything.

So I'm just going to briefly highlight a few of these questions and hopefully that sort of provide the

stimulus for the issue identification, which is sort of the next step in our workshop today.

Now the first question: Are the contents of the preapplication document appropriate. Do you think it's too much; do you think it's too little? We'd like some feedback on that.

What, if any, criteria should be considered in determining the use of the traditional process? Now recall that I said if -- once again, the ILP is the default. If you want to use the traditional process, you have to get public comment and then FERC will decide based on what we're saying, good cause.

We're wondering if maybe more specific criteria should be developed, so just sort of define what "good cause" would be.

Are the proposed study criteria in Section 5.10, are they adequate? We'd like some feedback there.

What modifications, if any, should be made to the study dispute resolution process? Okay.

One idea that we're floating is: Should resource agencies provide preliminary recommendations and conditions prior to either the draft or the final license application? Right now in the integrated process we're proposing, very similar to the traditional, that the resource agencies would provide their recommendations and conditions in response to

the REA notice.

One idea is that they would provide them in the draft -- in response to the draft license application as well. We'd like a little feedback on that.

Are the recommended timeframes associated with the proposed integrated process, are they adequate? As I said earlier, those little numbers up here in the upper left-hand corner, those are the number of days we have between boxes. Those of you who have been involved in FERC processes before, let us know if you think that those are realistic numbers or not.

Is a draft license application necessary? Some proposed that we go right to a final license application. Others thought that it was important to float a draft license application first to sort of make sure that the final application is in good shape. That's what we're proposing right now: Filing of a draft license application that would almost be identical to the final license application. Is that necessary or can something else suffice for that particular step in the integrated licensing process.

Are the -- are the recommended deadlines for filing the 401 Water Quality application, are they appropriate? Right now, very similar to the traditional process, we're proposing that an applicant file its

application with the state at the same time that it files its license application.

Some ideas we've heard that have been floated is maybe that should be -- the application should be filed with the state after the FERC issues it's REA notice. We'd like to discuss that a little bit with you.

Are there any suggestions on how the regulations could be modified to further accommodate small projects? If there's anyone here with a small project, say less than five megawatts, I'd like a little bit of input on is there anything -- any adjustments we can make to the process to better accommodate small projects.

Is the proposal for the early contact with the Indian Tribes, do you think that that's adequate to ensure that we improve our tribal consultation?

And, as I posed earlier: What recommendations are there regarding the roles and responsibilities of the proposed FERC tribal liaison? We had a good discussion about that yesterday with the Indian Tribes. We'd like to hear what the applicant and the agencies think about that as well.

Is that it? I knew it, done.

Okay. I'll turn things back over to John.

FACILITATOR BLAIR: Well, continuing with the discussion of the -- our direction in which we're

proceeding, we'll take questions now. Tim will assist in clarifying some of the points he made. The actual identification of issues of concern to you and the language of the rule, we'll reserve a little bit later this morning and this afternoon in which we find out your specific concerns with the language in the rule and, again, hopefully some suggestions for solutions. But right now we'll entertain questions regarding the presentation that Tim made and how we got to where we are today.

MR. WELCH: Your questions can go beyond my presentation.

FACILITATOR BLAIR: Sure.

MR. WELCH: We're asking any -- any clarification of any part of the rule.

FACILITATOR BLAIR: Okay. Wait until you have the microphone and then please identify yourself for the court reporter. Thank you.

MR. SAWYER: Andy Sawyer. Andy Sawyer, California State Water Resources Control Board.

I have three questions, and I'll take your direction whether I should do the first one and then wait for the mic to come back or do them together.

The first question has to do with the binding nature of study dispute resolution and it really gets to the issue of what does "binding" mean. A state may have an

interest in study dispute resolution from several different vantages. It may want to have a study issue resolved because it needs that study to make a recommendation to FERC.

It may also have need for a study because it has independent regulatory authority and its own independent procedures for a 401 certification; in some other states, Coastal Zone Management Act certification; in particular cases there may be a need for an NPS permit under Section 402 of the Clean Water Act; or if the state has delegation, Section 404 of the Clean Water Act for a dredge-and-fill permit. And there may be others where a state or tribe, and at least in the case of water qualify certification, 401 -- 402 and 404 permitting, may have its independent authority to request studies.

And the question is: By binding, do you mean binding for the purpose of what FERC will require the applicant to do or is it intended to have some kind of broader binding applicability?

FACILITATOR BLAIR: Okay. Let's take one question at a time. John, you or Tim want to define our definition of "binding"?

MR. CLEMENTS: Yeah. Binding means that it's binding on -- for purposes basically of Federal Power Act administration, and that means that it's binding on other

federal agencies or state agencies to the extent that they don't have another independent basis for requiring the applicant to provide information.

So that, for instance, if, I don't know, the Fish and Wildlife Service wanted a particular study done, and at the end of the day after whatever dispute resolution mechanism was applied, they didn't feel that they had sufficient information coming from the applicant as a result of that. They would -- they would be bound in the sense that the Commission would not require the applicant to provide any additional data with respect to that. And that might put that agency in a different posture than, for instance, a state 401 water quality agency, which would perhaps be able to require the applicant to provide other or additional data through its independent authority under the Clean Water Act and its regulations thereunder.

MR. SAWYER: Okay.

MR. CLEMENTS: So that's our -- that's the FERC perspective on what that means.

FACILITATOR BLAIR: Andy, hold on a second.

Brett, you had a comment. Identify yourself, Brett.

MR. JOSEPH: Yeah. Brett Joseph with the National Marine Fisheries Service.

Just to clarify, I think the term "binding" is

somewhat misleading. And not to -- to disagree with what John just said, but just to add some further clarification from the perspective of our agency and our understanding of -- of where we are at the point where the Commission makes a decision on dispute -- a final decision on dispute resolution. It is, in essence, a final determination regarding the contents of the study plan.

And, as John pointed out, we don't have any independent recourse within the context of the licensing proceeding to go back and require -- require more. However, we would retain the right after the final license decision is issued to make claims as to the sufficiency of the record and/or whether or not the Commission should have required the studies we had requested if -- if the decision goes against us. So it's not binding in the sense that we would lose our right to, you know, predicate an appeal on -- on the outcome of that dispute. But it is -- again, "binding" is not right term, but it is final for purposes of moving the process forward, to get to the final license decision.

FACILITATOR BLAIR: Yeah, that's a better way to put that. Yes.

Okay. Andy had a second question.

MR. SAWYER: Actually I have a second or third -- and third, but I'll take your direction as to when I should yield the mic and wait for it to come back.

The second one concerns the study dispute resolution process. In the traditional process, Section 4.38 subsection (b), you have deleted, and we appreciate deleting the provision saying the applicant can wait until the application to say that the applicant isn't going to do a requested study. But in contrast to subsection (c) there does not appear to be anything requiring the applicant to inform the party requesting a study that the applicant disagrees. And yet there is a section saying that if a dispute's not raised, it -- FERC will not later entertain a request for a study.

So my question is: Is there any way to know whether you have the dispute so that you can promptly raise the dispute as required by the regulation. There's a difference. Subsection (c) clearly does require the applicant to let the requesting party know there's a dispute. I don't see it in (b). And my request for clarification is: Why is there a difference in language between (b) and (c), and how is it going to work under (b)?

FACILITATOR BLAIR: We're -- we're

MR. CLEMENTS: Thinking.

FACILITATOR BLAIR: Yeah.

MR. WELCH: Yeah, John. What is that?

MR. CLEMENTS: Actually I can't explain that there's a difference. I think our -- it was never our

intention that the entity requesting a study wouldn't get feedback in some kind of timely manner, because we were just working off the existing regs, which have been there since 1989.

But I've marked it in my book and we're going to go back and look and make sure that there's a mechanism to make sure that, you know, that opportunity doesn't pass.

MR. WELCH: Just so I totally understand what you're saying, Andy. So this would let -- right now the way we have it is a disputing party, probably the applicant, could raise a study dispute at FERC. And you're saying how does the agency find out that there's a dispute?

MR. SAWYER: No. What I'm --

MR. WELCH: I'm not getting it.

MR. SAWYER: I'm concerned about it from my agency's perspective, --

MR. WELCH: Okay.

MR. SAWYER: -- as an agency, a state agency that might be requesting a study. If you look at (c), where additional studies are requested due to new information, the applicant responds and says -- either does the study or says, 'I'm not doing it and here's why.'

In (b) there's no language like that. You have, and I think it's at our suggestion, deleted language from (b) that allowed the applicant to wait until filing the

application to tell the requesting agency that it doesn't want to do the study, but there's nothing that I see, and I could be missing it, requiring the applicant to inform the requesting agency at an earlier time.

And then you've added language saying that if -- if the requesting agency doesn't request a dispute resolution, FERC won't entertain the issue later.

MR. WELCH: Yeah.

MR. SAWYER: And so obviously you can't resolve a dispute unless there's a dispute. And if we don't know there's a dispute, we won't be able to raise it. I may be missing something, but I -- but I would suggest that (b) and (c) should parallel each other so there's a mechanism, so we know there's a dispute so we can seek resolution of it.

MR. WELCH: Okay.

FACILITATOR BLAIR: Mona, a comment.

MS. JANOPAUL: Mona Janopaul, Forest Service.

This is -- this is something we clearly haven't worked out. I mean if you'll also look, the issue in the integrated licensing process is a key part that Tim pointed out, which is early FERC staff involvement. You don't really see any erudition here for a change in the TLP that would provide for early FERC staff involvement.

You know we see that from the resource agency as imperative in improving the traditional licensing process,

especially if the study dispute's going to be there, because a key of the study dispute is that FERC has been involved in approving and participating in scoping and developing the study plan. So if they're going to be one of those three-member panel in resolving the study dispute, how can they be there without having also the study plan that they've involved?

So this is an area where we're definitely going to have to do a lot of work, and I'm really glad that you brought that up because -- because, you know, frankly resource agencies don't see how that was necessarily a snip, an insert into the traditional licensing process. Because of this study plan development that is such a key feature, the integrated process is not showing up here for the traditional. So it's -- it's going to need some work, and I think this is great input. I appreciate it.

MR. SAWYER: This -- you're watching me here. I could have added a fourth if you weren't watching more carefully.

The third one concerns Section 5.1, and it's -- the determination at an applicant's request whether to do a traditional or alternative or integrated process. And the real question is: Why does it say "shall" instead of "may," where the regulation says, "FERC shall approve the applicant's request for a traditional process for good cause

shown"?

Is it intended that if the applicant has a good reason it will be approved or is it intended that it will only be approved if FERC believes that the requested process is the best process and if FERC believes that for this particular proceeding, it best be done through an integrated process it will be.

MR. CLEMENTS: I'm not a hundred percent sure I understood the question, Andy, but I think the intent here is that the -- the integrated process is the default process. And if the applicant is content to use the integrated process, then it won't request -- or it doesn't have to file anything with respect to the other processes. But if it does request it, --

MR. SAWYER: Well, let me --

MR. CLEMENTS: -- it would have to get approval from the Commission to use another --

MR. SAWYER: And that's -- when you say "default," that can mean that's where it goes if there's no request otherwise.

MR. CLEMENTS: That's correct.

MR. SAWYER: But there can be a higher burden that says not only is it where it goes if nobody requests otherwise, but it's -- it's where it goes ordinarily and it isn't simply that the applicant has to show that it has a

reason or that there is a reason, but it has to show that on balance it's better to go to the other process.

I may not be being clear on this, but it seems, you know, waiver of 401 certification is the default, but it isn't as though we have to make some kind of showing otherwise -- other than issuing the certification to prevent the default. What the request is, is FERC really going out make the decision as to which process is best? Or is this still applicant driven, where if they want traditional they can have it so long as they make a reasonable showing even if FERC thinks it's not best to use the traditional process?

MR. CLEMENTS: Okay. Well, right now it says "good cause," and we have specifically, I believe in Appendix B, directed one of the questions to whether or not there ought to be criteria to guide the Commission's decision on that. I know the overall intent is that the integrated process would be used in certainly the majority of the cases, perhaps the great majority of the cases. The idea is not for the exception to swallow the rule just because a licensee or original licensed applicant wants to use the traditional process. It's intended to be a fairly narrow exception.

So if we were -- and we have at each of these outreach sessions, we have asked people for feedback on appropriate criteria for that and we'll continue to do so.

FACILITATOR BLAIR: Right. Yeah, that question came up in Portland, Oregon. And as we get into the issues this afternoon -- and, again, we're seeking solutions. And if you have off the top of your head today what criteria FERC should apply in making that decision, then that would be most helpful.

MR. SAWYER: Yeah. If you -- very briefly. I think criteria are a good idea. But also where it says "shall" in (f)(5), I would recommend that it say "may."

MS. JANOPAUL: 5.1(f)(5).

MR. CLEMENTS: Say that again?

MR. SAWYER: 5.1(f)(5), it says "shall." I would recommend saying "may."

FACILITATOR BLAIR: Okay. Nancee, please state your name.

MS. MURRAY: Nancee Murray with the California Department of Fish and Game. I'll give you a couple seconds, John, to make that note.

FACILITATOR BLAIR: Made.

MS. MURRAY: Okay. I have two clarifying questions. The first one is: Does FERC agree with California's interpretation that a FERC order pursuant to Sections 5.1.2 or 5.1.3 is fully enforceable? These are the study plan orders.

MR. CLEMENTS: They are going to be -- orders

approving study plans will be office director orders. And in my view they're -- the office director will have delegated authority to do that, so they ought to be subject to compliance, if necessary.

MS. MURRAY: And what is the enforceable mechanism that FERC intends to use?

MR. CLEMENTS: I assume it would be whatever enforcement mechanism we ordinarily use when we're faced with an allegation of noncompliance with, you know, the statute or a regulation or a specific license provision.

MR. WELCH: Which would be --

MR. CLEMENTS: You wouldn't carve out anything special for this.

MR. WELCH: Penalties?

MR. JOSEPH: Well, section -- go ahead.

MR. CLEMENTS: There's just a variety of things that we can do and they sort of start with dealing directly with the applicant if we think they're not in compliance and trying to get them back into compliance. In I suppose an extreme and aggravated case, there -- you know civil penalties are available to the Commission, but it's the Commission's hope and expectation that we will not have to use that.

MS. MURRAY: And will the study -- oh, sorry, Tim.

MR. WELCH: Well, I just -- I just wanted to add: Short of a civil penalty, however, keep in mind that any applicant that does not comply with a study plan risks having a deficient application in relicensing. So I mean to me that's the -- that's the big, that's the big one. For -- I mean you can -- I'm sure some of the applicants can attest, I mean and some applicants know this, you know if you get kicked out in a relicensing proceeding, that can have pretty devastating economic consequences for you. So...

MR. CLEMENTS: And we're also supposed to review every new license application for the applicant's compliance record. And it wouldn't look real good to have a compliance order, you know, within the last couple of years.

FACILITATOR BLAIR: Okay. Brett, you had a comment.

MR. JOSEPH: Yeah. The National Marine Fisheries Service considers this an important point regarding the -- it's one of the things that really is essentially to make this study dispute resolution -- resolution process workable, and that is the nature of the Commission's order.

And currently I think the language could be strengthened to clarify that the Commission in making its decision regarding the contents of the final study plan is, in fact, issuing an interlocutory order requiring

implementation in accordance with that study plan.

The language right now, it's not clear in that regard, and so it's subject to varying interpretations. And so we would advocate for an explicit provision in the reg that says that the applicant shall implement the study plan as -- as approved.

MS. MURRAY: And will the study plan include a schedule that would be enforceable in the same way that the actual -- that the rest of the plan is enforceable?

MR. WELCH: Yeah. The -- I think the regs provide for a schedule that will be approved as part of the study plan. You know, I -- I think that we would have a little bit of degree of reasonable -- reasonality --

FACILITATOR BLAIR: "Reasonality"?

MR. WELCH: Did I just make that up?

FACILITATOR BLAIR: Yeah, I like that.

MR. WELCH: We would be reasonable about -- you know, if the IFIM study started two weeks later, I don't think -- you know, but -- you know.

FACILITATOR BLAIR: Okay. One more question?

MS. MURRAY: I have one more question.

FACILITATOR BLAIR: Okay.

MS. MURRAY: Then does Section 5.22 trigger the final 10(j) recommendations that are used in Section 5.25?

There seems to be a request for preliminary

conditions and I'm just wondering if those are -- after the REA we have to do our final 10(j)s.

MR. WELCH: I -- I think those are final 10(j)s. I mean the word "preliminary" here is associated with the mandatory terms and conditions.

MS. MURRAY: And then I guess one thought that we have, and we'll discuss more this afternoon, would be that there would be preliminary 10(j)s after the REA and final 10(j)s after -- after the -- with -- incorporated with our NEPA comments. So currently a problem that we 10(j) agencies have is that we have to give our 10(j) comments before the NEPA document, and that is continued in this integrated process.

So in terms of improving and making it so that we have the benefit of the informational environmental document, I -- I support the idea of preliminary 10(j)s. I just would like to have the opportunity of a final 10(j) af- -- and if we do it in conjunction with our comments on the NEPA document, it wouldn't have to push the schedule. We just do our comments on the final -- on the NEPA document and submit our 10(j) at the same time.

MR. WELCH: Right. Remember, though, that even under the current 10(j) process, that does allow for FERC and resource agency to resolve any difference. To me that's implicit that the 10(j) could be modified in accordance with

that discussion.

MS. MURRAY: Right.

MR. WELCH: Maybe it just needs to be more explicit. So maybe --

MS. MURRAY: Well, our -- the clock for submit-- going through the 10(j) dispute resolution process has started before the NEPA document is out. So even if you -- you have -- I think it's 75 days, we could be through that process before we're done with NEPA.

MR. WELCH: We rarely finish that process before the --

MS. MURRAY: It's still --

MR. WELCH: Okay.

MS. MURRAY: The question for more this afternoon is -- is the clarification is that, yes, it is the same as in the traditional process where we have to do our comments before the NEPA document. And the hoped improvement with an integrated process is that we have the benefit of the NEPA document before we have to submit our final 10(j).

MR. WELCH: I hear you.

MR. CLEMENTS: Actually I'm not sure I do. Are you saying you want a final NEPA document and then you would have --

MS. MURRAY: No.

MR. CLEMENTS: -- final 10(j)s after that?

MS. MURRAY: The draft would come out --

MR. CLEMENTS: Yeah.

MS. MURRAY: -- and then we have 60 days -- 30 to 60 days to comment on the draft.

MR. CLEMENTS: Yeah.

MS. MURRAY: And at the same time box 23b, comments on draft EA or EIS, we would submit our final 10(j) at the time of box 23b.

MR. CLEMENTS: Okay. Now I'm -- now I'm with you.

MS. MURRAY: So we wouldn't be pushing back your process. It would just give us a better chance -- a fighting chance to submit recommendations that are based on the record. A better understanding of the environmental record.

FACILITATOR BLAIR: Correction. This is a collaborative process, not a fighting chance.

MR. CLEMENTS: No, actually there's no assumption here that this is a collaborative process. People need to understand that.

MS. MURRAY: Um-hum.

FACILITATOR BLAIR: Mona had a comment, then Brett.

MS. JANOPAUL: Mona Janopaul, Forest Service.

So a corollary would be another -- another

question that FERC has proposed and -- and the federal agencies have -- this has been an area of controversy between FERC and federal resource agencies. We have a real issue with trying to provide preliminary conditions back before even a draft or in response to a draft license application. And, you know, so we've been sending that off in this. And that is yet a question that FERC is still proposing.

It sounds to me like you too would not be comfortable providing 10(j)s either before or in response to a draft or final license application?

MS. MURRAY: Yes.

MS. JANOPAUL: Okay. Thank you.

FACILITATOR BLAIR: Brett.

MR. JOSEPH: Just -- just to kind of point to one step that I think is going in the direction that you're suggestion. In the Section 10(j) process we've sought, and I can see in FERC's draft it's included that any preliminary determination of inconsistency that FERC makes has to be done in the draft NEPA document. Whereas previously that could be done ahead of the NEPA document, as you were saying, to where the whole 10(j) dispute resolution process would run its course before there's even a draft NEPA document. So at that point the dispute resolution would be informed.

However, that said, from the standpoint of my agency, we concur that, you know, we should have the ability to modify our 10(j) recommendations in the event that new information provided in the NEPA document warrants new recommendation. It's not just to limit it -- the limit it to dealing with FERC's findings of inconsistency.

FACILITATOR BLAIR: Okay. How about this side of the room before we yield to the -- let the State of California take all the time up. Let's see -- let's see if we have some questions from applicants or NGOs, any clarification questions?

None? Okay, Jim.

MR. CLEMENTS: No, wait a minute. Wait a minute.

FACILITATOR BLAIR: All right. Please state your name.

MR. MOLLER: David Moller, Pacific Gas and Electric Company.

I have two questions. One's a follow-up question to one that was asked over here, I think maybe Nancee asked it. And that was this enforcement of the final study plan. And the response, as I heard it, was FERC would use its normal enforcement capabilities.

And I can certainly understand how that might apply to a potential applicant who is currently the licensee of that project. What sort of enforcement might be used for

a potential applicant that is not the incumbent licensee, over which, as far as I can tell, FERC would have no authority?

MR. CLEMENTS: You've put your finger on that. We've been to court on that and been told that we -- we can't, you know, force a nonlicensee into Section 31, notwithstanding even that it may be someone operating a project illegally. And so the biggest stick we have really applies to existing licensees, which, you know, we expect to be the lion's share of the cases that we deal with, in any event.

But for nonlicensees, if they don't want to do it, especially if they're -- you know, it's a Greenfield Project proposal, if they're not doing the studies according to the plan, their application's not going to get processed. So they're going to be out in the cold.

MR. MOLLER: I assume that that question about the application being at risk, but I was curious if there was something else.

The second question I have at this point is with regard to the decision by the director on a final study plan. And I'm not quite clear at this point once that decision is made, and let's say it's a well informed decision, there's been a recommendation by an advisory panel, there has been input by the various participants who

are interested in the dispute, and despite all that good information literally an error is made in the final order by the director.

And I'm talking here, let's, as an example, a factual error. The wrong reach is named with regard to a specific study plan, for example. I don't see anything in there right now that provides for any sort of response or modification to that final study plan order, at least to address errors, and errors do occur.

And I'm wondering if there is some existing process in FERC's regs that would provide at least that opportunity so that the participants don't embark on an erroneous plan.

MR. CLEMENTS: Well, there's nothing here specifically addressing that. My personal exception is that the kind of error that you've premised your question on probably would never occur, but that there might be feelings either on the side of a licensed applicant or, say you know, a requesting entity that errors of judgment were made and that they would be -- people might try to shoe-horn those into something called an error of fact needing to be addressed. And I just think the likelihood of that kind of factual error that you're talking about, the sort of the gross blunder that undermines everything that's gone into the consultation and dispute resolution process to that

point is -- is just extremely unlikely to occur.

FACILITATOR BLAIR: Do we envision an appeal process that they could if there was a material-of-fact error?

MR. WELCH: Well, once again, I agree with John that that would be an extremely unlikely thing to happen, because right now -- David, I think you're looking at the dispute resolution process as sort of a distinct thing. I think if you look at the whole -- remember if there was some sort of an error, remember that the study plan itself has gone through several iterations. I mean throughout the whole process, beginning at, say, box, back, 6. You know it's included in the SD1 in box 7, comments in box 8, then there's the meeting. I think it would be highly unlikely for any kind of factual error to continue happening throughout those processes until it came down to the study dispute.

MR. MOLLER: Well, acknowledging it would be unlikely, we have seen errors even in final licenses issued. At least there's a chance for rehearing to say there's been an error made in the license.

I understand my question has nothing to do with proposing errors of judgment. It does seem that the process laid out has plenty of opportunity for everybody's thoughts with regard to judgment to be inserted. It does seem to me

there should be something in there that at least creates the opportunity if, in fact, there's a factual error in the final study plan issued, that that could somehow be brought to attention and at least revisited by the director.

MR. WELCH: I think at this point what we can say is that it doesn't address that possibility, but we're aware of your concern and the agency's concerns in the same regard.

FACILITATOR BLAIR: Okay. Next question, Jim. Please state your name.

MR. McKINNEY: Jim McKinney, State of California, the Resources Agency. I have two clarifying questions for FERC and then one for Mr. Moller afterwards.

One of the things we're curious about is we have this process, is it's streamlined, it's efficient. It's fast. It's even a spring. Can you direct us to where the contingencies and offramps are in the proposed rule if something doesn't go as planned and as anticipated?

Some of the contingencies that we were thinking of, perhaps there was an error in some of the underlying scientific assumptions used during study development. Perhaps you've got a new species listing under ESA. And here in the West you can often have flood or drought conditions. And then sometimes consultants may not do the quality of the work that was anticipated by the applicant

and the rest of the parties.

FACILITATOR BLAIR: Tim.

MR. WELCH: Jim, the only thing I would point out is during the study period under the integrated process there is a series of at least two check-in meetings throughout the process. And those -- after those meetings take place there is an opportunity for a resource agency to ask for additional studies, but subject to certain criteria, one of which is what you just mentioned, some sort of an extraordinary environmental circumstance, such as a drought or something that would necessitate more study. So there is that opportunity.

Your other example of a newly listed species. One would think that -- I mean even before a species is listed it's proposed. I mean it takes a series of years for that to take place. So one would think that, you know, even candidate species would be considered even in the development of a study plan.

I guess -- I guess towards the end of the process something like that could happen, but -- but, anyway, we have these check-in periods, at least two before the application is filed, where those types of offramps, as you call them, could be accommodated.

FACILITATOR BLAIR: Jim, you had a question for David Moller?

MR. McKINNEY: Actually I had another question for FERC staff. And to clarify the record, we discussed this yesterday in the tribal forum. And, John, I believe you directed us to Sections 518 and '21 as also have some bearing on this question of contingencies and offramps, and what do we do if it doesn't work as envisioned, so I'd just like to --

MR. CLEMENTS: No. I --

MR. McKINNEY: Is that still --

MR. CLEMENTS: I didn't -- somebody else must have directed you to 518 and 521, but in 528(f)(2), which is on page D-86, there is kind of the -- the sort of last-resort thing to deal with it, which is the director of Energy Projects can waive or modify any of the time periods. Basically it's for good cause.

So if -- if any of those other places where you check in after a first year of studies and you check in after the second year of studies or, you know, there's an additional AIR that somehow is lingering when the application is filed, which for some reason necessitates, you know, some further extension of time or delay, if everything else fails the director, you know, can go and modify the time periods as appropriate.

MR. MOLLER: Okay. Thank you.

My second clarifying question for the FERC staff.

Is -- can applicants start the consultation process earlier than the five-year NOI filing period? Tim, you -- you mentioned kind of a notice letter that would be sent from FERC to applicants.

And question is: Is there anything in the proposed rule that would encourage or hinder applicants from taking action prior to the NOI filing date?

MR. WELCH: There's nothing to preclude an applicant from beginning the process before the five- to five-and-a-half-year period. We hope we haven't put anything in there to hinder them.

I think maybe the one encouragement would be the advanced notice as a sort of -- you know, the sort of the wake-up call. And if you look at the requirements for the PAD, one would say, hmm, in order to really get this going I'm going to have to talk to somebody. But we're not requiring any consultation prior to the NOI period.

MR. CLEMENTS: With one exception and that is the exception that if you -- if you being a licensed applicant want to use the alternative licensing process, you're going to have to get with the stakeholders beforehand. Because when you file your NOI it's at that time that you have to request the use of an ALP and you're not going to get there unless you've got critical mass or the kind of consensus that the Commission has required to use that process. And

we -- we took the existing criteria for use of an ALP and lifted them right out of 3.43(e) and put them in here, somewhere in Section 5 upfront. So that's the one prescriptive thing prior to an NOI that exists in Part 5.

FACILITATOR BLAIR: Brett, you had a comment to that.

MR. JOSEPH: Yeah, just a quick addition to that.

I think that the PAD is a very important, a very key enhancement under the integrated process as well as actually in being applied to all of the processes. And one of the concerns that we have is ensuring that these documents are adequate, because they are at the front end of the process. They are expressly, you know, set forth as the basis for developing study requests. And, as Tim was pointing out, are intended to lead directly into an expedited NEPA review process.

What I don't see in there -- maybe, John, if it's in there, you can point to where it is -- is a clear mechanism for determining the sufficiency of the PAD when it's filed. It's filed at the same time as the NOI, but in the event that it's -- it's very cursory. It only minimally or really doesn't do a good job of meeting the content requirements in the rule, you know, is there a mechanism to stop the process right there and send it -- you know, send it back.

Because I think in lieu of having an earlier start to the licensing process, what is in here is an incentive to get started early. And that incentive only holds up if there's some assurance that an inadequate PAD will -- will not be -- will not move the process forward. It will be thrown back to the applicant.

FACILITATOR BLAIR: Mona, you had a comment.

MS. JANOPAUL: Yeah, Jim. On the issue of early starts, John noted that there is a sort of de facto early start required for alternative licensing processes. If you are looking for the licensee to file more than a statement of for good cause and a request to use the traditional licensing process at the time of the NOI, then maybe that's something you should state in your comments about the criteria, looking about some kind of early start and the same kind of prework in licensing in requests to use traditional licensing processes. That's one of the key questions here: What criteria should be applied in a licensee's request at the time of the NOI. So that's a wide open book that we're really looking for some good input on. Thank you.

FACILITATOR BLAIR: Okay. Jim, if I could ask you to hold your question for David Moller, you have two other people behind you that would like to ask questions. And then we're a little bit past the break time, if we could

have two more questions and then we'll take a break and then we'll proceed after that, okay?

In the back, yes, and please state your name.

MR. RABONE: Geoff Rabone, Southern California Edison.

I was just wondering what some of the drafting panel's thoughts were on whether cost would be a justification, a good-cause reason for requesting the TLP, recognizing that the additional of this PAD requirement is going to vastly increase the costs of a TLP process.

MR. CLEMENTS: Well, I'm not sure that we wholeheartedly agree with the premise that the integrated licensing process or the PAD is going to vastly increase the license applicant's costs. Much of the PAD was lifted from existing 16.7(d), which is the materials that are required to be provided and made available to the public at the time the notice of intent is filed, and that's been there since 1989.

And the PAD regs, if you read them closely, state that it's -- it's existing information at that time, so it doesn't require the applicant to do studies in order to create the PAD. It may have to do some work with respect to creating the description of its own project, but that would be there in any event and certainly the applicant would need it. But it doesn't request sort of pre-NOI studies to be

done.

I've lost the thread of --

MR. RABONE: But the real question is --

MR. CLEMENTS: Oh, yeah, the cost --

MR. RABONE: -- is cost a good cause for requesting a TLP?

MR. CLEMENTS: Oh, like I say, there's nothing in it now but "good cause." And we're just asking for people, you know, if you have wisdom on what criteria ought to be applied, if any, then, you know, tell us today, tell us in your written comments. We expect to get a lot of -- a lot of feedback on that.

MR. WELCH: Geoff, before you continue, I just -- I thought I heard you say something about your comparing the traditional with the ILP and you were saying that you felt that the PAD would add more cost. But, remember, we are proposing that the PAD be part of the TLP as well. So regardless of process, you will have to provide -- everyone is going to have to do a PAD.

MR. RABONE: I recognize that. I don't necessarily agree with that -- that process design, but my just -- my quick response would be that as a representative of a company that has many small projects, under five megawatts, our feeling is that costs will be a good justification for requesting a TLP process. Because many of

our project managers on relicensing those kinds of projects, although they typically try to involve the stakeholders more than is absolutely required in the regs, they don't feel as though a full blown collaborative process is justified by the size or complexity of their projects.

FACILITATOR BLAIR: Okay. Next question. Wayne Dyok.

MR. DYOK: Wayne Dyok, MWH. I guess this is an add-on to, you know, Jim's question regarding the --

FACILITATOR BLAIR: Excuse me. Wayne, restate who you represent, please.

MR. DYOK: MWH. Yeah. This is an add-on to, you know, Jim's question regarding the early start. I think it goes without saying that most applicants are going to get started before the, you know, notice of intent is filed. But it seemed to me in reading the regulations that the PAD itself was to be filed at the same time of the notice of intent.

And, Tim, when you had said, you know, you could get started before the notice of intent, did you mean that the PAD could be distributed before the notice of intent? Because my concern is that if that's the case then it would -- it might make a lot of sense for some folks, you know, to be able to get started with this process, but that really kicks off the formal process once you get that PAD out. So

could you clarify what you meant by "early start"?

MR. WELCH: I think that -- I think that an applicant could look at the requirements of the PAD and, once again, and say, 'Gee, I better talk to some technical experts to see if there' -- 'what kind of existing data are out there.'

I think that an applicant would be free to circulate its PAD to anyone or any entity it chooses.

I think we'll get into this in a lot more detail this afternoon.

FACILITATOR BLAIR: Okay. It's now by my watch 20 till 11:00. Let's take a 20-minute break and be back here by 11:00. At that time -- huh?

MR. WELCH: So generous.

MR. JOSEPH: Yeah, they came here to work.

FACILITATOR BLAIR: That'll give you a chance to formulate your -- your issues that you would like to address. The format for this afternoon -- or this morning and this afternoon is to get a list of the issues that are of concern to you. We've already heard some on early notification and early preparation of PAD and the criteria for whether you do the ILP or the TLP.

Let's -- we're going to list those up on the screen after we've massaged that. And then we will prioritize the discussion and then proceed to, hopefully in

addition to raise questions, but also raise some solutions. So that will be the format that -- after the break and then this afternoon.

Any clarification before we break?

(No audible response.)

FACILITATOR BLAIR: Okay. Back here at eleven o'clock, please.

(Recess taken from 10:40 a.m. to 10:58 a.m.)

FACILITATOR BLAIR: Southern Cal Ed has 100 CFS on the next application for the door prize.

(Laughter.)

FACILITATOR BLAIR: Okay. Three housekeeping items. When you first speak, especially if you have a difficult spelling of your last name, if you would spell it for the reporter so we can get it on the record. Example: Dyok.

(Laughter.)

FACILITATOR BLAIR: If you just joined us and you had not registered outside, in the foyer, if you would please register.

Also on acronyms, some of the companies for example have acronyms, SCE. For the record you might state, and I'm not singling out SCE, but for the record we have it the full explanation of an acronym, for the record.

Okay. The next part of the program is where we

record your issues up on the screen and -- your concern about some of the proposed rule language. And after we get a listing then we're going to prioritize the discussion and then proceed.

And, again, the watch word is "solutions" as well as questions. We heard this morning quite a bit of questions and clarification on dispute resolution, what is the definition of "binding," on mandatory conditioning agencies, enforcement of study plans, what mechanics does FERC have to enforce its dispute binding resolution, process selection, criteria for approval, and so on. So we already sort of started that process, but we need to sort of formalize it by putting it up on the screen. Liz Molloy, of FERC staff, is kind enough to offer her assistance in recording the issues. So if she doesn't quite get the tone of it, please let me know and we'll change it.

So, with that, unless staff here at the head table have anything to add, we'll kick in.

All right. First issue. Who would like to -- well, let me give you an example. In Portland we heard 29 different issues listed and we worked our way through all of them, but we collapsed the last few of them as the day went on. But, for example, study criteria. What constitutes study criteria. Time period for studies and so on. Those are some of the key -- the key ones that popped up in

Portland.

So we'll start over here. Tim -- or Ken, Andy.

Again, please state your name, and try to be succinct in your issue.

MR. SAWYER: Small words.

FACILITATOR BLAIR: Small words, yes. Especially for attorneys, small words, please.

MR. SAWYER: Andy Sawyer, S-a-w-y-e-r, California State Water Resources Control Board.

Several California state agencies met earlier and outlined eight issues. Your clarifications have cut it to seven. With your indulgence I'd like to go through the seven, if that would be possible.

The first would be the timing of 401 certification, which I would call the timing of 401 and CZMA, Coastal Zone Management Act, certification. Since the issues are similar and, although California does not have any hydro projects in the coastal zone, other states do, and use their CZMA authority.

The second issue would be joint environmental documents.

FACILITATOR BLAIR: Can you elaborate a little bit?

MR. SAWYER: Yes. In our view the desirability of having environmental -- a single environmental document

meet the requirements of the National Environmental Policy Act for all federal agencies which need compliance, and meet the requirements of the states' little NEPAs. In California it's called CEQA, the California Environmental Quality Act. But to try to prepare a single environmental document which serves the needs of all agencies that have approval authority and need an environmental document as part of that approval authority.

FACILITATOR BLAIR: Well, let me -- a clarification. So you would like for this environmental document to include, for example in California there's a CEQA process; is that correct?

MR. SAWYER: Correct.

FACILITATOR BLAIR: Okay.

MR. SAWYER: The third issue is actually several issues related to the study dispute resolution, and we have subsets of that issue. But the first subset is who may invoke the study dispute resolution proceeding. Two of the issues were discussed this morning and have largely been clarified. But we have a little additional discussion on, and that's the binding nature and how it applies in the traditional process.

And then we have some issues on just the mechanics of how the system works, and we lumped those together under study dispute resolution process as a third

issue.

We also lumped together as a fourth issue timing issues, all of which we asked clarifying questions about in terms of contingency planning, early start, and the timing for 10(j) recommendations. I'll slow down here. I had contingency, early start, and 10(j) timing were the three.

Our fifth issue was the quality of preapplication documents.

Our sixth issue was the determination as to whether you would use the integrated process or the traditional or alternative licensing process choice. That's good.

And our seventh issue was the need to emphasize the benefits of relicensing. This was mostly a comment on the preamble, but it seemed to present to us the picture that this was all a burden and failed to recognize that relicensing does a lot of good and we thought there was a need for some emphasis of that.

FACILITATOR BLAIR: Okay, good. Thank you.

MR. SAWYER: The benefits of relicensing. Thank you.

FACILITATOR BLAIR: Next. Nobody?

Tim, way in the back. The lady in the black blazer.

MS. DONOVAN: Karen Donovan on behalf of the

State Water Contractors.

And I guess we have sort of an overriding issue or a question and some subsets of that. And that would be the availability of elements of the ILP for a process which has already been initiated. And particular elements would be study plan criteria, dispute resolution with respect to study plans, and early involvement of FERC. I guess I went a little fast on that.

FACILITATOR BLAIR: Let me -- a clarification. Are you saying if you all have a process in motion and then the ILP comes online, can you adopt part of that, or is that the question, or does --

MS. DONOVAN: Yes. Would elements -- would elements that are listed here for the ILP be available not necessarily for an ongoing traditional process but for a process that's proceeding under the ALP, the alternative licensing, at this point?

FACILITATOR BLAIR: Okay. I'm sorry, Tim -- or, Ken, who?

MR. CLEMENTS: David.

FACILITATOR BLAIR: David.

MR. MOLLER: David Moller, Pacific Gas and Electric Company.

I'm not quite clear at this point if I wish to repeat a subject that's already up there. Shall I say it,

not say it?

Are we just trying to get a list --

FACILITATOR BLAIR: Trying to get a list of issues that are of a concern to the rule that we have before us. And then if you have a suggested solution, when we get ready to discuss them, then bring that forth.

MR. MOLLER: So at this point if an issue that I wish to speak to is already up on the board, don't repeat it?

FACILITATOR BLAIR: Right. Unless -- yes, unless you have, you know, a subset that you want to add to it.

MR. CLEMENTS: What we've been doing is after we get the list then we take a vote basically to prioritize, so here we're just doing the list. And then when everybody's given all their issues, then we'll do the prioritizing.

MR. MOLLER: Thank you. An issue that I would like to see put up there is the study criteria specifically.

FACILITATOR BLAIR: Can you amplify on that that a little bit?

MR. MOLLER: Yes. There are a couple of aspects to some of the proposed criteria that I'd like to make some suggestions on. And there is another type of criteria that I would like to make some suggestions on in terms of the merits of a study request.

FACILITATOR BLAIR: Okay.

MR. MOLLER: I have some items I'd like to discuss around dispute resolution. And, let's see, who may invoke, binding nature. Mechanics are up there. An added subissue to dispute resolution would be the possibility of applicability to aspects of the proceeding other than dispute resolution or in addition to dispute resolution.

And then I would like to tee up again the -- the issue that I raised this morning about the prospects for responding to a final decision by the director regarding a study plan.

FACILITATOR BLAIR: Okay. Your second item on dispute resolution, I guess we missed the point. Can you restate that? Your third item was an appeal process, but the second item we didn't get.

MR. MOLLER: Applicability to issues other than study disputes.

FACILITATOR BLAIR: In other words, you want to have a dispute resolution process on some other issue other than studies?

MR. MOLLER: Correct.

FACILITATOR BLAIR: Okay.

MR. MOLLER: Or at least discuss the prospects for that.

I'd like to have some opportunity to discuss some of the timeframes proposed and the need for some flexibility

around those timeframes, particularly during the early phases of issue identification, study plan development.

FACILITATOR BLAIR: Anything else?

MR. MOLLER: I have a suggestion with regard to the advanced notification by FERC, that it would at least like to raise.

FACILITATOR BLAIR: Okay.

MR. MOLLER: And then also I'd like to touch bases on the preapplication document, specifically about the scope of material in that.

FACILITATOR BLAIR: Okay, great. Again, if your issue is already up there and you just have maybe a subset, like we did on dispute resolution, then so state.

Okay. Please state your name.

MR. RABONE: Geoff Rabone, R-a-b-o-n-e, with Southern California Edison.

I just wanted to discuss a little bit this idea of interim study reports in the middle of the two-year study proposed process, whether they're necessary at all. And, if they are necessary, to what extent.

FACILITATOR BLAIR: Okay.

MR. BONHAM: Yes. Chuck Bonham, B-o-n-h-a-m, with Trout Unlimited.

I have one suggested issue that's a subset of process choice and it's: Good cause criteria.

FACILITATOR BLAIR: Okay. Jim.

MR. McKINNEY: Jim McKinney, California Resources Agency.

I think I should have asked this as a clarifying question this morning, but paragraph 232 in the preamble where it discussed the new information collection statement and requirements, so I would like to have that as an issue both for clarification and use.

FACILITATOR BLAIR: Re-restate it, Jim.

MR. McKINNEY: The new information collection requirements.

FACILITATOR BLAIR: Amplify it now. New information collection requirements, and?

MR. McKINNEY: Their -- their intended use and purpose, how they relate to comparison of natural resource benefits and relicensing benefits. And my clarifying question, while I've got the mic, is that we seem to be directed to make comments to OMB about this one, or some other part of FERC, as opposed to you guys. And I'm looking at page 130.

FACILITATOR BLAIR: What section, C?

MR. McKINNEY: In the preamble, excuse me.

FACILITATOR BLAIR: C? C-130?

MR. [SPEAKER]: C-91.

MR. McKINNEY: I'm sorry. I'm going off the only

NOPR paginations.

MR. [SPEAKER]: C-54.

FACILITATOR BLAIR: Okay. Page C-91 in your yellow book. You made a statement about it applies to OMB; you want to elaborate?

MR. McKINNEY: Okay. McKinney here. Okay. Let's see, it says, "Interested persons may obtain information on the reported requirements by talking to Michael Miller, Office of Chief Information" -- "Chief Information Officer."

So my clarifying question is: Is he part of your team? Any comments or concerns we have on this, does this go to him separately or does this go in our comment package?

FACILITATOR BLAIR: Why don't we go ahead and handle that right now, if it's okay, John.

MR. CLEMENTS: I would think they would go to directly to Mike, but they're -- if it goes directly to Mike we're certain to see it, in any event, because we have been working with him to develop this section. So it'll -- it will spread if you send it.

FACILITATOR BLAIR: Okay. Other issues?

I'm sorry, Liz.

MS. MOLLOY: Does this take care of this issue or is there still --

MR. CLEMENTS: I think that's done.

FACILITATOR BLAIR: Yeah.

Jim's not done. Okay.

MR. McKINNEY: I think as an issue, I wanted to have that as an issue: Use and purpose of the new information being collected. Just what you had up there.

FACILITATOR BLAIR: Wayne Dyok.

MR. DYOK: Wayne Dyok, MWH. The full spelling of the company name is MWH.

This may go under new information being collected, but it's the -- the cost data that's being requested by FERC on the cost of -- on the cost of licenses.

MR. BONHAM: Yes. Chuck Bonham again with Trout Unlimited.

I have an issue that's related to Section 5.28(e), which in our yellow book is D-86 and it's "Trial-type hearing."

FACILITATOR BLAIR: "Trial-type hearing," is that what you said?

MR. BONHAM: Is the heading for that section.

FACILITATOR BLAIR: Okay. Other people?

Are we all done?

Had a question up here in front.

Wait a minute, wait for the mic, please.

MR. WALD: I'm Steve Wald, W-a-l-d, with the California Hydropower Reform Coalition.

And this is really crosscutting, but we may as well put a bullet in there, for public participation it's -- it's really a component of a lot of these things. As an example, under "dispute resolution process, who may invoke," a sub- -- a subheading would be: Who may participate.

MR. CLEMENTS: Is that just with respect to dispute resolution?

MR. WALD: I think it's crosscutting. There's several areas where -- I think it's going to come up under a lot of these bullets.

MR. CLEMENTS: Okay.

FACILITATOR BLAIR: Way in the back. Give him a second to get back there with the mic.

MR. HOUSE: Lon House, H-o-u-s-e. I'm with the Association of California Water Agencies and the Regional Council of Rural Counties.

And the issue that I would like to talk about is mandatory consultation, particularly with water agencies and with the counties that are involved in hydro projects.

FACILITATOR BLAIR: Liz, why don't you add "specially with the water agencies."

Okay, other?

Gee, you're an easy crowd. We had 29 in Portland.

MR. JOSEPH: Don't egg them on.

MS. JANOPAUL: Egg them on. Make our job easier at the end.

MS. MOLLOY: Do we have any that we want to add that we've been seeking, in particular?

FACILITATOR BLAIR: Good point.

John.

MR. CLEMENTS: Actually I just have a clarification question for a member of the audience. I don't know who the state water contractors are. You know, what entity that is. So if you could clarify that?

MS. DONOVAN: Oh, it is the beneficiaries of the state water department.

MR. CLEMENTS: Okay. Thank you.

FACILITATOR BLAIR: Why don't you restate for the record, please?

MS. DONOVAN: The beneficiaries of the state water project, the contractors for that project.

FACILITATOR BLAIR: All right. Yes.

MS. JANOPAUL: I was wondering, Geoff Rabone raised some issues this morning about small projects. If he or anyone else would like a discussion, one of the questions on page B-7 is modifying regulations to further accommodate small projects, either in the context of criteria for selecting, qualifying for a traditional licensing process or -- or other. You know, this is certainly an issue that

we've heard a lot about last year in revamping this, is accommodating the small project, particularly in a relicensing situation.

So if you'd like it up there as a discussion point or have contributions, or other people in this room do, I would encourage a discussion on that.

FACILITATOR BLAIR: Do you want it up there?

MR. RABONE: Yes. Geoff Rabone. I just didn't want to spell my name again.

FACILITATOR BLAIR: Just like to hear your name, right.

George, did you get that last one?

We're good to go?

THE REPORTER: I didn't get that last one.

FACILITATOR BLAIR: Okay. Geoff, restate please.

MR. RABONE: It's Geoff Rabone. I'm Geoff Rabone, R-a-b-o-n-e, with Southern California Edison.

And, yes, I would like to talk about the impacts of -- especially altering the existing traditional license process for small projects.

FACILITATOR BLAIR: Go ahead.

MR. WALD: Hi. Steve Wald again with the California Hydro Reform Coalition.

Just as a bullet, this is also crosscutting enforcement or consequences, and, you know, this can come up

in the PAD. It can come up in carrying out the adopted study plan. It can come up perhaps with the whole process plan. So it's another one that may come up with time to time, but it's an issue area we'd like to talk about more.

MR. BONHAM: Yes. Chuck Bonham with Trout Unlimited again.

And just in defense of the Sacramento group, we may be lumpers and not splitters, like the Portland group.

(Laughter.)

MR. BONHAM: So leaving that aside. A particular issue of interest to me is settlement and whether or not there should be specific clarity within the new rules related to settlement.

FACILITATOR BLAIR: Okay. David, just a minute.

MR. JOSEPH: David Moller, Pacific Gas and Electric.

Taking Mona's lead, I looked back at the questions and the presentation as well, and there are two others that I think would benefit from discussion. One is this issue about the need for a draft license application and the other is the timing of submittal of recommendations and conditions.

MR. JOSEPH: How are they doing, John? Are they beating Portland yet?

Yeah. Just in terms of elements of the

integrated licensing process that also would be applied to the traditional licensing process, there was at least one identified this morning regarding perhaps the need for a feedback mechanism on study requests. There may be others, but just to determine whether, you know, everything that's been included in the traditional licensing process as an enhancement is covered.

MS. MOLLOY: Would that be addressed in -- would that be addressed in applicability of certain elements to the TLP, ALP, or would that be a different...

MR. JOSEPH: It may. I'm trying to recall that point that was raised. But, yeah, I think --

MS. JANOPAUL: It seems to me that issue was more -- and Ms. Donovan can correct me if she's -- if this is -- I didn't hear this write. She was talking about applicability of certain things to the ALP. You know, I join -- I join with Brett in asking do we need any other changes to the TLP to make what's proposed there work.

MR. JOSEPH: Yeah. Actually I recall those are two separate issues, because what I heard was applicability to existing ongoing proceedings under the ALP or TLP. I'm not sure what's really captured up there, but -- and I agree with that being an issue, but I would add also the applicability of some of these new elements to the revised ALP or TLP process.

MS. MURRAY: Jim.

MR. McKINNEY: Jim McKinney, California Resources Agency.

This is an issue we've discussed a lot over the last six months. I think the short-term version would be: What happened to some of the concerns raised in the California proposal about total length of processing time for relicensing.

FACILITATOR BLAIR: Okay. Why don't we cut it off there? That should keep us busy for the rest of the morning and this afternoon.

The next thing we're going to do is actually prioritize this by voting. And John Clements always says vote often, but, no, we only give vote, okay. So we're going to go down each item and see who would like to have further discussion. And, again, the watch word is you know suggestion of solutions, if possible. Maybe we can collapse some of these; I'm not certain. I don't see any right now.

Also if you want to decide you want to retract, we'll welcome retractions, but we're going to go down and vote who would like to speak on a certain topic, and then that will give us the priority for the rest of the morning and this afternoon.

So the first topic is: Timing of 401 CZMA Certification. How many people would like to discuss that

in length?

(Hands raise.)

MR. HOGAN: We got 14.

FACILITATOR BLAIR: Fifteen?

MR. HOGAN: Fifteen.

FACILITATOR BLAIR: Fifteen.

MR. HOGAN: We want to count Jim twice.

FACILITATOR BLAIR: Joint environmental documents. Satisfying the CEQA process or similar processes in states.

I would have thought that California would vote. Fifteen?

(Hands raise.)

MR. HOGAN: I've got 17.

FACILITATOR BLAIR: Seventeen? We'll split it, 16. Sixteen, okay.

Next one: Dispute resolution process, who may vote. Binding nature, mechanics. A lot of subsets there, but I think we're going to have quite a few people. All right.

(Hands raise.)

FACILITATOR BLAIR: I'll accept your official count, Ken.

MR. HOGAN: People are putting their hands up after I go by.

FACILITATOR BLAIR: I got 18. I got 18.

MR. HOGAN: That's what I had on my first count.

FACILITATOR BLAIR: Okay.

(Audience members comment outside of the range of the microphone.)

MR. RABONE: What I meant by contingency on the timing I think is the same thing that Bill --

MR. HOGAN: Hold on. Hold on.

MR. RABONE: I believe that what I meant by the first subset here, contingency planning, is the same thing that Bill [sic] Moller meant farther down at the bottom of the left column, is timeframes. So I wonder if we're going to lump or split here before we vote?

FACILITATOR BLAIR: Does Bill Moller agree?

MS. [SPEAKER]: David Moller.

MR. RABONE: David Moller. I'm sorry. David Moller.

MR. MOLLER: A cousin. It seems to me we could lump timing issues. There's timing issues.

FACILITATOR BLAIR: Okay. Give Liz a chance to consolidate.

MR. MOLLER: It seems that we could lump all the timing issues into one category.

FACILITATOR BLAIR: Okay.

MR. RABONE: And I think that would include our

10(j) issue and timing of recommendations, are very similar, overlapping at least.

MR. SAWYER: Andy Sawyer.

FACILITATOR BLAIR: Give us a minute to collapse.

Any other consolidations or retractions?

Okay. Timing, contingency, early start, 10(j) timeframes.

MS. JANOPAUL: A clarification. You didn't mean just 10(j), you meant all recommendations and conditions, right? Is that --

MS. [SPEAKER]: Well, I think that was the lumper that we --

MS. JANOPAUL: Yes. So -- so I would -- I would ask Liz not to just put 10(j), but --

FACILITATOR BLAIR: Hold it just a minute.

MS. JANOPAUL: -- just put "conditions and recommendations."

FACILITATOR BLAIR: Go ahead, Andy, and clarify for the group.

MR. SAWYER: We initially meant 10(j), but the other commentor meant all, so I think it best to substitute "timing of recommendations" for "10(j)" in the way we label it there.

MS. JANOPAUL: Thank you.

FACILITATOR BLAIR: So you're saying separate

them?

MS. JANOPAUL: No.

MR. SAWYER: Lump them with the words "timing of recommendations" instead of "10(j)."

FACILITATOR BLAIR: Okay. I got you. All right. All right.

All right. Then let's take a vote.

MR. JOSEPH: Okay. Put your hands up now.

(Hands raise.)

MR. HOGAN: Fourteen.

FACILITATOR BLAIR: Okay. Quality and scope of the PAD.

(Hands raise.)

MS. [SPEAKER]: So do you guys vote?

FACILITATOR BLAIR: Well, we have a vote up here.

MR. CLEMENTS: It's your meeting.

MR. HOGAN: Twenty-two. Twenty-two.

FACILITATOR BLAIR: Twenty-two.

MR. HOGAN: Fairly over the top.

FACILITATOR BLAIR: Why don't you give Liz a second to move that one up towards the top of the page, we'll get started --

MS. MOLLOY: Haven't moved any of them yet.

FACILITATOR BLAIR: Not going to do that yet? Okay. All right.

Process choice criteria. How do you select a TLP versus an ALP versus default. Is that correct? Okay.

(Hands raise.)

MR. HOGAN: Sixteen.

FACILITATOR BLAIR: Benefits of the relicense. We have cost information and the criteria, but what are some of the actual benefits.

MR. [SPEAKER]: No campaigning.

FACILITATOR BLAIR: Okay. We have a weigh in by industry.

MR. HOGAN: Thirteen.

FACILITATOR BLAIR: Applicability of certain elements to existing TLP, ILP. I forget what that one is.

Okay. Vote?

(Hand raise.)

MR. JOSEPH: One.

FACILITATOR BLAIR: Sorry.

MR. HOGAN: Well, we'll get to them all.

FACILITATOR BLAIR: No, we'll get to all of them anyway. We did in Portland, so.

MR. CLEMENTS: Come talk to me at lunch.

(Laughter.)

FACILITATOR BLAIR: Study criteria. That's a broad topic, but I assume everybody's apparently going to -- okay.

(Hands raise.)

MR. HOGAN: Nineteen.

FACILITATOR BLAIR: Advance notification. What constitutes -- is that one where we -- when can the process begin?

MS. [SPEAKER]: No.

MR. MOLLER: Like the pre-NOI period.

FACILITATOR BLAIR: Pre-NOI period.

Interim study reports.

(Hands raise.)

MR. HOGAN: Two.

FACILITATOR BLAIR: The use and purpose of information collected, cost information. That was your, what, OMB thing? Okay.

(Hands raise.)

FACILITATOR BLAIR: Five?

MR. HOGAN: Six.

FACILITATOR BLAIR: Six.

Trial-type hearing.

MS. [SPEAKER]: Can you reiterate what that subject was?

FACILITATOR BLAIR: The gentleman from Trout Unlimited. Give him the mic.

MR. BONHAM: Yes. I read the rulemaking to propose a new section.

THE REPORTER: Name, please.

MR. BONHAM: Chuck Bonham with Trout Unlimited.

I forget the -- with my fingertips, I don't have the particular number.

FACILITATOR BLAIR: Louder, please.

MR. BONHAM: And I have an amendment to that section, as a solution.

MR. CLEMENTS: D-86.

FACILITATOR BLAIR: Okay. We got, what, one vote there, two votes, three -- all right, everybody's hands up on this one, please, now that we have a clarification.

(Hands raise.)

FACILITATOR BLAIR: Five votes.

MR. HOGAN: Looks like five.

MS. JANOPAUL: Section 5.28(e) on pages D-85 through -86.

FACILITATOR BLAIR: Public participation, where, when, and how.

(Hands raise.)

MR. HOGAN: Six. Seven.

FACILITATOR BLAIR: Mandatory consultation, especially with water agencies. When do they weigh in.

(Hands raise.)

FACILITATOR BLAIR: Two.

MR. HOGAN: Two.

MS. MURRAY: Small projects. Mona brought this up. Further discussion on how small projects are affected by the ILP.

(Hands raise.)

MR. HOGAN: Looks like 11.

FACILITATOR BLAIR: Enforcement, all the ramifications of enforcement.

(Hands raise.)

MR. HOGAN: Eight.

FACILITATOR BLAIR: Settlements.

(Hands raise.)

MR. HOGAN: Sixteen.

FACILITATOR BLAIR: Draft license application, is it necessary. If so.

(Hands raise.)

MR. HOGAN: Six.

FACILITATOR BLAIR: Any changes required to the TLP.

(Hands raise.)

MR. HOGAN: Four.

FACILITATOR BLAIR: Questions revolving the total length of process time is a realistic...

(Hands raise.)

MR. HOGAN: Eleven.

FACILITATOR BLAIR: Okay. Give us a moment to

reorder, and --

MR. JOSEPH: So what's the winner?

FACILITATOR BLAIR: The big winner is: Quality and scope of the PAD, okay, followed by dispute resolution, process choice and settlement -- oh, study criteria. Process --

MR. JOSEPH: Ken, I have a possible lumping suggestion.

FACILITATOR BLAIR: Okay.

MR. JOSEPH: I notice that the item having to do with process, choice, and criteria only record 16 votes. However, I think that issue is closely related with at least two other issues that are up there. The one dealing with small projects, and I'm making the kind of an assumption that one -- you know, one possible way of dealing with small projects is that it may be among the criteria that are dealt with for selecting between the processes.

And also, you know, the elements that are included in the revised version of the TLP is closely related to how that process choice would be. So it's process and substance -- you know, are kind of both aspects of that, but I'm just concerned that by breaking them into several issues when they really are related, that they're giving less priority than they really deserve.

MR. HOGAN: Just a remainder. The head table

also needs to state their name for the record.

MR. JOSEPH: Brett Joseph, National Marine Fisheries Service.

MR. WELCH: Tim Welch with FERC.

Well, we sort of -- having this be the fourth time I've done this, I think what usually happens, Brett, is, you're right, they come up in other higher priority items. But then when we get there we always go, 'Oh, well, we sort of talked about that back...' I think it'll work itself out.

FACILITATOR BLAIR: Okay. Well, leave it stand as-is then.

Any other people would like to make any consolidations or eliminations?

Okay.

MR. CLEMENTS: We could just start on PAD while Liz is reordering the rest of them.

FACILITATOR BLAIR: Okay. Let's see, I look at my notes. Who raised the initial issue about PAD? Raise their hand.

MR. JOSEPH: Just so everybody can sort of be on the same page we discussed the PAD in Section 5.4 on page D-50.

FACILITATOR BLAIR: Oh, housekeeping. Housekeeping. If you're going to reference -- that's a good

point. If you're going to reference some aspect of the language in the document, please use the yellow book and please state where it is located in the yellow book.

Andy, had a comment.

(Audience members comment outside of the range of the microphone.)

MR. SAWYER: The question was who initially raised the issue of the quality of the PAD. Andy Sawyer, State Water Resource Control Board. It was one of the seven issues the State of California raised, and I think Nancee Murray can -- if you had questions about why we raised it -- can best respond to that.

FACILITATOR BLAIR: Okay. Nancee, you want to go ahead and kick it off?

MS. MURRAY: Well, my biggest -- one of my biggest concerns with the section that I haven't yet found in the yellow book, but on the PAD, 5.4, is the -- the qualifier on many of the sections: "to the extent known, available, and applicable." And, one, the redundancy of "known, available, and applicable"; and then, two, something may be known, but is there a requirement to actually gather it. Twenty past years of hydrologic data, is there a requirement to get it.

MR. CLEMENTS: Well, right now this is the -- as the regulations are constructed, the PAD is, along with the

NOI, the initiation of the process.

MS. MURRAY: Right.

MR. CLEMENTS: And so it only relies on existing information as of that time. And then to the extent that people think additional information needs to be developed or found, that's what the rest of the process is about. So there's no -- there's no implied study requirement in here. And so then with that, what your -- do you have a recommendation?

MS. MURRAY: Well, we've been wrestling with this quite a bit, this "known, available, and applicable."

MR. JOSEPH: Yeah. I think some clarification is really warranted here, to specifically address whether or not there's a kind of a due diligence search requirement. If information is available, what does that mean, does that mean that there is an affirmative obligation to seek out information in the form of a literature search, for example.

And I think in -- I think there's an ambiguity both in this section and when you get to the study section that refers to information and study requirements as to in any given case which category are you in. Is gathering existing information considered a study. In some cases may be so, but what I would advocate for here is that there be some kind of an explicit due diligence requirement to ensure the -- that information that can be obtained through

reasonable search, reasonable inquiry would be made part of the PUD -- PAD.

FACILITATOR BLAIR: Do you have a reaction to that, Nancee?

MS. MURRAY: I definitely think there needs to be a due diligence requirement.

FACILITATOR BLAIR: Okay. Again, I know you're going to be on the record and you may change your mind in your comments as you file them with FERC but, you know, if some of the things that we respond to seem to make sense, in the spirit of solutions, if you conclude or concur with that, then so state, please.

Okay. Next. Jim, go ahead.

MR. McKINNEY: A point of clarification in the process here. Is this a discussion of issues or is this like, you know, we put something out and Mr. Clements responds and then we go to the next subject? I mean there's a lot of -- there's a lot of really important issues that focus right on this thing, the preapplication document. How good is it, why is it important to be good. So for a process clarification, can we have more discussion? Because I'd also like to really hear from industry about some of their concerns on this one. Plus I have a few more comments of my own.

FACILITATOR BLAIR: No, that's fine. We haven't

left this topic yet.

MR. McKINNEY: Okay.

FACILITATOR BLAIR: And your points are right on the mark. If -- assuming an industry wants to respond.

MR. McKINNEY: Okay. To elaborate then -- excuse me, Jim McKinney, California Resources Agency. To elaborate on the discussion by Nancee Murray, Brett Joseph, et al., it seems to me that FERC has developed a very good list of the basic scientific information that's going to be needed to really kick this thing off right.

So if we're going to have a fast frontloaded process, where we need good quality scientific information, in the preapplication document, I think FERC has done a great job of listing out what those subject areas are and what the subsets of those are. But then there's this qualifier available.

My concern is: Is there a class of information that we all know is needed for every license application, that is going to be needed, we know it's going to have to be generated, but it may not be available at that time, seems to me in a spirit of expediting process applications and making this preapplication document as robust as possible so the rest of us can do our -- our regulatory jobs, that it needs to be a lot of high quality information in there. So we're concerned about this notion of available at the time

of the NOI.

MR. CLEMENTS: Just a quick response, if I could. This is John Clements. We did talk about that with the federal agencies, but we never really got any closure on what -- what sorts of generic, crosscutting data requirements might be applicable. So, you know, we're -- again, we're open to suggestion on these things.

MS. JANOPAUL: John?

FACILITATOR BLAIR: Mona.

MS. JANOPAUL: Mona Janopaul, Forest Service.

Just to give you a little insight in the process on this. There was -- as John mentioned, there was a subgroup of FERC staff led by someone who's not here today, who did work with resource agency people. I wanted to respond to Patty, that an earlier version might have said "applicable." It now just says, "known and available."

But there was a lot of discussion about, you know, how does one define sort of more of a term-of-art phrase such "availability." And, you know, going back to earlier questions of cost, how much is this going to cost. You know, what does "available" mean. What does "consultation" mean. What does "known" mean.

I guess I'd like to say that the -- you know, the integrated licensing process, while not a collaborative, is supposed to be intended to have people come to the table

with a sense of goodwill, partnership, stakeholdership in the river. And the idea is that this will be a time -- the Forest Service does something now called an "existing information analysis" before we go into any licensing. And -- and this is not unlike what we would do. The question is, you know, how much is somebody going to spend to reproduce some data, or it may be available in some form, but it needs to be in another form to make it useful. You know, is it better to go out and do a new study.

So we're looking for reasonable judgment on the part of the licensee and the others participating in this to at some point make a reasoned judgment when a different study might be needed or when they would just like to say, you know, 'It's our opinion that we can get by with this information for this subject.'

But it's -- but it is a growing body, I think Tim talked about that a lot, the idea that this is a starting point, and didn't want to make it too onerous, but did want to give the opportunity to start having the licensee do the existing information analysis as opposed to each individual agency trying to go out and figure it out and then come in with some study requests -- again, integrated process where everybody would be working on this together. And hopefully the Forest Service and other agencies would be putting their efforts in to combining on providing information about

existing data and things.

But we did take out the worked "applicable" because that did sound pretty judgmental. So -- but this is -- this is a very raw area. And I think, in response to Jim, this is a very fertile area for further discussions. It was one of the many areas that was hurried in this rulemaking process. And I -- you know, there was a lot of FERC staff working on this, but, you know, some more time and some more attention is certainly warranted. So.

MR. ZANETTA: Alan Zanetta, Pacific Gas and Electric Company.

I certainly agree with Jim that this is a subject that could stand with a lot of additional discussion. This is one of these devil's in the details as to what is, you know, exactly is in the PAD.

Conceptually we certainly agree that the PAD represents the start of what hopefully is a fairly intense period of activity by a lot of stakeholders, including the applicant, in trying to get as much discussion upfront as possible. Without that, the integrated process really won't help.

Having said that, exactly what goes into the PAD, there will be a lot of attention to where do you go in the gray area of how far you go to collect existing data and what existing data is deemed appropriate to collect,

checking with, you know, nexus to the project at every step.

FACILITATOR BLAIR: Does Matt have the mic? Yeah, Matt.

MR. CAMPBELL: This is Matt Campbell, California Attorney General's Office.

To emphasize what California is saying on this point is there seems to be agreement across those who have spoken on this issue, that it's -- it's one of the linchpins to the integrated -- to the proposed integrated process.

What we -- but we're supposed to be solution oriented here, not just flagging this as a concern, but we're supposed to be pushing forward with what we're going -- what we all propose to do about it. And I believe what California is proposing is some additional language in this portion of the rule that sets forth more specific requirements for what needs to be in the PAD. And it'll be a balancing act between, as Mona points out and I think Alan alluded to, that -- making those requirements and specificities too onerous for the applicant, but not as -- as lackadaisical or formless as it appears to be in the proposed rule right now.

But I think what -- what California's looking for is in -- as an end result of this information gathering, is existing environmental baseline data that we can start with and then kick-start the process and then move ahead.

FACILITATOR BLAIR: Okay. Tim, you had a comment?

MR. WELCH: Yeah. Just to respond to what Matt said a little bit. Could anybody or for -- maybe Jim or maybe somebody from California give an example of -- I mean I look at this and I thought, "Wow, this is, you know, really a high level of specificity," and you're saying that you would be looking for more. And I just -- if you -- do you have a quick example?

FACILITATOR BLAIR: May I pass your microphone doesn't to Nancee, please, for the rebuttal?

MR. HOGAN: Nancee.

MS. MURRAY: We often ask for the unimpaired hydrograph. And DFG has now somewhat started routinely asking for 25 years of the unimpaired hydrograph. That information is known in pieces, but it's very helpful at the start to know that and to have it then even arranged so that we -- it's wet years, dry years. And 25 is -- what we believe is a minimum. We sometimes ask, have asked in the past for more, but we're thinking that we could live with 25 years.

We -- it's pulling teeth to get it, so the question would be I think that's known and available. It takes -- it's going to take some work and it may take some synthesis for gaps. And there may be some projects that

need to do some work to get the unimpaired hydrograph, but we think that's part of the baseline environmental -- baseline environmental information Matt was talking about.

FACILITATOR BLAIR: Okay.

MS. MURRAY: And I'm just -- maybe this is a clarifying question. Is that something that you see? I mean we also have a comment of adding that as one of them, but, you know, we're trying to minimize the fights.

FACILITATOR BLAIR: Any comments by the panel? You want to speak on that, Brett?

MR. JOSEPH: I just want to say, if I understand, I mean clearly historic information would be available -- if it's available, would likely be relevant to determining what kind of condition -- future conditions, desired future conditions would be sought at the project.

I think, you know, this whole baseline issue is kind of oftentimes misconstrued or characterized as something other than -- than what it really is. It's a question of the relevancy of the information for purposes of making decisions.

FACILITATOR BLAIR: Okay. Wayne. Tim. Tim.

MR. WELCH: I just -- sorry. Just continuing on the subject, just keep -- that's a good example, and I understand now. But do keep in mind here that there is an opportunity to revise the PAD up in box number 5. I mean

this goes out for comment. Then we have a scoping meeting and a site visit, so there's time for discussion of the PAD. Then there's comments and then there's an opportunity in box 6 for the applicant to revise its study plan.

So we put that in there to allow the PAD to be tailored to the individual project in the individual state where it's located. Once again, as kind of Matt put it, we sort had to -- we sort of are balancing the fine line. I mean this is for all hydro projects regardless of size, you know, all over the country. And so -- anyway, just keep that in mind.

But that level of specificity that you mentioned, Nancee, we would be looking for in the written comments.

FACILITATOR BLAIR: Okay. Wayne, is your comment still on the same subject?

MR. DYOK: Yes.

FACILITATOR BLAIR: Okay.

MR. DYOK: Wayne Dyok, MWH. I guess first just a point of clarification regarding your statement, Mona, regarding to the extent "known and available," the word "applicable" does show up in a couple places in here as well, so maybe FERC needs to look that for consistency purposes.

MS. JANOPAUL: Okay. Thank you.

MR. DYOK: I think that the PAD, the PAD is an

important document. I think it does set the stage for the entire relicensing that's going to follow.

But I also think that the level of effort in preparing a PAD needs to be commensurate with the scope of the project. As an example, under wildlife and botanical resources there are some run river projects that essentially have, you know, no land within their project boundary. So in those instances it would seem to me that what should be required would be just a very general description of the terrestrial resources in the area and that the PAD should focus really on those areas that are going to have issues associated with them, which are typically the water quality and the fisheries.

So I think, just like what Mona was saying, we need to use some reasonable judgment here. I think the regulation should be revised to, you know, include the words that the level of effort should be commensurate with the scope and complexity of the project.

FACILITATOR BLAIR: Good. Thank you.

We -- wait a minute. We'll take one more -- one more question. It's high noon, and I don't want to interfere with anybody's lunch. What we can do is take one more question and then break for lunch.

Then, as Jim indicated, this is an important subject and we can come back and continue the discussion on

the PAD. Keep in mind we have -- when we come back from lunch, we have two hours and 45 minutes. So at some point I will have to make a judgment as to whether we continue the discussion or move onto, you know, another issue. So if that's agreeable with everybody we'll take one more comment or question and then break for lunch.

J- -- no, we have -- oh, I'm sorry. Okay. We'll take two more questions and then we'll break for lunch. David.

MR. MOLLER: Thank you. David Moller, Pacific Gas and Electric.

Building on what Alan and others have said here, we certainly view the PAD as a key element in the success of the integrated licensing process. And I have to say from a licensee perspective, we certainly recognize that it's a much greater burden in terms of preparing such a document of the time of NOI compared to the pre-integrated licensing process approach.

I think part of our acceptability or acceptance of the PAD and the additional requirements is based on its importance in the success of the ILP, but also this concept of everyone makes a good-faith effort to put in there what will be beneficial in achieving the goals of the ILP.

And I think it's important to recognize here a couple of things around this. One is it is a starting

point. It leads right into a scoping meeting. And if there are some significant deficiencies that the licensee has missed, a significant resource area or a specific body of data that is known to exist by other participants in the proceeding, there is an early opportunity to raise that and make it part of the document.

The other thing I would like to point out is this issue about specifying specific studies or specific informational requirements not in the form of a subject area but an actual product does raise some problems along the lines of what Wayne was pointing out, that what may be an absolutely key thing and applicable for one project may be of very low value or of no value on another.

So I think it would be fair to say we're fine with the concept of a subject based and good faith perhaps with some reasonableness language in there, some obligation of due diligence, but I think keying in on the good faith concept of everyone working together is what's going to make this work, not onerous specifics.

FACILITATOR BLAIR: In deference to others over here, I'm sorry I didn't realize that Ken had already queued up other people before Jim, but, Jim, since you have the mic go ahead. And with your permission then we'll break, then we'll come back and we'll get the others that had their hands up a few minutes ago.

MR. McKINNEY: Jim McKinney, California Resources Agency. This is going to be the preface to what I said earlier.

I think it was about halfway through the drafting session in Washington last December it became pretty clear that state and federal agencies, licensees and the tribes had a lot of common interests in how to identify a process and a list of criteria that would really help frontload this process and kind of meet the five-year goal that the FERC has set out here.

And so I wanted to acknowledge that spirit of really trying to understand what are the concerns of industry as we, you know, kind of analyze this proposal that FERC has put out, and really understanding the cost issues, the procedural issues, are there burdens to this. Again, recognizing that we all have a common goal of trying to make this thing work better and faster and produce better quality decisions in the field.

FACILITATOR BLAIR: Okay. Given that, unless there's any comments from the head table. It's five after 1:00. Let's break for lunch and be back -- excuse me -- five after 12:00. Let's be back here at five after 1:00 ready to start additional discussion on the PAD and the people that have raised their hands of here. Okay. Five after 1:00. Thank you.

(Luncheon recess taken from 12:05 p.m. to 1:19 p.m.)

FACILITATOR BLAIR: We're in session again. Before lunch we were talking about the first item, quality and scope of the PAD. And I thought we would continue that discussion for a few minutes longer. Keep in mind we have about two hours and 15 -- two hours and 30 to begin to discuss other issues. And we'd like to certainly get through the top ones if not all of them.

So other -- we had some -- before the break we had some people that wanted to make some comments, and I cut them off. We have this gentleman over here. Please state your name and go ahead.

MR. WALD: Sure. Thanks. It's Steve Wald with the California Hydropower Reform Coalition.

I think -- well, my first comment I think echoes something that's already been said, but I just want to -- I want to stress it. The way we -- it's been said by a number of parties, that the whole ILP is going to hinge on success in the first year. Parties scoping out the issues and agreeing to the study plan.

And then, again, with reference to, there's been proposals to maybe stretch out the overall length of time. And with suggestions that maybe it takes more time to get it done right, but seeing as that the current proposal is not

to try to do that and try to stick to five or five and a half years, again the quality and scope of the information in the PAD is going to be critical.

I just wanted to follow up on, I think it was, Nancee Murray was talking about as an example of information in the PAD, to have a good flow of information. And she talked about unimpaired flow, and I would just -- I would refine that a little further and talk about flow information at the finest time scale available on record. So sometimes that's daily or even hourly flow.

And the reason I think that's important and is not -- I think the reference to a monthly flow is in the document now, but the importance of having that in the PAD and prior to the scoping meetings is that, you know, there's going to be issues that come up related to scoping and related to people's management goals and objectives for the project that are going to be really only revealed by -- by looking at that actual flow, that hourly flow information. So we think that in particular is important.

And there were -- there were comments about, 'Hey, you know there's a PAD and then there's an opportunity to comment on it and then there's a revised,' but I would just highlight that in terms of the site visit and really getting the public together and everything, that there's -- that happens after the initial release of the initial PAD.

And so to get the best information from that really becomes critical, for parties to have effective scoping.

FACILITATOR BLAIR: Okay. Thank you.

Next is Jim Canaday.

MR. CANADAY: Yeah. Jim Canaday, C-a-n-a-d-a-y, with the State Water Resource Control Board.

In a sense it's parodying some of the things that have been said about the PAD, but your process, the success of your process is going to be based on the fact of the adequacy of the PAD.

I agree with what you've got in the regs as far as the kind of information that should be in the PAD, except I can't agree to the language that you're talking about, "known" and "might be known" and "will be known." That information that you've identified should be in the PAD. And all efforts should be made to get that information and put it in the PAD, because your next important step of your process is an early scoping and then ultimately your scoping document 1, which will be on the revised -- revised PAD and study plan.

So if the PAD is lacking in information, then your initial -- you lose the effect of scoping NEPA early. You don't benefit from that, because you're going to have to come back later and re-evaluate what your initial -- your initial or even your second scoping document was as that

information becomes available, to define what the -- or at least the baseline case of what you're going to be looking at under NEPA.

MR. [SPEAKER]: Pardon?

MR. CANADAY: Well, I think we need to work as a group to make sure that the language, and I'm -- we will probably come up with language for you when the -- California makes its comments, but I think it's to the interests of the group to devise the language that requires that information to be presented.

Most of these projects are coming in after a 30-year or 50-year license anyway, and to me I find it plexing or perplexing or I'm perplexed at the fact that you couldn't come into this PAD with that kind of information already existing and that the language as it stands is kind of an offramp out for -- I see for the licensee.

And I just -- I can't imagine where that information, particularly because they know they're going to come up for relicensing, that they wouldn't already anticipate and look at the information that's required in the PAD and be developing that information or collecting that information prior to that. So it -- I can see where that -- the PAD would be difficult for someone filing a preliminary permit, that that kind of standard would be very difficult for them. But I don't see that standard being --

the bar very -- too high for a project that's coming in with -- after 30 or 50 years experience and should have been collecting some of that data in any case.

MR. WELCH: Tim Welch from FERC. I appreciate your comment, Jim.

I think when we were developing this we just trying to be, once again, very aware that this would apply to all projects both large and small in, you know, every -- all 50 states. And I mean we didn't look at that type of language that "known" and "available" as an offramp, but we recognize that, you know, projects vary in impact and complexity. And we felt that it was necessary, you know, not to have this laundry list of stuff that must be provided, but that hopefully applicants with the assistance of resource agencies could decide, you know, the real -- the necessary information that would be applicable to the project.

MR. CANADAY: Understood, but the point is then you're managing by the lowest common denominator. I think common sense comes into play with the agencies that would look at a project like Geoff was referring to, where it's less than five megawatts, but that doesn't mean it doesn't have significant impacts. But let's assume it's one that's fairly benign coming in, then that's where common sense comes into play.

But if you haven't set the bar high enough for those projects that may have problems, then you aren't going to get the information. So I think you have to go in knowingly getting the information where you're going to need it and, in those cases, where you need it, rather than say, 'Well, we probably won't need it for these.' Well, that's a decision you make, you know, after the fact, in a sense.

FACILITATOR BLAIR: Okay. In the back, yes.

MR. FELTE: My name is Steve Felte. I'm with the Tri-Dam Project.

With regard to the PAD and the document, one thing that I would suggest, and you've got a provision there that the applicant would list all the federal, state comprehensive plans. I'm viewing this as somewhat of an instructional suggestion to the applicant. And also I'm looking for the resource agency to be a part of that process.

If they would take those plans and pull out the appropriate sections that relate to their project and identify those, and what I'm suggesting is that they identify the resource plan by an agency, be it a water-quality issue, be it a fisheries issue, be it a land management plan from the Forest Service. You know, should that correlation so as the process starts there is a better understanding of what that resource agency is looking for.

And if it's not properly stated, they should clarify it in those early stages, because that's been a problem in many cases. It's an undefined issue out there of what their objective is, and it would help clarify that.

FACILITATOR BLAIR: So you're advocating the comprehensive plans be sort of a baseline or outline for the applicant to kick off their PAD?

MR. FELTE: Well, at least disclose what the objective for the resource is as indicated by the resource manager for that agency.

FACILITATOR BLAIR: Okay. Other comments? Any more comments before we leave the subject on PAD?

(No audible response.)

FACILITATOR BLAIR: All right. The next -- any more comments from the head table before we move on?

MR. JOSEPH: Well, I was just going to respond to that last comment. I think that's a good one. And that, you know, one of the enhancements that we've been pursuing throughout in this process is our commitment to do a better job of identifying the relevant resource-related goals, you know, both for the specific project, but relating those to established goals that are in existing plans and getting those on the table early.

And I think the -- you know, I tend to agree that the PAD is a good vehicle for doing that. That to the

extent that just looking at it, you know, detailed here in the regs, it looks like there would be a lot of reinventing the wheel, that in practice I would suspect that a lot of this information could be virtually cut and pasted out of existing plans to the extent that it's relevant.

But the important point is, you know, that I think this is an important first step in the process, to set the overall context within which decisions are going to be made. And so I would be concerned about too much narrowing, you know, of what is or is not relevant at this early stage in the process, kind of within the rule of reason.

FACILITATOR BLAIR: Name? Ken, we have back -- the gentleman back there.

MR. CANADAY: I would submit that it does need some narrowing. The world is not the objective, it's protecting that resource at that site and so there is some narrowing of issues that need to be done at that earlier stage.

FACILITATOR BLAIR: Okay. So-noted.

All right. Moving onto study criteria. Let's leave that one open -- I mean that's a broad, broad subject.

MS. MOLLOY: David Moller.

FACILITATOR BLAIR: Okay, David. You're on the floor, David.

MR. MOLLER: Thank you. David Moller, Pacific

Gas and Electric.

Similar to the discussion about the PAD, we see the concept of this -- of a set of standardized decision criteria as a very key feature of the ILP and one that's essential to its success. And I guess our -- our primary comment about this is from the perspective of the adequacy of the specific criteria proposed in -- in the draft NOPR.

And there's one specific aspect of the criteria that are proposed there that we think is missing and should be included. And our comments around this are from practical experience of trying to resolve exactly study disputes.

So accepting the fact that the NOPR proposes to try and resolve the dispute informally and then advance remaining disputes under certain circumstances to an advisory panel and then eventually to the director, if at each step along the way the same criteria is being used, and we think that's great, there is this missing aspect. And the aspect, the best way I can describe it is the merits of the requested study in the context of the proceeding.

Let me just walk through this because I want to make sure people understand this.

All of the criteria that are listed here are explaining why the requester is requesting the study. And I would submit that some of these criteria are very similar to

criteria that's already in the FERC regs for backing up study requests after filing of a license application. And any requester can pretty much fill in information to meet each of these criteria, because what they are designed to do is to explain why the request is being made.

What's missing is some sort of justification or rationale or -- about the merits of the information, the value of the information in the context of the proceeding. And what this is all about is to make sure that for everybody's sake a million dollar study isn't done to make a 10 cent decision. That's what this is about.

There may be great justification explaining the reasoning behind the million dollar study, but it's that: How is this information going to be used in the context of the proceeding -- needs to be part of the consideration.

This becomes particularly true in the context of the formal dispute resolution where it is a panel made up of individuals that have no direct involvement in the proceeding. They don't know the project. They don't know the circumstances. They haven't been participating in all of the collaborative discussion around the issues. All they know about the dispute they're trying to resolve is the information that's provided to them in the context of resolving that dispute. And all they're charged to do is to assess the requested study against this set of criteria.

And I would submit that most requesters will be able to reasonably justification their requests based on the criteria here. And yet it may be that the key decision that the panel needs to make in making its advice to the director and that the director has to subsequently make is the value of that study in the context of that proceeding.

So, specifically, we would propose three additional criteria that would help in the informal dispute resolution and specifically in the formal dispute resolution, just add that additional element of consideration of the value of the requested study in the context of the proceeding. And the three -- and they could be worded differently, but just in concept, the first one is some sort of indication or assessment of the relative value of the study compared to its cost. This is different than the last proposed criteria, number 7, which is talking about cost of alternatives. Is this the most costly way of getting the requested information.

This other approach that I'm talking about here is assessing is this the million dollar study for the 10 cent decision. So that's the first one. Is some comparison of the expected value of the information in the context of the proceeding.

The second one would be is there any indication of a resource problem around this particular resource that's

being requested to study. I hope nobody hears this as just cutting one way. It cuts both ways. The issue here is if there is an obvious serious resource issue at hand, I believe that the dispute resolution panel should have that information so that they don't reject an essential study when there's a severe obvious resource problem on the basis of some, "It wasn't well explained" type criteria.

The other way it cuts is if there's no indication of a problem, that might be somebody they'd want to consider as well.

And then finally, specifically, how the information would be used in the context of the proceeding and specifically around resource management measures. So, in other words, if it's nice to have information and, yeah, it's connected to water resources and the project affects water resources, but when you really get down to it there are other considerations that are going to blow away that particular consideration, it really -- it has relatively little merit in the context of this proceeding, maybe it should be proceeded.

I have to tell you, I'm not going to name any proceeding, but on a specific proceeding that I'm involved in now we are literally at the phase of having received study requests in response to a recently-filed license application. And I had the opportunity to try to apply the

criteria that are proposed here in a real-world situation and see if I could respond to the study requests based on this criteria.

Without this issue of merit virtually every one of the requested studies you'd have to say met all the criteria, but as soon as you put in this issue of merit, some of the requested studies clearly fall away, and I think the requester would even agree, that the merit of the specific requested study or that specific requested study was really quite low compared to other considerations.

So the key here is to get this consideration of merit in the consideration both in the informal and formal dispute resolution.

FACILITATOR BLAIR: Okay. Great.

MR. WALD: Steve Wald, CHRC. That was a lot. I feel like I have to respond some of it, although it wasn't my initial comment.

Okay. A couple thoughts on what David just said. I guess the first is, you know, is there any indication of a resource problem, stating the obvious. Sometimes you do need to study something to find out whether there's a resource problem or not, and I know David acknowledges that.

The second one's a little more complicated, and it goes to the whole question of value compared to cost and how once you start plumbing into value there's a bunch of

different perspectives. And I want to talk about the nexus between studies and eventual PM&Es. And I guess the real concern we would have is being able to reject studies or contest studies or the basis for studies based on being opposed to that concept as an eventual PM&E measure.

So an applicant ought not be able to contest a study or object to a study simply because it doesn't support that PM&E measure. An example would be fish passage or something. You know, are we going to object to a fish-passage feasibility study because, after all, we're not going to support fish passage as part of our application, and that not ought to be a barrier to getting some sound data into the record around that issue so there's a full record there for all parties to judge that issue on its merits.

And I think that there's probably a lot of discussion we could have around that issue, but we'd want to highlight that right away, that you shouldn't have as a study criteria, the applicant ought not to be able to reject a study -- studies on the basis that they don't support that as a PM&E measure.

And I think really as soon as you open the Pandora's box of comparing relative value, it would give the applicant the ability to do that, 'Well, this is a low value study because we're never going to do this.' And it may be,

in fact, be a valid thing, that the applicant is simply opposed to at that time.

Compared to the issues David opened up, my question's really small, my other issue. It had to do with comparing the criteria for studies in Part 5 to Part 4. And there's -- they're a little different when the criteria item around methodology. And in Part 5 it looks like that you basically need to show, make a showing that study methodology is generally consistent with accepted scientific practice.

And, in flipping back to Part 4, and if you want a cite, it's 4.38(b)(5)(v).

MR. JOSEPH: What page?

FACILITATOR BLAIR: On what page?

MR. WALD: You know, my marked-up copy is what you guys had on your web page, not today's version. So -- it would have been helpful to have a cross-reference for today's meeting, but it's 4.38(b)(5)(v).

MR. JOSEPH: I think it's on D-23.

MR. WALD: In any case, that -- that says when you're making a study request in the new TLP, you would explain why each methodology recommended is more appropriate than any other available methodology alternatives, including those identified by the potential applicant.

And I was wondering if that -- so that's a

distinction for the kind of burden of proof on methodology, and I was wondering if that was intentional. This is kind of a clarification -- or the basis for there being a distinction there.

FACILITATOR BLAIR: Any of the panel like to comment?

MR. JOSEPH: Yeah, I don't think it was intentional. I think that -- I think the starting point that some of used, and there has been a lot of discussion, a lot of massaging of these studies, cr- -- study criteria, including the workshops, but they were -- they mostly originated out of some existing concepts that were developed in the interagency task force. But it's a good kind of cross-check to look at the relationship between what we came up with, which was I think, you know, a pretty full deliberative process and what was -- what is carried over from the existing FERC regs.

FACILITATOR BLAIR: Tim.

MR. WELCH: Yeah. Steve -- I guess I'm not asking not only Steve but everybody. So do you think that the criteria that's in Part 5 also should be part -- in Part 4 and replace that?

MR. WALD: That's my initial inclination, yeah. I noted the inconsistency. I've put some thought into it. You know, we'll have a position in our written comments for

sure. Be interested at what the agencies think or others.

And in Part 4, you know, does that burden of proof, for example, would that hold to the applicant's initial study proposal the same way? Would they make a showing that their proposed methodologies were better than every other alternative, or is that just the standard for people coming in with comments. That would be the question if you stuck with the Part 4 language.

MR. CLEMENTS: Can I say something a little bit briefly about that? This came up yesterday with the tribes. I'm uncomfortable with the concept of applying a burden of proof to these criteria as with respect to either somebody requesting or, you know, a licensed applicant that's less enthused.

I think that there's an obligation on the applicant to make its best case as to why the study should be done according to the criteria. I think there's a similar obligation on a licensee that opposes doing a study to provide its, you know, best answer to that. It's not -- I don't think anyone has to like establish, you know, sort of a basis for going forward for a further inquiry, you know, like you would have to establish in -- in a lawsuit, you know, some kind of basic factual case to get to the next hurdle.

This assume that everybody's got an obligation to

defend their position according to the standards and the criteria, whatever they may be.

FACILITATOR BLAIR: Okay. Mona next and then Tim.

MS. JANOPAUL: Mona Janopaul, Forest Service.

I wanted to discuss a bit what David Moller had proposed, that is, some consideration of the merit of a study request or value in the context of a proceeding. And -- and he mentioned a number of things that, in fact, we certainly discussed during the drafting.

And I realize that perhaps these criteria aren't very erudite about some of those things, but I -- you know, from my personal point of view, I think particularly maybe criteria number 2, "Explain the relevant resource management goals of the agencies or tribes over the resource to be studied," goes to part of that. Number 7, "Describe costs" -- "Describe considerations of costs and practicality," you know that kind of language was meant to cover some of those issues.

We got into a discussion yesterday over how does one define consultation or consulting. That's not really defined in FERC regs either. And what some may consider consultation or consulting, others certainly wouldn't. A gentleman this morning asked of that topic of mandatory consultation. Again, even with that qualifier I'm not quite

sure what that would mean. It's not really defined under the FERC regs.

Some of the problems in considering cost for -- particularly for resource agencies, or I could just speak for the Forest Service, is we don't know particularly what a study may cost other than what the licensee or the consultant may tell us that it costs. I mean we don't have either an independent way to determine necessarily when there's a million dollar study versus a 10 cent problem, which you posed. We would certainly rely on the licensee and other parties informing us about those things.

And I just want to say, and maybe this is part of why I'm struggling with study -- this particular kind of study dispute resolution being used in the traditional licensing process. Again, this is a cornerstone of the integrated licensing process. It is meant as a rarity, something that hopefully would never actually be used because a lot of the problems would be answered through this scoping process that we're introducing in the integrated licensing process.

We're talking about a lot of scoping going on where hopefully a lot of these issues will be resolved. So this is -- this is not something, and we're hoping this is not something, because it will be very labor intensive, each of these, for the Commission, and resource agencies, and

whoever the pool of third parties are.

You know we hope that we don't have many study disputes. We hope that we're going to work together in that scoping process and in all the other ways to discuss and reach down. So just -- this is taking it out of context, I certainly understand Mr. Moller's concerns and Mr. Wald's concerns.

But if you put it into the context where it's following a series -- where it's following the PAD, that you expressed some concern about, where it follows a series of scoping meetings, this -- this might seem of less importance.

And, again, we're hoping, because the workload potential could be horrendous, that this is really not going to be used often.

But you know there's a number of words in the FERC regs that just aren't defined and value, merit, consideration of cost. All those are kind of amorphous terms that perhaps it's worthwhile for you to submit in comments to be included in the preamble with the final rule or -- or something to that effect that would be useful, but for specific criteria, I would question that.

FACILITATOR BLAIR: Tim, you had a comment I thought.

MR. WELCH: I'll think of something.

Just to clarify, Mona, what you said. I would agree that -- and Mona makes a very good point about this whole study dispute resolution process as being the last resort. I mean we hope we never get there, but as far as a study criteria goes, Mona, we would expect that that be used not only in conjunction with the dispute resolution, but that be used by all study requesters, whether or not --

MS. JANOPAUL: W -- WMD, weapon of mass destruction is -- is we hope the rarity of using this for a dispute but, yes, --

MR. WELCH: Right, but the criteria would be used.

MS. JANOPAUL: I agree with Tim.

MR. WELCH: Okay.

MS. JANOPAUL: For -- for a study request, absolutely.

FACILITATOR BLAIR: No political statements, please.

Okay, Brett.

MR. JOSEPH: Yeah. Just -- just to kind of quickly throw my two cents in on this issue. I agree in general that the criteria don't explicitly have a value-balancing component to it. But I think it's implied in -- you know, in both the way the criteria are worded and also when you get to the dispute resolution process that leads to

a recommendation of the panel based on the study criteria, it doesn't come right out and say, you know, -- I mean I think there's some room left to the panel members to exercise common sense and judgment and to resolve those.

But I think what is really needed and hopefully, you know, where a consensus can emerge over these criteria is, you know, what -- what is the basic objective of having criteria, what kind of decisions do we want. And I would something one thing we're looking for, you know, in terms of at least my own thought process on this is consistency and just an overall rationality in the outcome of resolving study disputes.

Because, to state it another way, these criteria should be clear enough and objective enough so that parties that may have different basic ways of assessing the relative values of either the resources or the specific PM&E measures that -- you know, that they would like to put on the table, could still resolve a question of whether a study is needed, without necessarily have to resolve the underlying value differences.

I think in the ideal world it would be great to have, you know, an objective process that would resolve the big value questions as well, but I'm not sure that could be done on a study-by-study basis unless you have a methodology, you know, that you want to put out there.

FACILITATOR BLAIR: Okay. Let me break it off here.

We had the issue raised by the audience and then the panel sort of gave -- each one of them gave their rationale of what we did and why we did it. But, please, you know follow those suggestions on your written comments.

We have a question from Geoff. Geoff -- or Steve.

MR. RABONE: Geoff Rabone, Southern California Edison. R-a-b-o-n-e.

I just wanted to generally support David's statement and especially in regards to the request that there should be some kind of evidence of an impact there that we're trying to search down or confirm so that we don't end up with a wish list or a shopping list approach to these study plans. Each project is individual and, as Steve Felte pointed out, there's a lot of narrowing down that needs to take place if you're going to get to a point where you can make a decision on how to operate these projects.

And I sincerely hope that Mona is right, that this -- you know, being basically skeptical I look at these things, you know, as worse-case scenario, but I hope that Mona's interpretation is right, that you'll work through the process and you won't -- you'll try to avoid these kinds of shopping list approaches to study plans.

FACILITATOR BLAIR: Okay. Other comments on study criteria. Yes, in the back.

MR. BONHAM: Yes. Chuck Bonham with Trout Unlimited. I have three comments about three specific sections and then I have a solution for each.

The first section is 4.38(b).

FACILITATOR BLAIR: You're still talking about study plans, correct?

MR. BONHAM: Yes.

FACILITATOR BLAIR: Study criteria.

MR. BONHAM: Although it's a fine line, these sections deal with criteria as to studies in resolution of study disputes separate and apart from the new proposed dispute resolution panel process.

So 4.38(b) Roman numeral -- actually (b)(6)(iv), which I think is on -- in the yellow document D-24.

FACILITATOR BLAIR: D-24.

MR. BONHAM: And my comment goes to the last four words "is reasonable and necessary." And the concern is that there's a discretionary decision here left to the director of the OEP and there's a noticeable lack of criteria from my perspective as to what "reasonable and necessary" means.

And then I have a solution. I would just preface the solution by just saying it's purely informal at this

point, for purposes of conversation today, and I expect that it will be taken towards a more official position in writing when time is for commenting.

I suggest amending that section to require the idea of "reasonable and necessary," to reference and incorporate as appropriate the criteria that FERC actually uses and the resources agencies actually use to meet their respective needs for their decisions.

FACILITATOR BLAIR: Okay.

MR. BONHAM: So the next section is Section 5.12(b), which is on page D-61. It's actually at the bottom and it's the same general concern. There's a vested discretionary decision to the Commission about a study plan, modifications determined to be necessary in light of the record. My solution is the same: Amend that consistent with my prior solution.

And then the last section is 5.14(a)(6), which is on page D-64. And it's the same thing, in this instance the discretion is left to the director of OEP to "amend and approve study plan as appropriate." And I suggest as a solution focusing on what "appropriate" means with an amendment, as discussed.

FACILITATOR BLAIR: Okay. Thank you.

Ken, who's next? David, I believe you're next.

MR. MOLLER: David Moller, Pacific Gas and

Electric. Thank you.

Two -- two thoughts back on this issue of including some sort of assessment or statement of merits or value as part of the criteria. Just hearing some of the comments, and frankly there haven't been too many comments, I think it's important to not hear the -- or not to hear a desire for some sort of indication of relative value or merit as a fearful thing, but rather as just one of many criteria being considered in the context of all the criteria. And it's quite clear from the way the criteria is set up that the intent is that the panel or also an informal application of it for informal dispute resolution consider all the criteria and not one to the exclusion of the others.

So I want it to be clear at least as I have proposed adding that in, it's not as to be the key detriment, but rather than among other so that -- among others, so that the decisionmakers, whether it's the informal decisionmakers or the more formal panel, are informed as well as possible.

The other thing that I would like to point out about this in actual experience, and I'll give you an example, no project-specific names, of how this plays out.

We might see a study request and have seen study requests on a project that has numerous reaches, "We'd like you to perform this study on all project reaches." But on

further discussion it turns out that on some reaches it's a very high value piece of information, on other reaches very low value information. But that the first version, "We want it for all reaches," can easily be justified on the basis of the kind of criteria that are in here. There's nothing in there that would right now weed out the low value reaches from the high value reaches by the criteria that's here.

It could be. I'm not saying it couldn't be, but there's nothing there that draws that out. As a real world example of where these considerations of relative value and merit come into play, multiple reaches is a good example.

So, again, you'll certainly see it in our comments, trying to get something in there to best inform those who are working on resolving disputes of all the considerations, even if some of them are subjective.

MS. MURRAY: Nancee Murray with Fish and Game.

Again going to your proposed first criteria, the relative value of the study compared to its cost, not that I'm fearful, but what I think will happen or could happen is that the cost is very easy to determine and then the relative value of the resource is as a much more amorphous concept or is much more harder to put -- it's much harder to put a value on it.

One thing that is in the Water Code right now, the California Water Code is that there be a reasonable

relationship between the study and the cost of the study. The study requested and the cost. And maybe I like your idea, Mona, of having it put into the preamble that -- that there's an expectation that there possibly be a reasonable relationship, not that we have to prove the value of the resource, that this is a steelhead stream or that, you know, we only have warm water fish so it's not going to be worth the cost.

I don't want to get into discussions of the value of one fish versus another. But I think that if there was some kind of reasonable relationship between the study and its cost, its -- its benefit to informing the process, that would be a step forward.

FACILITATOR BLAIR: I -- I think David would really like to have the microphone, but he's not next. We need to follow the order; we'll come back to you, David.

MR. HOGAN: He is next.

FACILITATOR BLAIR: Oh, he is next, okay. I'm sorry.

MR. MOLLER: What a happy coincidence.

FACILITATOR BLAIR: I'm sorry.

MR. MOLLER: Not in any way to refute, but there's been some misunderstanding around this. As I heard what you were saying, Nancee, I think in terms of not wanting to value the resource. Be very clear: When I talk

about value I'm not talking about value of the resource but the value of the information.

In other words, the whole issue here is if a reasonable and appropriate resource management can be -- measure can be identified and implemented without gathering the additional information that perhaps is the subject of the request. In other words, there's the incremental cost of the study, but it only adds a very small increment of additional value to the information, so I just want to be clear.

I'm not in any way, shape, or form suggesting that the resource valuation be part of this criteria, but rather the value of the information to be obtained from the study.

FACILITATOR BLAIR: Okay. Matt, I believe you're next.

MR. CAMPBELL: Matt Campbell, Attorney General's Office.

Really quickly, my two cents worth is that my read of the study request criteria, I believe they adequately cover the concerns that Mr. Moller has raised, particularly the ones that Mona and --

MR. JOSEPH: Brett.

MR. CAMPBELL: -- Brett pointed out.

Number two, number 5, "Explain any nexus between

project operations and effects, direct, indirect, or cumulative, on the resource to be studied." And number 7, "Considerations of costs and practicality." So I respectfully disagree with the suggestion made by PG&E that this is -- that their concern isn't reflected in the proposed rule.

The second thing, just a general comment about value. There's a false premise that would underlie any sort of valuation along the lines that Mr. Moller has suggested. And that's that the -- the underlying resource that -- one of the primary underlying resources, the water, is being utilized for free by the licensee. And when you take that into account the notion of relative cost and value kind of flies out the window.

If you want to put it into prosaic terms: Why do diamonds cost more than water.

FACILITATOR BLAIR: Okay. If there's no further comments to moving along, it's two o'clock, and we have several more issues to cover. Unless someone has a burning need to -- no rebuttals on that last comment, by the way -- we'll move right along on -- on dispute resolution. I know we'll get a lot of conversation on that.

Okay. The gentleman in the back.

MR. BONHAM: Yes. This also cuts across to public participation. It's a straightforward both concern

and proposed solution, specifically as to Section 5.13 Roman numeral -- and my name is Chuck Bonham with Trout Unlimited -- (i), which is on page D-63.

As I read this section, and my concern is interested parties are precluded from commenting at this point, my solution would simply be an amendment to permit interested-party filing.

FACILITATOR BLAIR: State it again. I don't think we quite heard it.

MR. BONHAM: My solution would be an amendment to the language that allows interested-party filing.

MS. JANOPAUL: Mona Janopaul. So you're saying in the last sentence where it says "applicant," insert the words "and any interested party"?

MR. BONHAM: Yes.

MS. JANOPAUL: Okay.

FACILITATOR BLAIR: Okay, Andy.

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board.

This morning we discussed in clarifying questions to issues, one, the need to identify when there is a dispute under the initial stage of consultation under Section 4.3(a) and (b) and suggested that similar provisions to those exist in 4.3(a), (c) would identify the dispute.

And, second, the need to clarify the binding

nature or nonbinding nature, depending on what you're talking about. The response we got this morning clarified very well what we both read the rule to be and think it should be, but we think it would be important to include specific language in the regulation stating that the dispute resolution is not binding on an agency that has independent approval authority in the exercise of its request for information or requirements for studies to be conducted as part of its own approval procedures.

FACILITATOR BLAIR: And will you be providing that language in your written comments?

MR. SAWYER: Yes, we will.

FACILITATOR BLAIR: Okay.

MR. SAWYER: In fact, we've already provided an initial draft of language with respect to those two particular items.

The third major issue which we didn't --

MR. CLEMENTS: Can I stop you just for a second, Andy. John Clements. Do you mind if we take that draft language and stick it in the record of this, this conference for today, or do you want to hold off till you get to your --

MR. SAWYER: We would appreciate that.

MR. CLEMENTS: Okay. So we'll make sure the reporter gets a copy.

MR. SAWYER: The third major issue, especially with that clarification, is we now have a dispute resolution process which as read it means that the only parties that can invoke the dispute resolution process are those who don't really need it, because they do have independent authority to require the information if FERC does not.

And we believe, and I think since it concerns other state agencies much more than mind, they should speak to it, that it's very important for the agencies and tribes with 10(a) and 10(j) authority and responsibility to make recommendations to be able to invoke the dispute resolution process so that they can get a better ability to get the studies they need done so that they can make their recommendations. And I think Fish and Game especially can speak to more detail to that.

MR. KNIGHT: Yes. Curtis Knight, California Trout. Knight's K-n-i-g-h-t.

This applies somewhat to the PAD, but also dispute resolution process, and that is that the PAD should be -- should be specifically laid out. There should be time specifically laid out within the PAD to include the dispute resolution process, so there should be some time line set up that does include time for dispute resolution process, so that when it is brought up it isn't considered as throwing a big monkey wrench in the time line.

MR. CLEMENTS: I'm sorry. This is John Clements. Can you clarify? Are you talking -- are you suggesting that there should be a dispute resolution process with respect to the PAD, or something different?

MR. KNIGHT: More of a dispute resolution process plan, not necessarily taking -- not necessarily adding anything new that we have right here, that you've proposed already, but more laying out the plan for the process.

MR. CLEMENTS: We thought that was in the regs.

MR. KNIGHT: Well, maybe I -- I'm referring to Section, let's see, 5.1, and this -- hopefully this doesn't bring us back too far. Page D-45.

MR. CLEMENTS: Um-hum.

MR. KNIGHT: Section 5.1(e). The idea would be to -- to trade a presumption that the process plan in the PAD will included a dispute resolution process. And is that -- or at least the procedures that would follow. Am I -- does that make sense?

MR. CLEMENTS: I think it doesn't need to be in the PAD because it's in the regulations, such that if there is a dispute, you know, the formal dispute resolution process there and then the -- of course that would only be necessary if the informal process that's reflected in, I guess it's like 5.4 through 5.8 --

MR. KNIGHT: Right.

MR. CLEMENTS: -- didn't satisfy an agency that was eligible for the formal process. It's -- nobody can avoid the dispute resolution process --

MR. KNIGHT: Right.

MR. CLEMENTS: -- by virtue of anything they do or don't do in the PAD.

MR. KNIGHT: Okay. So -- so the concern of the process disrupting the time line is taken care of.

MR. CLEMENTS: I'm not sure there's anything with respect to the time line. I guess I'm losing the thread.

MR. WALD: If I can clarify on this point.

I think -- I think the concern is that in the PAD doesn't the applicant lay out a process plan or propose a process plan?

MR. CLEMENTS: Yes.

MR. WALD: Okay. And I think the comment really is just to build in time line for the dispute resolution process as part of that process plan, that it ought to be an assumption going in rather than allow a move-to-dispute resolution to kind of train wreck to whole process plan, so to build those assumptions into the process plan from the beginning.

MR. CLEMENTS: Okay. I think I get the idea now.

MR. WALD: Okay. Steve Wald, CHRC.

FACILITATOR BLAIR: Okay. We had someone over

here? Yeah, Nancee.

MS. MURRAY: Nancee Murray with Department of Fish and Game.

As Andy mentioned, as we now understand the dispute, study dispute resolution process, would only involve those agencies who do not need it. Department of Fish and Game as a 10(j) agency needs study dispute resolution. We do not have an independent authority to order studies we need for our 10(j) recommendations.

So it seems to make sense to have the resolution process for people who need it who -- and I guess California proposes to expand it to 10(a) and 10(j) agencies. And what we're saying is that they should be included in those that -- who can invoke the dispute resolution and then all through the process who -- who creates the panel, the three-person panel and who goes through the whole process.

One of the other subcategories in addition to who may invoke was the mechanics. And there are a couple of mechanics questions I have. One, there is -- there does not seem to be any requirement that the panel actually convene in person. They could do this all by phone. And we think that if -- that the panel should actually convene in the vicinity of the project, that -- that the panelists, specially this potentially neutral third party that isn't -- has never been in the state of the project, would need --

would be important for that person to see the project, see the area.

The other thing. I support Chuck's comment in (i) that the -- that the list of who can submit information filed with the Commission, serve upon the panel members something, be expanded to the application and any interested party. I have -- and maybe this is a clarifying question, but I have -- I don't understand (h) and how it relates to (i). Because in (h) you have, "to facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses will be posted on the website." To me that invites everyone to write to them potentially every day. And industry could have set up a phone tree or an email tree and, I don't know. It just -- it could be anything. I don't know why it's -- the invitation to ex parte contact seems incredibly broad.

So it seems to me I would want to delete that whole "facilitate the delivery of information" and actually delete having them on the webpage. Maybe the name and some background, but not their email address or their home address.

And it brings up the question of is it only (i) that you are supposed to communicate through, or... Yeah, I mean I think that needs to be clarified in the reg. How anybody, whether the applicants and interested parties,

whoever, is supposed to communicate with the panel.

And one thing we do in the Fish and Game Code is we have -- you know, this was not part of the California proposal because we go through this in California and it has not been successful, but it's there. And our third person is the panel chair, who then makes some rules, calls the meetings. You don't have a chair of the panel. And that just to me seemed -- is another invitation for problems. So I -- I would suggest a panel chair.

FACILITATOR BLAIR: Okay.

MR. CLEMENTS: Would it be a good idea -- John Clements -- would it be a good idea to have the neutral party be the chair?

MS. MURRAY: Well, I'm not saying it's a good idea because in -- in the Fish and Game Code, that's the way it's done. I don't --

MR. CLEMENTS: But you don't like that?

MR. JOSEPH: You said that didn't work?

MS. MURRAY: Well, this whole process of one -- each side picking -- choosing its own and then picking a third. For one thing, it takes far more than 15 days. And we have a provision that says that the two parties can then extend it upon agreement, which we do every time because nobody agrees in 15 days. Nobody agrees in 20 days. Nobody agrees in 30 days.

So we -- so -- but at least we have a panel chair, and it's important to have a panel chair. And that -- not having a panel chair, somebody, you know, making decisions, saying, this is -- 'We're going to meet on this day.' This is, you know, somebody. I think that's a big -- that could be a big problem.

MR. CLEMENTS: Okay. Just to quickly respond to a couple of things you said. On (h) the idea was not to invite everybody to comment by putting those on the website. It was in recognition of the very short timeframes here. The idea was to have it available to the people who are participating in the process. And the quickest way to do it, we thought, was just to stick it on the website. And they could -- you know, everyone would know that they could just go to there.

And the (i) is intended only to indicate that the application can file comments and that's why it doesn't identify anyone else. It's to make sure that the fact that the applicant has a role there, is -- is clearly specified. So that's what we were trying to do.

MS. JANOPAUL: John.

FACILITATOR BLAIR: Mona.

MS. MURRAY: Can I have -- I have one last clarifying --

MS. JANOPAUL: I wanted to ask you some

clarifying, so don't go away. Don't hand the mic off.

FACILITATOR BLAIR: Go ahead, Nancee.

MS. MURRAY: So I guess the one other thing would be in (d)(2), that "one person designated by the federal or state agency or Indian Tribe that filed notice of dispute who is not otherwise involved in the proceeding," again assuming the group of people who can invoke this is expanded to 10(a) and 10(j), we think it's important that we not have to involve somebody who is not otherwise involved in the proceeding.

We would want to be able to decide who our person is. And most likely that -- well, it -- that may be somebody who is somewhat involved, very involved. We have staffing limitations. And it may just not be wise to have somebody -- well, we don't think it's wise, I don't think it's wise to have to have somebody who knows nothing about the project. You potentially would have two people and possibly -- I guess all three not otherwise -- none of them would know anything about the project.

MR. WELCH: Tim Welch with FERC. The limitations that you're talking about, I mean we fear that as well. I mean it's definitely going to be taxing on our staff to have a completely different person. But in order to maintain some semblance of independence of the panel, we all thought that it was very important to have a new -- I mean for lack

of a better term -- unbiased person to look at the problem or otherwise you're going to have the same conversations that you had two months ago at the -- I mean sometimes a staff member can just get stuck, 'No, I don't think that study is required, and I'm not going to change my mind and I don't care who's on the panel.'

MS. MURRAY: Well, I guess I say trust us. We typically in our arbitrations do not choose staff members. They're deputy directors, they're regional managers, they're policy. They see bigger picture. Where we do not choose the person who --

MR. WELCH: Oh, okay. Well, then I --

MS. MURRAY: But I don't -- but they may be involved.

MR. WELCH: I misunderstood.

MS. MURRAY: They may have gotten updates.

MR. WELCH: Okay.

MS. MURRAY: They've heard something, but they don't -- now like you got a briefing two weeks into the project, 'You can't be our panel member.'

It's -- there's -- I just feel like --

MR. WELCH: Yeah.

MS. MURRAY: -- you're micromanaging our decision on who would be --

MR. JOSEPH: Well, maybe --

MR. WELCH: Yeah.

MR. JOSEPH: Brett Joseph, National Marine Fisheries.

FACILITATOR BLAIR: Brett. Brett, Mona had some follow-up questions and answers.

MR. JOSEPH: Okay.

MS. JANOPAUL: No. If you're following this line of thought, I'm going way back to something that was brought up in the beginning, so go ahead.

FACILITATOR BLAIR: Okay. Go ahead, Brett.

MR. JOSEPH: Just -- just on that narrow point, I'm wondering whether a refinement might not be warranted so that it's not the broad sweep of involvement with the proceeding, but --

MR. WELCH: Yeah.

MR. JOSEPH: -- something narrower, like involvement in the --

MR. WELCH: Intimately involved, or something.

MR. JOSEPH: Well, no, that participated in developing the study, the specific as you request, --

MR. WELCH: Yeah. Yeah.

MR. JOSEPH: -- or something of that nature.

Yeah. I guess you were reading it a little bit more narrow than we had intended. Because I would see that a higher-up, like a deputy director or whatever would be an

adequate person to have on there. But maybe -- Brett, maybe you hit it just right, the someone that hasn't -- wasn't involved with the study plan itself.

MS. MURRAY: In developing the --

MR. WELCH: In developing it. I think that's what we're after, really.

FACILITATOR BLAIR: Okay, Mona.

MS. JANOPAUL: Mona Janopaul, Forest Service.

Back to the first issue here which was who may invoke, you were discussing having those agencies with 10(a) and 10(j), I wanted to refer you to paragraph 86 in the preamble, which is -- happens to be in this version on page C-38, which describes that the rationale was based on the fact that mandatory conditions and prescriptions are required to be supported by substantial evidence, versus recommendations which are not.

If you don't hold with this rationale, please explain why in your comments, not just for the State of California, but anyone here who has a comment on that. But that explains the rationale as to who may invoke.

As to the location of the third party, if you would perhaps in your comments explain the regionality of this -- of the study request criteria or the study dispute criteria. We did not see a regionality aspect to them that would require that they be familiar with the particular, you

know, aspects or processes or regions or parties in this state or other states. But if you're looking at this criteria and you see a locality aspect, I would like to better understand that.

And also in trying to find a third party in your locality, maybe the -- you know some of our criteria was finding parties who were not otherwise involved in this issue. So if you could explain what your definition of a neutral third party might be, that would help us as well. I mean some of the neutrality was in finding someone who was removed from the region and not participating in other cases where this may be a decision.

You also suggested site visitations and so on. If you have any comments about who should be paying for the expenses of the panel in making those site visits, holding public meetings, traveling, whatever, we would certainly like to understand who would be paying for the expenses of the panel, both the agency participants and the third party.

So I mean those are some of the things that we discussed in putting this together, so if you have any comments on those. But certainly it was in keeping down the cost of the panel that we were focused on, as well as meeting, which Mr. Knight brought up, the time aspects of it, you know, since it is an incredibly short time period.

So those are some of the things we were balancing

which we hope, if you're making comments other than what's proposed here, you'd help us figure out. Thanks.

FACILITATOR BLAIR: Okay. Thank you.

Geoff, you're next.

MR. RABONE: Geoff Rabone, Southern California Edison.

I'm really worried about this dispute resolution process because I don't see any checks and balances on this becoming a process where senior policy advocates, deputy directors, et cetera, get together regularly and approve all study requests. The -- the applicant or licensee has no ability to go meet face to face and present their case, who they arguably have the most information on the -- on the individual project. And you have -- if you're just deciding for policy precedent reasons why you want this -- why you need this study on every project, boy, you -- Mona's question about who pays, we're all going to pay for this sooner or later because the price is going to go up for everyone.

But my comment, my basic comment is I feel like the -- I would like to hear from the panel their reasoning why the licensee couldn't appear at the -- at the dispute resolution process face to face and try to enlighten people who are not really involved in the process on why -- why it may not be -- why it may be a special case. It may not be

just following our normal precedent that, 'Yeah, we always approve this study.' This may be a special case, and I don't see any of those parties involved as it's spelled out here having enough information to make those -- those kinds of decisions.

FACILITATOR BLAIR: Okay. We'll take a couple of comments from the panel. Keep in mind the time and keep it short. Anybody?

MR. WELCH: Okay. I don't see anything in here, Geoff, that would preclude an applicant from appearing in person before the panel. Why -- I understand that we don't lay out whether these three people are going to physically get together in the same room, and maybe that's something we need to think about, but I mean paragraph (i), you know, specifically says that the applicant may file with the Commission, serve upon the panel comments and information regarding the dispute. You have the ability to spell it out. I guess I'm not getting it.

MR. RABONE: The way I read that was that within -- when you go back to -- to the way the process was laid out, I is that the dispute resolution panel already meeting, and then the applicant preparing written comments and information after the panel had already met.

MS. JANOPAUL: Geoff, --

MR. RABONE: I may be in error there.

MS. JANOPAUL: This is -- yeah, this is Mona. Do you understand this happens after the Commission has approved the applicant's study plan, without including the study?

MR. RABONE: Um-hum. Um-hum.

MS. JANOPAUL: Do you understand that? That it's the Commission's approved study plan at this point and it does not include this? So they've already --

MR. [SPEAKER]: You've won.

MS. JANOPAUL: You've -- yes, you've already, you know, -- your position has already been supported by the Commission. I just -- you don't think that's a serious matter? I mean I'm really asking. I don't know.

MR. RABONE: No, I think -- I think it's very serious.

MS. JANOPAUL: Okay.

MR. RABONE: I just don't see the checks and balances in here.

MR. CLEMENTS: Geoff, just one little clarification. There's nothing here that prohibits the panel from soliciting something in addition to any written comments that the applicant might want to file as a result of this. We deliberately left it so that the panel would have a lot of flexibility to get its job done the way that it wanted to get its job done, as a matter of procedure. We

want to just let them do what they thought they needed to do.

MR. RABONE: I guess my skeptical reading of this was in Part D-5 -- Section 5.13(d), it said, "Within 20 days of a notice of study dispute, the Commission will convene one or more three-person dispute resolution panels," if they couldn't agree, as Nancee said, on the individual third one, the neutral third, then the two parties would meet and decide. And then the 25 days following within 25 days, that's the way I read it, that, you know, after the panel had met, you had to provide comments. I guess that was in error, but I would appreciate clarification --

MR. CLEMENTS: It's 25 days from the notice of dispute.

MR. RABONE: Right.

MR. CLEMENTS: So that within five days of the panel being convened, they would have your paper in front of them.

FACILITATOR BLAIR: A comment over here.

MR. WALD: I'm going to -- I'm going to go back to that Section I again and just -- and just clarify. Is -- is or isn't? Because I guess there's a couple places in here where it's not clear. Will the panel -- are any parties free to serve information to the panel and will that information be used and considered, or does Section I really

limit the input to the current record plus what the applicant provides?

MR. CLEMENTS: Our intent was to limit it to the existing record and what the applicant provides, that's correct.

MR. WALD: And I mean if the interests, you know, flipping back, making a reasoned decision based on substantial evidence, what value is added by -- by limiting substantial evidence in the record for -- you know good information can come from any source. And I think everyone's experience here, for better or worse, bears that out in some examples.

MR. CLEMENTS: Well, our thinking with respect to this particular aspect is that the -- any other entity, for instance, an NGO that had participated in the proceeding up to that point, to the point of the preliminary determination, would have already provided all of its input on why it thought a particular study or studies needed to be done. It would have addressed the criteria and a decision would have been made, so that -- and that information would be available to the panel. So the panel would have heard from the NGOs already, at least on paper. If it wanted to go back and see what insights they had, it's certainly free to do that.

FACILITATOR BLAIR: Okay. Let's stop -- let's go

to the next. David, -- we're going to do this. David, you'll be the last commentor on dispute resolution. It's 2:30. We'll take a 15-, 10-minute break, unless the audience -- we'll take a vote. Does the audience want to take a break or you want to continue?

Who wants to take a break?

Okay. Who wants to continue, everybody? Okay.

All right. So, Wayne, you and Cyrus go out and have a cup of coffee and we'll continue --

MR. [SPEAKER]: Can I go?

FACILITATOR BLAIR: And we'll continue on then. We have an hour and, oh, half, hour and 15 to continue. And we've got -- some of the issues will go pretty quickly, but we have some very important ones here right upfront that we need to finish.

So, all right, David, you're on.

MR. MOLLER: Okay. Thank you. You know Nancee said something that really, really struck me when she said that the only agencies that can evoke the -- maybe these are not the exact words, but the concept -- the only agencies that can evoke the formal dispute resolution process are the agencies that don't need it.

And nobody else kind of reacted to that yet, but I think that's sort of a dead-on comment as I see it right now. And that raises the concern, we're spending all this

time trying to design it. If they don't need it, why would they even pursue it? Why would an agency that has the ability to set its own study plan through its own separate authority, even engage in the dispute resolution that isn't binding on them in the end? So I'm just pointing that out.

I have to say from my view, I would like there to be a binding or at least agreed-to dispute resolution process. And I have a suggestion or a solution to how this might work. And I think that is at the start of each proceeding the agencies, particularly those with mandatory conditioning authority or recommendation authority, get together if there isn't already some standing state-specific agreement among them, but get together on a proceeding-specific basis and decide whether they're going to engage in some dispute resolution mechanism, such as this, and they simply agree to it.

At the very least that would enable the licensee as well as the other participants to know what the game plan is for that proceeding. Short of FERC coming up with some magic to impose this binding feature on this, which doesn't seem to be the case, it seems to me that this dispute resolution procedure is optional at best. So I think we ought to at least get it out on the table at the start of a proceeding whether the participants in that proceeding are going to exercise that option so we all know what game's

being played. So that was my first comment.

I have a couple of other comments on the dispute resolution. The second one is back to an item that I brought up this morning, and that is the issue about some ability to comment on the final decision by the director, specifically in the case that there are errors of fact. And I would propose a possible solution to that would be to have something similar to paragraph (i) that comes after paragraph (k) that at least acknowledges the opportunity that if there is some cause for commenting on the director's decision, there's at least some provision that such a filing would be looked at if submitted.

Thirdly the point that I was making earlier about the study criteria and my urging that there be some sort of criteria in there that at least addressing the anticipated value of the information, not of the resource, but of the information. The reason that I particularly bring that up, if you take a look at paragraph (j) as to what the panel's supposed to do, while acknowledging that they may have a bunch of information in front of them, it says, "The panel will make a finding with respect to each information or study request in dispute as to whether the criteria set forth in 510 are met or not met."

My concern is despite the volume of information they may have in front of them and whether it's -- who it's

from are extremely inclusive, let's say, in the end their charge is only to decide if the criteria before them is met. And that could cause them not to consider some very vital information that would affect their decision that doesn't squarely fall within that criteria.

And, finally, just one -- this is kind of a question, no particular solution, but it is interesting to me that I think in the prior workshops there were plenty of comments about coming up with a dispute resolution mechanism that would apply at least to study disputes, but also perhaps be applicable to other types of disputes, like disputes about resource management measures, for example. And I'm just curious as to why that wasn't attempted to apply this any further than study disputes.

FACILITATOR BLAIR: John.

MR. CLEMENTS: I -- I can't respond to everything David said, but I want to respond to one thing Nancee said and then the last thing that David said.

I -- I take exception to the notion that the only entities that are eligible for the formal dispute resolution process are entities that, as you put it, "don't need it." A water quality agency has other vehicles. One of the reasons we have this formal study dispute resolution process which the other federal agencies have worked so long and so hard to get is that they say they don't have independent

authority to require applicants to provide information that they think is necessary. They have to come to FERC and ask us, acting through the Federal Power Act, to make the applicant to do the study. So they have a need for a dispute resolution process, and that's sort of the fundamental underpinning of this and why they've been at our throats for -- for all these years.

With respect to --

MS. JANOPAUL: I'll let you give you a hickey, John.

MR. CLEMENTS: With respect to David's last one, oh, God, refresh my memory. My fading memory.

MR. MOLLER: I'm sorry to have laid so many comments all at once, but it was the last chance. The last one was about just kind of a question, why FERC and the other agencies right in the NOPR did not attempt to extend the applicability of some sort of decision criteria or dispute mechanism to help solve disputes other than study disputes.

MR. CLEMENTS: There is a brief paragraph in that the suggestions we got in terms of the comments were focused on things like: Well, if we, say a resource agency disagree with a proposed license condition, why shouldn't that be dispute resolution. And the answer to that was that that's something that's strictly within the Commission's province.

That's -- we're the only entity that has the authority to establish that license condition. If you have a dispute with us about that, you seek rehearing. We don't -- the Commission doesn't sit down and negotiate all of its license articles with the parties to the proceeding.

So dispute resolution was intended to be for matters where there is a disagreement that's applicable to that, not an opportunity for entities that, you know, have some kind of statutory authority to sort of bargain about how they're going to exercise it. The equivalent of that would be asking the State of California to have a dispute resolution process between you and it with respect to its water quality certification conditions, which I don't think they would have a whole lot of enthusiasm for. So there's the thinking there.

We also didn't want to have every application proceeding turn into an endless series of dispute resolutions about everything that anybody had a problem with.

MR. HOGAN: Brett, you wanted to respond?

MR. CLEMENTS: Other agencies may have had more to say about that, too.

MR. JOSEPH: A little bit more. I mean I tend to agree with the reason why it's not broad to cover other disputes. Although I would point out that obviously the

other kind of dispute, 10(j) disputes have -- has a mechanism. And one thing that we are seeking in some of the changes that we've advocated is that that be less of a -- you know, kind of a black box process with FERC and more of an actual dispute resolution where, you know, that process is used in an iterative way to try to reach consensus on the -- on the actual recommendations under 10(j). That could be taken further, I'm sure.

But back to the point raised, I just want to express a little concern at some of what I'm hearing about the kind of -- what is being read into the concept of the panel and what its purpose is, particularly, you know, this being a high-level policy decision or being a decision kind of detached and apart from the familiarity with the region. That's certainly not the conception of this panel that my agency has had going in. And maybe, you know, from these comments it suggests to me maybe some further explanation in the preamble or elsewhere may be warranted to clarify that what we're looking for here is a -- you know, a balance between a couple of very relevant concepts to how you resolve disputes.

One is we're seeking independence, you know, given that when you get to this stage informal dispute resolution presumably has not worked. And so you need to move it beyond the immediate parties to the dispute. That's

one.

The other, however, is that the -- that the resolution be based on, you know, those that have expertise in the subject area, that it not be so -- and this kind of pushes back against the independence concept, where a balance needs to be struck. It not be a decision made by people that have no familiarity with the project, no familiarity with the resources, quite the contrary. It's -- it's not perhaps a mechanistic, you know, determination with no room for exercise of common sense and judgment. I'll allow that, and I think the current -- the way it's currently worded, although it could be massaged some, I think it allows for that kind of common sense approach to be taken by the panel members.

By the same token, though, I would be very concerned about us going too far the other way to where we lose the sense that -- that the resolution of disputes be done based on -- you know, the technical merits. As I think you have, David, pointed out earlier, the totality of all these criteria, not just looking at one alone. And when you read the criteria together, at least to me the way I interpret it, it creates a very strong sense that, you know, you're looking for basically a scientifically based set of recommendations based on experts regarding the underlying need for the information to make decisions.

FACILITATOR BLAIR: Okay.

MS. JANOPAUL: Mona Janopaul, Forest Service.

This formal dispute resolution process is to determine: Is there substantial evidence in the record to support a mandatory term and condition or prescription. It will be the outcome of this.

Now there is -- you know, Mr. Moller mentioned resource measures. Certainly there's other processes where one can communicate or have informal or other formal dispute resolution measures. But this process was specifically designed to be part of this new integrated licensing process where the federal agencies are working hand in hand with the Commission to create a record and a NEPA document that will support the terms and conditions whether they're emanating from the agency with authority under 4- -- or Section 18 or from the Commission. And that's -- that's really the focus of it.

So I -- you know, I -- I didn't -- I didn't debate the State of California and I'm not going to debate PG&E on who else needs this process. If -- if you think another agency needs it or if it needs to be applied to another part of the process, you know, say so. I think we need to really consider this.

This should cover everything, but this was meant for a very limited purpose, to assist in having an

integrated licensing process so that there won't be contests on rehearing or in the court over issues of substantial evidence. So that we can go forward with some certainty, which is a word that I don't think has been used enough today, but was used a lot in the comments of certainty. And this all gives us some certainty in going forward as to -- as to whether there is substantial evidence to support our terms, conditions, and prescriptions. And that's -- that was the basic issue to be resolved here.

FACILITATOR BLAIR: Okay. We're going to do this, people didn't want to take a break earlier, we're not going to take a break now as such, but we're going to have a stand-up-and-stretch. And that will give those that really need an excuse to duck out. You can duck out for a few minutes, but five minutes in place, how about that? Okay.

(Recess taken from 2:40 p.m. to 2:50 p.m.)

FACILITATOR BLAIR: All right. Dispute resolution. I'd like to leave that unless there's a couple of other pressing comments, so that we can talk about joint environmental documents. And I'm certain when we get to process choice, whether we select ALP or TLP or ILP, that there will be an awful lot of conversation on that item. And certainly I think probably, not to say that settlement is is not important, but I suspect that there will be some especially conversation from the State of California on 401

certification.

So any more on dispute resolution or can we move onto the next topic?

I see some nods in the audience. Let's move on? Okay.

Andy, is that a vote for or a vote against?

MR. SAWYER: Requesting on joint environmental documents.

FACILITATOR BLAIR: Okay. All right. Thank you, Andy. Andy, here's the $5 I promised you...

(Laughter.)

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board.

If your objective is to integrate the water quality certification proceedings, and I think it would also apply to CZMA proceedings, of the states with the FERC licensing process, the two most important things you can do are the one we have been discussing until now, getting the studies done that provide the information the states need. And the other one that is very important is to provide for the preparation of joint environmental documents.

Our objective, and we think it should be your objective, should be to allow the use of a single environmental document for all approvals, including the 401 certification; if a 404 permit or other permit of state on

federal permit is needed at the same time, to cover that as well.

The process that's proposed in the draft regulation will not work for that purpose, at least it will not work for the states. The reason is --

FACILITATOR BLAIR: Do you want to elaborate? Go ahead, you started in.

MR. SAWYER: The reason is that our rules require that we circulate draft environmental documents that reflect our independent judgment. We often are able to and with many other different federal agencies are able to work together to prepare a draft environmental document that both agencies say and believe represents their independent judgment. And so we can use a single document, but that does require that we work together in either preparing the document or supervising an independent contractor and editing that contractor's work to get a draft document that reflects our independent judgment.

And the rules as proposed won't work because we can't be cooperating agencies. It's pretty much limited to the federal agencies. Or we have to forego our ability to -- to be parties, which would not be acceptable.

As I see it, that problem arises from two, what I see, as unnecessary features of the proposed process. One is a very strict interpretation of the ex parte rules. We

ourselves are subject to an ex parte rule. We have to keep it in mind when we have environmental documents about how it will get into the record, but it has never interfered with our ability to prepare a joint environmental document with a federal agency. And expect for FERC, it's never interfered with the ability of another federal agency, like the Environmental Protection Agency, to participate, even when they have, as we often do, trial type hearings in connection with it.

The other feature that causes the problem is the insistence that it be a decisional and not an informational document. As we see it, if you were to change one or the other to allow it to be an informational document or to take a harder look at your ex parte rule, we could prepare joint documents, and that would be a tremendous boost to streamlining the process and providing a joint process.

I think that the easiest way to resolve this is to provide for an informational document, and that's what we'd recommend so that we can have joint documents.

FACILITATOR BLAIR: John.

MR. CLEMENTS: Just the one comment I wanted to make was in your written comments it would be helpful if you would explain why a state 401 agency needs to be an intervenor, since it has the authority to impose license conditions that the Commission can't do anything to change.

So what -- what is the need that that agency has to be able to take the Commission to court with respect to its license or water quality issues are -- are in play?

MR. SAWYER: I mean the simple answer to that is that assumes that FERC does not reach any kind of procedural ruling to find a la Order 464 that the state has waived certification or otherwise. If FERC were to issue a decision that, well, you know it really should have been 360 days, not 365, and we're not parties, we're going to find ourselves out to lunch and not able to exercise that independent authority. And we just don't want to find ourselves where we have no ability to -- no recourse for a procedural ruling that ends up in our 401 certification decision being ignored.

MR. CLEMENTS: Good point.

FACILITATOR BLAIR: Other discussion on joint environmental documents?

Geoff.

MR. RABONE: Geoff Rabone, Southern California Edison.

For once I agree with Andy. I think an informational document would actually do something for this process to shorten -- shorten it and make it less expensive. And if we all -- if all the agencies including the FERC participated all the way through from scoping on, why can't

we just produce an informational type document, even if -- if you are required by your interpretation of NEPA to do some kind of fairly non- -- I don't know the word I'm searching for. But an example would be the kind of analysis that the Forest Service sometimes produced in their NEPA document, where they have a range of alternatives and they just say: This alternative would -- is relatively high, you know, for energy, lower for recreation, higher for fisheries, as opposed to, you know, alternative B, would be a little bit lower on energy, a little bit higher on recreation and fisheries, but not going into -- into excruciating extent. Let each individual agency use that document and make their own independent judgment on the -- on the facts, but I think that would go a long way towards producing a process that -- that even looked like it was going to be shorter, less complex, less duplicative.

Because going through all this scoping and all these comments, you know, 10 to 13 opportunities for the agencies to comment on -- on the study plan, the studies, the draft document, and then starting all over and having the FERC require -- require an independent NEPA to be done all over again, it seems that we're just ignoring one of the most frustrating parts about this whole process.

FACILITATOR BLAIR: Other comments?

All right. Then we'll move onto process choice,

the criteria. The best I recall, that was if you wanted to use the TLP versus ILP, that discussion.

No one? What -- okay.

MR. BONHAM: Chuck Bonham with Trout Unlimited.

I have a proposed solution for 5.(f)(5), which is on page D-47. And that language speaks to the opportunity -- actually not an opportunity -- the mandatory requirement to grant a request based on a for-cause -- a good-cause showing. And the solution I have again is simply kind of an informal solution for discussion purposes today.

I would propose amending this to better define this concept of the good-cause showing that results in authorization for a traditional process by requiring an affirmative showing by the requesting entity that it's done three things. The first would be an affirmative showing that the requesting party has consulted with agencies and interested parties like there's a present requirement as to the ALP, which is actually, if you go to the previous page D-46, it's Section (B)(i).

And the second step for an affirmative showing would be after such consultation has occurred, I think I would propose that the requesting entity provide a summary of all oral and any written responses or communications in that consultation.

And then the last third affirmative showing I

would request is that the requesting entity describe how the traditional process has a better prospect -- remember the comparison is as to the ILP -- that the traditional has a better prospect in the specific circumstances of the project at hand to do two things: To maximize the coordination of the licensing and all the other regulatory processes and that it will resolve potential disputes in a more timely manner.

FACILITATOR BLAIR: Good. That's exactly the type of thing we need on solutions, is specific recommendations for language and so on.

Jim, over here. Ken.

MR. McKINNEY: Jim McKinney, California Resources Agency.

I'm not going offer you specific amendment language to this. I'm going to step back several steps and I'm going to end with asking some questions of industry here, both the munis and the IOUs and the irrigation districts.

I think we're here today because industry's been very concerned about the time and cost of relicensing, and specifically with the traditional licensing process. So we have all rolled up our sleeves and worked very hard to create a new process that addresses both the concerns of industry, of FERC, of the federal agency, state agencies,

tribes, and all the other parties involved with this.

We're obviously all discussing the pros and cons of the draft rule that FERC has produced, and there's a lot of merit in it. So my question is: If there were troubles with the TLP and we're all working hard to create something that's better and more efficient and faster, why is there now a need to retain the option to use a traditional licensing process? And I'll direct my question specifically to FERC staff.

And I would just invite industry here to comment on that, because it doesn't seem to jibe with, you know, some of the base assumptions we had when we started this process last fall.

FACILITATOR BLAIR: Okay, John, you're up.

MR. CLEMENTS: Well, I think part of the -- what's going on here is the commissioners are not convinced that although the integrated licensing process we're proposing -- they're convinced that it's a good thing and it should work.

I think they're persuaded or at least open to wanting to hear more from -- from those who think that we need to keep the traditional process. That it -- the ILP, for all of its virtues, may not be the best fit for some projects. And there was a lot of comment in that regard, particularly from the licensee community and particularly

with respect to small projects. But there wasn't a lot of, at least in my view, consistency. Some said it's -- the ILP is too labor intensive and burdensome for small projects. And some said it's not going to work for really complicated projects either, because those can't go quickly. So we need to hear more on that.

But I think they also wanted to be -- wanted to get to the end result as quickly and as efficiently and as effectively as possible in as many cases as they could. And so they wanted to keep open an element of choice. They didn't want to mess with the ALP because it has a good track record.

And another consideration I think that has some play here is that there may be cases where for one reason or another the ALP crashes and burns at some point. And if that happens then you have to have -- you have to have a plan B. Plan B, I guess, is to go back to, in those cases, and we hope we don't have one, is back to the traditional process subject of course probably to some modification depending on the state of play when the ALP, you know, reaches its demise. But they wanted flexibility.

That being said, they perceive that the TLP would be used in a distinct minority of cases. And I think that they are very open to limiting the kinds of cases that would be eligible for the traditional licensing process. And

that's why we have the specific questions about what criteria ought to be, if any, applied to request to use that. They don't -- they don't want the exception to swallow the rule. So they were trying, I think, to be responsive to -- to the industry's request to keep that open. But I think that there is sort of a burden, if you will, on the industry to speak more clearly and with more focus as to why the traditional process needs to be there for some -- some projects.

MR. FELTE: Steve Felte, Tri-Dam Project.

I'll pass on a comment that I found somewhat amusing -- or not a comment, an item that I read. It was in an industry trade journal. And someone from the nuclear power industry was complaining that it takes us over two years or up to two years and almost $2 million to relicense a project.

You know when I look at the cost of relicensing, the time of relicensing, I said, "Gee, what an opportunity. Let's get a nuclear power plant built here." So it's a perspective that is not available in the hydro industry, that processing is either quick or inexpensive. And so you need to -- and part of the problem is that many agencies are not, let's say, either equipped, prepared, or financially able to participate. And, consequently, the responsibility falls on the licensee to try and pull that out, because

agencies cannot participate in an ALP process. It's a terribly time-consuming process, and so you need some other option to do that.

And so, consequently, what the default is that the applicant is -- is preparing the documents, trying to solicit the input, and then ultimately it's struggling to try and get a decision out of people that are finally participating in the end. And so, you know, the process is just confusing, difficult, and frustrating. So that's the reason industry is looking for other options, and I don't know if we've found that yet, but hopefully we'll move that direction.

FACILITATOR BLAIR: Jim.

MR. CANADAY: Mine's actually -- Jim Canaday, State Water Board -- mine's more of a question. And I realize that the focus of this is on relicensing, but I need to ask the question.

We have 65 preliminary permits pending in California. And I'm trying to understand how the integrated licensing process, when it gets triggered, so that we can anticipate, since it's -- I'm assuming it's a default for new -- new projects. And so when does that process start after they -- you've granted them a preliminary permit? I couldn't find it in here to where that was addressed, so I'm asking you where would I look for that so I understand that

process.

MR. CLEMENTS: You wouldn't look in the regulations. It's -- it's discussed in the preamble and the -- we kind of -- we looked at it and we said these things can exist side by side. You can get a permit for an original -- you know, a brand new project, but you're still going to have to do what's required by Part 5. So when you get your permit, you should be thinking in terms of complying with the Part 5 requirements.

And if you don't comply with the Part 5 requirements, you're putting your permit at risk because, you know, they require you to -- to get your -- you know, to issue your NOI and to file a PAD. And then once they've done that, the process moves along.

If you don't do that, then I think the Commission would be sympathetic to someone coming in and saying, 'Yank that permit. He's not doing what he's supposed to do under Part 5.'

So I think there's a -- built into this is a risk to permit holders, that they really need to get their ducks lined up. And it may be that eventually that forces people to apply for a permit when they're really more serious than they frequently are now.

MR. CANADAY: But that doesn't -- that doesn't save the resource agencies, states, and the federal folks

from having the play the game with these preliminary permitees. There ought to be something built in. Since your process is five and five and a half years to try to accomplish this, they haven't done something within six months, then you ought to bounce it.

Because what happens to us is 18 months left, we get this mad dash to the finish line. And it still takes -- if we don't -- we can't just say, 'Well, we're not going to play,' because you've got somebody developing study plans and doing all this other kind of stuff.

So there ought to be a default in the FERC regs that if, in fact, six months after the preliminary permit, if they haven't started or having provided the PAD document, they're gone, because they aren't going to complete the process. And that -- that will save the stockpiling, if you will, of preliminary permits. But, nevertheless, requires the agencies to still have to reach in and touch that even if it's only a day, a month, or an hour a month. That's still an hour that we don't have -- that we should be spending someplace else.

MR. CLEMENTS: Okay. Yeah. Definitely, put that one in writing, you know.

MR. WALD: Just a quick clarification on that. That wouldn't apply -- the current backlog of preliminary permits would be grandfathered from the ILP requirements or

would it kick in right away?

MR. CLEMENTS: I don't think we addressed that at all, but the intent for this -- the new Part 5 process would apply only to entities that file a notice of intent, you know, three months or later than the issuance date of the final rule. So if -- you know, it would only be applying on a prospective basis. Beyond that anybody who's kind of in the loop now could keep their permit, but if they wanted to renew their permit then they would bump up against the applicability of this new rule.

FACILITATOR BLAIR: Jim.

MR. CANADAY: I read it someplace and I'll have to try to look, but there actually -- there is a savings -- I don't know if that's the right term -- savings clause in here that says if you've already got your preliminary permit three months prior to the issu- -- or after the issuance of that, of this particular process, that they aren't bound by it. They go by the process that they came in under their preliminary permit.

It's in here someplace, I just have -- I just can't find it.

FACILITATOR BLAIR: Other comments on -- yeah, Jim.

MR. McKINNEY: Unless there's someone else.

FACILITATOR BLAIR: No, go ahead.

MR. McKINNEY: Jim McKinney, Resources Agency.

My -- my request for kind of factual examples or information was sincere. What we've put into the record that is -- is hydropower is the lowest cost energy resource in the country. If you look at O&M costs, we think it's -- you know, from a third of a cent to .8 cents a kilowatt hour, so it's hard to understand why some of these cost issues are so acute for industry.

I'm not sure if nuclear plants get relicensed very often. I don't think they do, actually. And comments like it's, you know, a million dollar problem and a 10 cent issue, that doesn't help me kind of make the balancing decisions I need to do when I make my recommendations, you know, to the policy directors and the State of California.

So this issue of cost and where are the real concerns, I think it would be really helpful to build that into the record for this proceeding so we can all make some kind of balanced decisions and recommendations.

FACILITATOR BLAIR: Okay.

MR. RABONE: Geoff Rabone, Southern California Edison.

I just wanted to speak briefly to this process choice criteria issue. John, I think you -- I think the question asked back in Washington about the relative number of processes currently before the FERC. Are there more TLP

processes or ALP processes currently being pursued?

MR. CLEMENTS: You may have asked. I wouldn't know the answer. Tim might.

MR. WELCH: John.

(Laughter.)

MR. RABONE: I couldn't find it in the preamble.

MR. WELCH: Probably TLP.

MR. JOSEPH: It's a 50-50.

MR. WELCH: Yeah.

MR. JOSEPH: I think it's in there.

MR. RABONE: Yeah.

MR. CLEMENTS: I don't have an answer --

MR. WELCH: The question's a 50-50 guess.

MS. MOLLOY: I think it's TLP.

MR. RABONE: I think -- I think the majority of processes now are TLP. And I think if we -- if we change the TLP at the same time we're instituting this, we never get a true test and we make the new process the default, you're never going to find out if you had a -- if you really improved the process or not. Everything's going to be changed and you'll never be able to tell.

MR. CLEMENTS: But I can say --

MR. RABONE: I think people vote with their feet really.

FACILITATOR BLAIR: Your assumption is that the

TLP has been the most wildly used, but I believe we have over 50 cases of ALP having been used in, I venture, 25 percent of the licenses have been issued under ALP, so it's not like we don't have a track record under ALP to show that it did or didn't work, or that elements of an ALP, which the ILP incorporates, would have no value. Now I couldn't say that.

MR. CLEMENTS: It just hasn't been around that long.

MR. RABONE: And don't -- Geoff Rabone, again, Southern California Edison -- don't get me wrong. I chose ALP for my -- you know, my big process, so I'm not opposed to it, but I take a lot of heat also. And when I get back to the office with other project managers that have small projects about all I want to do is throw money at the problem and, you know, all I'm doing is wasting resources and I'll never get anywhere with this collaborative approach.

So I'm worried about the other side of the industry that may not be represented here very -- very adequately, that their feelings are respected and that they may want to do a simple known process and not change it at all. And they may want to have that option ongoing.

FACILITATOR BLAIR: Okay. Other comment -- we got one comment in the back, and why don't we make that the

last comment, if we may, to move onto the subject of settlements.

MS. DONOVAN: And just a brief follow-up on the comment that was just made --

FACILITATOR BLAIR: Name, please.

MS. DONOVAN: Oh, Karen Donovan representing state water contractors.

I think that's true not just with regard to people involved in very small relicensing processes either. The traditional licensing process is a known entity. And I -- I don't know if this is the case with anybody who's gone into an alternative licensing process, but you still have the traditional licensing process right now to fall back on. And there may be people who would -- would have had serious reservation of using the ALP without that type of a process to fall back on. And I think that throwing that process out while you're going into an experimental process would probably lead you to problems in the future that you haven't even seen in the ALPs yet.

FACILITATOR BLAIR: Okay. Unless someone has a pressing comment on the process choice, can we move onto settlements?

Okay. Someone raised settlements, I don't recall. I guess it's all settled then -- no. In the back.

MR. BONHAM: Chuck Bonham with Trout Unlimited.

I, unfortunately, don't have a proposed solution yet for this. I expect by the time of the final written comments to have such a solution. It's simply a query to the larger group.

If settlement are quickly becoming not only a preferred path but an actual reality in frequency, is there a need for some sort of specific clarification in the new rule to address settlements, some sort of perhaps explicit encouragement and any other element of concern in that topic? I don't know. That's a question.

FACILITATOR BLAIR: Other reactions to the topic of settlements?

Well, we're either answering all the questions as we go along or people are wearing down, one of the two.

MR. CLEMENTS: It is addressed in the preamble, but we don't have any specific new provisions. The only thing that we have that's specifically directed to that is one of the questions in Appendix B as to whether or not there's an applicant. I think the question is should it be required to make some sort of a statement with its draft license application, whether it intends to pursue a settlement, but we thought we otherwise explained how settlement-friendly the Commission is already.

FACILITATOR BLAIR: The next topic: On timing of 401 CZMA Certification. I suspect we'll get a little

conversation. Who would like to kick it off? Andy.

MR. SAWYER: Andy Sawyer, California State Water Resources Control Board.

The timing of water quality certification is of course determined by, at least initially, by the timing of the filing for the application for certification, which starts the one-year clock. And the draft rule recognizes that this is an issue focused primarily on when will the application be filed.

But of course that timing should be geared to recognition of what the state or a tribe with certification authority will need in order to issue its certification. The draft rule recognizes the need for studies that will provide the information the certifying agency needs.

There are two other issues that need to be worked in to this. One has been mentioned earlier, is the public participation requirement, Section 4 of the Clean Water Act -- Section 401 of the Clean Water Act specifically requires that the state have public participation requirements.

And the other is the environmental documentation requirements that would apply under state or tribal law. In our state and I think most that have environmental documentation requirements, we use those to satisfy the public participation requirements as well so that the public participation is worked in through the commenting on

environmental documentation.

But I think in during the timing for filing an application for certification, there are two issues that need to be focused on. One is in those jurisdictions that have environmental documentation requirements, they can't act to issue certification. They can deny, but they can't issue until completion of the environmental documentation requirement. So the ready-for-environmental analysis or the time for filing the application, those are simply too early, because the environmental documentation requirement, assuming we achieve joint environmental documentation -- documentation and don't have a separate document under some other timeframe, isn't going to be ready.

The second consideration is that there should be room for flexibility. States will vary. Some don't have environmental documentation requirements and therefore might be able to do it earlier. Sometimes a state has environmental documentation requirements, but they won't apply to this project. So I -- so the timing should take into account two things: The need for final environmental documentation in many cases and flexibility to deal with others.

And based on that what we would recommend, we, the State of California, and we have talked to many other -- other states and Indian Tribes about this, is that the

timing for the application for certification be at the time the draft environmental documentation is released for public review, unless the applicant and the state or tribe agree to a different date. So the flexibility is provided by the ability of the applicant and the certifying agency to set a different date, if appropriate. But otherwise it would be at the time of the public release for review and comment of the draft environmental documentation.

You could provide even somewhat additional flexibility in this if the tendering notice and schedule -- the schedule that went with the tendering notice -- actually issued the schedule for certification. But the basic rule we think should be at the time the draft environmental impact report or impact statement, FNSI, Finding No Significant Impact, the draft environmental document is released, unless a different date is agreed to by the applicant and the certifying agency.

FACILITATOR BLAIR: Tim.

MR. WELCH: Here's my idea. What if -- I guess maybe I'm asking my colleagues here. Maybe this whole idea of specifying the date that the -- or the time that the application for 401 be submitted by the applicant, what if the regulations were essentially silent on that other than saying that it would be made part of the process plan, you know, the process plan that we have right in the beginning

that we put together for the entire process. Maybe if we just said that, you know, depending on the -- that we would work with the state and the state would determine, well, this time would be best for us, and then that would be the time. I don't know.

I'm about to get reamed.

MR. CLEMENTS: Great idea, Tim. Next.

(Laughter.)

MR. CLEMENTS: I just have kind of a -- I'm trying to think through what you're recommending. And I'm -- I have this kind of nightmare scenario on my mind where we go through this integrated process and we get all the way through to issuing a draft EA. And at some point along the way the state has been unhappy with the evidentiary record as compiled under the FERC process.

So at the point where we've issued a draft EA, the license applicant files a 401 application, and only at that point does the state say, 'Sorry, not enough information. Let's go back and do a bunch of studies and, you know, and then we'll start denying your 401s until the studies are completed and you can just keep refiling.'

Where it seems to me that once the Commission has issued a final order on study plans, including any prelim-- you know, any dispute resolution on whether or not it includes a 401 agency, the state would at that point know

what the Commission is going to require with respect to water quality or any other form of data. And that then there would be a period of, you know, two, two and a half years where studies are ongoing.

And so it seems to me long before the license application's even filed, the state knows what FERC is going to require. So it doesn't make sense to me that the state should be able to sit on its hands for two, three, three years, longer than that sometimes, without saying what it wants the applicant to do for water quality information. Why -- why would the state want to start all that time after it knows what the FERC will require?

MR. SAWYER: I think you -- there are two issues raised by that. If we know early on that the studies being requested by the Commission are not going to be adequate for our purposes, then of course we should tell the applicant early on, regardless of when the application for water quality certification will be filed.

But I think the timing of this regulation should be based on what the proper timing will be if the process works properly. And the problem is if the application is filed prematurely, so that we cannot finish processing the necessary environmental documentation within the one-year period, we have no choice but to deny certification and get into precisely the problem you're seeking to avoid.

So that's why we -- I mean if the application is filed well before the preparation of environmental documentation, we cannot legally issue certification, because under state law you cannot approve a project until the environmental documentation is complete. That's the problem that we are seeking to resolve by having the application filed at a time where we can actually complete the process within one year after the application's filed.

If that's the way it's done then, yes, the state should, to the extent they possibly can, forewarn the applicant if the studies required by FERC are not going to do the job. We should be working through the integrated process --

MR. CLEMENTS: Well, I think that --

MR. SAWYER: -- the studies come out.

MR. CLEMENTS: I think that misconstrues our intent. We're not particularly concerned that a license -- or a -- pardon me -- a water quality certification application would be denied. What people have been concerned about is that the original license expires and there is no water quality certification, so the Commission can't issue a new license. And therefore the environmental benefits of the new license aren't going into place.

And if the license application is filed no later than two years before the original license expires, there's

a two-year period in there. I don't think we really care if during that time there is a denial. What we're trying to get to is the completion of all the applicable processes in time for us to issue a license hopefully before the original license expires. And so, you know, so what if you issue one denial. That's not a matter of any particular moment.

And I guess the other thing is you're saying, well, we may -- we sort of have an obligation to let the applicant know if we didn't like what the data requirements were required by FERC. But I'm saying to myself, well, what's the venue for doing that if they don't have to file an application. I mean how would you inform them that the information they've submitted isn't sufficient. There's nothing for them to submit.

So, you know, how do you communicate with them other than to say if you do file a license application -- or, pardon me -- a certification application based on that data record, we'll have to deny it.

MR. SAWYER: Well, I mean that's to me the idea of our participation in an integrated process, is that we can work with FERC and work with the applicant to let it be known well ahead of what the study needs will be for the state. But if the environmental documentation is not completed, that's sufficient grounds in itself for denial. So filing the application earlier doesn't resolve the

problem. What we should be working at is getting an integrated process so that all the information the state needs will be available to issue a certification before the expiration of the current license. And that's not promoted by the premature filing of an application leading to a denial because the environmental documentation isn't ready yet.

MR. CLEMENTS: See, I don't see how it's premature. I guess I'm just not agreeing with you on that. It seems to me that by having them file the application, then you'll have an official formal vehicle to tell them that the data that the Commission required isn't sufficient for 401 purposes and therefore they have to do that. And there's a window for them to do it before the application's even filed.

MR. CANADAY: Well, I've been working on 401s for 20 years in California, and I can't think of a situation that you're trying to express where we haven't worked with the applicants to try to -- upfront to try to identify the studies.

But according to the existing rules they could file the requests on the back of a matchbook cover, certify that it was delivered to my agency, and you run a one-year clock on us. And I don't see how that reaches this integrated process where we're all trying to have decisions

being made at a time so that you can make the final decision and issue your license before this other one expires.

MR. CLEMENTS: I --

MR. CANADAY: And I'm confounded by the fact that if we're trying to develop this integrated process, where you wouldn't have deference to the state to allow us to file -- or require them to file when it's to our advantage to -- to meet your needs as far as timing. I'm just -- I'm puzzled by that.

And it used to be, before Rule 464, that a 401 wasn't considered or deemed adequate by the state until we had the complete record, the information and the license application. And then that started a one-year clock for us to do our environmental. But with 464 it was the matchbook cover. And we're looking to kind of recover some of that so that we can have an integrated process, if that is the intent of the Commission, so that we're -- these different decisions come at appropriate timing so that indeed you make your decision before their license expires.

MR. CLEMENTS: Hmm, I guess I would just say I'm kind of confounded by the state's continued insistence that they can only do their job if the Commission will tell the applicant to do what the states continue to insist only they can tell the applicant what to do. I just -- it kind of boggles my mind. But, anyway, we're getting kind of

confrontational here, so I'll shut up.

(Mr. Blair left the room.)

MR. HOGAN: Brett, you had your hand up.

MR. JOSEPH: Just actually a question for Andy. Earlier, you know, you laid out the rationale why California's supportive of the joint NEPA process, also echoed by some of the industry reps. You know, in relation to your proposal that the 401 application coincide with the draft NEPA document, do you -- how do you envision those two working together?

In other words, you're -- you would be participating as a cooperating agency in the developing of a NEPA CEPA document before a pending application. Just could you clarify, -- I mean how -- how does that work? I mean is the state in a position to devote resources and time to actually be in a joint participant in the NEPA process before there's an application in front of it?

MR. SAWYER: I think that's much more difficult to -- I mean there are -- there are resource problems before an application is filed, because our filing -- our application fees don't -- aren't triggered.

MR. JOSEPH: Yeah.

MR. SAWYER: But we've discussed this with other states as well. And we all believe that more important than getting our fees is having the process structured so the

application is filed at a time when the -- the -- when we can act on it in a timely basis. And we will be, in the case of the State of California, recovering our fees in arrears because we do, at the time the initial application is filed, recover for the work that has already gone in to the preapplication process. So it's a fair question given our current fiscal situation, but we are prepared to accept that because we do eventually do get our costs recovered and because we just think that makes for a much more efficient process and shouldn't have our ability to collect fees driving the process.

MR. HOGAN: Next we have Lorraine.

MS. MARSHALL: Lorraine Marshall, Alaska Coastal Management Program.

I can only speak in reference to Alaska of course and I'm in a funny situation because we do -- the 401s are implemented in Alaska except for hydro projects and small projects, due to their resources. But there is talk about them coming back in and participating in certifying hydros, and we would be in the same situation as -- as we're discussing right now.

It's premature if that one-year clock runs out before the end of the entire process, the last block, for the State of Alaska. And the reason is that the State of Alaska does its consistency review for the Coastal Zone

Management Act later -- you know, at the end of the process. And so it is after that is done and we have a hydro project is consistent with the Coastal Management Program, that then the 401 could be issued. So if there is a one-year deadline and they have applied too earlier, that causes a problem.

One -- one thing you said was, you know, just deny. And, again, just speaking for Alaska, we have to be sensitive to something like that. That could have great ramifications for our government, down to, you know, legislative actions getting rid of a program or something. So that's a pretty serious thing to just have your -- your records full of denials by your agency.

MR. CLEMENTS: And the common practice has been in these cases that an application is denied without prejudice. It doesn't mean the application or the project proposal is dead. It just means that the state agency wants additional information before it will process the application through to the end. So, as a practical matter, you know, every other place I know of where this happens, there -- there are no consequences except that the -- you know, the issue is unresolved until the state gets the information that it -- you know, it thinks that it needs to do its job.

MS. MARSHALL: Right. Thanks.

MR. CLEMENTS: So we trust it will be that way in

Alaska, too.

MS. MARSHALL: I'm sure it would be.

MR. HOGAN: So is there anybody else that would like to speak on this issue? Okay.

FACILITATOR BLAIR: Move onto the next one. Timing contingency, early start conditions.

Thank you, Ken.

I have a some sinus strange -- occasionally I just can't talk, so that's the reason I had to leave the room.

Okay. Who raised number 14? Okay, Nancee.

MS. MURRAY: I at least raised part of 14 which was the timing of the 10(j) recommendations. And we went through this already with the idea that in the existing traditional license process we have to put in our 10(j)s right after the REA and before an environmental document. And we would -- we had hoped that that would -- which puts us in a difficult situation of not having the benefit environmental analysis. We had happened that that would get better in the integrated process.

And if we were able to do preliminary comments after the REA -- REA and final comments in conjunction with our comments on the draft NEPA document, we would then have the benefit of reading and using the NEPA document in formulating our 10(j) recommendations.

I also have a minor point on the comments up in boxes 5, 6, 7, the revised preapplication document with draft study plan. The sections talk to this -- the applicant filing this directly to FERC. And then FERC puts it in its scoping document, and we have 30 days to comment on the scoping document 1, with the applicant's study plan appended.

If the applicant were to file it with FERC and all the other interested parties or at least the 10(a) and 10(j) agencies, we would then have 60 days to look at their -- at applicant's draft study plan. And it would just make our comments on the draft study plan that much more informed and detailed versus the 30 days. It looks like it kind of -- it goes to you and it would be helpful for us to get it at the same time.

You look perplexed, John. Are you?

MR. CLEMENTS: Yeah. I just assumed that when it comes to us it goes to everybody else, too.

MS. MURRAY: That's not the exact language of 5. -- it's 5.7 --

MR. CLEMENTS: That was certainly our intention.

MS. MURRAY: Okay. That is your intention?

MR. CLEMENTS: Yeah.

MR. [SPEAKER]: You would have 60 days.

MS. MURRAY: Right. And our comments from our

staff is 60 days is doable. Thirty days would be a big push.

FACILITATOR BLAIR: We're checking.

MS. MURRAY: Yeah. Let me check, too.

MR. CLEMENTS: Are you talking about 5.7(a) where it says, "The applicant shall file with the Commission"?

MS. MURRAY: Yes.

MR. CLEMENTS: Okay.

MS. MURRAY: Okay. Yeah, 5.7(a), great.

MR. CLEMENTS: The intention of that is when you file it, it's got to -- it's subject to the service requirements, too. So it would have to be served on everybody, --

MS. MURRAY: Okay.

MR. CLEMENTS: -- because a proceeding has commenced. But maybe that could bear some clarification.

MS. MURRAY: Well, and I guess we are before the license application, so has a proceeding commenced? Do -- is there --

MR. CLEMENTS: Yes. Yes, in this a proceeding has. And if you kind of dig back through the initial -- our first notice in 5.5...

FACILITATOR BLAIR: B-57 -- D-57. D, as in "dog," 57.

MR. CLEMENTS: Which one is it?

If you look right at the top of page D-58 there's -- that little Roman iii, so it's 5.57(a)(3)(B)(iii), the Commission's first notice will assign a project number and announced the commencement of the proceeding at that point.

MS. MURRAY: Okay. Sorry.

MR. CLEMENTS: So, yeah, the game is afoot.

MR. WELCH: But there are still no parties at this point. There's no call for intervention yet.

MS. MURRAY: Right. The call for intervention doesn't come until after the license application.

MR. WELCH: That's right.

MS. MURRAY: So...

MS. MOLLOY: She's back to her issue.

FACILITATOR BLAIR: Liz, you had a comment? Okay.

MS. MOLLOY: I was just going to note that -- that under our service requirements it is party, so we do need to look at that.

FACILITATOR BLAIR: Yes, ma'am, over here.

MS. STOHRER: Sharon Stohrer, S-t-o-h-r-e-r, from the State Water Resources Control Board.

In support of the comments being made by Nancee, I wanted to agree, yes, it does under Section 5.5 the Commission and the applicant would be required to send out not only their notice but also their PAD to the resource

agencies and the tribes on, let's say, day one, which would be 30 days in advance of the scoping meeting.

And it looks to me like on page D-58 under subsection (b)(3), the Commission anticipates that the scoping meeting itself would be a point in time when preliminary identification of information needs would occur. We only have 30 days following that point in time before the deadline for submittal of recommendations and our version of those study plans.

Now what I would like to comment on is not only that that gives essentially 30 days rather than 60 days from the point in time when we've been out at the site and had an open dialogue with the applicant regarding anything in addition to what may be in this hopefully quality PAD, it -- we are put in a position where we are commenting on that PAD and essentially writing draft study plans for the applicant. And we are not talking study plan singular, we are talking study plans by the numbers in more cases than not.

In these relicensings typically we are looking at resource studies that cover a span of resource issues. And we're all very aware that those range from geomorphologic studies, gravel-recruitment studies, water temperature, water quality, fisheries, riparian vegetation. It goes on and on and on. And typically we will see approximately something on the range of 15 to 85 studies developed for any

one project.

I submit that 30 days is not an adequate period of time for an informed group of resource agency staff to generate somewhere on a scale of 15 to 60 or 80 study plans and have them submitted in a timely manner.

FACILITATOR BLAIR: What would you propose as an adequate amount of time?

MS. STOHRER: Something longer than 30 days, in addition to the fact that under the traditional licensing process we currently practice, that the applicant actually in their first stage consultation package has proposed study plans that you can work from and add to.

My vision of what I'm reading here would -- would present to us a preliminary document that has facts and information in it. However, perhaps it does not have even the skeletal first stages of studies developed.

I envision -- and correct me if I'm wrong, I envision that resource agency comments will span and put -- put to the test to develop those study plans for the applicant.

MR. CLEMENTS: Would you -- well, let me just ask you to think about, you know, something and then in your written comments -- because it -- people would want to think about this. Would it make any sense to require the applicant at the time of the NOI to have along with the PAD

a draft study plan that you could react to rather than in your, you know, thinking sort of start from hole cloth?

MS. STOHRER: That would be valuable as a start. Remember, we are talking multiple not singular, we're talking about study plans that cover the entire spectrum of the resource issues and concerns that we're dealing with. So we are talking about many study plans in most cases. It would be a start to have a draft put into the document.

But in addition to that we all recognize the importance in how -- how effective a process can be if you start with quality resource study plans to work from, as opposed to setting ourselves up for failure, essentially, if we don't put adequate time and focus on developing a study plan that is going to ultimately drive a resource study that will generate data that is satisfactory three to five years later, for us to proceed with our process.

FACILITATOR BLAIR: David, you had a comment.

MR. MOLLER: Yeah. I share Sharon's concern about the adequacy of time in here for development of study plans. My experience also has been there's usually multitudes of study plans that need development. And what I see in this timeframe here is basically a comment-and-response-type timeframe, where there's a meeting, things are -- issues are presented, the licensee responds, sends something out, people comment on that, the licensee revises,

FERC does something. It's really into that kind of comment-and-response cycle.

These timeframes are fine for that, but if we're truly trying to work together to develop quality study plans, as Sharon is pointing out, it's going to take more time from kind of the scoping meeting on, right in there, to provide enough time so that the participants in the proceeding can do more than just comment and then wait for a response, but can add the discussion that comes after the comment.

So I would like to propose that at least there be some flexibility in there. There are some proceedings that have very limited study needs that could potentially go through this timeframe, but I think many proceedings would need substantially more time in here to develop quality study plans.

The couple other timing comments that I would like to comment on here, and time alluded to this earlier, but I think this is a clarification that should be made in the proposed regs themselves, and that is the idea of having a scoping meeting and also a study plan meeting. Many people would read that to imply that that happens in one day. I think those are like multiple-day meetings, if they're going to be anything more than just comment and then wait for a response. So I think somehow at least expressing

that in there that there's an expectation that they may be more than one day, in fact, they may be multiple days. And some flexibility in this scoping period study plan, issue-identification period is essential.

I have in the past and still pretty much am not in favor of any participant, including the licensee, laterally -- unilaterally putting out a study plan proposal, because they would be doing it not informed by that discussion. But that would be one way to potentially jump-start things, so, at the very least, some flexibility in that timeframe.

MR. WELCH: John.

FACILITATOR BLAIR: Tim, go ahead.

MR. WELCH: Yeah. I understand -- I do understand the timeframe is very short there. Just wanted to let you understand the thinking here.

When this came out, especially at our drafting session in Washington, D. C. there was a concern by the participants there that an early shot at a study plan by an applicant, like right from the very beginning just sort of sets up a confrontational process right from the beginning. So the participants there were very careful to say let's begin to build it, but let's build it first by getting the existing information out, you know, in a very sequential process. You know, getting the existing information out,

identifying the information gaps, and then -- then begin building the study plan from there.

As a matter of fact, I heard a person in this room at our -- that I'm staring at right now say that at our public forum. So, anyway, that was our thinking sort of behind that. I don't know. David?

FACILITATOR BLAIR: David, do you feel like you've been stared at?

MR. MOLLER: Well, I was going to turn around and see who you were looking at, but --

(Laughter.)

MR. MOLLER: -- I thought that might be presumptuous.

I think I said a minute ago that I still am very leery of any participant unilaterally proposing study plans in advance of there being discussion. I still feel that way.

I understand that in this period of time there's trying to be achieved both some focus, some real production, and let's get it going and not drag it on and on, and I'm all in favor of that. It's just I do believe that on a case-specific basis there should be some flexibility in these timeframes that in the -- in a proceeding that's going to require many study plans, maybe a hundred study plans, that they don't be trying to jam their development in a

timeframe that simply is inadequate to do a quality job. That's -- I'm just talking flexibility here.

FACILITATOR BLAIR: Sharon -- oh, I'm sorry. Who's next?

MR. HOGAN: Geoff.

FACILITATOR BLAIR: Geoff, okay. Geoff.

MR. RABONE: Well, -- Geoff Rabone, Southern California Edison. I -- I just don't think you can come out with your -- with even your initial draft study plans before you've scoped. I think it is leading to confrontation and leading to that shopping list approach toward study plans.

I just had one last comment. We've got to run, unfortunately, and I apologize, but I think we've added, in this process we've added somewhere between 8 and 13 additional steps in here between the NOI and the initiation of studies. And I just don't think it's -- that there is enough time to get it all done or to get the studies done in these two years here. And I think that echoing the comments that the state made, we ought to be realistic in our timeframes and not just try to squeeze it all in here and hope for the best, that it's all going to work, because something is going to go wrong and it's not going to work.

And also that the -- this creation of the PAD is going to take somewhere for a company like ours, somewhere in excess of a year to put together all that information.

And to tack -- you got to tack that onto to the beginning of the process. I think maybe to give the benefit of the doubt to the drafting committee, they were hoping that a shorter process time at the end was going to make up for that, but I'm not so sure that that's going to happen because you still have the issue of unresolved study plans with mandatory agencies. So thank you very much for the opportunity to comment.

FACILITATOR BLAIR: Okay. Geoff, can you hold off leaving for at least five minutes? Okay.

Before we go to Sharon -- wait a minute. It's not four o'clock. We have -- we've almost completed the issues that received the highest ranking. I'd certainly like to see Southern Cal Ed stay for the discussion of benefits of relicense, so we have industry perspective.

But we do have the room until five o'clock. I see some people have already had to leave and ducked out. The total length of process time at the top of the right-hand corner, we've sort of bounced off that already.

So the issue before the group is would people like to stay and continue through all the issues or do you want to end with the discussion of benefits of relicensing? So, again, how many people would like to stay till five o'clock and go through the rest of the issues, raise their hand.

(Hands raise. Laughter.)

MR. WELCH: You notice our hands aren't up.

MR. JOSEPH: Don't leave us here with just the California agency, please.

MR. WELCH: Don't leave us along with them.

(Laughter.)

MR. JOSEPH: We'll settle it in the bar.

FACILITATOR BLAIR: Can we then safely say that after we finish the benefits of relicensing, that that will conclude the meeting? Do we have agreement on that? No, yes or no?

No, we don't have agreement on that either?

MR. CLEMENTS: I think we do.

MR. [SPEAKER]: Yeah. From the state point of view, I wanted to be clear that we're willing to stay here, you know, to discuss any issues that they want to have on the record.

FACILITATOR BLAIR: Okay. With that we still have Sharon over here. Sharon, right? Defer to Jim.

MR. CANADAY: Right. We just want for the record to --

FACILITATOR BLAIR: Jim Canaday.

MR. CANADAY: -- agree with -- Jim Canaday, State Water Board -- that Geoff agreed with the California proposal that takes about six and a half years.

(Laughter.)

FACILITATOR BLAIR: Tim, go ahead.

MR. WELCH: As far as flexibility and the time, I would share with you one idea that we did float. And I don't know if this is -- if this would serve your needs, but one idea we did think about was not putting any -- putting the boxes here, but not putting any times at all, and simply saying your NOI is due five to five and a half years prior to license expiration and your final study plan is due one year later, good luck. Or, you know, --

(Laughter.)

MR. WELCH: You develop -- you develop the time. You know, you develop the time between these boxes, so.

MR. CLEMENTS: In a collaborative way.

MR. WELCH: In a collaborative way. In a collaborative way. Not the applicant, but everybody. That was one idea we thought about.

FACILITATOR BLAIR: Wayne.

MR. DYOK: Wayne Dyok, MWH.

I mean I'm going to be saying a little bit of what Jim was talking about, what Geoff was talking about and what California was talking about here with respect to early start. It may be a dead horse, but I'm going to beat it anyways. And this was with respect to the notice of intent. The five- and the five-and-a-half-year period. For some

projects five years may be fine.

My solution would be why don't -- why doesn't FERC just say that you need to file your notice of intent no later than five years before, and leave it up to the applicant to decide which time they would like to start their process.

And let me give you an example. There are a lot of projects that expire in the January-February-March timeframe. If you back up six months from there, that means you're in the August-September timeframe to get your process started formally. And you may have already done the early start working with the agencies and other participants to come up with some rudimentary ideas of -- you know, for study plans to get a jump-start on this process.

But then when you submit, if you go through the process and even if you took a year, but let's say you were able to get done and just follow the timeframes that you have laid out, that means around June of the following year you're going to be ready to get out into the field. Well, that really screws up your field season for that year. So then do you wait until the next year to get started, and if you do that then you just don't have enough time to get things done. You don't have enough time for settlement in there.

And if you happen to have a project that, let's

say, was in April you had an expiration. I haven't really checked to see how many expire in April. If you back up, you know, the five and the six months before that, by the time you get out and to do your site visit it's November-December, well, there are a number of projects here in California where you cannot get to the site in November and December. So, you know, I think that the Commission needs to give this some additional consideration and not just be so rigid on the five and a half years.

I think California came up with a good idea last November and I think you've heard from some industry folks here that, you know, it makes sense in some situations to get your process formally started before that five-and-a-half-year period.

FACILITATOR BLAIR: Okay.

MS. JANOPAUL: I'm not clear, Wayne. Are you proposing that the Commission require it start six and a half years earlier or just mention in a preamble that a licensee may want to start --

MR. DYOK: No. I'm saying that the licensee should be given the flexibility to formally kick off this process with their preapplication document more than five and a half years. So you just say that you must start -- you must file your notice of intent before five years and leave it up to the applicant that if they need to go before

five and a half years, then it's up to them to start five and a half years or even six years beforehand.

MS. JANOPAUL: And do you see something in here that would preclude that?

MR. DYOK: Yeah. If -- the five-and-a-half-year period. You -- you cannot file your preapplication document before five and a half years.

MR. CLEMENTS: I don't think there's anything that says you can't.

MR. WELCH: Yeah. I think it says "no later" --

MS. JANOPAUL: No later.

MR. WELCH: -- "than." I thought --

MR. DYOK: No. It says --

MR. [SPEAKER]: Where are you looking at?

FACILITATOR BLAIR: Give us a page reference, if you can, Wayne, or someone.

MR. [SPEAKER]: It's in there.

MR. DYOK: Yeah. So D-49, "When to notify. An existing licensee must notify the Commission as required in paragraph (b) of this section at least five years, but not more than five and one-half years, before its existing license expires." And that's when your notification comes in and that's when your preapplication document is also distributed.

FACILITATOR BLAIR: Okay. Duly noted. We see

the...

MR. CLEMENTS: We'll change the statute right away.

FACILITATOR BLAIR: John says change the subject, okay.

MR. CLEMENTS: Change the statute.

FACILITATOR BLAIR: Oh, who's next? Jim.

MR. McKINNEY: Jim McKinney, California Resources Agency.

I just -- I would like to just kind of remind the FERC staff that this discussion we've just had is exactly what the California agencies went through when we came up with the six-and-a-half-year time line. When you add up all the pieces, when you add in the time that Sharon was talking about for -- for review, if you expand that through whatever review period here in the document, if you take into effect, you know, the weather conditions here in California, when that allows you to start studies and all that, you get to six and a half years.

And I understand the political constraints in Washington about this five-year deadline, but the fact of the matter is we didn't just pull six and a half years out of the hat. We sat down and talked about how much time does it really take, and I think candid discussions with everybody involved with relicensing on all sides, recognize

that it does take longer than five years. Sometimes not, but generally longer than five years.

MR. WELCH: One point to clarify and that's the time for studies. We mention that, you know, we sort of have a -- sort of a two-year timeframe in here for studies, but -- and that's what we think it typically takes most projects. However, the time for the studies is determined by the study plan. The schedule and the study plan is how long the studies are going to take, and that could -- we all know that sometimes it takes more than two years because you need three years of data and because of the timing issues that Wayne mentioned. So it's the schedule and the study plan that drives the studies.

And if you look in the language on the REA notice, the Ready for Environmental Analysis notice, it says that we will not issue that REA notice until that study plan has been completed.

MR. CLEMENTS: So there's some reality on the back end.

FACILITATOR BLAIR: Okay. David.

MR. MOLLER: Two things about this time issue. One, I'd like to suggest that in its advance notification of license expiration that FERC makes to licensees, that one of the items it comments on is this seasonality issue. And just pointing out that the specific timing of the license

expiration may affect the licensee's decision as to when to start its proceeding. And that would be true even within the five- and five-and-a-half-year timeframe because a license that is inexperienced in relicensing may just intuitively wait till five years, assuming 'Why start earlier than I have to,' when in fact if they had started at five and a half years it would have removed them from a seasonality problem.

So I'd like to suggest that wherever that's documented that FERC would make that notification, that seasonality of the license expiration date would be one of the items that FERC would comment on.

I guess I would also say, I don't know that I'm necessarily ready to concede on the spot here that it -- that it's always going to take longer than five or five and a half years to get through a proceeding, but I am optimistic that some of the procedures that are being put into place or recommended in the NOPR are going to cut down some of the durations of tasks along the way of relicensing compared to what we've seen in the past. So somehow that's in the picture as well.

FACILITATOR BLAIR: Andy.

MR. SAWYER: A comment and a question. One, I appreciate Tim Welch -- Andy Sawyer, California State Water Resource Control Board. Tim's, I appreciate his pointing

out that the Ready for Environmental Analysis will be delayed if the studies take three years.

I just wanted to make the point that of course that under Part 5 the requirement for applying for what I'll call a certification is not delaying. It's before the REA so that in that circumstance we wouldn't even have a study, let alone the environmental documentation in place.

As we mentioned earlier, we do think it critical we have the ability to do the environmental documentation, too.

I just wanted to make a comment totally unrelated, but when we make our written comments, do you want us to cite the pages of the document you passed out today, the document on your website, or -- I haven't looked at it yet -- the pagination in the Federal Register?

MR. CLEMENTS: Well, if you're citing the preamble of course we'd appreciate the paragraph.

MR. SAWYER: Okay.

MR. CLEMENTS: If you're citing draft reg text,...

MR. SAWYER: The section number?

MR. WELCH: Yeah, the section number.

MR. SAWYER: So skip the pagination, just the --

MR. CLEMENTS: That's probably the best thing to do.

MR. WELCH: Yeah. Because not everyone's going to have one of these, only the people who go to the meeting.

MR. JOSEPH: Oh, this is on our --

MR. CLEMENTS: Oh, yeah, but it's -- the pages are -- you know, there's no D-67 on the web.

MR. WELCH: Right.

FACILITATOR BLAIR: Repeat it one more time, John, so the people -- what do you want?

MR. CLEMENTS: If you're discussing a section number either existing or proposed, you know if your comments pertain to that, then reference the section number rather than the page, you know, that it may be on in whatever version of this you're working with. And that would -- and, as I -- you know when I'm constructing comment summary for internal purposes, I'll try to do it that way myself as to -- you know, have a section for sections and what people said about those. And there will be probably cross-references, you know, internally so that we can link these things together, but that's probably the most effective way to do it.

FACILITATOR BLAIR: But if they're commenting on the preamble, they cite the page. And each paragraph in that preamble is numbered, so that would be sufficient?

MR. CLEMENTS: Well, each -- just -- in the preamble cite the paragraph number. Forget the pages.

FACILITATOR BLAIR: Okay. Okay. Where are we? Can we move onto benefits of relicense?

MS. MURRAY: Can I ask one clarify- -- one more clarifying question --

FACILITATOR BLAIR: Nancee, state your --

MS. MURRAY: At the April drafting workshops will we be using these yellow books and dealing with the page numbers in this one?

MR. CLEMENTS: Yeah. Bring your book with you and we'll have more.

FACILITATOR BLAIR: Oh, incidentally, a housekeeping. I just remembered. Pardon me. We have -- speaking of more, we have a couple of boxes of these out there. We would prefer not to take them back with us. So if you have friends that would like to have some reading material, please feel free to take some back, okay?

Moving right along. Benefits of relicensing. Who would like to kick that off? Benefits of re- -- Jim.

MR. McKINNEY: Jim McKinney, California Resources Agency. I'll try to focus on the specific text here.

Paragraph 224 proposes that the applicants submit a lot of cost information, so that's: Timing; costs to develop measures; annual increases, decreases in generating capacity; book value; annual O&M expenses for environmental measures; et cetera. We concur that that is important

information.

What's missing from here is any reference to the benefits of relicensing. And if there's going to be a detailed listing of all the costs associated with relicensing and, as I think was suggested in earlier discussion, that this might be used for 10(a) balancing purposes, where does the discussion of license benefits come in, the benefits to the resources from relicensing. And I'm not necessarily suggesting, you know, a resource economics, a quantification, a modernization of the -- of the resource benefits, but some explicit recognition of what the benefits are from relicensing.

MR. CLEMENTS: I always thought it happened in the NEPA document or in the license order, where we discuss, you know, the various alternatives and what you're discussing is the environmental benefits of, you know, various proposed measures. And so, you know, that's the place where you talk about it. You know, if it's going to create -- you know, if it's going to double the habitat for endangered steelhead, or something, then that's where it's going to be said.

MR. McKINNEY: I think a part of my concern here is that the debate currently before the Commission, before Congress is about the costs of relicensing. So you may be right, that all those benefits are explicated in a NEPA

document. That's not what part of the discussion in this rulemaking, nor in Congress.

So what I'm asking for is what are some ways, and we'll come up with some recommendations in our written comments, how do we also enter this into the record so we can demonstrate that it's not just a costly undertaking to relicensing a hydro project.

MR. WELCH: So, Jim, you're -- I guess this part pertains to the applicant. So what you're essentially asking is the applicant provide what it thinks the benefits are.

MR. McKINNEY: Not necessarily. I'm --

MR. WELCH: Because this refers to the application.

MR. McKINNEY: Right. I understand. I understand.

MR. WELCH: Okay.

MR. McKINNEY: I understand. Although that might be a good exercise to see what the applicant --

MS. JANOPAUL: This is Mona Janopaul, Forest Service.

Jim, I'm just not clear on what you're talking about for the benefits of relicensing. Are you talking about the benefit of rebalancing power and nonpower interests at this point in time or are you talking about the

usual benefits that are described in a license of flood control; you know, water way development; clean electric power; reservoir; you know, recreation; that kind of thing. What -- what kind of -- benefits of relicensing, is that -- is that saying it's good to do a new license at this time in order to acknowledge changes in social and environmental circumstances? I'm just not clear what kind of benefits you're talking about.

MR. McKINNEY: Yeah. The benefits that are discussed or that are evaluated in -- as you're balancing. So as you're balancing power benefits and power values with recreation benefits and natural resource benefits. That sense of rebalancing that occurs during the relicensing process.

MS. JANOPAUL: So it would be the benefit of issuing a new license versus just continuing with the existing license; is that -- is that what you're talking about?

MR. McKINNEY: No. No, I'm not following you. Maybe it's late in the day.

FACILITATOR BLAIR: Andy.

MR. SAWYER: I think it largely is. Jim and I didn't understand each other. Andy Sawyer, State Water Resource Control Board. But the preamble sort of sets it up like, well, this is a very lengthy burdensome process.

Well, why not just abolish relicensing. And we do think it important to emphasize, as you stated, the underlying purposes to provide for a new look in light of contemporary law and contemporary public policy. That's a very important benefit of hydropower. And it can't get -- cannot afford to get lost as you're trying to reduce transactional cost, informational cost burdens. But -- but don't lose sight of the benefits.

MS. JANOPAUL: So, again, it is the benefit of development of a new license versus continuation of the existing license; is that --

MR. SAWYER: That's right.

MS. JANOPAUL: Okay. Thank you. Thank you.

FACILITATOR BLAIR: Okay. Any other comments that would like to be made on benefits? Brett.

MR. JOSEPH: Yeah. I just had a related question and I guess a comment. Jim, you mention that this would not extend to actually quantifying resource benefits. I just want to be clear.

When you're referring to benefits are you referring to basically an economic set of benefits but in the broad sense that would include economic benefits of the resource or are you -- are you limiting it just to 10(a) balancing?

In other words, does it benefit in the overall --

you know, the overall benefits of relicensing this project versus anything else you might do with the river or is it just trying to achieve, you know, a sufficient development of the record relating to other than economic costs, the amount of power benefits referred to under 10(a)?

I'm just wondering how broad -- how broad you go in terms of delving into the resource economics aspect of it.

MR. McKINNEY: I think those are good questions. I haven't thought it through personally. I don't think we've thought it through as an interagency team.

What sparked, you know, the desire to put the issue up on the board, I think Andy said it pretty succinctly. We're talking a lot about kind of the burdensome costly aspects of this process, but don't discuss the benefits that happen when we relicense. So -- and I don't think I'm answering your question accurately --

MS. JANOPAUL: The benefits of a relicensing process, of the process of relicensing.

MR. JOSEPH: But I think there's -- and this is my comment. I think there is a bit of an apples-and-oranges comparison here when -- I mean I hear and I share the concern with focus being made too narrowly on the costs to the licensee of relicensing in the strict, you know, monetary sense, which is a different issue from 10(a), as I

read it; which is 10(a) -- the power refers to the power and nonpower values, and balancing between those two. Cost is not even referred to in 10(a).

But as soon as you inject cost, which obviously is a real world consideration, you are getting into the realm of economics. And so that's, I guess, my comment that any consideration of cost in the economic sense should be in the context of the total economic picture, which includes the economically-related cost of the resources. I don't think you can get around the need to -- to account for those costs, as well.

MR. CLEMENTS: And I just have to respond for the record that I think most attempts to put economic value on natural resource enhancements stray into mumbo-jumbo.

FACILITATOR BLAIR: Other --

MR. CLEMENTS: But we've had that discussion.

MS. JANOPAUL: Oh, say what you really think.

FACILITATOR BLAIR: Other comments?

Well, we had -- one more. Sharon, state your name.

MS. STOHRER: Just out of curiosity, early on today --

FACILITATOR BLAIR: State your name.

MS. STOHRER: Oh, Sharon Stohrer, S-t-o-h-r-e-r, State Water Resources Control Board.

Early on Tim Welch in his presentation this morning identified on page B-6 a couple of new items or requirements for information that will be put into the application content of the new process, you know, integrated process. And among those was a declaration of the minimum and maximum hydraulic capacity of the project and a cost to develop the license application.

And part of what I'm hearing over here is some current concerns about the graveness or the overbearing costs of doing these licensings. I'm wondering if it might not be also appropriate in addition to putting down an estimated cost to develop a license application, to also include what the financial benefits that have been realized by the utility on a yearly basis throughout their previous license might be in comparison to the relative cost they anticipate to relicense it for the upcoming 30 years.

MR. CLEMENTS: Okay. Biting my tongue here.

MR. JOSEPH: Well, I missed most of that. Well, you --

MR. CLEMENTS: Okay. I guess I could only respond by saying that a relicense proceeding is a forward-looking proceeding and it's not an attempt to either, you know, punish the licensee for environmental bad things that happened under the previously license or to identify how much money they have made at the expense of the resources,

to look at it that way. It's what the -- what is the project doing now with respect to the affected resources and how can we make things better in the future. How can we get the right balance for today in going forward, which is irrelevant or which is -- has no bearing on how much money they may have made in the past.

MR. JOSEPH: Or how much their cost --

MR. CLEMENTS: Or how much their costs were either. It's a forward-looking thing.

MS. STOHRER: It's a forward-looking thing. I just might have concern about --

FACILITATOR BLAIR: Wait a minute. Need the microphone.

MS. STOHRER: I agree with you wholeheartedly and the goal that all of us seek is to undergo a relicensing that's going to have an outcome that is a better use of the water, the resources, whether it be the same or whether it be modified for the future generations.

I just feel like it would be valuable information personally, and I don't know about others. Apparently others aren't agreeing. I think it would be valuable information not just to anticipate what the cost might be for the relicensing process itself, but also to relatively compare it to what the gains have been in the past.

FACILITATOR BLAIR: Okay. Thank you.

Let me confer with Tim here a second.

MR. CLEMENTS: Ask them again.

FACILITATOR BLAIR: We were just conferring as to whether we would quit now, which we had talked about earlier, and everyone seemed to concur, or whether people would like to continue on. I know that Jim and Jim had indicated they wanted to continue, but they were the only two at the time. Matt just voted in. He wants -- so the question is would everyone would like to call it a day or would you like to continue with the subjects?

How many would like to call it a day? Raise your hand.

MR. CLEMENTS: Please vote one way or the other.

FACILITATOR BLAIR: Wait, wait. This is going to be a rough one. Seriously, everybody hold up their hands because it's not going to be a clean cut, okay? Quit for the day. One, two, three, four, five, six, seven, eight.

One more time, hands up, like to quit for the day. Well, wait a minute, Matthew, --

MR. CAMPBELL: I have two quick process comments. Pass the microphone now, everyone. We've been through this before.

FACILITATOR BLAIR: Matt, you'll get your chance with the microphone in a second. Let's finish this first.

MR. CAMPBELL: Okay.

MS. MOLLOY: I'll stand right here with him.

FACILITATOR BLAIR: Okay. One more time. Who wants to quit for the day? Please raise your hand.

Okay. One, two, three, four, five, six, seven, eight, nine, ten, eleven.

Okay. And who would like to continue? Okay.

Now we're going to quit for the day right after Matt how the microphone. Now the last time he got the microphone in Washington, D. C. -- Matthew, you're on.

MR. CAMPBELL: Two quick process -- rulemaking process comments. One, I believe it was raised in the Portland workshop I think -- I think by the Nez Perce Tribe that there was some concern about the amount of time you all have between when you get the comments on April 21st and when you go into the drafting session.

There is -- California shares the concerns that have already been expressed in the Portland workshop, that that isn't enough time for FERC to adequately review and synthesize and digest and deal with the comments that they're likely -- the written comments they're likely to receive on April 21st. And so I'd ask you to consider how you can address that.

And then the second question I have is after the -- the four-day Washington, D. C. draft session there appears to be another kind of black box period where FERC

and the federal agencies get together to work on the final -- the final rule language. The State of California and perhaps other states would like, if possible, to be included within that effort, because we are equal regulatory partners in this process and feel that we -- we would have something to add.

I know I asked Tim this at the last regional workshop, in the previous black -- about the previous black box period for the proposed rule. And I was -- we were told that we would get a discussion draft during that period, and we didn't. So I'm asking again at this point. Thanks.

FACILITATOR BLAIR: Liz.

MS. MOLLOY: I'd like to answer the first one.

FACILITATOR BLAIR: Okay.

MS. MOLLOY: I have gone out of my way to encourage anyone who wants to, to file early. That's a deadline. That's not -- you know, it's no -- at least as early as -- you know, no later than, or anything. It's -- you know, an outlier. So you can file tomorrow. It's all right. And then they can start thinking about it, and then I'll turn it over to one of them to --

MR. CLEMENTS: Just to make it absolutely crystal clear, there isn't going to be a discussion draft of the final rule coming out. I mean to the extent that people come to the session, you know, in April and May there, we

can discuss language there, but don't expect to come and see a draft final rule to work with. That's just impossible to even contemplate.

MR. [SPEAKER]: I don't have the mic and I can --

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(Laughter.)

FACILITATOR BLAIR: That's okay.

Any other comments, people would like to submit anything for the record, file anything for the record?

MR. CLEMENTS: Oh, Ken, can I address that, your direct language, California. I have marked all over mine, so if you could give a clean copy to the reporter?

MR. [SPEAKER]: Ken took care of it.

MR. CLEMENTS: Thank you, Ken.

MR. JOSEPH: I would just like to thank everyone for all your comments. I've been trying to take copious notes, and they're certainly going to help us. Even though a lot of those, you know, I didn't respond to on behalf of the agency, I thought many of them, most of them were very excellent.

FACILITATOR BLAIR: Mona, do you have anything on behalf of the Forest Service?

MS. JANOPAUL: I just join in Bret's comments of expressing appreciation for the discussion the last two days.

I also recall that a lot of people here were very active in the last D. C. meeting before the FERC chairman and commissioners and also in the drafting sessions. I don't know if any Commission staff would like to talk about the format of the April 10th meeting with the FERC chairman and commissioners, but I do remember people asked about that in Portland again, were there going to be panels like last time or, you know, were the FERC chairman and commissioners going to be there. And I remember, yes, I too remember Matt coming in and grabbing the microphone, so --

MR. CAMPBELL: See you around.

MS. JANOPAUL: All right. All right.

MR. CAMPBELL: That's right. Talk about grabbing.

MS. JANOPAUL: But -- but if FERC staff would like to, you know, share how the April 10th meeting's going to be run, I do remember that being asked about in Portland.

MR. WELCH: Right now we're sort of talking about internally -- we haven't talked to the commissioners about this yet, but right now we're not thinking that it will be panels in front of the commissioners. That it will be a meeting very similar to this, but a little bit more focused in that, instead of those questions that I had at the end, we would identify the topics, the most popular topics that we discussed at all the regional meetings and present them

for a more focused discussion. So it will be almost -- it'll be very similar to this.

FACILITATOR BLAIR: Well, --

MS. JANOPAUL: So Matt won't have to grab the microphone. He will be -- have plenty of time to say whatever's on his mind.

FACILITATOR BLAIR: We do hope to see you in D. C. and we really appreciate you coming to this meeting and sharing your comments. And if there's no further discussion, well, then I declare the meeting adjourned. Goodday.

MR. CLEMENTS: Thank you.

MS. JANOPAUL: Thank you.

MR. WELCH: Thanks, everybody.

(Whereupon, at 4:35 o'clock p.m. the Public and Tribal post-NOPR Regional Workshop was concluded.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the FEDERAL ENERGY REGULATORY COMMISSION in the Matter of:

Name of Proceeding: PUBLIC & TRIBAL POST-NOPR REGIONAL WORKSHOPS on HYDROELECTRIC LICENSING under the FEDERAL POWER ACT

Docket No.: DOCKET NUMBER RM02-16-000

Place: SACRAMENTO, CALIFORNIA

Date: TUESDAY, MARCH 25, 2003

were held as herein appears, and that this is the original transcript thereof for the file of the Federal Energy Regulatory Commission, and is a full correct transcription of the proceedings.

Official Reporter