

PUBLIC POST-NOPR

REGIONAL WORKSHOPS

April 1, 2003 - 9:00 a.m.

Manchester, New Hampshire

RE: PROPOSED RULEMAKING FOR  
HYDROPOWER RELICENSING

PANEL MEMBERS: Elizabeth Molloy - FERC, Facilitator

Timothy Welch - FERC

Tom Dewitt - FERC

Ken Hogan - FERC

James Kardatzke - Bureau of Indian Affairs

Court Reporter: Brenda J. DiMatteo, CERT

## P R O C E E D I N G S.

## I. Welcome and Introductions

ELIZABETH MOLLOY, FERC: Good morning. I'm Liz Molloy from FERC. I was appointed the Tribal Liaison and this morning I'll be facilitating this meeting. I have Tim Welch and Tom DeWitt up here who are going to do a presentation and answer questions. The agenda, you will have each gotten our nice complementary program, I hope.

The agenda is on A-1, one of the first pages and today we are going to review a little bit of the rule, highlights of the rule, the process, and then we want to talk about issues that people may have still with the rule and ways we can resolve them and ideas for solutions on that.

We have a small enough group, I would like to go through and do quick introductions and then Tim is going to present our Power Point presentation and any clarification questions anybody has on the rule feel free to ask after that and we'll try to answer any questions. Then after that, we'll take a small break and then come back together and identify what issues there are remaining that people feel we may not have quite nailed down in the rule and we'll sort of prioritize them and then in the afternoon or whenever

we get to it, we will discuss it and hope we'll come up with some answers. I will start in the back. Ken has the mic. Ken Hogan is walking around with microphones, so as we discuss such, he will walk around and give you a microphone. And so for introductions, he is walking with the microphone.

TOM SULLIVAN, Gomez and Sullivan: Good morning. I'm Tom Sullivan with Gomez and Sullivan Engineers in Weare, New Hampshire.

KEVIN WEBB, CHI ENERGY: Kevin Webb, CHI Energy.

JIM KARDATZKE, Bureau of Indian Affairs: I'm Jim Kardatzke with the Bureau of Indian Affairs Eastern Region in Nashville.

PAUL MARTIN, TRC Environmental: Paul Martin, TRC Environmental in Lowell, Massachusetts.

BETTY LOU BAILEY, Adirondak Mountain Club: Betty Lou Bailey with the Adirondak Mountain Club.

DUNCAN HAY, National Park Service: Duncan Hay, National Park Service.

DAVE SHERMAN, Essex Hydro: Essex Hydro, Dave Sherman.

JOHN SULOWAY, NYPA, NHA: John Suloway from the New York Power Authority and NHA.

MELISSA GRADER, USFWS: U.S. Fish and Wildlife Service, New England Field Office.

DANA MURCH, MAINE DEP: Dana Murch, Dams and Hydro Supervisor, Maine Department of Environmental Protection.

JOHN WARNER, USFWS: John Warner, the U.S. Fish and Wildlife Service, New England Field Office.

MARSHALL KAISER, Safe Harbor Water Power: Marshall Kaiser, Safe Harbor Water Power Corporation, in Lancaster, Pennsylvania.

KEN KIMBALL, Appalachian Mountain Club: Ken Kimball, Appalachian Mountain Club.

TOM CHRISTOPHER, American Whitewater and New England FLOW: Tom Christopher, American White Water and New England FLOW.

BRIAN FITZGERALD, Vermont ANR: Brian Fitzgerald,

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Vermont Agency of Natural Resources.

ROD WENTWORTH, Vermont ANR: Rod Wentworth, also  
with Vermont Agency of Natural Resources.

SARAH VEIVILLE, Long View Associates: Sarah  
Veiville, Long View Associates.

PAUL PISZCZEK, NHDES: Paul Piszczek, the New  
Hampshire Department of Environmental Services.

MARK SLADE, TRC Environmental: Mark TRC  
Environmental.

MIKE LAROW, Sigma Consultants: Mike Larow, Sigma  
Consultants.

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BRIAN MAZERSKI, NH Office of State Planning:

Brian Mazerski, New Hampshire Coastal Program.

STEVE HOGAN, PSNH: Steve Hogan, Public Service Company of New Hampshire.

STELLA SHIVELY, Northeast Utilities: Stella Shively, Northeast Utilities.

KEVIN MENDIK, NPS: Kevin Mendik, National Park Service Northeast Region, Boston.

LIZ MOLLOY: Thanks a lot. Thank you for coming today. I'll turn it over now to Tim to give the presentation. They are very excited next-door.

## II. Rule Overview

TIM WELCH, FERC: I've got a lot of competition. As Liz said, I'm just going to do sort of two things. First, I'm going to find a place to stand. I'm going to do two things today, actually three. First, take you through our process, sort of where we've been and how we got to today, and kind of where we're going in the future with this rulemaking. And then, I am going to briefly go through the rule, hitting a few highlights, and then I'm going to wrap things up by going through a series of questions. These questions were adapted from many of the questions that we posed in the NOPA itself and we are going to pose those questions to you today just to stimulate your thinking

about some of the issues remaining for FERC staff, kind of those loose ends that we want to tie up in the rule.

So anyway, this yellow book here will sort of be your guide and I'll be pointing out -- the presentation I'm about to give you is in closure B, beginning on page B-1. So, you can follow along and there are parts in here where you can take some notes if you would like.

So, we'll go through this and then as Liz said, we'll have some time for some clarification questions about what did you mean in this particular part and what did you mean in that. Then we'll identify some of the issues and then we'll discuss those issues and that will be sort of the bulk of our meeting.

So, let me just start by sort of taking you through our process and you can follow along. Our process is found on the inside cover of your book, in the back inside cover.

Now, we started the whole thing off back in September 2002 when we issued a public notice, and that public notice sort of set the stage for a series of public and tribal forums, where we went out and we tried to talk to as many stakeholders as possible all around the country about what they felt the new hydro

electric licensing process should look like. So, that fall, in October and November, FERC and some of our sister federal agencies with powers under the Federal Power Act went out and conducted these public and tribal forums. Last fall we were out in Bedford and I know many of you were at that particular forum.

So, once we got those wrapped up, we got a little bit of an idea about how people felt about things, we held a stakeholding drafting session in Washington D.C. in December. And as part of that, we invited various stakeholders from federal agencies, state agencies from all over the country, NGO's, the tribal folks, and we invited them to Washington D.C. for two days of drafting of conceptual ideas about what they felt that FERC should include in the notice of proposed rulemaking. So, we took the information from the forums, and we took the information from the drafting sessions, and we took all of our written comments from our September 2002 notice, and then we sat down with our sister federal agencies and we began drafting the notice of proposed rulemaking and much of the language that we drafted during that four weeks that we were with the resource agencies, much of that language you will see in the notice of proposed rulemaking today.

So, this all culminated at the end of February, on February 20th, where the Commission unanimously voted to release the notice of proposed rulemaking that you can find right here in your booklet, which I am sure you all read in tremendous detail.

So, that brings us to now in spring, March-April. Once again, we are going around the country, this is our -- If today is today this must be Manchester. So this is our fourth one. Then we have another one later in the week in Milwaukee and then we have another one in Washington D.C.. And once again, we are conducting a series of workshops to get people's input on the notice itself. So once again, once we wrap this up at the end of April, beginning of May, we are going to have this time a four day stakeholder drafting session. We're calling it Hydro Hell Week and we're inviting you to come to Hydro Hell Week in Washington D. C., once again, to draft the language in certain areas that we will use in the final rule. Once we finish with that, we will once again reconvene with our sister federal agencies in March. We have sort of already began some meetings in April and May and we will begin drafting language for the final rule and we are targeting the end of July for the Commission, to present the final rule to the

Commission for a vote.

So, when we went to those forums and the written comments back in the fall, what we heard from people, if there was one theme that sort of surfaced it was integrate, integrate, integrate. Integrate all of the various processes involved in getting a hydro license; integrate things all together into one process. So, lo and behold, what did we come up with but an integrated licensing process.

You'll find our proposed process on the back in a nice little flowchart and that is what I am going to spend the rest of my time talking about today. Now, we're hoping that you'll find something in here that you can latch on to, because I think we have hopefully taken bits and pieces of the many proposals that we received from NHA, the NRG proposal from the Interagency Hydro Power Committee proposal and hopefully we put together something that sort of everybody can sort of latch on to. But, as we know with most things, the devil is in the details and that's why we are here on this second round, to have you help us sort of fill in those details, sort of cross the T's and dot the I's.

So as I said, the proposed rule does two things. One, it creates this new integrated licensing process,

I'll talk to you about that in a minute. And the second thing that it does, it also proposes some changes to the traditional process. So as far as the integrated license process, I sort of split it up into three areas. Sort of the top role here and part of the middle role is the development of the process plan, this is something new that I'll talk about in a few minutes and the study plan. We were thinking that would take about one year. So, that is sort of the beginning of the process.

Once all of that is in place, we move into the studies and application development. So, on the flowchart we have allotted about two years for studies. This two year time frame is not frozen and I'll talk to you a little bit about that in a minute, but just for discussion purposes, we're thinking about two years for study.

Now, application processing, this is the time that the application finally goes to FERC, two years before the license expiration on a relicense and we are projecting that is going to take one and a half years.

Now, as far as the changes to the original process, what we did was, we thought of let's take some positive aspect of this integrated licensing

process and let's apply them to the traditional process as well. So, the two things where we have changed, we have increased the level of public participation. In other words, in the traditional process where applicants are required to consult with resource agencies and tribes, we have added a public dimension to that, where we are requiring applicants, even in the traditional process, to consult with members of the public. We have also added early study dispute resolution. We have sort of enhanced the current study dispute resolution that you find in 4.34 of the regulations under the traditional process, in order to resolve study disputes early even in the traditional process.

Now, we think that the integrated licensing process improves both the efficiency and the timeliness of the licensing process. We also believe that at the end we are going to end up getting a better answer; in other words, a better licensing product. I am going to talk a little bit about how we believe the integrated process is going to improve the efficiency of the process. The cornerstone of the ILP, as we call it, is that application preparation will be done in conjunction with FERC's NEPA scoping. Now, contrast that with the traditional process that

you are all familiar with is that the application is prepared, filed with FERC, and then FERC does its NEPA scoping. So scoping is done after the application is already developed. We are proposing to change that and do those two major activities at the same time, resulting in a more efficient process.

Now, the other cornerstone of the process is coordinating with other participants processes. And what we are thinking about here is processes such as the 401 Water Quality Certification process, doing everything we can to get those processes sort of together and happening more efficiently or at the same time. And we are also, as I said with the traditional process, we are also increasing public participation at the very beginning of the process, so we can identify all of the participants right from the get go.

Now, let's talk a little bit about timeliness. We think the process is going to improve timeliness, primarily because of the early FERC assistance. Again, contrasting with the current traditional process, FERC staff does not typically get involved with the process until after the application is filed with FERC and that can be one to two years after the process is already beginning. In the integrated

process Commission staff and the proceeding will begin right from the very beginning and FERC's major job here is going to be coordinating and developing what we are calling the process plan, getting together with all of the stakeholders and all of the other agencies that are involved and coming up with a process plan to complete the licensing process overall with milestones for not only participants but also for FERC staff and keeping that schedule on track throughout the process.

Now, we are also proposing, again, early study plan development with FERC staff involved and both formal and informal study dispute resolution. Once again, in contrast to the traditional process when many disputes over studies linger until after the application is filed with FERC, we are proposing to once again do that up front before the study period even begins and resolve all of the study disputes right up front.

My next slide here is an attempt to sort of illustrate increases in both timeliness and efficiency. We are looking at a graph of application processing time. This is the time that the application is filed with FERC, right here at the zero on the X axis, to the time the Commission issues the license. Now, under the traditional process we have

actual data here and this data was derived from our 603 report, which reported a median application processing time under the traditional process, a median time of 47 months. Now, this bottom bar is our projection, not based on any hard data, of course, because we haven't begun the integrated process, but we believe that with all of those measures that I just talked about in the process, we think that the processing time under the integrated process is going to drop dramatically to seventeen months.

Let me just point out one more thing. This red line here at the 24 month mark is the time that the current license would expire at the two year point. And you can see in many, many, instances under the traditional process the new license is not in place in time after the old license had expired. So, the Commission takes the step of issuing annual licenses. It is our belief that the integrated process, as you can see, the new license should be well in place prior to the expiration date of the license, so that all of the environmental measures agreed upon here can be implemented right when the old license expires.

So, now that I have talked a little bit about the timeliness and efficiency of the process, we have some other significant aspects of the NEPA that I want to

talk to you about. Our process selection, our change in cooperator/intervenor policy, our proposed change in tribal consultation, the advance notice of license expiration. I'd like to talk a little bit about the Pre-Application Document, the PAD, this is the document that is going to replace the initial consultation package and talk about study dispute resolution and some changes to the requirements for Applicants in the application.

So, process selection. We are proposing now that FERC maintain three processes, the integrated, which I just talked about; the traditional with the changes that I talked about earlier; and of course, we are also retaining the ALP, the alternative licence processes. The important thing to remember here is even though we are retaining the traditional, we are proposing that the integrated process be the default process. In other words, if you wanted to use either the alternative process or the traditional process, you would have to request that and solicit comments in your notice of intent. That is, the Applicant would have to solicit public comment and file it with FERC. Then the Commission staff would use all of that information and look at the Applicant's reasons for wanting to use the traditional or alternative process

and then would either approve or deny the request.

The cooperating agency intervenor policy: As many of you know, if a federal agency wants to be a NEPA cooperator, it is our current policy that they would not be allowed to intervene as a party in the process. So, under the current policy we require that a cooperating agency make a choice, either be a NEPA cooperator or be an intervenor. What we found is that many federal agencies that wish to cooperate don't wish to give up that intervention right. So, in order to promote a more efficient process by promoting more cooperation under NEPA, we are proposing to change that policy by permitting both a federal agency to be an intervenor and a NEPA cooperator at the same time. Now, there are some concerns about the ex parte rule and we are going to modify that slightly to require Commission staff to disclose only technical study information that it receives from a NEPA cooperator, that is very specific information about a study or technical information that an agency might have, that would be disclosed on the record. What would not be required to be disclosed on the record would be like the exchange of drafts of the NEPA document between the cooperators. So, we are going to modify our ex parte rules, we're proposing to modify the ex parte

rules in order to allow that key communication between NEPA cooperators.

We are proposing changes in tribal consultation. We are going to try to improve, this is one of the most important aspects of the notice of proposed rulemaking, Commission staff were proposing -- would initiate very early discussions with effected Indian tribes in order to develop consultation procedures. What we found from talking with the tribes, it is very difficult to sort of come up with sort of one size fits all consultation procedures for every tribe. All the tribes are a little bit different with respect to how they view consultation. So, the only thing we're proposing is an initial meeting with FERC staff to develop how FERC and the tribes are going to consult throughout the entire licensing process and to help us do that, we are proposing to establish a position of Tribal Liaison. Right now Liz is our Tribal Liaison for the rulemaking, but we are planning on creating a permanent position of Tribal Liaison who would coordinate activities with all tribes in all aspects that the Commission is involved in.

One of the ideas that we got a lot of favorable response on during the public forums and in the written comments are advance notice of license

expiration. So, we are proposing that it becomes the Commission's practice to notify a licensee sufficiently in advance, we haven't specified any time. We would like some input on that, sufficiently in advance of the deadline for the notice of intent. And think of this as sort of a wake up call to an Applicant: Dear Applicant, guess what? Your license is going to expire on such and such a date and your notice of intent is due on such and such a date and this is to sort of stimulate the Applicant to begin thinking of the process and alert them to the requirements for the notice of intent, for the Pre-Application Document and the process selection. So sort of begin to get them thinking about those types of things.

A little bit about the Pre-Application Document.

As I said earlier, this is what is replacing the initial consultation packet or initial consultation document, ICD or ICP that many of you are familiar with under the traditional process and we wanted to improve the amount of detail in that Pre-Application Document in order to provide the participants with all of the available environmental information about the project. So, get all of the studies that have been all ready completed, all the data about the project,

about the hydrologic data, and get that out to all the participants so we can provide a basis in the very beginning of the process for issue identification, which of course provides the basis for study requests and the whole thing provide the basis for FERC's NEPA scoping document.

Now, we are very careful with how we sort of structured that Pre-Application Document. As you can see, it is all split up into very distinct resource areas, because we are hoping that that is going to be the form and content precursor to the Applicant's Exhibit E. Now, sort of our hope here is that this Pre-Application Document will sort of evolve and morph throughout the entire process, until eventually at the end it would be the Commission's NEPA document. So hopefully, you are going to keep, as a participant in the process, you are going to see the same document again, and again, and again, as the studies are developed, as the studies happen as the information on the studies come in, the Applicant will be adding to the Pre-Application Document, which will eventually becomes Exhibit E and then from that the Commission's NEPA document.

Now as I said earlier, one of the key aspects of the integrated process is early study dispute

resolution. And the key to this study dispute resolution is the establishment of study plan criteria and there are a series of seven or eight criteria in section 5.10 of the proposed rule for study requesters to follow, things like nexus to the project, cost and practicality. There are a number of study criteria that all requesters have to follow. We would like you to take a look at those. Hopefully we can discuss those today, whether you think there needs to be additions or subtractions, we are looking for input on that study plan criteria.

So after the issues have been identified, FERC has its NEPA scoping, the Applicant would file its first draft study plan for comment from all participants, including FERC staff. So, if there is any dispute, the first step is an informal dispute process. We are proposing that after this draft study plan has been circulated for comment, we would come together and have a study plan meeting, pulling all of the participants together with FERC staff to resolve any differences that people might have in various aspects of the study dispute resolution. So, once that happens, it would be up to FERC to approve the study plan with any needed modifications if things weren't quite worked out in the study plan meeting.

The next step is for both state and federal agencies with mandatory commissioning authority under the Federal Power Act. They could dispute the Commission's approved study plan and at this point FERC would then convene what is called an advisory panel consisting of FERC staff, and resource agency staff, and a third party neutral, that is acceptable to the other two people. Now, this panel would convene -- let me just add that the FERC staff person and the resource agency person would be different people than were involved in the actual study plan development itself. So, we are looking to get some sort of fresh eyes on the study plan.

Now, this panel would convene, look at the study, look at the dispute, look at the study criteria, and then determine whether or not the plan met the study criteria. Once they came up with the decision based on information that the Applicant provides, once they came up with a decision, the panel would provide its finding to the FERC Director of Energy Projects and the OEP Director would make a decision on the dispute with respect to the study criteria or any other applicable law FERC calls for.

One of the things that we did was, we went to FERC staff and we asked FERC staff, what are the

things that it seems like we always need to ask applicants for in an additional information request and they can come up with a few things that we always seem to have to ask for again, and again, and again. So, we decided to propose that that information be included in the requirements for the application and a couple of things that come to mind is information on both minimum and maximum hydraulic capacity. I think right now the requirement is just for maximum. And also, we are going to be asking for information on the cost to develop a license application. This is something that we are using in our comprehensive development analysis and also we will be using this as a benchmark in looking at how this new integrated process is effecting costs for applicants.

We are also requiring that project boundary information be required for all license applications and all exemptions. Right now I don't think it is required that minor projects provide project boundary information. We are requiring now that all applications clearly define the project boundary.

We are also, as I said earlier, looking for changes in sort of the format of Exhibit E to make it sort of more NEPA like. So, Exhibit E would have various distinct areas on effect environment, which

essentially would be the Pre-Application Document, plus any more information on the existing environment that comes through studies, it would include the Applicant's environmental analysis, its proposed environmental measures, identification of any unavoidable adverse impacts, and a developmental analysis and these top three or top four things would be done for each resource area. It would be done for aquatic resources, terrestrial resources, cultural resources.

So, that sort of takes you through some of the highlights of what we're proposing here. Now as I said, we are going to propose a series of questions to hopefully stimulate your thinking on some of the issues that we think remain. The first question is, are the contents of the preapplication process appropriate? Are they too detailed or are they not detailed enough?

What, if any, criteria should be considered to determine the use of the traditional licensing process? Right now the proposed rule just says that an Applicant should show -- or FERC would approve an Applicant's choice based on good cause. Some have suggested that FERC include very specific criteria in which instances the traditional process would apply.

Are the proposed study criteria that I told you about, are they adequate?

What modifications, if any, should be made to the study dispute resolution process that I just described to you?

Should resource agencies provide preliminary recommendations and conditions prior to either the draft or final license application? Right now we are proposing, much like the traditional process, that the terms and conditions would be filed with FERC after the REA notice. Some have suggested maybe it would be good if agencies provide preliminary recommendations and conditions if the record was complete enough even before the application is filed with FERC, so the Applicant would have a chance to, if it chose to, to sort of embrace those recommendations and conditions in its proposal.

Are the recommended time frames associated with the proposed integrated process adequate? And you will find those, if you look on the flowchart, we have these little numbers in the upper left-hand corner, and it shows the number of days between each of these boxes and we would like some input on whether or not those are realistic.

Is a draft license application necessary? We are

proposing in the integrated process that the Applicant file a draft license application that would be identical in form and content to the final application. Some have questioned whether this is necessary or should something else be filed, like maybe just Exhibit E. I would like some input on that.

Are the recommended deadlines for filing the 401 Water Quality Certification application, appropriate? We are proposing that in the traditional process they be filed in response to the REA notice and in the integrated process they be filed at the same time the application comes to FERC.

Are there suggestions on how the regulations can be modified to accommodate small projects? If there are any of you here today that have small projects, are there ways that this could be adjusted to accommodate small projects?

Are the proposals for early contact with Indian tribes, is that adequate to improve our tribal consultation? What recommendations are there regarding the roles and responsibilities of the tribal liaison? Now, this is a question we have focused a lot on with a lot of the Indian tribes that we have met with so far and a lot of people have a lot of

different ideas about what that tribal liaison should do. Or even, someone suggested that we might want to have multiple tribal liaisons.

That's all I have. So at this time, I'll turn it back over to Liz and she'll tell you what we're going to do next.

LIZ MOLLOY: That was our presentation. Now we would like to know if you have any questions to clarify anything in the presentation or in the rule and Ken is going to come around with the microphones. As he hands it to you, then you can speak. We are recording this, so if you could give your name pretty much every time before you speak, just to help out on the stenographer's job here, that would be great.

KEVIN MENDIK: Two questions, feel free to answer them in whatever order. Regarding the advisory panel for study disputes, you mentioned that the panel includes a resource agency person and a FERC staff person, both not associated with the project. Does that mean a FERC staffer who has not been assigned to this particular project, as well as a resource agency person? Say for example with the Fish and Wildlife Service, if John has been working on a project then they would assign someone from a different office to work on that dispute? And I guess that raises the

question of manpower and those kinds of issues and familiarity with the project to getting up to speed.

The second question is the cost to develop the application and at what point would that be submitted, and I assume that would have to be an estimate given this is a new process, and then are you are also going to request applicants to provide actual cost data at the time of filing to see how closely in line their estimates are with the actual costs?

TIM WELCH: Taking the study dispute question first, I can't remember what the actual language is, I could look it up here pretty quickly, but we are looking for a person -- we are a little bit realistic in that we are not looking for a person who absolutely knows nothing about the process, but it would definitely be a different person than was involved in the study plan development. And I am speaking now for FERC, whether that would mean another biologist in the same section or a different section, just as long as they weren't intimately involved in the study plan development. And I realize this could be taxing a little bit on resource agency personnel, as it will be for FERC as well.

But remember, one thing I can say is, this whole process is going to take seventy days. So, it is

going to be a fairly short time frame and the person will just have to get the information and get up to speed as quickly as they possibly can.

KEVIN MENDIK: That is probably the rub, getting somebody up to speed that quickly and being able to identify and task or retask someone to get involved with that from a resource agency standpoint. I know that is going to be an issue and a challenge.

TIM WELCH: As for FERC staff as well.

TOM DEWITT: I would just add to that, and maybe I'm a little more optimistic, but this formal resolution dispute process, we are hoping, based on the collaborative effort of the integrated licensing process and the informal dispute resolution, that where we try to work through all of these issues of studies that there won't be that many that go to the formal stage.

TIM WELCH: That's right, just remember that the formal dispute resolution, that is sort of like the last resort. So, we're hoping that we can resolve the dispute in the informal part as well.

TOM DEWITT: On the question of cost, I really hadn't thought anything about that. Right now when we ask for that information after an application is filed, we are looking at the licensee's best guess on

what they have spent so far and any other subsequent dealings that they would have to take in in finishing the license application. Whether or not this requires any fine tuning and, you know, requiring licensees to file updated or revised figures, I don't know if that is anything we talked about. Maybe that is some comments that you could give us. You know, or the licensees here know or the companies that represent licensees have a little better knowledge about how those costs develop over time and can give us some ideas about how we might do it.

TIM WELCH: Kevin, once again, just to follow-up on your previous question about study dispute and the other person, the specific language says "One person designated by the federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding. Some have asked that we might loosen that a little bit. To some people it suggested that someone not otherwise involved with study plan development, so you won't have to get somebody that knows absolutely nothing about the project.

LIZ MOLLOY: Dana.

DANA MURCH: First, I appreciate you all coming here. I think this is a great way to do rulemaking.

A lot of states, like Maine, do a collaborative stakeholder process and rulemaking often now. It is very tedious, but it does arrive at a better product and I would like to compliment FERC on a lot of the good ideas that I think are incorporated in this draft rule. I have some other ideas which I hope will make it better.

But what would be most helpful to me is to ask you to step back from all of the detail. I have done rulemaking and I help people who do rulemaking and what I always say at the beginning of the process is, tell me what's broken that you are trying to fix. So, you know, this is the twenty-five word answer, what is it that you feel is broken in the process that you are trying to fix?

TIM WELCH: That is a good question. What I think is broken with the traditional process is that when an application is filed with FERC quite often there are too many loose ends. The class of '93 is a perfect example of this. We got 157 applications and a lot of them, FERC staff looked at the applications, looked at the comments from the resource agencies and there were a lot of studies that FERC staff felt that it needed in order to produce a decent NEPA document. So, there was a lot of time and effort

spent on conducting containment studies, and in-stream flow studies after the application is filed and that added two, three, you know, sometimes four years on to the process. So, our proposed fix here is to have a better and more complete license application that comes to FERC and we are doing that in several ways: Number one, having FERC staff and all of the agencies get their study needs out at the very beginning of the process, so we can use the prefiling process to get everyone's study needs met. I think that is the most important aspect of that. The second part is getting all of the agencies to get their processes out so that every single participant understands, you know, what the responsibilities of all the agencies are, so we are not processing 401 applications very late in the process. So, does that answer your question?

DANA MURCH: What I heard from that are incomplete applications. Is there anything else that's a problem with the traditional process? I don't want to be leading here, but I in fact think there are a bunch of things in this rule that are designed to address what appears to be specific problems with the length of time that it takes FERC to get an application through the process.

TIM WELCH: Well, that is the one that comes to

my mind.

DANA MURCH: Okay. NEPA scoping.

TIM WELCH: That's it, NEPA scoping, but it's on the same theme, you know, why should you scope the issues two years after the process is already beginning? To me it makes all the sense in the world to scope the issues in the beginning. I think that is what NEPA intends. So, it is almost like in the traditional process you have the Applicant and the agency scoping the issue and FERC sitting on the sidelines. And then after the application is filed FERC comes in and says okay, we're going to scope the issues now. Well, we already did that.

DANA MURCH: So what you see is wrong with the process is the applications are incomplete when they hit the door, FERC then has to do NEPA scoping under the traditional process, and there are a bunch of other agencies with processes that aren't well coordinated with FERC's.

TIM WELCH: Right.

DANA MURCH: I would ask you to keep those things in mind as we go through today, because I have some suggestions and observations to make, where I think what is proposed could be changed to better meet those needs. My other question is a process one. This

proposed rule spends a lot of effort on study dispute resolution. Again, let me ask you, sort of twenty-five word answer question, what is the problem with the traditional process that you are trying to solve?

TIM WELCH: The problem now is there is a dispute resolution process in place under the traditional process but no one is using it. So, we are trying to find out why people aren't using it. So, what ends up happening is because FERC staff isn't involved, people are reluctant to use the study dispute resolution process and those disputes remain until after the application is filed. Our proposal to fix that is to get those disputes resolved early in the process. The federal agencies have agreed that once they participate in the study resolution process that the results of that dispute resolution is binding on them and they do not have the opportunity to ask for studies later on in the process, with some exceptions.

DANA MURCH: I'll accept the fact that there are applications that hit FERC and there is still an outstanding dispute about studies and information. What problem does that create? In the traditional process FERC decides when an application is ready for environmental analysis. FERC staff essentially says

we either need this information or we don't. So again, what is the problem that you are trying to solve?

LIZ MOLLOY: There is a concern that our process takes too long and that we have to issue annual licenses and there is a general perception that that would not be the desired condition. By integrating, we think we can reduce the number of annual licenses we will issue and have the process done in a better complete way earlier.

DANA MURCH: And what I am really asking is, does the current disagreement about studies contribute to that delay, and if so how, since FERC decides what it needs anyway?

TIM WELCH: Dana, it is not so much the dispute itself, it is the timing of the dispute.

LIZ MOLLOY: Rod.

ROD WENTWORTH: I would also like to thank FERC for their efforts on this. I did, before coming today, read through the document that explains the rulemaking and it is obvious that a lot of effort has gone into this process and there has been a lot of listening and I think many of the suggestions for the new process are on the right track. Thank you for that.

I had a couple of questions. One is that, Tim, you mentioned that there would be a process plan and schedule developed and that seems to be fairly flexible, but I am not sure how that fits in with the flowchart which has a lot of set numbers on it.

TIM WELCH: There is -- yeah, we do have a lot of set numbers in there. I think there is some degree of flexibility in there. I know there is a provision in there, and of course John Clemmens knows immediately where it is and I don't, but there is a provision allowing some flexibility in that the office director can adjust the schedule accordingly. So, a lot of these numbers, for whatever reason in any particular proceeding aren't quite fitting, then we have the ability to sort of adjust things on the fly. The only ones that are fixed are the ones that are fixed in the Federal Power Act and that is filing the notice of intent five years before expiration and filing the application two years before expiration. Those two are the focal points that are fixed.

ROD WENTWORTH: I guess I would like to follow up on what Dana was saying about some of the studies and nailing that down. I got the impression under the traditional process that perhaps the studies were ultimately resolved in FERC's AIR and I'm wondering if

the intent here is to maybe push all of that earlier in the process and deal with the timing issue maybe that way.

TIM WELCH: Yeah, that is exactly it. What we are hoping is that there won't be any more post application AIR's even from FERC. You know, there obviously might have to be on some minor points, but we are hoping that the FERC AIR will be in the beginning of the process, so that the study period time can be used to serve FERC's study needs as well as the resource agencies.

TOM DEWITT: Before we get another question, I would like to add something to Dana's question and I think this question also, if you don't mind. Maybe what I want to say is probably more of the management perspective of this, is that, you know, basically hydro licensing, you have probably heard this before, takes too long and costs too much and we hear that in spades over the years. When we testify before congress we hear it. Back in September 2002 we put out our first notice asking stakeholders, industry, tribes, agencies, you know, what the problems were in our licensing process and we got just hundreds, and hundreds, and hundreds of pages of complaints. A lot of stuff was similar in scope, but a lot of differing

opinions on things.

And just basically, we have had such success with the alternative licensing process where it is being used in terms of the reduction in time and reduction in cost, that that coupled with the efforts of the Interagency Hydro Power Committee and national review group and other entities and the fact that our chairman sees an application for a gas pipeline taking sometimes eight, ten, twelve months to process and these are brand new facilities, unconstructed; and then we have existing hydro projects that have been there for fifty some odd years taking three, four, five years to do. And basically, the Commission is not going to do that anymore and we are creating an integrated process, getting back to the fact that we have this NOFA process which is much more open than we have ever done before.

We are doing this for a lot of reasons, one is to get everybody's input into this, so that we can come up with something that hopefully satisfies everybody, so that in the future people won't be complaining about the process, because they will be part of it. So the Commission is committed to reducing the time and this is the way we think we can do it.

LIZ MOLLOY: Sarah.

SARAH VEIVILLE: I have two questions also.

First on study resolution, when FERC approves. The study plan through the informal dispute resolution process and then the agencies are given the chance to dispute that approved study plan, what is the rationale for not allowing the licensee to dispute the approved study plan? Number one, that is my first question.

And then my second question is a question about transition provisions for licensees who are starting relicensing now or before the effective date of the new rule, does the new rule with regard to application contents apply to those licensees?

TIM WELCH: Let me take your dispute resolution process question first. We are proposing that the study dispute resolution process be open to resource agencies with mandatory conditioning authority, because those agencies are required to -- help me out here.

LIZ MOLLOY: They are required to -- they have a certain level of evidence they have to show to make the recommendations, so that this process was designed to assist with that and to finalize it so that there was no continuing argument or discussion on what that would be. So, this was kind of the last effort to hammer out a disagreement between FERC and the agency

on whether or not a study was required.

TIM WELCH: Now, the Applicant is not left out of the process. They perform a very key of function of providing the information that the panel members will need in order to make their decision, the background information and the whole genesis of where the studies came from.

TOM DEWITT: Licensees also prepare the study plan. Informally they work with the agencies and Commission staff to develop that study plan and once they decide what they want to propose to do, they file that with us. So when we approve or disapprove or make changes to it, we are making changes to the recommendations of probably the federal and state resource agencies. So, the dispute really is between the Commission and those agencies at that point.

TIM WELCH: Transition provisions: The rule will come into effect three months after -- the effective date of the rule will be three months after the issuance of the final rule. So, anyone filing an NOI, say if we do it at the end of July, anyone filing an NOI after October would then be subject to the changes in the application content. So, you have to sort of look to see where you are going to fall there.

SARAH VEIVILLE: On the transition, one of my

colleagues from the Charlotte meeting thought she heard something different, which is that with regard to application contents that that would apply to projects who file an NOI prior to the effective date of the rule. It seems to me that I've sort of got --

LIZ MOLLOY: We will double check. It is possible we made an error either here or in Charlotte. We will double check it and get back to you. For this particular point I just want to make sure we answer correctly what we say, but then as to what it should say then, you know, we can discuss. I just want to give the right answer on what we actually say here and I am drawing a blank at this exact moment.

TOM DEWITT: I think we would like to hear from you on this. I know in the discussion I've heard within the Commission about transition from what I have heard, our main issue is position of fairness to everybody. Now, if there is a desire on the stakeholders to make that rule, if that is what you want to call it, you know, somewhat different or somewhat more flexible, we would like to hear about that, but basically we are most worried and most concerned about the fairness issue for the licensees in terms of timing and costs and the agencies in terms of their staff and so forth. So, that is the reason

and probably not much more than that.

LIZ MOLLOY: We'll double check it. Betty Lou.

BETTY LOU BAILEY: I look at this and think back to when the traditional procedures were put in place and it was a time when FERC was sort of anticipating the huge slug of the class of '93. So, the basic theory then was if they had this preapplication effort centered in the state of the particular project, so that you have state agencies and federal fish and wildlife and people like that working with the Applicant, that when the application was filed it would have most of the I's dotted and the T's crossed. It didn't work out that way. They underestimated the need for public participation and got license applications that were lacking in a number of ways, because who better can say what FERC wants than FERC itself. Then you started down the road with rather lengthy ARI's and longer times after the application arrived at FERC. And I think -- well, the traditional application changes that are proposed here are probably quite good and we'll hope that original intent at least so that things come out better that way. However, I figure that in the long run, another fifteen years or so you folks may well be ready to kill off the traditional approach if this current one

works out well and I think it will. But it is hard to look into the crystal ball when you are proposing something new and I commend you for the thoroughness with which you are trying to do all of this.

LIZ MOLLOY: Melissa Grater.

MELISSA GRADER: Getting back to the dispute resolution process when the conditioning agencies request that process, is the intent that they would only be able to request it for those studies which have bearing on the actual conditions they may set?

TIM WELCH: We talked a lot about that. I think our intent was to have that, but what we heard from the agency was it would be too difficult to delineate that, no, this particular study is for this. No, as you know, it all kind of gets meshed together, so it would be any study.

LIZ MOLLOY: Is that Tom?

TOM SULLIVAN: I have three questions. The study plan approval process, how does that work? Is it a yes, no approval? Is it an approval with modifications by FERC staff? How does the approval process work? That is the first question I have.

TIM WELCH: I don't think it would be yes or no. It would be either yes or yes with modifications.

TOM SULLIVAN: And the dispute resolution, in

terms of who it binds or what -- I guess what venue it binds folks in front of, I am assuming it would bind the Applicant and the federal agencies, but only in the federal venue. Right?

TIM WELCH: That's right.

TOM SULLIVAN: So if there are other study requests that come up as part of a state 401 that is not really -- the dispute resolution process is not going to do anything to that?

TIM WELCH: Yes, it is important to sort of make this delineation. I think there was a little bit of confusion. Our intent would be a 401 Water Quality certifying agency would be bound but only under the Federal Power Act, the procedures involved with the Federal Power Act. Agencies, of course, would be free to pursue studies under their own processes under the Clean Water Act or whatever other processes including the FEA and other federal processes they might have.

TOM SULLIVAN: Including like the ESA or the Endangered Species Act and other federal processes?

TIM WELCH: That one poses a little more of a question. We haven't fully flushed out how the ESA interacts here. We are currently talking to our sister federal agencies about the ESA and how it integrates here. So, I am not sure if I have a good

answer to your question, Tom.

TOM SULLIVAN: The last question I have is not related to dispute resolution. You are maintaining three processes and I guess the crux of my question is why. Why have three separate processes? Do you think it will create some confusion for the stakeholders in the processes as they try to figure out what regulatory requirements they are trying to meet?

TIM WELCH: We got a lot of input about how many processes there should be and the Commission feels that the traditional process should be retained. And the Commission feels that there are instances with certain types of projects with certain levels of impact that could still use the traditional process. What we are hoping is that most of the projects would use the integrated process. You know, I think that any time you make a major change in your regulations, I think there was a little bit of reluctance from the Commission to totally abandon the traditional until this integrated process is fully tested. But I would agree that, you know, perhaps in five, five to ten years that maybe if things all go as we hope, that the traditional process would soon go by the wayside.

TOM DEWITT: I would just like to add, it is sort of like the seersucker suit I bought a few years ago.

I still love it, but I don't know if I would wear it anymore, even if it did fit me and I certainly wouldn't wear it up here. I might wear it in Washington D.C. But there was a lot of input and a lot of desire by various entities questioning, you know, what if the integrated process is a bomb, what are you going to do then. So, I just think it is important that we maintain what we have. There might be some confusion for people who are somewhat new coming into this and they say, what, they have three processes, you know, what are the differences and so forth. But we are hoping that with staff involvement that certainly the change in the traditional process and the fact that we are having staff involvement, that we can help everybody along the way. I would be very interested in hearing from you all in your comments about the criteria that you think maybe the Commission could use, you know, in making calls if there is a licensee that comes in and they are trying to make a showing to use the traditional process rule for whatever reason, we have to make that decision and I would be interested in hearing from you on what some of the things you think are important for us to consider, so that you know this sort of ahead of time.

LIZ MOLLOY: Tom.

TOM CHRISTOPHER: Relative to the dispute resolution process, there is no placeholder for NGO's to participate in this and this is of significant concern to our interests. Clearly with the mandatory conditioning agencies, often times the information, certainly anecdotal information that comes forward from NGO's, could play a very important role as to how this dispute resolution process goes forward.

Again, I commend FERC for the amount of time and effort they put into improving public participation throughout the ILP development. However, this is one area they are certainly, at least in our view, could use some improvement.

TIM WELCH: Tom, let me refer you to page D-63 in the book, under subparagraph (i) it currently states "No later than 25 days following the notice of study dispute, the Applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute." One suggestion that was made by the California Hydro Reform Coalition is that that language be changed to no later than 25 days following the notice of study dispute, the Applicant and any interested parties may file with the Commission. So, that was one suggestion that we had from some NGO's about how the public could

be more involved in this process.

TOM DEWITT: Consequently that gets on the record.

TOM CHRISTOPHER: That certainly is very helpful. And I had one other question relative to the scoping document and notifying NGO's as part of the dispute resolution. How is that going to go forward?

TIM WELCH: As far as, I'm sorry, the scoping document?

TOM CHRISTOPHER: Right, the initial consultation document or the PAD, I guess you want to call it.

TIM WELCH: Yeah. One of the things we are hoping to put together for applicants to use is sort of a comprehensive list of nongovernmental organizations that are involved in hydropower. Maybe it would be some sort of a regional thing, that was something we could provide to the Applicant to help them contact the right members of the public, including NGO's.

TOM CHRISTOPHER: I think that is a step in the right direction and I would encourage you to do that. Our organizations, I am sure, would be willing to help you develop those lists. Thank you.

LIZ MOLLOY: And remember, we can add this to the list to discuss different things this afternoon. So right now we just keep clarifying.

JOHN WARNER: In the dispute resolution process we had establishment of a panel of -- I'm assuming these are a panel of biologists if it is a biologist question and so therefore, you know, they are experts in this area and following their finding, the Director could basically either agree or disagree with the panel's findings and that seems pretty wide open and questions why -- you know, how much power this panel would have in deciding what studies are needed. It states here that the Director can use any applicable law or FERC policy and it seems like -- and again, I guess I would like some definition of how you define the Director's limits here, there doesn't appear to be any. That is one thing.

And secondly, if there is an applicable law under the Federal Power Act or FERC policy, it would seem like the FERC staff involved in the panel would be able to clarify that and prevent that from being an issue in the final analysis. So, I guess I would like to hear your feedback.

TIM WELCH: Yeah, John. I guess probably the thing we had in mind with the Commission policy and was the baseline question, was sort of at the forefront of our mind. But I think you are exactly right; one would think that any question, any study

that would be contrary to Commission policy would never get to -- I mean it would be hopefully filtered out prior to that happening, but we put in that language because our lawyer said to.

LIZ MOLLOY: Ken.

KEN KIMBALL: I have a question on time line.

When I take -- one of the desires I think that has been expressed is a need for two field seasons and when I look at the preapplication activity and I add up all of the days, it strikes me that before you even come out with the final order of the study plan you could be well over a year into the process. Then if you take the need for the Applicant to find consultants, to do the hiring, et cetera, to get going on the first field season and then the second field season, the results from the second field season could actually be coming out about the time that the draft license application is due and in some cases actually, at least if I have worked the calendar through, hypothetically could even come out at the time that the license application is due. The question I have back to FERC is, how do you foresee dealing with the issue where the data is still coming in and the applications are being filed? And once the application is in then you are really starting to set

up the clock for comments and terms and conditions and you could get into the Catch-22 situation, where you can't really file your terms and conditions, because you are still waiting for results from the second field season.

TIM WELCH: That is an excellent point and I'll make two points here. The first being, as far as the two season study time, I just want to point out that that is the amount of time we think that it will take most projects. However, we realize that is not true in all cases, as everyone in this room knows. So, the time for studies is not dictated by this flowchart. It is dictated by the Commission approved study plan. And you're right, there will be many instances where there will still be outstanding studies once the application is filed with FERC.

So, I have two things to say about that. Number one, we have a provision in here that with the application, the Applicant would be required to identify any studies that aren't completed and layout a schedule for completing those studies, so that everyone is aware of what needs to come in. The second thing I would point out to you would be the Commission's REA notice. There is a provision in there that says that the Commission and staff will not

issue that REA notice until the study plan has been completed. So we would not move forward and the REA notice is the trigger for the terms and conditions that we would not move forward until all the studies that are in that Commission approved study plan are completed.

LIZ MOLLOY: Betty Lou.

BETTY LOU BAILEY: I have a question for the room. Am I the only one here that has been involved in a project where dispute resolution was used? Because I think that people are worried because they have never seen it in practice.

TOM DEWITT: I think the existing dispute resolution process has been used under two dozen times, I think.

BETTY LOU BAILEY: In this area it was used. Curtis Palmer and that is the only one I know of. I think that if you have seen it used, you probably have less anticipation of problems.

LIZ MOLLOY: Any other questions to clarify? Let's take a fifteen minute break and come back at ten of. Thanks.

III. Break

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(OFF THE RECORD)

#### IV. Issue Identification

LIZ MOLLOY: Let's get started again. For the next bit of time we want to identify issues that we want to discuss more and so I'm looking around and Ken will be again walking around with the microphone. So wait for him, identify yourself, and then let's put up an issue. We're going to type them here and when you identify them, I would ask that you use small words commonly used, so that I am not too embarrassed when I type and if I misspell you can tell me after a few minutes. Okay. Who has an issue they want to put up here?

JOHN SULOWAY: Liz, just one question before I raise an issue, the questions on the proposed rule --

LIZ MOLLOY: If you want to talk about any of them, raise them. We will not put them up separately. If people don't identify one that we particularly are interested in we will add it.

JOHN SULOWAY: I guess my question is, are these going to be reviewed today. Are we going to discuss these questions today?

LIZ MOLLOY: Only if you all raise them.

TIM WELCH: We will only talk about the things that go up on the screen.

LIZ MOLLOY: If you want to bring up one of the

questions, bring it up and we'll put it up on the screen, but we are not going to like start with our questions.

JOHN SULOWAY: Okay. Well, I guess the issue of the dispute resolution panel and the practicality of it I think is an issue that I would like to discuss.

LIZ MOLLOY: Okay. Any others? Dana.

DANA MURCH: As long as we get to raise issues that we think of later.

TIM WELCH: You must get all of your issues out at the beginning of the process.

DANA MURCH: I do understand the process you are trying to go through.

LIZ MOLLOY: If you think of something after someone has raised something else, we will come back to you.

DANA MURCH: The issue I want to raise is the need for the traditional process and 401 agency involvement. I can stick a whole lot under those two things.

SARAH VEIVILLE: The issue I would like to talk about is, is a draft license application necessary.

LIZ MOLLOY: Anyone else? Up here Ken.

KEN KIMBALL: One of the issues we have with the PAD, the accountability if it is coming in incomplete,

because if it is incomplete, the rest of the process really gets thrown off.

MELISSA GRADER: Time lines.

LIZ MOLLOY: Rod.

ROD WENTWORTH: The contents of the PAD. I've got two others, the study dispute resolution criteria and then the last one is the 401 one year time clock and when that starts.

LIZ MOLLOY: Yes, up front here.

TOM CHRISTOPHER: Tom, the last name is spelled like the saint. We will have some public participation issues to talk about I'm sure.

DON TRAESTER, Northeast Generation: The issue of project economics, where it falls in this process, not only for the overall project but also during the study period.

LIZ MOLLOY: Ken.

KEN KIMBALL: Two questions or two issues, one is on dispute resolution and the exclusive right of the applicant to present material to the panel and the second issue is relative to the cost estimate. As currently written the cost estimates are for the Applicant but there is no attempt to figure out what the non power benefits are to balance those costs.

KEVIN WEBB: This has been mentioned before, but

it should be on the list, is the criteria by which you would be judged whether a traditional or new process should be used.

LIZ MOLLOY: Anyone else? Dana, have we triggered any thoughts here?

DANA MURCH: They're all just little subsets and I think it is sort of better to keep like things grouped together, rather than having a bizillion bullets.

LIZ MOLLOY: I put the first three, the study dispute resolution stuff together, because they are inter related and I'm not sure I see any others that fit as naturally together. So yes, it is time for the ever popular hand voting.

TIM WELCH: I just wanted to say, what we are really looking for when we discuss these issues, to the extent possible, we are really looking for solutions here. So, if you have identified a problem based on one of these issues and you had something in mind, please think out of the box and if you can come up with some kind of solution that you would like to see in the rules. So, I just wanted to put that out there.

LIZ MOLLOY: In this voting, when you raise your hand, raise it when we ask and keep it up, so that

Ken's job of counting is made a tad easier.

TIM WELCH: Vote early and often.

LIZ MOLLOY: Just once for each item, but you can vote for each item. There is no limit on the issues you want to talk about, just one hand up.

TIM WELCH: And no campaigning.

DANA MURCH: And the purpose of voting?

LIZ MOLLOY: So we can prioritize, whichever one has the highest number of hands we will start with, but the polls are closed now.

DANA MURCH: Can we caucus?

LIZ MOLLOY: No caucusing. The first one is dispute resolution panels, the practicality, criteria, and only the licensee providing information. Hands for who would like to discuss this. Eleven. All right, twelve.

Need for TLP, how many people want to talk about this? Four.

401 agency involvement and time clock, who wants to talk about this?

Draft applications necessity for. Four.

PAD contents and accountability. Sixteen.

Time lines. Seven.

Public participation. Four.

Project economics overall and during study

period. Five.

Need for nonpower cost estimates. Two.

Criteria for process choice. Fourteen.

Any other issues anyone has thought of while we have been going through this? Okay.

TIM WELCH: And the winner is.

LIZ MOLLOY: PAD Contents and Accountability.

So, we'll start with this and I'll take a moment and reorganize these to go in order. Who brought this one up and would like to mention something about it? Rod will start us off.

TIM WELCH: Just to get everyone oriented, the PAD regulations are on page D-50 section 5.4.

ROD WENTWORTH: I'm kind of thinking of the PAD as kind of the new version of what use to be the ICD and my experience with ICD's in the past is that they have not been terribly helpful and that they have been fairly sketchy. I think what I would do is maybe, you know, go through the list of things that show up in the application and try to put anything from the application into the PAD to the extent that is possible. Obviously for studies that need to be done that can't be completed. But, you know, there was mentioned in the presentation about including maximum and minimum hydraulic capacity. I think that was

mentioned in the context of inclusion in the application. I don't see why that couldn't be put into the PAD and possibly other things such as information about the hydrology and obviously the more complete it could be in regards to the facility and the facility operation. I think all of that would be helpful and possible to front load.

TIM WELCH: Ken, do you want to talk about something? Ken was involved in our subgroup with resource agencies that put together the requirements for the PAD, so why don't you go ahead and speak to that.

KEN HOGAN, FERC: Basically on the PAD what we did was, we took the requirements from the current license application and front loaded that into the PAD and made it existing information only. Product operations and I'm not sure about the max/minimum, like you said, that is something that we added, the hydraulic capacity.

TIM WELCH: I don't think that's in there. Someone else made that suggestion as well and it's a good one.

JOHN SULOWAY: I think both of the items that you mentioned, hydraulic capacity is listed under subsection (e)(iii) and then under Water Resources on

D-52 it does talk about hydrology. So I think Ken, he knows this better than I do, I think you're right. I think you've got this covered very well. I think you've done a great job here of front loading the process. If I may, I also looked at this and there are a couple of things I'm curious why they are included and I am also curious about how people in the audience will react. On D-56 (l) and it says "If applicable the Applicant must also provide the most recent emergency action plan and any independent consultant reports." The Part 12 requirements, I don't know if you folks have ever read these babies, but the idea of -- I mean for my projects these are in four inch binders or five inch binders and the idea of making copies for all of the people involved in the process who probably don't care, I really think you should rethink this one. Maybe there is another way to get it. Maybe you could say it could be on a web site or something like that. But these are for some of us are monstrous reports and to make in some cases hundreds of copies I think would be a waste of money.

And again, I would be curious about how other people in the audience feel about this and subsection (m) has all of our information with regard to energy conservation information. As I said earlier, I work

for the New York Power Authority. We spend literally one hundred million dollars on energy conservation stuff and we're very proud of that, but I don't see how that is particularly important to a relicensing proceeding. So, just a couple of comments there.

LIZ MOLLOY: Just to quickly answer that one piece there, we do have to look at it in the relicensing. So, we do need it eventually, the conservation efforts, because it is important.

MR. SULOWAY: Is it part of the statute or something?

LIZ MOLLOY: It is part of our regs and we're looking at it in part. I'll tell you why actually, because it is an effort to show, as far as I believe and this is personally, I haven't prepared this, that we are not just issuing a license to make more power that you as a company are looking at other ways to meet needs out there for customers in addition to just generating power, that you are maximizing all of the available resources, encouraging people to use wisely or efficiently or doing things. So that is one thing we look at on an overall kind of evaluating what we are going to do with the project and it is in section 15 of the Federal Power Act, I'm pretty sure. There is something about looking at conservation things in

if not all relicenses, than certain ones.

TIM WELCH: Just a quick comment on what John has pointed out here, just so you will know what the genesis of these things were, these particular items were not part of the subgroup that Ken headed up. These are migrated from the current regulations, so this is not new. I mean I am not questioning whether or not it is useful and we really would like to know whether you think that dam safety information in the PAD is necessary. But I am just saying a lot of the stuff in the end has just migrated over from the current regulations in the traditional process.

KEN KIMBALL: I think that brings up the point I was going to make, when I go back and I look at the blue book which you put out in 1990, which described what was necessary in the ICD, which is really not all that different than what you are listing here for the PAD. The problem that we see with the ICD, many times the Applicant never provided the information that was required, even for the class of 93. Then it begs the question in this process of what happens if the Applicant comes in with a PAD that is incomplete because it sets the whole process backwards and there needs to be very strong accountability on the Applicant's part to make sure that that information

comes through. The rules as written right now really don't have any accountability relative to an incomplete PAD that comes in. There is a lot of accountability that is listed here relative for short time frames for the public to respond or for the agencies to respond, but there is none on an incomplete PAD and that essentially is going to set the environment as to whether or not the licensing process is going to move ahead smoothly or not.

TIM WELCH: One thing I would point out to you, Ken, there is an opportunity for the Applicant to revise the PAD based on the comments and that would be in box 6. And I think the accountability would once again go to the ultimate completeness of the application and the ultimate completeness of the Applicant's study plan.

KEN KIMBALL: But if the PAD comes in incomplete, and I understand there is the chance to come back, because there is sort of the pre PAD and then there is the final PAD, but the time frames between those two are relatively short and this swings back on to the question I had brought up earlier about the two field seasons, if that initial PAD does not really describe the current condition, then the start of your scoping for your study issues is going to be way off, because

the primary focus of those studies should be on potential impacts and mitigation, not on trying to finish up the requirements for the information for the PAD.

TIM WELCH: I would agree.

SARAH VEIVILLE: I will echo John's comments with regard to the Part 12 requirements being included within the PAD and I also wondered how that requirement, the PAD, intersects with the Critical Energy Infrastructure Information Policy that was recently promulgated. I am not sure that information is supposed to be made public at this point anyway.

One other question or comment on the PAD is with regard to recreation resources, I would think that recent Form 80 reports would provide a good current condition.

TIM WELCH: What section?

SARAH VEIVILLE: D-54 sub (8), it is a lot of gathering of information for recreation resources and I would advocate perhaps using a recent Form 80 and describing the results of a Form 90 survey to satisfy recreation contents for the PAD.

LIZ MOLLOY: Who's in the back, is that Kevin?

KEVIN WEBB: Sarah already addressed the issue that I was concerned about, whether Part 12

information can be released under current security restrictions and just going beyond that and assuming that hopefully someday in the future the security concerns will be reduced and this information can be released to the public, what need is this in a relicensing document? What use is this sort of information in a relicensing document? It seems to me we are talking about dam safety issues, which are really under the purview of D-2 SI and really there are few agencies and members of the public who have qualifications to speak to these issues. I'll just leave it at that.

TIM WELCH: In regards to CEII and I must admit, I am still learning about the CEII rule, as many of you are as well, but it is my understanding that anything that an Applicant would file with FERC would have to be identified by the Applicant as CEII. There are different categories. There is CEII which involves very specific structural drawings of the dam and very specific locations of project works, that's CEII. Then there is also nonpublic internet called NIPS, which is handled a little more differently at FERC, and that is more along the lines of maps and that type of thing. But anyway, the regulations may in the future require that an Applicant identify to

FERC, you know, what they believe is CEII and FERC would still, you know, require the information but it would be how we would handle it at FERC. It is not that you wouldn't necessarily have to make it public, but you would have to identify it as CEII and then it would be handled in a certain way once it is filed at FERC.

LIZ MOLLOY: Melissa.

MELISSA GRADER: A couple of questions that kind of relate to Ken's concerns about a deficient PAD. I guess the first thing I would note is that it looks like, based on the time line you have defined, after the comments on the PAD the Applicant only has 45 days to address any of those comments and that seems that if it was a very deficient PAD that would not really be all that much time.

The other comment is that somewhere, I have no idea where I pulled this out of, but it said that seven and a half years before the license was supposed to expire that the advance notice of license expiration would come out and then twelve months from that date the Applicant would distribute an orientation package and hold a meeting or site visit.

TIM WELCH: Twelve months?

MELISSA GRADER: After that advance notice.

TIM WELCH: No, the site visit would happen --

MELISSA GRADER: This isn't in the regs, but it was somewhere. So, I guess my question is that it was in there somewhere. It was not in the regs, but it seems to me that if it were in the regs it would help prompt, you know, the licensee to develop a good PAD, because otherwise come five and a half years before the license expires, that is a really big document and if they haven't really worked on it or been prompted to work on it, then chances are that it might be deficient to some degree.

TIM WELCH: We are hoping that with the advance notice and laying out the requirements of the PAD, that that will inspire applicants to understand what is going to be required of them right from the beginning, so if they chose to do so, they could get a jump start on providing the PAD.

MELISSA GRADER: Is there some kind of procedural reason why you couldn't actually incorporate some of those things into the regs?

TIM WELCH: You mean like the site visit?

MELISSA GRADER: In the orientation package, you know, prompting consultation with the agency.

TIM WELCH: Well, I think the Applicant could chose to do so. Are you talking about prior to the

NOI?

MELISSA GRADER: Yes.

TIM WELCH: Okay. One thing I would say is the commissioners were very vocal in that they did not want to lengthen the process beyond the current seven years. So there were many, many proposals that we got with lots of activity before the notice of intent, but the commissioners were very clear that they did not want any kind of requirements on applicants prior to the NOI.

LIZ MOLLOY: In the back. John.

JOHN HOWARD, Northeast Generation: John Howard, Northeast Generation Company. In relation to the requirements for Part 12 information submitted, since this migrated over from the traditional licensing process, since that time FERC, the Division of Dam Safety Inspection has instituted a failure mode analysis review coincident with Part 12 inspections, which is a much more thorough review than a traditional Part 12 inspection and I know that they are concerned that this information not be made public and I would hope that you would also.

TIM WELCH: What was the name of that analysis?

JOHN HOWARD: Failure Mode Analysis, Gus Tsumas.

LIZ MOLLOY: Ken.

KEN KIMBALL: Two comments, one is on page D-52 under on Water Resources for the PAD. Basically it is describing the monthly minimum, mean, and maximum flows. I think we would advocate in particular projects that are not truly run of river that you have the flow durations occur in a much shorter time frame. And the reason I recommend this is if you are going to do any scoping for an IFIM you really can't do the proper scoping without having that information in front of you and you can't derive that information from the monthly flow duration curves. So, you would need a much tighter time frame for those projects which are not run of river.

The second point I would make is on the PAD, it is not clear the way that it is written whether the Applicant is only required to put together existing data out there without doing any field work and we would advocate that if some of the data that is being listed here for the PAD is missing, since what you are trying to do is describe the current condition, the Applicant would be responsible to get these pieces of information. If it did not exist then obviously they would need to do some field work in advance to make sure that the PAD is complete. Otherwise, I think you will find the whole study process getting tied up

exactly the way that a lot of study processes are right now, which is will spend the first year or so just trying to complete out the baseline condition and then we get caught in this bind of trying to do the follow-up studies on impacts and mitigation and then I think you proceed well past your second season.

LIZ MOLLOY: Tom.

TOM CHRISTOPHER: Under Recreational Land Use, Sarah had an excellent suggestion about using the Form 80. The only disagreement I have with that is that sometimes the Form 80's are very bland, sterile, documents that do not fully represent what the value of a resource might be and as far as our interests are concerned, I would like to see as part of this regional and local books incorporated that evaluate the resource perhaps more specifically and that doesn't necessarily have to do with just white water recreation but other forms of recreation also.

LIZ MOLLOY: Stella.

STELLA SHIVELY: I just like to comment generally that one of the things that I think is good about the traditional licensing process, filing the initial consultation document in the beginning and then your license application later, is that through the consultation process you can -- I know it is an

interim process and it is a little bit circular, but you can focus on those issues that are really important and I would just pick, for example, on page D-52, in item (2) Geology and Soils, you could write a six volume book on this particular issue if you wanted to, if you went out and collected data that was generally available, but that is an awful waste of money if that is an issue that nobody is really interested in and I think that is what happens a little bit in the traditional process and then when there is a dispute about whether something is a significant issue or not, that is where Ken and I would get into an argument about whether the data provided is sufficient. If I were going to be really anal retentive and go through here and say, you know, what is required by this PAD, you have to apply a little reason in there somewhere, otherwise we are talking about license applications that were going to be circulating to a large number of people that are going to be forty volumes long and I don't think that is going to benefit anybody and it is certainly going to make this process cost a lot more, and a lot of this data people don't look at it if it is not something they're interested in. So, I think you have to take that into account when you talk about the

accountability issue and the content of the PAD's, there has got to be some reason applied here and people are still going to have to work together on what is really necessary in there and what is detail that is not really applicable to a particular project.

TIM WELCH: One thing I would say would be, I don't think it is in all of the resource areas, but there are clauses in there that say if applicable and to the extent known. So there is a little bit of discretion that we've given to the Applicants to put only -- I mean we realize that all of this information would not apply to every single licensing for every single project in the entire United States. So, we have left some discretion to the Applicant to include what they think is necessary. So, if you have any specific things about what you think should be included or should not, we would definitely need to hear about that.

LIZ MOLLOY: Sarah.

SARAH VEIVILLE: Two items. One with regard to hazardous waste sites, to what extent -- I'm not sure to what extent is that the responsibility of the licensee, so why should all of that information be included, that comes up in a couple of places. And second, construction and operation information,

including the original license application order issuing license, subsequent license application, subsequent order, etcetera, etcetera. That is a lot of information, a lot of documents, some of which are probably old enough that they are not really -- people are not going to use and they are also available on the FERC website to the extent that people want to see them. So gathering all of that is in my mind a waste of time and money.

TIM WELCH: That was also brought up in Sacramento, especially the original license application, that was something that migrated over from the original regulations. And quite honestly, I don't know why in the world anyone would want that. So, that is a good point that someone will definitely have to look at.

LIZ MOLLOY: Ken.

KEN KIMBALL: On page D-51 again and on the PAD, and this is on bullet (2)(D) it says "A general description of the river basin in which the project is located," and it goes on down and it lists under (D)(v) a list of relevant comprehensive and resource management plans applicable to both the basin and the project. We would recommend that you not only give a list of these plans, but also a summary of the

components of those plans that are relevant to the particular project, because I think it would help give more focus to the individual projects and questions that would come up. Currently what we see a lot of times is a list of the relevant plans and then when you got to the EA is says we met all of these conditions, but when you go back and you say what were the conditions and how have you met them, the record is completely blank on that.

LIZ MOLLOY: Kevin.

KEVIN MENDIK: Relative to the issue of including the original license application, in some cases that might be helpful or desirable by some of the resource agencies or NGO's that are looking to get some documentation of preproject conditions. Granted, how it relates to the baseline issue is another story, but there are some cases where that information might be helpful. So instead of making that an absolute requirement, where it is requested, it might be helpful to have that information or at least have the Applicants be aware of the need to start to dig that up.

LIZ MOLLOY: Any other comments on this?

JOHN SULOWAY: Kevin, I doubt that that would be useful as far as preproject conditions. Have you seen

the ones that were filed in the 50's and the 60's?

There is nothing in them. They are like this thick.

But again, on the other hand, if you are looking at

projects that were licensed in the 80's. We did

several on the Mohawk River. There is valuable

information in there as far as the resources, I think.

But again, what I am concerned about is what Sarah --

we could be looking at three volume sets and in some

projects you have five hundred or even a thousand

stakeholders and it just seems like some of the

information I need is a big waste of money too, I

could see some of this being in the public information

library, if somebody wants to look at the original

application, I could see that, but again to make like

five hundred copies and to send them out, wow, that is

just incredible.

KEVIN MENDIK: I am not saying to make it a requirement or to make copies. I think your idea about having it in the public information records is a good thing. It is also important information to preserve where that is available.

LIZ MOLLOY: Okay. We have Tom up here.

TOM DEWITT: So maybe one idea you all might think about in your comments is that concept of what types of things would have to physically be in the PAD

and what types of things could be just referenced as to their location.

KEVIN MENDIK: Also, the kinds of things that might be helpful to have that original documentation for are cultural and historic resources.

LIZ MOLLOY: Thanks. Tom.

TOM CHRISTOPHER: The only concern I have about assembling things in a reference library so that individual groups can download them, is the fact that some groups, some that I represent, are very small groups and essentially what this does is it shifts the burden of preparing these documents or at least sending these documents out away from the Applicant to the private groups. The fact of the matter is some of these groups are not necessarily that well endowed and don't have the time and resources to be spending on downloading all of these things. There was a suggestion that you could put these on a CD and I don't think that is necessarily a bad suggestion, but nine times out of ten when you go to different meetings and hearings you have to have some hard copy with you to make notes on or at least certainly to use as reference. So consequently I would see a rather significant erosion and a shifting of costs onto the NGO's that should be part of the business of being in

the hydro generation business.

KEN KIMBALL: I think one way to address the question that John and others have brought up about getting documents that are three volumes long, and I'll just go to page D-53 on Wetlands and Riparian Habitat. It reads "A description of the floodplain, wetlands, and riparian habitats." Needless to say, you can write a narrative description that would go on page after page after page. I think if the Applicant came in with maps and identified which types of wetlands exist out there and the current condition, that can basically be a one page thing as opposed to multiple pages of narrative. The other thing that would be very helpful here is not only using the term of description but also maps but to have tables that quantify the amount of wetland that is out there and same types of things could be done with the littoral zone and we could give you a more conclusive list as we move ahead. A lot of this could be switched over into a quantifiable form and put in tabular form.

LIZ MOLLOY: Okay. Any other comments on this first issue? Duncan.

DUNCAN HAY: I think part of the issue is that if the PAD as it is now presented is in essence the Exhibit E document, and what I see here is an effort

to boost the existing ICD, which many people who are in the position of reviewing them says doesn't give us enough information, it isn't adequate, and yet as part of FERC's NEPA requirements eventually a full Exhibit E has to be done and the challenge folks are trying to grapple with here, Ken and others, is how do we define something that is more than what we have been getting here before and yet doesn't go to the point where it is so much information that is it is ridiculous or it duplicates information that is already available through existing documents. And so it may be that this first cut in several of these sections porting over the existing Exhibit E requirements gives us a rough outline, but may have erred on the side of too much. I mean certainly as an agency person, the more information I get up front, the better it is and the easier it is to say what more information do we need. But it, you know, there is something in between. Eventually you are going to have to get -- eventually the Applicant is going to have to generate all of this information, because it's a requirement for the Exhibit E, but where along that line do we fall is the trouble that we're all grappling with now.

TIM WELCH: I think you have hit it pretty good, Duncan. Thank you. You were very articulate there.

So exactly what we are looking for is some sort of a balance, you know, between this detailed information and then the too voluminous issue. So we're hoping on written comments that, you know, we ask you to get really specific on the stuff that you really, really think that you'll need and hopefully we can sort of achieve that balance in the final rule.

TOM DEWITT: I think it is really something the Commission needs to do in its final rule, probably not in the regs itself, because you can't create different forms of a PAD depending upon the size of the project and so forth, but you need to have some sort of preliminary statement that sort of captures what you said, Duncan, and what John has said also, just to make sure people use their head when they are putting this together and not go to the extremes, and just let them know how important it is that, number one, they use their heads in providing the appropriate information of stuff they had at the time, and just let them know that the better they do on this, the better the whole process is going to go.

LIZ MOLLOY: Okay. We have Kevin and then Marshall.

KEVIN WEBB: Just continuing on with this thing, it is helpful if everyone steps back to page D-50

(3)(c), Pre-Application Document, Purpose, what is the purpose of this document; "This document is intended to compile and provide to the Commission, federal and state agencies, Indian tribes, and members of the public engineering, economic, and environmental information available at the time the Applicant files the notification of intent." In other words, what do we know now, so we can move into scoping and determine what needs to be done. Now, Mr. Kimball has suggested that maybe some studies need to be done ahead of time before the preapplication document is prepared, just to establish information, what we know now. That seems to be going a little bit too far to me. This is almost starting to look like it is turning into a miny application and that is clearly not the intent. Thank you.

LIZ MOLLOY: Marshall.

MARSHALL KAISER: Just a curiosity question primarily to the FERC staff, have you been approached or how do you include issues of security in today's world? Has that come up at all in terms of any challenge for balancing the amount of engineering detail to be sent out to numerous parties? Does that even come up at all in discussions?

TOM DEWITT: Yes, we are working now on internal

guidelines on issuing NEPA documents. You will see starting last week NEPA documents that have been issued that we have a non internet public copy and we have -- so yes, we are very much involved in how to do that, at least from within the Commission.

LIZ MOLLOY: Paul and then Dana.

PAUL MARTIN: I was just going to say something and you kind of brought it up when you go back to looking at the purpose of the PAD and it kind of all stems on the definition of the word available and maybe there needs to be further language in there about what available means, because you can go back into prehistory on a lot of these projects and go forward in time and it is out there and there are other related studies that could be dragged in. As Sarah said, nobody wants to fill a bookshelf with the PAD.

DANA MURCH: I think I want to second what Kevin Webb said and explain what I think you are trying to do here and how the PAD works to do. Remember the problem you are trying to solve is, the application process takes too long and costs too much money at FERC. You didn't say at FERC, but that is really what the Commission is interested in.

TIM WELCH: Not necessarily.

DANA MURCH: Well, I will respectfully suggest that there is nothing here that is going to make the process any less costly to the Applicants or to the rest of us. But, I think your goal is a laudable one; it takes too long to get through the process from the time the application hits your door until the time a license comes out the other end. That is primarily a function of the fact that there is a lack of coordination with a whole bunch of processes and the application is incomplete. Okay. How do you solve that? You basically front end load the old initial consultation process and the NEPA scoping process, because I read this, the PAD is the initial consultation document called by another name, pushed back to the time frame five to five and a half years prior to licensing. Right? What happens now as I understand it, sometime in that window of five to five and a half years prior to licensing, FERC issues a notice, this license is going to expire. Do I have that right?

TOM DEWITT: No. Well, yes, but our letter reminding an Applicant that their license expires in seven or so odd years is for very -- is to really get them going and suggest that when they issue their notice of intent they are going to have to have a PAD

and explain to them what is to be there. Believe it or not, we have licensees who call us up and say I think our license expires soon, can you send me a copy of it and we have notified people whose notices should have been filed and they didn't. So, we are trying to cover a whole range of different licensees.

Obviously, there are people here who are very on top of everything that is going on, they maintain data throughout their license and a lot of stuff is already going to be available.

DANA MURCH: What basically happens now, as I understand it, is FERC issues, I get them in the mail the all the time, notice of license expiration and that formal document comes out in that window between five and five and a half years .

TIM WELCH: Yes, that is our noticing of the notice of intent.

DANA MURCH: That really starts the process today. One of the problems beyond that is there aren't any time frames. And I commend the Commission for there being time frames in here for what amounts to in my book, initial consultation, which is the PAD, and the draft application, which is second stage consultation. You have actually put time frames in there for those things to happen and you have pushed

them forward in essence, both of them, from where they are today. In that context, I think what the PAD should be is the initial consultation document that has as much information as is available.

I think many of us have dealt with applicants who do a very good job of these documents today, because they have figured out that it makes sense to put as much information there as possible. What you are really doing is just pushing all of these processes for the Applicants another two years back from license expiration. In fact, I think -- well, we'll get to this later. I think FERC ought to have a window within which this notice of license expiration is posted by the Commission and that notice has to be sufficiently in front of this PAD to allow the Applicant time to get there and that is in essence initial consultation. It is going to happen five years prior to licensing.

TIM WELCH: Recall that one of the practices that we are proposing here is to send out an advance notice of license application.

DANA MURCH: But there is no time frame for that, and one of my suggestions is that there be a time frame for FERC to do that?

TIM WELCH: We would be interested a year, two

years, three.

TOM DEWITT: We have actually had time frames, various time frames, from three to two years and so forth, and we thought it was best to make it as vague as possible at this point and hope we get input from you all and it may be different for different projects.

DANA MURCH: If I could follow-up on that, maybe I'm reading this wrong, but for most Applicants the process starts now, between five and five and a half years prior to expiration. I would be interested if Applicants think that is not true.

LIZ MOLLOY: It is the same time frame. What we are front loading is the scoping and we are putting that earlier than when the application is filed. The Applicant still has the same time frame in this because they had to do the initial consultation packet at the beginning with the NOI. So, this is the same time frame as that. What we are hoping is that by setting it up in line with what they would be filing in the future that we have set up sort of a format and we have gotten people thinking that way. But we are looking for available information. We are not looking for a complete application at that point, but the starting, what you know already on these things that

you can start working with in doing the consultation and when scoping to try to figure out what the important issues are that can be flushed out more.

DANA MURCH: I would be interested in what some Applicants and consultants have to say. It seems to me what this process will do is result in the Applicants starting the licensing process a year or two earlier than they currently do. I may be wrong, but that's the way I'm reading this, because right now there is no time frame for starting initial consultation. Most Applicants I suspect don't even think about it until they receive this notice from FERC, basically when the official notice, you know, five to five and a half years prior to the license expiration comes out. So, there is going to be a lot of work that has to go into that PAD. That work is going to be front end loaded.

LIZ MOLLOY: Currently what we issue, the notice that you are referring to, is in response to the licensee letting us know that they intend to file a new license application and we are letting everyone else know that they have told us.

TIM WELCH: We know that they know.

LIZ MOLLOY: Okay. Kevin.

KEVIN WEBB: Thank you for raising that question,

Dana. Let me try to give you a little bit more perspective from a licensee's perspective, especially a licensee of small projects. You know, I'm thinking, for example, we have right across the river here, not two miles from here, a small project called Kelly's Falls, 800 kilowatts. When it comes time to relicense that under the traditional process, and the way I have always looked at these things is, okay, five years out from license expiration we file our notice of intent and sometime within the next, say, four or five month period we will get out the initial consultation package, receive agency comments, start scoping out what we are going to be doing for our first round of studies, do those within year two, have comments on those and maybe some follow-up studies during year three, so that maybe by the two year window, the two year deadline before license expiration, we have a complete license application going out. Now I think what Dana is saying here is fairly accurate; this Pre-Application Document, which is not an insignificant document, is now going to need to be filed with the notification of intent and just scanning through this, just for me to gather up all of this information, even on a tiny project like Kelly's Falls is going to take me several months. You know,

it could take me six months. I am probably being optimistic. Our files are reasonably well organized, but a lot of stuff has been archived and shipped way off. Now I have got to go chase down my old license application and all the other various things that are required under section (K), Construction Operation Information, if it is deemed that it is okay for us to file all of the part 12 stuff, that's a dam that is subject to both parts 12 (C) and (D). So we have EAP's, numerous inspection reports, and so on. I mean this is not an insignificant document. So, thank you.

DANA MURCH: I would like to follow-up on that. I am not criticizing what you are doing. I just think that it is important that FERC recognize that in order to get more complete applications, the process, the licensing process for licensee and the rest of us is going to start earlier than it does now, substantively would start earlier.

KEVIN WEBB: One other concern that I have here with this PAD is that it is sort of a one size fits all document, you know, whereas under the traditional application things are broken down major, minor, and so on. As I read this, regardless of the size of my project I have to file the same volume of information and on some projects, including ones like Kelly's

Falls, that will be about a milk crate full of paper.

LIZ MOLLOY: One of our questions had been and that we are looking for comments on is how could we do -- what could we do to adjust it for small projects. One concern we had is that just calling small projects and going for a different criteria on things sometimes doesn't work, because sometimes a small project can have a big impact, depending, you know, on where it is located or what happens to be there. So, sometimes we found that in certain cases omitting the information doesn't help, because it is really needed in those cases. So, what we have been looking for is if we can find criteria or some way of measuring for what could be for small projects or any kind of project that didn't have impacts on numerous issues, how we could identify those and how we could accommodate that. So, any ideas or comments that you have on that would be greatly appreciated to help us address that. I think we have in the back, Tom.

TOM SULLIVAN: I wanted to address Dana's question for a second. Our experience with time frames and on initial consultation documents, if you will, is kind of varied. For what Kevin described, for the small project that does traditional licensing, five years seems to work. The ICD's typically don't

contain as much information. You pull them together pretty quickly. You try to use them as a starting point. You know, if you work out the time frames, it gives you two seasons to do studies and you can kind of do things in five years. If you are involved right now in an APL process that uses like a highly sophisticated ICP, the one that does baseline studies beforehand, the one that looks and feels like a license application for some projects, you are going to be looking at seven or eight years easily to start. The difference in costs between those two levels of effort just for the ICD is on the order of about forty fold, I would say. And it is. I think Kevin's point is well taken. Trying to apply a one size fits all to this is going to put a tremendous burden on the smaller plants, you know, just the economics, the licensing on the small plants.

That being said, there is also a concern that there are a lot of ICE's out there that have -- they are not very useful as a starting point because the information is so sketchy that you couldn't do it. I think if there were some standard that FERC could come up with of how you go about procuring existing information, you know, that you need to do literature searches and at a minimum you need to use the

following sources and I know you can't standardize all of that, but I think an attempt to standardize what is a legitimate attempt at putting together existing information, I think would probably be helpful.

LIZ MOLLOY: Ken.

KEN KIMBALL: Yes, I think cost has come up and I think there is a need to take a look at where we are, because it is true that putting together a PAD could be expensive. But the committee also has to take into consideration part of the reasons why the ICD's when they were done properly were fairly expensive was due to the fact that there really wasn't much data out there. A lot of these projects have been licensed in the recent past and they have accumulated a lot of data, so that when you come up for relicensing out twenty-thirty years from now, in theory if the licensing was done properly this time, the cost for the PAD should be much less. So, there is a yardstick you could use like relative to like the class of '93, which would say very expensive, but if you look at the yardstick looking out, by the time you actually adopt this rule and start to apply it, which is really the relicensing of the class of '93. The cost of PAD's and the need to accumulate a lot of this data should be way down. So, I want to make sure that the

Commission takes into consideration that as we move out forward, the cost will actually drop. It should drop if these were done properly.

The second question that had come up was the trigger for small projects and I think one of the yardsticks you would definitely want to use, because typically small projects, if they are going to have a major impact even though they are small, is going to be on fish passage questions. And I think you could use fish passage as one of the major yardsticks as to whether or not a small project gets to have an accelerated easier licensing process versus more complicated ones, particularly if it is going to revolve around an anadromous fish or fish migrating out of a large lake complex, like Lake Champlain, and so forth.

LIZ MOLLOY: Thanks. Okay. We have one question in the back. It is noon. So, we will take your question and comments and if there is nothing else on this. I will give sort of one last time, but I think we have covered this fairly comprehensively. We will then break for lunch and then come back and deal with the rest. So, John.

JOHN HOWARD: Again, I just wanted to state, there seems to be a disconnect between the information

required in the PAD and what FERC is looking for as far as security of information. I'm not so sure as a licensee I want to mail out the design criteria for a dam emergency access plans that have inundation mapping and sunny day breach failure analysis, potential failure modes identified, design drawings for the dams. I would much rather see that information, if it needs to be made available, in a secure location where people that want to view that information need to submit their names ahead of time, background information can be done on those individuals before they are allowed entry into a resource room to even look at that information.

LIZ MOLLOY: As we said before, we are sort of looking at the CEII, the rule that FERC has issued just recently, in trying to sort of work in tandem with that. So I mean we will be looking at that and making sure we're following that.

TIM WELCH: Just be aware that when this was being developed the CEI rule had not come out yet. Trust me, there will be a significant discussion of CEII in the preamble of the final rule, but your points are good ones.

LIZ MOLLOY: Let's take an hour break for lunch.

## V. Lunch

(Recess)

## VI. Interactive Discussion of Issues and Solutions

LIZ MOLLOY: One administrative announcement, we have parking validation things. You only pay one dollar upon departure, as opposed to some higher fee, if you want to pick those up. And we also had earlier said we'd look into one of the questions that was raised and Tim did. So, he has a definitive answer.

TIM WELCH: I was right. I talked to John Clemments, who knows this proposed rule better than anyone. He stated that no matter what process you're in, whether it be ILB, the traditional one, the change in application content would take place for anyone filing an application three months after the effective date. And we're also looking into why some people got the impression in Charlotte that it was otherwise.

SARAH VEIVILLE: No, that was the impression they got in Charlotte. I had a different impression.

TIM WELCH: I thought your question was the things that are required in the application and John told me that any application filed after three months after.

KEVIN MENDIK: So, John is saying that any final application filed more than three months after the effective date of these regs would have to go

through --

TIM WELCH: No, that application would have to include some of the changes we are proposing to the application, they wouldn't have to go back and do a PAD. If they have already gone through the three stage consultation, the initial consultation package, and their application was due three months after the issuance of the final rule, in their application they were required to include those new items under the rule.

KEVIN MENDIK: It does sound somewhat retroactive that people who are already involved in the process through a different procedure would then have to incorporate elements of this new process.

TIM WELCH: We are not talking about elements of a process. We are talking about specific items that we are now requiring in an application, such as project boundary information, cost to develop the license application.

LIZ MOLLOY: Page D-34.

TIM WELCH: Those items would have to be included in any application filed three months after the effective date of the rule.

LIZ MOLLOY: It is section 4.51 Contents of Application, and that sort of highlights the new ones

are in red line.

KEVIN MENDIK: How are you going to deal with additional information requests in that circumstance if those things have not been resolved?

TIM WELCH: I'm sorry Kevin. I'm not following you. These are little bits of information, not a lot that now have to be included in an application. So, I am not sure of the connection you are making with the AIR.

SARAH VEIVILLE: I am.

TIM WELCH: Okay. Help me out here. I'm kind of lost.

SARAH VEIVILLE: I think Kevin is thinking along the same lines that I was. I understood that the application under the new ILP is supposed to provide all of the information that a NEPA document would.

TIM WELCH: Could I stop you right there. We are talking about all processes now, traditional, ILP, ALP.

MELISSA GRADER: Correct. Okay. So, the application under the new regs is supposed to pretty much look like a NEPA document?

TIM WELCH: No, only those specific items -- yes, the answer to your question is yes, but only to the people who are in the ILP. I guess that maybe this is

where the confusion is.

LIZ MOLLOY: And we'll look into it again. I mean we'll keep an eye open to that when we're looking at any comments.

TIM WELCH: Once again, I would refer you to 4.51.

LIZ MOLLOY: Which is what is suppose to be in the application, but raising your comments, any concerns you have on how it is presented now versus how it is being interpreted.

SARAH VEIVILLE: I guess that's the point. There are a lot of people who are confused on this issue. So, the NOPA, the final rule needs to clarify.

TIM WELCH: Sorry, Kevin. I understand where you're going with that now. I'm getting there. I'm trying to get there.

KEVIN WEBB: It seems to me there is a little bit of a conflict in the way you set things up here. Page D-2, Section 430, paragraph (2) "Any potential applicant for an original license for which prefilng -- excuse me, any potential Applicant for an original license for which prefilng consultation begins on or after three months following the issuance date of this rule and which wishes to develop and file its application pursuant to this part, must seek

Commission authorization to do so pursuant to the provisions of Part 5. So, that is saying that if -- I was just quoting from section 430 on page D-2.

LIZ MOLLOY: Which is saying, if you start after this date, then you are going to do Part 5 of the regs.

TIM WELCH: Right. That is the ILP regs. In other words, what that is --

LIZ MOLLOY: That's the default.

KEVIN WEBB: That's right. That's the default, but then, you know, when you look at the transition provisions under each one of the other subparts, for example, at page D-38 is where I happen to be at the moment, Transition Provisions, "This section shall apply to license applications filed following."

TOM DEWITT: Could I ask you again just to try to slow down again.

KEVIN WEBB: Sure. So, it seems to me that on the one hand you are saying that if the application process is started after three months and then you are going back and saying if the application process is already in place three months following that. I guess I am a little confused about how those two different things jive.

LIZ MOLLOY: There are two different processes

being referred to there. One is the ILP and one is the TLP. Section 4, which is the four point whatever numbers, goes to the traditional and section 5 is the new ILP. So when we have the regs here, some of them are traditional and some of them are the ILP. So it is sort of what section are you going to be working under, and then under what section you are going to be working under, when do those terms apply to who's involved in the process. Does that help any?

KEVIN WEBB: Yes, I guess I will have to take a closer look at it. Thank you.

LIZ MOLLOY: The ALP has a separate section. Each one has a separate section.

TIM WELCH: Glad I could clarify that.

LIZ MOLLOY: When last we left, we were moving on to Criteria for Process Choice. Now, just to kind of review the bidding, it is 1:20 or so and we are here until 4:00 and we have several issues. I think the next three have the most interest for us to go through, but I just want to kind of keep in mind the whole afternoon here.

So we are going to start with the Criteria for Process Choice and work on that for a bit and then we will move on to Dispute Resolution discussion. Who would like to start on the Criteria for Process Choice

that was raised? Is it okay that it is just good cause? I think Rod and then Dana.

TIM WELCH: Just to get everyone oriented, we will probably be talking about pages D-46 and D-47.

ROD WENTWORTH: I am not sure that that is exactly the page I'm on, because I looked through the narrative that is in section C and kind of organized myself off of that to some extent. But there was a list of criteria proposed by the IHC that mentioned in the narrative that FERC was considering that and then a question about an alternative criteria that was proposed by NHA. I think it had to do with looking at the cost of the studies and justifying that.

TIM WELCH: Rod, just to clarify, right now we are talking about criteria for choice of the process. That criteria you were referring to is the study dispute criteria. The for picking the traditional.

LIZ MOLLOY: This would be the criteria on --

TIM WELCH: -- of how to pick -- the criteria for picking the traditional.

ROD WENTWORTH: I don't have a comment on that.

LIZ MOLLOY: Dana.

DANA MURCH: Well, fourteen people voted for this, so there must be a concern out there. But I will use the opportunity to get to the one that we

won't get to otherwise, because they go together.

What FERC is proposing to do is to say that this new integrated process will be the default process. Now, remember the discussion we had this morning, the traditional process is broken. I am going to use my words here. It is broken because applications come in that are not completed and even when they are completed, FERC has to then start the NEPA process. So the way to solve that is to get more complete applications. The way to do that is to start the process sooner, as we discussed this morning, and have some definite schedules for what I am going to call the initial stage and second stage; in your new parlance the PAD and the draft application, and FERC does NEPA scoping in that preapplication process. Perfectly legitimate, understandable, makes exquisite sense. Then you go on to say someone can still request the traditional process if they want and there is no criteria for deciding in the rule. There is no criteria for FERC to decide. I want to respectfully request that there is no reason to have the traditional process any longer. If you are acknowledging that it is broken, why would you ever allow someone to not do the things you say ought to be done to make a better process and a better product.

It just makes some sense.

Now I want to also suggest, while I understand there may be some great reluctance at the Commission doing away with the process that everyone has come to know and love for ten or more years. These changes you are making really aren't huge. You still basically have stage one and stage two, you are just calling them something different, pushing them forward, and pushing NEPA scoping forward. It's great. It's still basically the same old process, just reconfigured so it works better and I think this ought to be sellable on those terms.

TIM WELCH: Just a couple responses. While I admit that in many cases the traditional process is what you call broken, for the reasons we talked about this morning, it does and has worked fine in certain cases, which is one of the reasons why we are retaining it, because it can work sometimes. Now, some of the flaws that we talked about with the traditional process we have now corrected, the earlier study dispute resolution process and more public involvement. So, we have taken one of the major breaking mechanisms of the traditional process and we think we have fixed those. But the Commission felt that there are still instances where the traditional

process can work for Applicants.

LIZ MOLLOY: Melissa.

MELISSA GRADER: I guess another, which I believe is a compelling reason, is because at this point in time we really don't know if the ILP will work and it seems to make sense to maybe at some point in the future to phase out the traditional, but after this has been tried and tested.

Another comment, it kind of relates to time lines, but it's time lines that have to do with deciding which process to use, is that I think I read that the agent -- well, anybody is allowed fifteen days to provide comments on the license process request. That's not a lot of time. There are a lot of fifteen and twenty day time lines and that is just too short I think.

DANA MURCH: I don't want to beat this to death. I'm not sure what I've heard. What I have heard you say is yes, we recognize some deficiencies in the traditional process, so we will make changes in that process to make it look more like the integrated process. The more you make changes, the less difference there is between the two processes, the less reasons there seems to be to maintain the traditional. And if you now step back and say what's

left as a different, and I want to be honest, it is needless scoping, is what is left. So is FERC saying there are times when the process works better to have NEPA scoping after the application is filed, that it costs you more time and more money? I am missing the point. And I am not meaning to beat on this and I know the Commission has made some statements that may limit your flexibility, but I just don't get it.

LIZ MOLLOY: Ken.

KEN KIMBALL: The NGO's I think in general agree pretty much with what Dana has said, that there is going to be a lot of confusion if there are these multiple processes, just trying to understand, particularly from the public's point of view. I would suggest that if you are going to keep the three tracks though, that what you might end up doing is putting a grandfather period to the ALP and the traditional process for after five years they go away. That gives you a chance to go through and determine whether or not you actually need these, but it also puts a time line out there, where you're going to actually either get rid of it or have to go back and change the regulations, as opposed to going through a long laborious process of trying to determine what the criteria are.

KEVIN MENDIK: I agree with what Ken says. That may also eliminate the need for you to do further rulemaking or amending this rule if you are going to eliminate the traditional process. Again, as with what Ken said, you should really have a specific sunset provision for the use of the traditional process and that would be to allow only those processes which are still -- in which a traditional process is ongoing. So in other words, if a process has not yet received final license order and the appeal period has ended, those processes may continue, but anything else should not be allowed to use a process. I don't know that anyone finds a benefit to the traditional process, given the length of time it has taken.

TIM WELCH: I would expect that a licensee's request to use anything other than the integrated process will face a pretty substantial hurdle and that will probably be a combination of the specifics of a project, whether the size, location, those types of things, and if there is -- if the licensee could make a showing that the stakeholders, the federal/state resource agencies, the NGO's that are in that area, have all gotten together and agreed that there are no issues that are going to, you know, make this thing

difficult, that if they can make that kind of showing then we could approve that. It is sort of the same way now that we do the ALP, I am guessing. I am guessing out loud, there has to be showing, that not only the preponderance of participants in this particular case think that that is the better way to go. They don't have time to put staff involved in a collaborative process like the ILP or the ALP and it's small and it's noncontroversial. We had no problems, therefore this is what we want to do, and the Commission will say fine. It is not going to be we want to do the traditional because it is a small project. That is not going to cut it. So, that is my guess on the way it is going to go. It is going to be a pretty good hurdle.

LIZ MOLLOY: Kevin and then Sarah.

KEVIN WEBB: I guess I may be the only person in the room here speaking in defense of the traditional process on behalf of owner-operators. I strongly feel that the traditional process will be a much more economically feasible process for small hydropower projects. And I continue to believe it is entirely appropriate for small low impact water river projects. I am a little bit, honestly a bit dismayed to see that the way the draft rules are written up, it puts the

burden of proof of the Applicant to prove the traditional process will be viable for a particular project, where really it is a business decision ultimately as to what the Applicant feels it can accomplish more cost effectively and those sorts of decisions very many times involve proprietary information. Often times it involves decisions that you can't really, you know, put on paper which would be difficult to put in an application to the Commission to be allowed to use the traditional process. However, given that there seems to be the way the Commission is leaning, I would like to offer at least a couple of ideas, and I noted that I believe it was Mr. Kimball suggested whether or not fish passage will be involved, and certainly that seems to be one appropriate condition, whether or not there is an existing approved restoration plan for that particular stretch of river, I think that certainly is an appropriate condition. I think whether or not it is anticipated that there will be any substantial change in operations or structures, whether or not the plant is operated in a run of river mode or not. At the very minimum those could be three criteria that could be used. That is all I want to say right now.

LIZ MOLLOY: Thanks. Sarah.

SARAH VEIVILLE: I just wanted to clarify, Tom, what you described a few minutes ago. It sounds like you were just describing what good cause should be in a request to use something other than the ILP.

TOM DEWITT: My own personal.

SARAH VEIVILLE: And it also sounded like that those criteria were very similar to what one must use in an alternative process.

TOM DEWITT: Earlier that is one of the questions that I asked and the reason why we are talking about it now is there was a lot of discussion about why we should keep the traditional and the alternative. And in a round about way I am saying, well, they are going to be kept. So, let's focus our attention to the kinds of things you think the Commission staff should use to make those decisions. So, that is sort of what we're looking for.

SARAH VEIVILLE: I would echo Kevin Webb's comments on coming up perhaps with criteria for small projects that would allow them to use the traditional process more easily. I am aware of several projects that have been able to get their preapplications and studies done within three years and sometimes less than three years and still have licenses issued in a fairly timely manner.

KEVIN MENDIK: Instead of making the criteria for the use of the traditional process the size of the project, it might make more sense to focus on the perceived impacts of those projects. There are a lot of situations when you have a relatively small project, a couple hundred kilowatts, that has significant environmental impacts. And on the other end of the scale, you could have some huge projects that don't have any major impacts. I think that it can become a subjective judgment, but I think with enough definition in the rule, that could be addressed.

LIZ MOLLOY: All right, anyone else? Excellent, thank you for your ideas and thoughts on this.

TIM WELCH: The way you phrased that, Kevin, I thought was a good one. Maybe it is not so much criteria that we are looking for, but at least issues that need to be addressed for use of the process. So, it would go beyond just is there a need for fish passage. There may be a number of other issues that would trigger the automatic, no you can't do the traditional process here kind of decision.

LIZ MOLLOY: Betty Lou.

BETTY LOU BAILEY: I just wanted to say a word for the alternative process, because I still regard

that as probably the most desirable, because you basically are dealing with a situation where you have got a group of participants who think they can get to an agreement, known as a settlement, and if that is the outcome of that, as well as the other necessary things that go into a license application, I think that that puts it at the head of the parade, so to speak, in terms of what you really like.

TIM WELCH: I'm glad you brought that up about the ALP, Betty Lou. Just so you know, we did not -- the criteria for using the ALP remains the same; and that is demonstrative that there is a reasonable consensus of people that want to use it, file a communications protocol. So we haven't changed any of the criteria for using the ALP.

TOM CHRISTOPHER: When we start thinking in terms of size of the project to quantify whether or not a particular process should be decided upon, on some of these smaller projects I think an additional criteria that could be observed is the size of stakeholder involvement, because often times there are very small projects that have an enormous impact that is certainly going to generate an enormous amount of stakeholder interest. Often times the stakeholders have more to lose than anybody else in the process.

So, if we are going to start quantifying in terms of size, that might be one of the things that we could look at.

TOM DEWITT: This is a case where size doesn't matter. Some of you who have been bothering us for a long time might know that there have been several instances where there has been legislation to try and take away states' authority over certain projects, you know, smaller than such and such. The Commission has always maintained that size of the project is really not a determinate, because I agree with a lot of people here; a little project in terms of size could have massive effects to be dealt with. So, I don't think size is going to be key here.

LIZ MOLLOY: Melissa.

MELISSA GRADER: On page D-46, I think it is F(3)(a) and (b) it discusses how the Applicant needs to have -- it implies the Applicant needs to have consulted with the agencies before submitting the application to FERC, but in the actual time lines there is nothing that really specifies that they needed to have done that consultation. You know, there is no requirement prior to the Applicant filing the NOI and the request for whatever process. So even though it is implied, it is not in the time line.

So maybe, I guess my suggestion would be to not require both of those at the same time, if there is this whole nothing can happen before five to five and a half years out, to parse that out and have the request be submitted X number of days after the NOI, to allow time for them to consult with the agencies or whoever and get their feedback if they need to submit that along with the application to the Commission.

LIZ MOLLOY: All right, Dispute Resolution Panel, Practicality, Criteria, Licensee being an entity that can provide information. Who wants to start us on this one? There was some interest in this issue. John.

TIM WELCH: So, we are on section 5.13, D-62 and D-63 are the pages.

JOHN SULOWAY: But I think it is also helpful in addition to looking at the proposed regulatory language also to look at pages C-33 through C-40. A lot of thought that went behind the processes are included there.

First of all, I am not speaking for NHA at this point. I am speaking more as a practitioner in relicensing. My concern with regard to this process, which I think has a lot of good aspects to it, I think the so called step one with the informal work is a

great idea, I like the idea of the study plan.

My real concern about this is and whether or not it is practical to try to do this as a panel. I have a number of concerns about the panel and as you guys asked of us, I have a suggestion of how to make it better.

One of my concerns is that the third member of the panel is not compensated and I think that you are going to have a hard time finding -- I hope Tim is right, but my gut tells me he may not be right as far as the number of study disputes there will be, and I think there will be, at least to start with, a fairly large number of panels needed and I think you are going to have a hard time finding the so called third member of the panel who is able to contribute, who is going to be qualified, and is going to have the time that they can basically give up to participate in this panel.

I think also, I have concerns about whether or not you can have the panel do its work in this relatively short period of time, if they are not fairly familiar with the issues and the project.

And one of the things I do like about this proposed process is it is very time oriented. It is kind of like, okay, here it is, do this, do that,

decision comes out. That is attractive to me. I think it is probably to most licensees. But if you have got people who don't really have a heck of a lot of background on the particular project and they have a lot of study disputes to deal with and we can't have that third person compensated, I have real concerns over whether or not it works at all.

What I would suggest is that rather than after that notice is filed by the mandatory conditioning agency, rather than convening this panel, that the mandatory conditioning agency and FERC can be in a technical conference and that, you know, prior to having that technical conference, after the Applicant has received the notice that the Applicant does have to file the paper, as is suggested in the process that is in this reg that basically puts whatever information the applicant thinks is appropriate, as well as its argument of whether or not the study is justified or not, comparing it to the criteria. At the technical conference you would have the technical experts within the agency, the mandatory conditioning agency, and you would also have the technical experts from FERC and basically you have a full discussion of whether or not this study request meets the criteria with all the information available from those folks,

the technical experts, as well as the Applicant, and basically that this gets filed. The results of that technical conference gets filed with the Director to make his or her decision on whether or not the study plan should be amended to include the study with the change in methodology or whatever the dispute is over.

LIZ MOLLOY: Thank you. Anyone else? Ken, Sarah, and Kevin.

KEN KIMBALL: I think the concern we have on the study dispute resolution process is it focuses in on the mandatory things like water quality, fish passage. If there is a request for say a white water boating study, this process essentially ignores any of the studies that do not fit into the mandatory requirements. And the question I would have back to the Commission is how do those issues get dealt with? If you have requested studies for land use, recreational or white water boating, there is no procedural process to try to solve this.

TIM WELCH: My answer to your question, Ken, would be the informal study dispute process, the study plan meeting that happens in box 9 would be the opportunity to raise concerns if an Applicant chose not to do a particular study in say white water boating or any other issue, that would be the

opportunity for an NGO to bring that to the Commission staff for a resolution and discussion.

KEN KIMBALL: I hear the answer but I think we would like to see this broadened.

SARAH VEIVILLE: This morning when we talked about this, the question was raised as to the mandatory conditioning agencies and what studies they could file a dispute on and the answer was any study, though the rationale given for only allowing the mandatory conditioning agencies, as opposed to the Applicant or the NGO's, filing a dispute on the approved study plan was that the mandatory conditioning agencies have a burden of proof or an evidentiary standard that they have to meet to fulfill their mandatory conditioning authority and I guess I would suggest that if the study dispute -- the formal study dispute process is limited only to the mandatory conditioning agencies that the disputes that they file be limited to disputes on studies needed to fulfill their mandatory conditioning authority.

KEVIN MENDIK: I kind of like John Suloway's idea of convening a technical conference. In that way you could have a specific time limit, say from the onset of the dispute, and give everybody thirty days to get ready to actually convene the technical conference.

You have a time limit, say two to three working days, but in that technical conference, I think it would be helpful for FERC to be able to hear from those parties with an interest, that would include the Applicant, it would include NGO's and in a lot of cases both the Applicants and the NGO's have specific technical expertise on the issues that have been raised in the studies requested by the agencies with mandatory conditioning authority.

TIM WELCH: I would like to explore that idea and the first question that comes to mind, John and Kevin, what would distinguish your technical conference from the study plan meeting or conference that is already taking place? How would that be different?

JOHN SULOWAY: I'm assuming that these technical conferences would be very narrow in focus. You know, when you're talking about the study plans and the study plan development, you are covering, depending on the project, you could be looking at dozens of studies. I'm assuming on these technical conferences that you are looking at just a couple of studies, so all the discussion that took place in study plan development serves as the basis for basically the very focused discussion about whether or not this study meets the criteria being required. And again, it

seems to me that could be summarized in the record pretty carefully and should make the decision on the part of the Director a little more easy to deal with.

And on the concept that Kevin proposed, conceptually I don't -- I don't, I'm not speaking for NHA, but I personally don't have a problem with the NGO's and the general public being at that technical conference, and the Applicant. But again, the key to this I think in order to make this workable, is that the scope of this is fairly narrow. You know, that again hopefully, and I must admit I am not a real optimist, that we are to be able to keep the disputes fairly narrow, if we can do that, then yeah, those people who want to participate and have something to contribute and even I guess if the venue is big enough and it is not too much of a demand on folks, you could have people who just want to see this happen, you know, have it open to the general public. Maybe they are not going to participate in the sense that they are contributing information or testifying or anything like that, they just want to see because the project is important. Conceptually, I don't have a problem.

LIZ MOLLOY: Thanks, John. Tom.

TOM CHRISTOPHER: We have cases in other parts of the country where we actually have agencies and we

have the Applicant not agreeing with studies that we have been requesting, and so for the most part we are being boxed out of what we feel is an appropriate study request. I would hope that as you go forward with this process that you have some way to overcome that, because it is becoming particularly distressful for us on a couple of projects now.

LIZ MOLLOY: Betty Lou.

BETTY LOU BAILEY: I would say that if the dispute resolution process that is formally proposed here is so narrowly defined that only the people who have mandatory requirements are able to participate and have their objections and things resolved, what that means is that the NGO's and the Applicants are basically left to going through the courts, which I think is what you were trying to avoid.

DANA MURCH: I have to preface this by saying I don't get too excited by this whole thing, in part because I see this enormous edifice that is being proposed here and I am wondering what purpose it is trying to serve. So, let me get at this by making sure I understand what happens now. Say there is a traditional process now. Say there are NGO's or agencies that ask for certain information or studies, the Applicant disagrees. They fight with each other

but there is no resolution, so the application lands on FERC's desk. At some point early in the process, the Commission staff makes a decision what additional information, if any, is needed and what studies are needed to get that information. There is no panel. You don't consult with anybody. You could, you could hold a technical conference, I think that's a great idea. But basically, the staff decides. What you want is to avoid that situation of having to then have that application sit while studies are done and additional information is gathered after the application is filed. So, if that is the goal, I would respectfully request that it would be appropriate for any study request from any NGO's, agencies without special mandates under law, whoever, to be subject to some process if you feel you need one for a resolution dispute regarding that particular study.

Secondly, this seems like a horribly complicated process. It seems to me if FERC knows at the end of the day what information it needs, it ought to be able to know at the beginning of the day what information it needs without this formal complicated process that I suspect none of us will use, like the process now. You are trying to invent something to solve the

problem of these disputes that doesn't use the FERC dispute resolution process because no one wants to use it. It says here, you know, the mandatory agencies with mandatory licensing authority, conditioning authority, may request. Well, I'll never request it, because I want to leave my options open.

LIZ MOLLOY: I believe, and correct me if I'm wrong, Tim, the options have changed slightly under this process though. It is not as open. If agencies chose not to do it, their options change in the future from what they are now. So there is more of a --

TIM WELCH: There is a higher stake in not using it.

DANA MURCH: But only as written for those agencies that have access to that process, which means that all the NGO's and other agencies who may have other interests that aren't addressed by those mandatory agencies, you will still wind up having information requests and disputes when the application hits your desk.

TIM WELCH: No.

DANA MURCH: I'm missing something then.

TIM WELCH: For everyone other than the mandatory conditioning authority agencies, their disputes would be resolved in the informal resolution process and

would be decided by Commission staff in the approval of the study plan. They would not have the opportunity to ask again for those studies after the application is filed.

SARAH VEIVILLE: This is probably not going to be a very popular suggestion. If through the informal resolution or the formal resolution the study plan significantly changes, particularly with regard to cost of doing the studies, I would advocate that the licensee at least have an opportunity to do some sort of appeal through the Commission or maybe through an ALJ and show how it is being prejudiced, and I am thinking particularly in economics, by the change, by the dispute resolution, because under the current system, under the traditional process, if the Commission asks for the request post filing, there is an appeal opportunity there for the licensee, but in pre-filing there is no appeal opportunity.

TIM WELCH: Others have made that suggestion.

MELISSA GRADER: Getting back to the proposal to maybe hold a technical meeting, which I am not sure if it would replace the study plan meeting or replace DPR, maybe a recommendation would be in order to potentially limit the scope of studies that you need to go into this process or to have it replace the DPR,

that way you would have gone through that first phase of commenting on the study plan, having the informal meeting, having FERC issue a preliminary determination, and then hopefully have narrowed it down somewhat and then maybe go into the technical meeting to resolve any unresolved.

TIM WELCH: Correct me if I'm wrong, John, but I think your intent or your idea of the technical conference would be to replace the dispute resolution panel.

JOHN SULOWAY: Right. Maybe I wasn't clear on it. I think that the process that is outlined in this notebook is good. Again, because you start with your study plan, you get comments on it, the Commission says this is great, you've got the ability in the beginning to do this informal dispute resolution. That I think all should stay. I think that's good. It was only when you have a problem after you have gone through that whole process and a mandatory conditioning agency says no I want you to do this study and you can't get it resolved, so you do this formal dispute resolution and I just have a problem with the panel concept. I don't think it's workable. Whereas a technical conference I think as long as, and this is a big if, as long as it is convened by the

mandatory conditioning agency and the FERC, because it is very important to have the buy in of the federal agency. I mean if they are not going to buy in on the results of this, then you haven't gained anything. I think that was one of the main reasons for having the panel with the different representatives on it from both the agency and FERC. So, that is why I am saying this technical conference would be convened for both of those agencies, both the FERC and the mandatory conditioning agencies so as to get the buy in. That's very important. Just the same way when you guys have been doing the proposed rulemaking you have got Fish and Wildlife Service or Department of Interior up there with you guys. I think that spirit of cooperation has to continue, otherwise this is not going to get us where we want to go. I mean the idea is, once you have gone through this process the licensee or the Applicant is ordered, yes you will do this and then the idea is, the quid pro quo for that is then once you do that study plan as you were required to do it, then the federal agency will not come back after you filed your license application and say oh, by the way, I have twelve other studies I want you to do.

LIZ MOLLOY: Kevin.

KEVIN MENDIK: The formal dispute resolution process, is that suppose to be record of review or could it be de novo, and is there any appeal of FERC's decision of that?

LIZ MOLLOY: They will have the whole record in front of them and they will be able to discuss it, but they will be from the beginning, you know, everything that has been filed will be available to them, but they won't be looking at it -- they will be looking at the study request with an eye toward the criteria. So, they will be going through, and I presume, deciding. So, I don't know how exactly to answer in the form of your question on which it will be, but what they will be doing is taking what is before them on the record and that would be from the PAD through whatever has been prepared until then and making calls.

KEVIN MENDIK: That sounds like record review as opposed to de novo. Again, is there any kind of appeal process from that?

TIM WELCH: I am not a lawyer. It is my understanding that any decision the Commissioner makes under delegated authority is appealable to the Commission. That's my understanding.

LIZ MOLLOY: It would be an interlocutory

decision, so.

KEVIN MENDIK: That goes back to Dana's point earlier. Why would an agency with that authority submit to a process such as this, where they might not have a final say, especially the 401 conditions?

LIZ MOLLOY: If the Forest Service were here we could ask.

TIM WELCH: I can only speak for the federal agencies, that they have agreed to be bound by this process. The 401 agencies, a little different story.

LIZ MOLLOY: And that is what they have said at the other meetings where they have attended and that question has come up and that is basically what they have explained. They have agreed to it. They see a benefit to it. They are willing with the panel that would meet their needs.

MARSHALL KAISER: The question was, what's the benefit that they have that they said that they see?

TIM WELCH: I can't speak for them.

JOHN SULOWAY: Are you talking about the federal agencies, Marshall?

LIZ MOLLOY: Yes.

JOHN SULOWAY: God forbid I should be speaking for the federal agencies, I'll tell you my perspective of this and then you can dispute it later. One of the

criticisms that licensees have had about the FERC process is we feel like we're caught along with several federal agencies kind of in the middle of things, you know, people who feel very strongly about their jobs and the mission of their particular agency but who basically are fighting and we're kind of stuck in the middle and I think that the industry has been somewhat successful in bringing the argument to the people, the congress, the heads of the agencies, and said, you know, you are all supposed to be part of the federal family and you should all be coordinating and we shouldn't be stuck in the middle of this mess. And I think that criticism has been recognized by the federal agencies and I think that -- and they also, I think one of the by-products of the NRG and all the other relicensing reform efforts where we all kind of sat together, the licensees, the agencies, NGO's, and we have kind of got to know one another better and expressed our frustrations and they have expressed theirs and I think that there has been a recognition by the federal agencies that it puts the licensees and other parties in a pretty difficult situation when the FERC and various agencies are fighting with one another. So, this is an attempt to give the process and the people involved with it a more integrated

coordinated process and yet the agencies get their say. They have more input than they feel that they have right now with the FERC. That is my sense of what you guys are trying to accomplish. And I am hoping that -- If I thought the panel was workable, I would say fine. I don't want you guys to give up on the dispute resolution process. I want it to be workable and I want it to have the backing of the federal agencies, your sister agencies as well as the FERC. I wish we could also do something with the 401 agencies as well.

LIZ MOLLOY: All right. I think we have covered the Dispute Resolution Panel Practicality and the Information. The criteria had been raised. If you want to spend a couple of minutes, if someone had a few comments on the criteria.

TIM WELCH: Yeah, Rod had something on that earlier.

ROD WENTWORTH: This was the item that I brought up a little bit too soon in the discussion. I did note in the document that you put out that you have raised a question about the criteria. And I guess I'll keep it brief, I thought the IHC study criteria looked pretty reasonable. There was a question raised about an alternative suggested by NHA relative to cost

considerations. I think the wording on that was maybe a little bit narrower. I would try to include something related to cost that allows a certain amount of flexibility in interpretation and the wording in the NHA proposal talked about incremental information. It may be a little difficult to fine tune things on some studies and I think some kind of a test that is fairly practical on cost would be sufficient, but I don't have specific wording for it.

LIZ MOLLOY: Any other comments? Okay. Thank you. Anything else on the dispute resolution? Okay, 401 Agency Involvement and Time Clock.

DANA MURCH: My reputation proceeds me. In speaking for a state 401 agency, we are often hampered in our ability to take timely action by a lack of information in the application as filed. Current FERC regulation requires that when you file the application with the Commission it has to include either a 401 or evidence of filing a 401. In the case of Maine, most people file within thirty days prior to filing the license application, so that they have a piece of paper they can stick in the application for when they send it to the printer and that is fine in terms of meeting with FERC requirements. My agency has additional information requests or FERC does and it is

often the case that we need to essentially need roll the 401 over through a voluntary withdraw and refiling until we reach the point that we have a complete application. Other cases, to be perfectly honest, we can't get to it. I have these stacked up like sardines and we are dealing with the ones that are most ripe to be dealt with and that means in some cases other projects wait, even though they are ready to be processed. If I had my druthers therefore, I would say that the FERC regs should require that the filing for water quality certification be made within sixty days after FERC notices the application is ready for environmental analysis, if I had my druthers. FERC is proposing to essentially do that in the traditional process but then for the new integrated process leave the schedule where it is. I would say pick one or the other. I would rather have one schedule, I think the Applicants probably agree, for doing the 401 filing.

The only other comment I wanted to make on 401 agency involvement is this whole idea of our requesting studies and our ability to get information we need. I mean I will just predict that 401 agencies are unlikely to use a dispute resolution panel because if we get an answer that we don't like, it will hurt

us when we then request that information later in the state process. So, we probably won't request it. We are still going to ask for the information we need.

It is still either a valid request or it isn't and that issue will be decided by state courts and not by FERC.

LIZ MOLLOY: Thanks. Anyone else? Sarah.

SARAH VEIVILLE: I just have a question of I guess Dana with regard to the suggestion that filing for the WQC application within sixty days after FERC notices the REA, would that mean by that point the 401 agency shouldn't have to request additional information, because everything should have been generated?

DANA MURCH: Well, in the best of all worlds, yes. It isn't always the case that FERC, through the FERC process, that that information will in fact be gathered, so.

LIZ MOLLOY: All right. Anything else on this? Rod.

ROD WENTWORTH: A lot of the states have their own procedures and processes for going through studies and what's needed and when the application is complete. So, I think there is a need to allow that whole process to unfold at the state level and somehow

fit that in with the new process. I don't know your new process time line well enough to know how that fits together, but you certainly need to do something.

I also think that in terms of the one year time clock for the 401 that that should start when the state deems the 401 application complete. It would help a little bit. As Dana mentioned, the one year time clock is too often tight. I have been involved in a number of projects where everybody is working quite diligently to get through things in often a very agreeable manner, but just can't do it in one year and that is virtually always true if there are settlement discussions involved and that becomes a problem with trying to reset the clock, which I don't think anybody really likes doing. So, to the extent we can start it a little later, I think that would be helpful.

LIZ MOLLOY: Anyone else? Betty Lou.

BETTY LOU BAILEY: When I think of time lines, I think of this setup where we need to have at least two field seasons which are basically summer seasons, because we never seem to be studying ice fishing, which is the way of the real world. So that sometimes, depending on the accidents of the past, we have a favorable time line so that people could start planning their studies and then with more detail

working out the specs for the contractors and that sort of thing, so it flows smoothly along. Other times you are starting in August, which is bad because nothing is going to really happen until the following May and it just means that you need more time. And I don't know how you can address that, but I think it has to be worked on. Obviously, the southerners are not as perturbed about it as we northerners are.

KEVIN MENDIK: Perhaps a suggestion would be to allow some flexibility into the overall licensing schedule, to allow more than one field season where studies have been identified and agreed to, and either the timing of the point at which the studies agreed to doesn't lend itself to a single field season or where it is essential to have enough statistical validity for having more than one season.

KEN KIMBALL: I think one thing that you do need to do the time lines early in the process to have the Commission publish what the time line is for each individual case and it may be appropriate to put it in the scoping document, which right now as I am looking at page D-60, there is no listing of the time line for the scoping document and there should be.

And comment two I would make is once FERC publishes that time line, they should work very hard

to make sure all parties are sticking to it, and not only sticking to it, but they are accomplishing the task they are supposed to on time.

TIM WELCH: Ken, on page D-60, under section 5.9 item (5) it says "the process plan and schedule and draft outline of environmental documents." That would be our time line.

LIZ MOLLOY: Melissa.

MELISSA GRADER: I think I have mentioned time lines in specific cases a couple of times today. But from our perspective, anything less than thirty days is just too short. Specifically, if the DPR is used, I think the regs allow twenty days for the resource agencies to file those study disputes and that has to include meeting the criteria for each study we are disputing. That is just a really, really short period of time.

Also on 5.14 (A)(1) and (2), I think the regs use the word "promptly" for the Applicant to file a couple of different things, and I guess I would suggest that there be days, actual specified days in there. It seems like time is really critical in this whole process. And from the point of final application being filed, it seems like even if you maxed out all of the proposed time periods, you would still be well

within that two year time frame. So, it seems like there is a little wiggle room that maybe could be used in the prefiling period of the process.

TIM WELCH: Just to answer your question on the "promptly," we put "promptly" in there to allow an Applicant to schedule that study plan meeting that works for everyone and that schedule would be in the approved study plan, the schedule for that meeting, so it would be defined at some point.

SARAH VEIVILLE: This has to do with on D-59 and D-60. Actually it is with page D-59 that the Applicant has to file a study plan within forty-five days following receipt of comments. I know on some of the larger projects I have worked on, it probably takes us forty-five days to go through the hundreds of pages of requests we get. So, I'm not sure how to do this, where you -- again, it is an instance where the one size fits all may not work. Just from a practical standpoint, forty five days just to sort of review and summarize all the study requests received and then come up with a study plan, I am not sure how a licensee can get it done. That's very ambitious.

LIZ MOLLOY: Okay. It is about 2:30. Let's take a ten minute break and then we'll finish the last ones.

## VII. Break

(Recess)

## VIII. Continuation of Discussion of Issues and Solutions

LIZ MOLLOY: Welcome back. Project Economics Overall and During the Study Period. I think we are at the next topic. It looked like there were not as many hands, you know, there were no hands up when last I looked. So, if I was wrong you can tell me, I'm okay with it. But I'm not, we're moving on. Project Economics Overall and During the Study Period.

DON TRAESTER: The reason I raised that is because I was looking for understanding from the FERC panel about where in the process will the FERC consider project economics. Typically that has been considered in the final ruling, you know, post filing. But I am wondering would it also be considered as part of the study plan or as part of the study dispute resolution process. It goes into a level of detail about the compensation of the panel members, but something much more important to us would be exactly when is the FERC going to consider the project economics as far as studies that have been proposed by NGO's and resource agencies. So, can you comment on that members of the panel?

TIM WELCH: Looking at our study criteria on page

D-61 criteria (7) states that a requester, including FERC staff would describe considerations of cost and practicality and while any proposed alternatives would not be sufficient to meet the stated information needs; in other words, if there was a way of getting the same information out for a less cost, we would weigh that in the selection of the studies that would be included in the package. That would be just part of all of the criteria of the seven. Others have suggested that maybe a better measure would be adding information on the merits of a study value; in other words, if you are getting the best bang for your buck. In other words, but if a study costs a lot of money and you are getting a lot of good information from it that would be a good thing; but if a study cost a lot of money you were getting just a minute minor amount of information, Applicant's would view that as not a good thing. So, that has been suggested by some Applicants as another criteria.

LIZ MOLLOY: Anything else on this?

TOM CHRISTOPHER: A couple of things relative to the project economics. Often times, at least on some of the projects I have been involved in, the actual value of outside activities overweigh the value of the projects and I would hope that when we are drafting

study plans that we would use, again, criteria that is comprehensively broad enough to look at all of these issues, rather than just what is coming particularly right out of the generation of hydro.

Also, a couple of other projects that we were engaged in, we have asked the Applicant to use outside consultants to verify the actual costs of the project; in other words, the revenue stream that is coming out of the project. In the past we have had some difficulty with applicants that have been less than forthcoming. And again, hopefully we will be able to develop study plans that will remedy this, but this is one of the criteria we will be looking at.

KEN KIMBALL: Actually, two comments on project economics. One is we are seeing more and more where Applicants will not put the information forward because it is proprietary, which begs the question of how are people going to be able to actually use this data and analyze it.

The second one really goes to one of the last bullets up there and that is if FERC is really challenged with the responsibility of doing NEPA consideration it is one thing to figure out what the cost is to the Applicant for doing the studies, for carrying out mitigation enhancement, etcetera, for

lost power, but to balance that you actually need to know what the value of the nonpower benefits are as well and we would strongly urge that the Commission require that the non-power benefits be presented as well or at least estimates, so that you could at least do a fair comparison between the two.

TIM WELCH: And that would be by the Applicant?

KEN KIMBALL: It is the Applicant's application, so, yes.

LIZ MOLLOY: Any other comments? John.

JOHN WARNER: Just to follow up on D-61 there, the list of criteria for a request for a study on that cost, (7), describe the consideration of cost or practicality, at least up to this point, I don't believe our agency has ever been responsible for generating cost estimates for alternative studies. They really are in a poor position at the point of having a very short time frame on which to comment on these to generate an alternative cost estimate relative to the Applicant's proposed study. It also suggests that the cost of the -- in the Applicants proposed study is provided that they provide some sort of cost estimate there, which is not routinely provided, since most of those are held fairly proprietary for various reasons, consultants don't

like to have their costs out there either.

So, I fail to see how we are going to get a lot of information there that is really usable without a broad ballpark, you know, like looking at the river or an FIM study we can sort of characterize the relative costs of those two, but getting that as an integrated study design seems way beyond the ability of an agency to respond adequately.

TIM WELCH: John, others have raised that issue from the resource agency side and perhaps I think a lot of people read number seven that not in every single case, only if cost was an issue would you have to provide cost and practicality information. So, maybe there needs to be some wiggle language in there, you know, if this was an issue, then describe cost. I don't think we would be looking for every single study request that you provide all the detailed cost information in. That is definitely something we are going to have to look at.

LIZ MOLLOY: Betty Lou.

BETTY LOU BAILEY: What I was thinking of is that in terms of your long term costs, some of the things that get built into these newer licenses are things like fish passage flows and by-passing flows and that sort of thing and these are relatively easy to keep

score on because this is water that does not pass through the turbine and so that is an economic that could readily be kept track of to see where you are headed. Certainly, that is far more important than the occasional picnic table that gets washed away in the flood or somehow otherwise disappears.

TIM WELCH: I think we are talking about here primarily about costs of studies, not so much PME.

BETTY LOU BAILEY: They are all important.

TIM WELCH: I agree but these criteria do not apply to PME measures; they apply to study requests.

TOM DEWITT: On the question of what does Commission staff do when an Applicant doesn't provide certain cost figures because of its proprietary nature, in a very broad brush stroke, in some instances it is good to have that information to do our comprehensive development section and to make those calls, but in instances where we are not getting the information that we do need to do our comprehensive development section, we have staff that can estimate those numbers, and we will probably be fairly conservative in our estimates, such that when the NEPA document comes out say or comprehensive development becomes public, a licensee may or may not like what we come up with. So, we still have to do

our analysis and we have a staff that can make those estimates that enables us to do it.

LIZ MOLLOY: All right. Any other comments on that? The Need for the TLP. I think we have talked about this already though. Is there anything else on it? We also have the Draft License Application Whether it is Necessary or Not.

JOHN SULOWAY: I was in DeWitt's group and we talked about this. I don't think the draft license application is necessary. I'm not saying in a particular case -- I'm not saying it would be a bad idea for a licensee, if they felt that would help them to get input on a draft, but I just would just as soon use that time, rather than compiling a document and making five hundred copies of it, I would rather use that time to complete my settlement negotiations or complete studies or whatever that go into filing a license application. But I don't think we need in this process to require that an Applicant put out a draft license application for copy.

TOM DEWITT: Would there be a time in the process early on before that takes place, where the stakeholders would get together and jointly make that decision that they aren't going to do it or they are?

JOHN SULOWAY: Well, I know this isn't a poplar

decision to make, but I think that should be the decision of the Applicant and I think the Applicant should be very up front with its plan that it puts forth as far as how they plan to license this project. I think in those time frames they should clearly spell out this is when we intend to do our studies, this is when we are going to do our settlement negotiations, if we do settlement negotiations and here we are going to file a final license application; we are not going to file a draft.

DANA MURCH: Remember, this is -- the integrated process is still the traditional process with some stuff front end loaded. It still walks and talks a lot like that. You are doing a little more public outreach, a little more discussion of study plans, study information. All that is good, but what the draft license application does for everybody today is it says here is the applicant's proposal, and we are not talking about the alternative process, where there is a negotiated or settlement or a collaborative. We are talking about the Applicants, licensees, application. And what the draft application does is it sets the stage and all the information that has been gathered to be put together in one place and for the Applicant to say here is what this information

means for us, and here are our proposals for operating this project and then the agencies all get to respond to that. I would hate to lose that. I don't think removing it gains you anything and I think you lose something significant in the process.

JOHN WARNER: I don't need to reiterate what Dana has said, except I strongly think that the draft application is necessary. Again, if you are in a situation where the chances of there being a settlement at this point is not the major focus of the proposed process, in most cases in my experience, until the draft application hits my desk, I have no idea what the proposal is from the Applicant and from the proposed relicensing we have had so far the peek in operation, bypass flows, none of that stuff is proposed, none of that stuff is decided it is all sort of held draft at the draft applications when you get some indication of what might be proposed and at that point that can lead to further discussions to refine those operations and so when it hits FERC's desk it has had another chance to go back and forth, another chance to review and work out some of those details. I think if you remove that you remove one more step of negotiation that happens when you are not in a settlement.

TOM DEWITT: If we kept the draft application would you be comfortable with automatically moving into a nondraft EA post filing? In other words, one EA, we would issue one EA. If you kept the draft application pre-filing, what would you say if that automatically kicked us into a 1 EA post filing rather than draft or final?

JOHN WARNER: Are we negotiating right now? I will definitely not respond to that.

LIZ MOLLOY: Sarah.

SARAH VEIVILLE: A couple of comments, I would also be an advocate of not having a draft license application on the basis that I think that time can be better spent. But one alternative may be, and I don't know how I feel about this, but dispensing with Exhibit A, B, C, D, H, G and just preparing an environmental document, a draft environmental document. That is the most significant piece of the draft application. From the licensee standpoint it doesn't save any time -- well, it does save time. It is an alternative. I'm not sure I'm crazy about it, but particularly feel with regard to projects, I keep saying small projects, but non-issue projects, low impact, whatever it is projects, my experience has been that the draft application stage is almost a

waste of time, that the Applicant issues the draft application at the most five to six months before the final is due. You've got ninety days for comments and then they turn it around in a couple of weeks. So, I would certainly advocate for the smaller non-issue projects doing away with the draft application, as a way of streamlining the process for the projects.

TOM DEWITT: May I interrupt one more time? Same question, if you did away with the draft application, would you be comfortable with an automatic draft and file post filing, even if it is tiny?

SARAH VEIVILLE: Yes.

LIZ MOLLOY: John.

MR. SULOWAY: If you look at what is proposed in this document on page D-51, I can understand somebody saying look I want a draft application, because I want to know what the Applicant is proposing, are they going to change up the turbines, are they changing the operation of the project. If you look at section F on page D-51, we should be telling you that in the PAD. It shouldn't be a surprise what we are proposing.

So again, I just don't see that it is necessary.

As a matter of fact, I think it is a big waste to print all the copies and go through all the comments and all of that other stuff and then once you have

done it once, you have to do it all over again in the final. I would rather cover that early in the process.

KEN KIMBALL: First, Tom, going back to your question about using a nondraft EA if you did away with this process; I would suggest something slightly different and that is you can do away with nondraft EA if there is a settlement agreement, use that as your deciding point, and if there is no settlement than proceed ahead with the draft EA and that would encourage more settlements. There is a reward for going the settlement route using that, and that is the carrot as opposed to the stick.

Relative to the draft application, I would agree with John and Dana and others, it is the first time we see what the Applicant is proposing. There is a need to digest. I do agree that many times it could look like a waste of money, because we comment on the draft applications and a lot of time the applicant never changes it, so it looks like it is redundant, but there is an inherent problem that comes about due to the fact that sometimes there isn't much response to the questions coming in outside of changing the cover page. But also the draft application, the way that I understand these proposed rules right now, is also the

point which triggers the AIR component and if you do away with the draft application, it does beg the question of where is the AIR request going to be triggered and how is it going to be triggered, because it will be the first time you will be able to ask yourself whether or not you are going to ask for an AIR or not, depending of what the applicant puts out there.

KEVIN MENDIK: There is also the question in the NEPA process of the opportunity to intervene at the filing of the DEIS. In 5.23 and 5.24, I don't see that opportunity is in there. It may still be in there by virtue of NEPA, but I just want to get a clarification as to whether there is still going to be that opportunity to intervene at that stage. Regardless of whether you go to an immediate final.

TIM WELCH: Well, I don't think it was our intent to change that. I am not sure why it is not in those particular sections. I don't even know, is it in ours? It might be just under the NEPA regs, so I don't think we have ever had it in our regs.

KEVIN MENDIK: Right, but given it is under the NEPA regs, if the rule comes out with a provision that allows you to go directly to a final NEPA document, that could potentially bypass the NEPA regs of

allowing an intervention at that time in the process.

I mean, granted, by that time you hopefully would have had all of the parties there, but we all know in the real world parties do show up later on in the process.

TIM WELCH: Correct me if I'm wrong, the NEPA regs probably, I would have to guess, pertain to EIS's and not EA's.

KEVIN MENDIK: Right. But still, if you are going to go to a final EA or a final NEPA document, this is more of a general concern in that going to primarily EA's in this process, you seem to be cutting out the opportunity for subsequent interventions as a whole.

TIM WELCH: I think the hope would be if there were a possibility for late interventions, you probably wouldn't be doing an EA. I mean if a project was that contentious and that many stakeholders were involved, I don't know. I mean I understand what you are saying.

BETTY LOU BAILEY: I would like to say that I think that the draft application is important. It causes the Applicant to have to put his head together a little earlier than he might have to otherwise, but I figure that that is good. And I am afraid that the main reason I say that is that I have seen some really

bad applications, where things that you thought you had put to bed three years ago are still there, they're still alive and you don't want them to go to FERC and other things, in the usual stuff, a certain sentence doesn't make sense, little stuff. But there are big things and I don't know whether it happens because the Applicant just is deft to what is going on sometimes or if it is because the Applicant has chosen a consultant that is the motivator and is incompetent. I mean these are real world considerations. They are not the sort of things that look nice on paper.

DANA MURCH: I wanted to make two arguments for the draft application. First, is to second what Ken said; the draft is the first place that we actually get to see an Applicant's protection, mitigation, and enhancement proposals, and that is what I meant, that is the first time we really know what is proposed. And I think Sarah's idea may have some value. This really is Exhibit E, and you know, maybe that is one way you could make this process at this point a little less onerous for Applicants is have it just be Exhibit E.

The second argument I would make though is that this is a great opportunity for the general public or those people who are not as intimately involved as we

are with this process to know what the project is, what the studies are that have been done, what the results are, and what the Applicant's proposals are. I know lots of agencies and public make extensive comments on draft applications. Sarah is also right. Often it is the case that these draft applications happen so late in the process that there is very little time for the make Applicant, the licensee to turn around and make substantive changes. I think what FERC has done to address that is actually put a schedule for the draft application. I think that is a good thing.

One last thing, and that is Tom's suggestion of could we go straight to a final EA, I couldn't understand what the distinction was in the rule. It sounds like what you are saying is one process is a draft NEPA document followed by a final, the other is it is a final it is put out for comments and then supposedly FERC responds to the comments. Well, that sounds like a draft by any other name to me and I respectfully request that all NEPA documents be put out as draft for comment and then FERC respond to the comments. That is a good sound process and I can't think of a reason why you wouldn't do it in all cases, but maybe you have a reason.

LIZ MOLLOY: There are some projects we won't get very many comments at all on a draft and we know that, that it hasn't been controversial, there haven't been issues, there has been general agreement on things, but maybe not a settlement but just is not a controversial project. We issue a draft and we get no comments or we get, you know, we get a comment that says we agree or you had a typo on page 3. When you have a document where you know there isn't going to be a lot of comment or you have pretty much addressed everything, you can then take whatever comments there are and address them in the order and that is what we do many times now and that has worked and it is not --

What we want to avoid doing, I think from my perspective, to just do a draft and a final just to do a draft and a final is perhaps a waste of some resource and if there are situations where just an EA would be done, then it seems better to just do it that way, instead of because we do it in every case. It is again the one process, I mean we also try to tailor to the extent we can processes to fit the situation. So while we are looking for opportunities to do that and make it all work, we are also looking for opportunities for ourselves.

MELISSA GRADER: I guess I just third or fourth

the opinion that a draft license application is a good thing in whatever form it takes, if it is just Exhibit E or if it is the full application. On D-51 F it does say that the Applicant will, you know, state what the proposed operation will be, but at that point nobody knows what the appropriate below project or bypass flows will. You don't know that until the draft NEPA document. I'm not sure if this would be the case, I don't know if there would be a conflict with the MCRP guidelines if there was no draft NEPA document. So, maybe it is not an issue because there is a comment period, but you have to look at the actual detail of the MCRP language.

TIM WELCH: There shouldn't be a conflict because we do have a comment period for the final EA.

MR. SULOWAY: You know, there are a lot of other applications, whether they go to the Corp of Engineers or various regulatory agencies, and they don't do a draft application and the processes work just fine. I understand your point that you don't see the proposed PME measures in the PAD, that's true. But again, I don't see that it should be required that you have to do it twice. There is no, as far as I can tell, there is no reason that you couldn't have a successful relicensing by including your PME measures in the

final license application. Quite frankly, I think it is a more efficient process to do it that way. Now, an Applicant may decide, you know what, I want to do a draft. I want to circulate a draft of this document to the stakeholders to find out if this is going to work or not. But again, I think it should be the Applicant's decision if they want to use a draft or not, but I don't think it should be required because I think it is an insufficiency.

I thought Ken had a really interesting point about potentially going to a final EA if there was a settlement. The wrinkle on that is you have a settlement with how many parties? Do you have to -- if you have one hundred parties, do you have to have all hundred sign up? If you have ninety-nine, does that mean that you can't go to a final EA that is just something -- I think, Ken, I would hate to be a licensee who is being held up by one or two parties. And actually, I would hate to be a stakeholder whose PME measures were being held up by a particular party who is making some outrageous demands who had to be part of that comprehensive accord in order to do it. And Betty Lou, you know, if there are typos or sentences in the final license application that don't make sense, that could be the comment that you put in

on the final license application, and that gets straightened out, but you don't need a draft license application to do that. And as far as the question about when do you put in your AIR's, it makes perfect sense that your AIR's come in after you file your final license application. Then you put in your AIR's and you say, you know, I think you need this information in order that this application is ready for environmental analysis and FERC makes the decision then; yes, I need to have additional information or no I don't and either issues the REA or doesn't.

BETTY LOU BAILEY: In regard to what you just said, I am not so concerned about editorial. What I brought up first on the draft licenses is when you see things you thought were put to bed as impossible three years ago in the draft license and those things are very irritating. Like for instance, they mentioned people have been asking for white water releases. There was no possibility of white water releases. The impoundment was so full of silt, there wasn't any volume of water there. We had discussed this several years earlier and yet there it was again. They said the people were still asking for them, which is wrong.

JOHN SULOWAY: But do you need a draft license application for that?

BETTY LOU BAILEY: What I really wanted this for was to talk about EA's and I wondered if possibly the difference between draft and final EA's often is very small and I often suspect that it could be handled with one erata sheet and here is a new page 37 and not redo the whole blessed thing for just a little bit of effort and I think that would satisfy the people who want a final EA and those who don't think it is necessary, I mean just a modest effort that would be a supplement.

LIZ MOLLOY: Dana.

DANA MURCH: This issue of draft license application, I would respectfully suggest to the Commission staff that all of us out here are use to the process that involves draft application. If you don't have them, I think the outcome will be you will have more work to do when the application hits your desk and I think that is a consideration for you if what you are looking for is to front end load as much in this process as possible, getting rid of the draft may well be counter productive.

Another comment I make is, I have been writing water quality certifications for twenty years now and I have reached the point where even in the case where there is a settlement and the DPE has agreed to honor

the terms of that settlement, I am putting out draft water quality certifications to all of the parties on the service list and I think it is good public relations. I think it is good for all of the parties to have the opportunity to review and comment on what we're doing, make sure we got it right, we don't always, and even if nothing changes in the final, it is a good thing to do.

KEN KIMBALL: I just wanted to go back to John's question about using whether there is a settlement agreement or whether a settlement agreement exists or not relative to whether you go down the draft EA or the full EA route. I think history has shown us because you may not have one hundred percent sign on is not probably a serious problem. And I think if you take a look at the ALP process, it suffers from that very same question and it hasn't really bogged it down.

And Tim or Tom correct me on this, but there have been several EA's now that have been issued, as opposed to draft EA's, that have been based on the existence of a settlement agreement. And again, it hasn't brought a lot of problems out. So I question whether -- I think your question may be more theoretical than prove problematic, just based on the

history we have seen to date.

DUNCAN HAY: I would like to pick up again on Sarah's point about submitting the Exhibit E as the draft application, because one of the things that has happened in this is the PAD now contains many, many of the elements that are in a draft application and it may well be to address John's concern about, you know, do we have to duplicate this over, and over, and over again and send it to the entire distribution list, the things that haven't changed, and many of the exhibits that would be in the PAD, and would also be in the draft application and the final application are going to be the same documents, so that you can deal with that by reference and simply say this is the same as it has been all along.

Now, there are things that do change and often times operational considerations change and we have seen this most dramatically in class of '93 projects, where because of project economics and technology that, you know, things are in or out, and they're back in again. But that can be addressed first of all in Exhibit E, but also in those exhibits that deal with project facilities and operations and if something changes then you address it there. The other stuff which is going to be the same through the entire life

of the application process, leave it the same and deal with it by reference. And for those stakeholders who join the process later on, they can get that binder, since most of these things do end up looking like multiple binders.

LIZ MOLLOY: Any other comments on this? All right. Public Participation. This has come up throughout all of the issues that we have addressed, but is there anything in particular we haven't covered yet with respect to public participation?

TOM CHRISTOPHER: I agree with you. I think the whole idea of public participation has been a theme that has extended itself very well throughout the discussions today. The only other thing I would like to add to it is there are a couple of areas where we think public participation should be given primary consideration and we would ask FERC as they go forward with these regulations to do the best that they can. What we have in front of us certainly is a vast improvement. The idea of front loading a lot of this will certainly make our lives easier. I think we will probably have some angst in a few test cases, but it is an improved process and we thank you for what you have done so far.

LIZ MOLLOY: Anyone else have any comments?

KEVIN WEBB: I just have one concern with this and I am not in any way trying to limit public participation, but it seems to me that there is really no way, that the Commission has not set up any criteria by which NGO's are granted kind of blanket consultation rights. There were some discussions earlier this morning about the NGO's providing the Commission with a list of organizations that would be interested in participating in licensing proceedings in general, which is fine. But how large is this list going to grow? Again, look at this from the perspective of a small hydro operator, where I have to deliver this milk crate full of documents for a PAD to an alphabet soup of state and federal agencies, plus NGO's and so on and the larger this list grows, I mean my Kinko Copy bill is going to get larger than my annual revenue at some point. I am just wondering if there is going to be some sort of procedure by which NGO's are formally granted that ability. Did you understand what my question is?

TIM WELCH: Yes, and the answer is we haven't considered any kind of formal procedure for identifying a consultant NGO.

KEVIN WEBB: My concern is that NGO's are in essence being granted agency rights to participate,

which is fine and the public always has the right to participate, but it just gets to the point where the list of groups that wants to participate can get quite onerous for a small project.

TOM CHRISTOPHER: I have an answer to some of those questions but it is not productive. I think that any attempt by the FERC to limit participation is going to be met with a great deal of resistance. If projects are so small that they cannot bear the burden of relicensing them, then perhaps they should not be licensed. And participating in projects over a relatively modest geographic area, I think that the list of NGO's that generally appear knocking at the door is limited enough so that the public interest is represented and protected and should not necessarily be a burden to those projects that have limited resources.

LIZ MOLLOY: It does raise a question in my mind as we have been talking, I have been thinking about it, and Tim and all may have already thought about this and we just happen to have just not have discussed it. But part of this process is before we have intervenors, before it is filed, and before we notice it and get interventions and this is involved with participants, interested participants. And how

do I identify that pool of people, you know, how do we know who is interested rather than the Applicant can go out and find, you know, send it to local governments and interested people, and people that they know are interested. But how -- you know, has anyone thought about this, how we would have this -- and if it is in the rule, I am totally out of line and I apologize.

TOM CHRISTOPHER: I actually have thought about this, and I think that particularly in the last ten years FERC has had a great deal of experience in identifying these groups geographically and one of the things that FERC could be doing that when it is time for them to notify the Applicant that they have a license coming up, it might be entirely appropriate to utilize this general list of geographic intervenors or contacts that they know. Now, this would not necessarily preclude a singular individual who has a very narrow interest to intervene. Often times we have seen that happen here in projects in New England where one person or one person and his wife feel strongly about an issue and they will intervene. One of the things we have tried to do is file joint interventions with conservation intervenors in the New England area and that has helped a little bit. But

the idea of identifying these people or notifying these people up front at the time that the Applicant is notified would probably go a long way.

LIZ MOLLOY: Anyone else? Need for Nonpower Cost Estimates. We talked about that briefly too. Do we need to do more on that? Ken.

KEN KIMBALL: I was the one that brought it up and I think we covered it under project economics.

LIZ MOLLOY: All right. Is there anything else that we haven't covered that anyone wants to address? I want to thank you all for coming and providing us with excellent ideas, and questions, and suggestions.

Again, parking slips are here on the table.

Comments are due to FERC on the 21st of April. That is an outside deadline. So, if you happen to be done with your comments earlier, feel free to file them.

There is no penalty for early filing, it will give staff time to start going through them, rather than waiting until the 21st, when they might all arrive.

Is there anything else?

TIM WELCH: No.

LIZ MOLLOY: Thank you for coming.

TIM WELCH: Thank you very much, everyone.

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## C E R T I F I C A T I O N

I Brenda J. DiMatteo, CERT, do hereby certify that the foregoing 162 pages are a verbatim transcription of the April 1, 2003 Public Workshop regarding proposed Hydropower Rulemaking.

I further certify that I have no affiliations with the parties involved in this proceeding.

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Brenda J. DiMatteo, CERT    Date