

PUBLIC & TRIBAL FORUMS  
ON  
HYDROPOWER LICENSING REGULATIONS

November 22, 2002

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BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the Public and Tribal Forum on Hydropower Licensing Regulations was taken before Tia B. Reidt, a Certified Shorthand Reporter, and a Notary Public for the State of Washington, on November 22, 2002, commencing at the hour of 8:58 a.m., the proceedings being reported at The Sheraton Inn, 1320 Broadway Plaza, Tacoma, Washington.



Tacoma, Washington.

November 21, 2002

8:58 a.m.

MR. MILES: Good morning. On behalf of the Federal Energy Regulatory Commission and the Departments of Commerce, Agriculture, Interior, we welcome you and thank you for attending today's forum to discuss the consideration of the new hydroelectric license regulations.

Before I begin my presentation, to be followed by Tim Welch's presentation on why we're here and to give you some background information, what I would like to do first is to do a round of introductions. We have found that to be very useful because it -- and it's also doable because of the size of the audience.

This afternoon we hope to have a very interactive and engaged conversation among all of the individuals within this room to discuss the topics that you have -- for example, on this side of the room you'll see some suggested discussion topics. Our goal is to list from you those topics that you would like to discuss not only with us but with each other.

My name is Richard Miles. I am with the Federal Energy Regulatory Commission. I work within a unit at FERC that is dedicated to the advancement of alternative dispute resolution, ADR, and I have been asked

to facilitate, or moderate, this forum.

With that, let me start with introductions at the front of the room and we'll go around the room. Okay? John, do you want to start? John will be helping to co-facilitate this conference.

MR. BLAIR. John Blair, Federal Energy Regulatory Commission.

MR. DACH: I'm Bob Dach with the Fish and Wildlife Service.

MS. SMITH: Gloria Smith, Department of Interior, Solicitor's Office, Washington, D.C., member of the IHC.

MR. GRIFFIN: I'm Kerry Griffin with the National Marine Fisheries Service.

MR. WELCH: Tim Welch with FERC staff. I'm in Office of Energy Projects.

MS. JANOPAUL: Mona Janopaul, Forest Service, Washington, D.C., also on the IHC.

MS. MALDER: Nan Malder, Acres International.

MS. WAHTO: Heidi Wahto, Acres International.

MS. ANDERSON: Emily Anderson, Longview Associates.

MR. LINDERMAN: Chuck Linderman, the

Edison Electric Institute.

MR. McMURRAY: Greg McMurray, Oregon

Department of Environmental Quality.

MS. BONANNO: Kristin Bonanno, Oregon

Water Resources Department.

MR. O'KEEFE: Tom O'Keefe, University of

Washington Fishery and I volunteer with American Whitewater.

MS. BOTZHEIM: Tracy Botzheim, Seattle

City Light.

MS. GREENE: Barbara Greene, Seattle

City Light.

MR. ROBINSON: Mark Robinson, director

of the Office of Energy Projects at FERC.

MR. ANDERSON: Bob Anderson, Avista.

MR. HOWARD: Bruce Howard, Avista.

MR. (Unidentified): Mary Gordon, FERC.

MR. MILES: Let me explain something.

Mary Gordon is under the weather. She's lost her voice, so that's why she didn't announce herself.

MR. BURKE: Roger (phonetic) Burke,

Forest Service, the Alaska Region.

MS. MARTIN: Connie Sue Martin, Shert

Crossman and Burgess in Seattle.

MS. KELLEHER: Connie Kelleher, American

Rivers.

MS. SWIFT: Brett Swift, American

Rivers.

MR. BICKFORD: Shane Bickford, Douglas

PUD.

MR. CLUBB: Bob Clubb, Douglas PUD.

MS. CRAIG: Barb Craig, Stoel.

MR. O'CONNELL: Michael O'Connell,

Stoel, Seattle.

MR. ROBINSON: Doug Robinson, Washington

Department of Fish and Wildlife.

MR. FRYMIRE: I'm Bill Frymire. I'm

with the Washington Attorney General's Office, and I

represent the Department of Fish and Wildlife.

MR. MARTI: I'm Jeff Marti. I'm with

the Washington Department of Ecology's water resources

program.

MS. ZEHM: Polly Zehm, the Washington

State Department of Ecology.

MR. METZGAR: Roy Metzgar, City of

Everett.

MR. MEAKER: Bruce Meaker, Snohomish

County PUD.

MR. OLIVERS: Claire Olivers, Snohomish

PUD.

MR. STEARNS: Tim Stearns with the

Emergency Policy Division of the Office of Trade and  
Economic Development, State of Washington.

MS. KEIL: Julie Keil, Portland General  
Electric Company.

MS. WALKER: Sue Walker, National Marine  
Fisheries Service, Alaskan region.

MS. HANNUKSELA: Jane Hannuksela,  
National Oceanic and Atmospheric Association.

MR. KIRKENDALL: Keith Kirkendall, NMFS,  
Northwest region.

MR. BERG: Mel Berg, Bureau of Land  
Management in Washington, D.C.

MS. PATTISON: Malka Pattison,  
Department of the Interior, Washington, D.C.

MS. THOMAS: Liz Thomas, Preston Gates  
and Ellis.

MR. STIILLZ: William Stillz, Preston  
Gates and Ellis.

MS. WHITE: Janet White, EES Consulting.

MR. MATT: Good morning. This is  
Robert Matt with the Coeur d'Alene Tribe.

MR. BERNHAM: Bernie Bernham, Bureau of  
Indian Affairs, Northwest regional office, Portland.

MR. MILES: Thank you for those  
introductions. What I would like to do at this time is go

through three of our slides before I turn it over to Tim Welch from the Office of Energy Projects.

As you can see, this is a public forum being held in Tacoma, and there are, at the front of the room, representatives from the FERC, the Department of Agriculture, Commerce, and Interior.

This is a cosponsorship forum. As many of you know, out of the Federal Power Act, the Commission FERC is responsible for licensing nonfederal hydropower projects. The Departments of Agriculture, Commerce, and Interior are also responsible for providing conditions and restrictions to be included in those licenses. It was because of all of the different jurisdictional responsibilities that those agencies have that we came up with this cosponsorship forum and this program.

To give you a brief review of what has happened and what is planned to be happening in the future, we had, on September 12th, 2002, a notice issued of these public and tribal forums, and today is the last one. We had public forums in Milwaukee; Atlanta, Georgia; Washington, D.C.; Bedford, New Jersey; Sacramento, California; and Tacoma, Washington.

Comments on the proposals that we will be discussing today are due on December 6th, 2002. John Clements, who has been assigned the task of working on those

comments, as well as other members of the team, has asked that you submit your comments before December 6th, to the extent possible, so we're making that speech on his behalf.

Later today we will talk more about the December 2002 stakeholder drafting sessions that will be held. In February of 2003, the Commission hopes to issue a Notice of a Proposed Rule Making. In March there will be a series of technical conferences.

I might note that all of you, I think, had the opportunity to get a blue booklet before you came in. If you didn't get one, please get one because we're going to be using it off and on today. The very back of that blue book, the back page on the outside, you'll see a one-page chronology of the events. At the end of the day we'll be reviewing those steps, and you may have some questions about those steps during the course of today.

Following the technical conferences, there will be another opportunity for a stakeholder drafting session. The Commission hopes that they will reach the final rule in July of 2003.

Now, the agenda that we will be working with today is as follows: Tim will, following this slide, give a presentation on how we got here, why we are here, and give you some background information that will help today's session. We have also presentations on the

Interagency Hydropower Proposal, and that will be given by Bob Dach, who is with the Department the Interior, Fish and Wildlife Service. And then the National Review Group has put out a proposal, and that will be presented by Julie Keil with Portland General Electric Company.

What we have done in the last two sessions is that -- at the end of each of the presentations, we've given the participants in the audience an opportunity to ask clarifying questions about those proposals.

I should also note that there are other proposals that have been circulating over the last three or four weeks. The National Hydropower Association has put out a proposal, Pacific Gas and Electric has put out a hybrid proposal. On Tuesday this week in Sacramento, the State of California came up with another proposal.

You're going to hear this more than once today, because it is an important point, that this is not an election. We're not here to select all or one of the proposals that you will be hearing about. The goal that has ultimately come up in the proposed rulemaking that incorporates the best features of all of the different proposals that you will hear about today and in the comments. Okay?

Following those two presentations, we

will this morning give members of the audience an opportunity to make statements to the group. As you know, when you signed in, there was a little block for you to check off so that we could get an indication of how many speakers would like to make a presentation, just for the purposes of making sure that we identify them early on. But also, if there is a large number, we want to make sure we allocate the appropriate amount of time for each speaker.

Following those presentations, we'll break for lunch. Then, as I indicated earlier today, this morning, after lunch we want to have a very interactive, engaged conversation among the participants here today about the different topics that you might want to discuss. As I noted up there on the wall, there are eight suggested discussion topics that we came up with, but you may have your own.

What we will ask you to do over lunch is to think about some additional topics that you would like to discuss. We will list those on a flip chart. After we identify all of the topics that you want to discuss, we will start the discussion on each of those topics.

That is the agenda that we propose today. Is that okay with everybody? Any questions about the agenda format? Okay. With that, I'll turn it over to Tim.

MR. WELCH: Thanks, Rick.

Yeah. I'm Tim Welch from the Office of Energy Projects at FERC. As Rick mentioned, I'm sort of here to sort of kick things off today and just sort of set the stage with what we hope to accomplish today. It's basically answering the questions of not only why are we here but how the heck we got here.

As many of you may or may not know, back in 1991 the Commission received about 150 or so relicense applications in a pretty short period of time. Unfortunately the Commission, for a myriad of reasons that I'm not going to get into today, was unable to issue those relicenses within the two-year time frame prior to license expiration, which meant that a lot of those projects had to go on what was called the "annual licenses." Some of those projects of the "Class of 1993," as they became known -- some of those are actually still pending in front of the Commission even today, going on almost ten years.

After that experience with the Class of '93, a lot of folks at FERC and the resource agencies and the hydroelectric industry -- a lot of people began scratching their heads and kind of saying, "Well, why does it take so long to get a license for a hydroelectric project under the current, traditional licensing process?"

People started thinking a little bit

about -- "Well, you know, what are some things we can do?"

Well, one thing we did was that FERC did a rulemaking and agreed to the alternative licensing process, which many of you are involved in now. The facts still remain, "What about the traditional process? What can we do to make that process more efficient?"

So as many agencies often do, they sort of take a first stab at something. We look to the series of administrative reform efforts with a traditional process. What are some things that we can do without doing a rulemaking fairly quickly that will make the process more efficient?

One of the first things we did at FERC -- we got together with some of the other federal agencies involved in the licensing process, Commerce and Interior and the Forest Service, and we formed what was called the Interagency Task Force, the ITF.

The ITF, as I said -- we got together and we looked at various aspects of the traditional process and produced a series of seven reports dealing with things such as FERC, noticing, how we interact under the Endangered Species Act, how we do NEPA, how we handle mandatory terms and conditions, and we came to some agreement about how we can communicate better and more efficiently in order to make the process more efficient.

That effort alone produced a lot of deficiencies in the process. Now, there was a -- at the same time, under the umbrella of the Electric Power Research Institute, another group was formed called the NRG, the National Review Group. That was made up of representatives from the hydroelectric industry, conservation organizations, and some federal agencies as well. They also produced a series of reports, looking at best practices to help future applicants get through the traditional process much easier.

Now, back in December of 2001, under leadership of our Chairman, Pat Wood, the FERC convened what was called the hydroelectric licensing status workshop. The purpose of that workshop was to look at some of these projects that had been pending in front of the Commission for more than five years and sort of dissect them -- there were 51 of those projects -- and dissect them and examine the reasons why they had been pending for so long and talk to some of the other participants in the process and get a discussion going about how we can move these projects much faster.

Now, a lot of these projects were still pending in front of the Commission because they did not have a 401 water quality certificate. In an effort to talk to states that issued the water quality certificates, we initiated the next round of workshops, regional workshops,

where we actually went out and talked to many of these state agencies to find out how we can better mesh the licensing process and the 401 water quality certification process. In my next slide I'll talk to you a little bit about what we have learned at those regional workshops.

Finally, the resource agencies themselves, most notably Commerce and Interior, also initiated some administrative reforms. Commerce and Interior created a process very similar to the Forest Service's 4(e) appeals process called the MCRP, the Mandatory Commission Review Process. What that did was that subjected those agencies' mandatory conditions that are filed under the Federal Power Act. It subjected those conditions to a series of public review. The resource agencies themselves also have also put in some administrative reforms as well.

Before I go on here, I just wanted to say a little bit about our regional state workshops and about the kinds of things that we heard about the FERC licensing process from the states.

The number one thing we heard from the states was that they felt that if they had more complete license applications, they would be in a much better position to issue water quality certificates in a much more efficient manner. As many of you know, a lot of the states use the federal license applications as the water quality

certificate applications, so the applications serves both purposes.

We pressed the states a little further, and we said, "Well, okay. Let's look at ^ ^traditional licensing process and what about it could we possibly change in order to insure that we have more complete license applications?" The next four bullets here were some of the things the states told us. (Indicating.)

One thing that we talked about was early identification of issues through NEPA scoping, in other words, having NEPA scoping very early in the process before the application is filed with FERC rather than afterwards, and the same with resolving study disputes.

I don't like to say anything to -- you folks in this room are aware of the kinds of conflicts that can arise over studies between applicants and resource agencies and tribes. The states felt that a mechanism to resolve those study disputes, once again, early in the process before the application is filed rather than afterwards would lead to a much more efficient process. They also felt an early establishment of the licensing schedule would also be very helpful of all of the stakeholders in the proceeding.

In other words, having FERC staff involved early, coming out, meeting with all of the

stakeholders in a particular proceeding, sort of laying out the schedule, a road map, if you will -- a road map that would ensure that everyone understands what everyone's role is and the schedule that we're trying to keep.

Finally, the states felt that the Notice of Intent, which is sort of the kickoff of the whole proceeding and the initial consultation package should be filed simultaneously, at the same time.

So keep in mind these four points throughout the day because when you hear about some of these other proposals that various groups have, they've attempted to incorporate some of these ideas into their proposals.

Now, back to why we are here. You know, as I mentioned -- of those administrative reforms I mentioned a couple of slides ago, while they improved the licensing process greatly, at the very least improving the communication between the federal agencies that are involved under the FDA, the feeling at FERC is that that may not be enough. In October and November we kicked off an effort to begin looking at regulatory reform, a new journey.

In other words, at this point we're going to actually look at FERC's regulations and determine if improvements of the current regulation are needed to reduce the time and costs of licensing while continuing to provide for environmental protection and ensure that the

state and federal statutory Indian trust responsibilities are met. That's sort of our guiding theme for this whole movement. Now, I will note that this is very consistent with the National Energy Policy, which calls for a much more efficient hydroelectric licensing process.

We began our journey on September the 12th when we issued a notice to 2,000 licensees and Indian tribe resource agencies and the public to invite you to come to this series of public and tribal forums in order to provide an opportunity for discussions like we're going to have this afternoon.

Now, the notice has also, as Rick mentioned earlier, provided a mechanism to file written comments and recommendations on the need and structure of a new licenses process.

There were two attachments to that notice, and those were two proposals that the Commission had received at the time. One of those proposals is from the Interagency Hydropower Committee, the IHC, which you're going to be hearing from next from Bob Dach from the Fish and Wildlife Service, just noting that the IHC was the successor to the Interagency Task Force, the son of ITF. That was a similar group of people that, again, took another step to look at how the traditional licensing process could be formed.

Now, the National Review Group that I mentioned earlier also continued their work, and at that time they also put forth a proposal for FERC for a new process, and you're also going to hear about that proposal today from Julie Keil here in a few minutes.

Now, remembering, once again, what Rick said, these are just two proposals that are in this notice. Now, since that notice, we have received several other proposals. Most notably, a few days ago we received a proposal from the State of California.

I would encourage you to go on FERC's Web site, looking through the transcripts of some of these public meetings. Those proposals will be attached to a lot of those transcripts. I would encourage you to go and look at those proposals as well as the ones you're going to hear about today and the ones in your blue booklet.

As Rick mentioned, we're not going to pick one of those proposals. What we would like to do at the Commission is take the best parts of all of those proposals and create a super-proposal that we will hopefully put in the Notice of Proposed rulemaking.

Yes, Chris?

MR. ESTES: I'm Christopher Estes with Alaska Department of Fish and Game.

When you're referring to the Interagency

Task Force, are you also including the state mandates work group that also prepared proposals and suggestions, or do you differentiate that?

MR. WELCH: Oh, when I'm talking about the ITF? Yes.

What Chris is saying is that there was a subgroup in the ITF that was made up of several state agencies and a state mandate group. One of their reports was in that seven reports that I mentioned. "Trackable and Enforceable License Conditions" I think was the title of it. There was an effort by the states that were also part of the IFT. Thanks for clarifying.

MR. ESTES: Thank you. And I go by Christopher. Not a big deal.

MR. WELCH: In addition to those two proposals, the notice also outlined a series of nine questions that you'll find -- you'll find the actual notice itself within your blue booklet, and there's a -- we asked a series of nine questions that we would like people to read and consider when you're making your comments, and I'll go over those questions and what subject matter they pertain to here in a few minutes.

The goals for today's forum -- for the next hour or so, there will be a few of us talking heads up here, kind of blabbing about proposals. The primary goal

here is not for you to listen to us, but for us to listen to you. We want to listen to your ideas about the licensing process and what works for you and what doesn't.

We would like you to identify some of the specific problems in the current regulations, and then taking it a step further, to discuss any possible solutions to those problems. If we can this afternoon in our interactive discussion, we would like to translate some of those possible solutions and actual concepts that we can use for the Notice of Proposed rulemaking.

As I mentioned earlier, the suggested discussion topics today sort of go to the nine questions that we asked in the notice. One of the things we would like to talk about today is about integrated licenses processes.

You're going to hear two proposals for an integrated licensing process, as I mentioned earlier, one from the IHC, one from the NRG. We want your feedback on those about what you think of that whole concept.

We're also going to talk about study development and study dispute resolution. Those two topics right here -- those are probably our -- this is our final workshop. Those two topics have probably been the most popular. What's the best way of having a process to develop the information that's needed for a license

application, and what's the best way of resolving disputes that sometimes happen over studies. We'd like to hear your thoughts about settlements. Some of the proposals that you'll hear today, will they foster settlements? Will they discourage settlements?

Time periods: Now, the IHC proposals, you'll hear from Bob, has some very specific time periods in between steps. Are those time periods realistic, or was the IHC out to lunch on a couple of them?

Most importantly, we would like to hear from some of the states and the tribes. What's the best way of coordinating state and federal agency and tribal and FERC processes? Now, as many of you know, under the Federal Power Act, there's lots of different processes going on at the same time. What's the best way we can coordinate those into a licensing process to make the process more efficient?

Finally -- and that has also been a pretty popular topic of discussion -- what's the relationship of any new process we develop? What's the relationship between that and the existing processes? In other words, the ALP and the traditional. So would a new process wipe those two processes out and become one process? Should it join and become a third process? Should it just replace the ALP? We want to hear your ideas about those

types of things.

Let me just finish by saying that the overall goal that we would sort of like to achieve with this whole rulemaking is to come up with a new licensing process that hopefully will do three things:

Number one, we want a process that is relatively easy to understand, that you can look at and understand and understand what your role is and not need a lawyer to explain it to you. That's one thing.

The second thing we would like to do is, we want a process to make our jobs a lot easier. In other words, no matter who we are, whether we're an applicant or we work for a resource agency or we work for FERC or we're a member of a tribe, we want a process that we can all do the jobs that we need to do in an efficient matter.

In other words, let's make sure we come up with a process where people are working in parallel and not sequentially. No group entity or agency should be waiting for another one to get their job done before the next person can get their job done.

Finally, and this is probably the most important, we would like a process that's a level playing field for everyone, where all of the participants have equal access and have equal opportunity to participate in the

process. If we can do all of those three things, I think we will have truly come up with a process that we can say to the Commission that this is in the public interest.

Thank you.

MR. MILES: Thank you, Tim. Bob Dach from Fish and Wildlife Service will make a presentation on the IHC proposal. Before he does, let me make note of two things. One, as you have noticed, to my right is a court reporter. What we want to avoid is having the transcript read "The public." We want to identify the speaker for purposes of the readers of the transcript, not only those who obtain it off the Web page, but also those who will be working on those proposals in the future. What we need you to do each time you speak is to state your name and who you represent.

All of you know that usually a court reporter puts a little diagram as to where people are sitting so after a while, the court reporter can kind of determine -- they will determine who is speaking. Well, in this sort of setting, we can't do that. Please keep that in mind. If we cut you off early on, please don't be upset. I hope I won't have to do that.

The other thing that we want to make sure that we achieve is that, if you use acronyms, please state what that acronym represents. "REA" can mean a couple

things to different people, so we want the readers to make sure they understand what acronyms mean when you use them.

Okay? With that, I'll turn it over to Bob. Bob, it's all yours.

MR. DACH: Thank you. Bob Dach with the Fish and Wildlife Service. I think probably most of you know me.

I've given this a number of times, and the good thing about working with a committee is that after each time I get the benefit of all of their critiques, so you're going to get the best presentation I can possibly give you today.

One thing I do want to make clear is, the IHC proposal is done. We're not going to change anything in it. We're not going to do anything to it. We've developed it with the idea of getting it out there on the street to sort of get people focused on the process, put out some ideas in how we could benefit from the existing process or whatever and then hopefully generate a whole bunch of feedback and input. Then we could take everything in and develop the super-process that Tim was talking about. Just keep that in mind if I start to sound like this is the greatest thing in the world.

In my presentation, I'm going to tell you just a little bit about the IHC. Tim went into most

of it in the objectives of what we were trying to do.

I'll go into the proposal itself, not in a whole lot of detail, but I'll kind of cruise through it just so you can kind of understand it, and then the benefits that we anticipate from that.

The IHC was -- it was a staff effort amongst the federal agencies. There was FERC, Interior, Commerce, and Ag. We also had EPA there and CEQ and an advisory council on historic preservation to give us some pointers as well. Again, there was quite a number of staff involved in this from a bunch of different agencies. We were thrilled we could bring that and come up with a proposal.

What we first wanted to do was improve coordination, eliminate duplication, and reduce conflicts. I think generally we were looking at the better, faster, cheaper strategy. So we tried to put together a process that would take less time and would cost less, but where we would ensure that we had appropriate environmental benefits; environmental safeguarding, if you will.

I'm going to give you the IHC proposal in sort of four chunks. I'm going to turn on this thing -- it's Page C-26. I know you can't see this, but if I don't have it up here, I get lost.

I'm going to go through four basic

steps here, which is advanced notice through scoping. I'm going to tell you a little bit about the study dispute when it comes up in the process, and then study periods through draft, then we'll have what times to get the license.

The advanced notice of license expiration is our Box 0. Three years before the Notice of Intent, it would be that the Commission would send a letter to the licensee with a lot of information that would help the licensee prepare itself for their Preliminary Scoping Document, which will occur instead of the Initial Consultation Document and at the same time as the Notice of Intent. It will have, you know, potential contacts in there -- how to identify issues and all of those sorts of things. The idea is to get together all of the available information that they can possibly get their hands on, so there will be instructions on which agencies to contact and that sort of stuff.

I don't want to downgrade because this is a pretty important step, and we're hoping that it gets everything off on the right foot. When we turn to the Pre-Scoping Documents, one of the themes throughout this is that we try to do everything in a NEPA-like format so that it feeds right into the final NEPA document that the Commission is going to produce. The Pre-Scoping Document would look like a NEPA document. As soon as the Commission

gets it, they would initiate the formal licensing process.

Once they do that, then we would move into the scoping process, which is somewhat standard to what the scoping process is under NEPA. Basically what this whole process does is lay out a series of steps to scope the project, to agree on a study plan, to conduct studies, do a license application, do a NEPA document, and then you get a license. That's the order of events that occur through this maze.

After we do all of the scoping and everything else, we have a couple of opportunities to comment, to get in study requests, to work with each other in sort of a collaborative fashion until we get to this Box 8, which is where we have the final study plan as a result of this process.

From Box 1 to Box 8 is about eight and a half months, so we're hoping that all of the issues have been resolved amongst the parties before we get to this point. On the very outside chance, due to this collaboration, that there's actually a dispute on one of the studies, we have included a study dispute resolution process.

The way that we anticipate the study dispute resolution process working was to be very objective, so we established a set of criteria. The study requests

presumably would be made to these study criteria from the onset. If there was an issue over whether or not the study was required, it would go to this three-panel team -- one person from the agency requesting the study, one person from the Commission, and a third neutral person -- and they would look at the study proposal versus the criteria and make a finding as to whether it satisfied these criteria.

If it did, they would file with the Commission saying that the study satisfying the criteria should be done. If it didn't, they would file a finding with the Commission that says, "You didn't satisfy the criteria, it should be conducted." Then the Commission would make the final decision. They would release Scoping Documents to -- it would include a schedule for the study and the final study plan. That would then take us through the rest of this pre-application process.

One thing I do want to note is that this dispute resolution process was specific between an agency that had a mandatory authority and Commission. The idea behind that was -- the agencies think that, you know, they have to exercise, you know, their authority under the (inaudible) they need to have some information in order to do that.

If the Commission has made a decision in Box 8 that didn't include some of the information they

thought they needed, that was a need for dispute resolution. That issue can be taken care of at that point. Then it will move faster through the licensing process, and it won't result in an additional information request later on.

The study period itself we anticipated two seasons, but as I said earlier, after we scope and develop the study plan that everyone can agree to, it might be a year. It might be three years. It all comes down to what the issues of the project were. If you have a little project with no issues, you're going to move through quicker. If you have a big project with a lot of issues, then you will probably anticipate these time frames may be a little more accurate.

During the study period, we do have these specific reviews. After the first year, the group would get back together and they would look at the information. They would make any course corrections that were necessary. The dispute resolution would be there. After the second year, they would do the same thing.

We have what we call the final review. I think it's Box 13. The final review itself is where everybody could sit down, take stock of the information at hand at that point in the process, and determine whether or not they actually have the information they need in order to continue the process. If so, it results in the draft

application. The bullet here is that the environmental section would look a lot like the Commission's NEPA document.

The final applications through licensing is after the intervention, comments and recommendation. The reason I have this bullet on here, by the way, is because this is when the ex parte thing would kick in for those folks that are thinking along those lines. The formal proceeding goes back at one -- the ex parte, and I think it's Box 17 or 18 on the chart.

To go through now the NEPA process and get the license, we have two tracks. We have Track A, which would include a draft NEPA document. Whether it be an EA or an EIS, it was going to have a draft go to Track A.

Track B was if a draft wasn't necessary. We anticipate that most of the projects would need to have a draft, so we would most of the time be on Track A.

There are small projects that don't have any impacts. You know, we scoped them, there was nothing there, nobody showed up, whatever. They don't need to have a draft EA, so we would just get the EA -- if there was a condition and somebody prescribed something in the EA, the NCRP process would still be followed and then the Commission

would make any changes in the final licensing.

Otherwise, if we're doing the draft, you get the draft NEPA documents and you get our preliminary terms and conditions. You get our final terms and conditions. The Commission would produce a final NEPA document and a license would come.

We're hoping, of course, by this point, because we had an agreement on scoping and issues, and we did the studies that everybody wanted, and we made sure -- at this point, we're hoping that the process moves relatively quickly.

The anticipated benefit is, of course, one NEPA document. Everybody uses the same paper document. Everybody is in agreement with the information that's in the NEPA document, and then we base our decisions on at least the same set of information.

Early identification of issues, early dispute resolution: We could have set time frames. I didn't go over that a whole lot as I was working through here, but we had some hard and fasts -- the NOIs between five and a five and half years out and the license applications at two years out.

We divided that amount of time up into the issues that needed to occur. In order to keep the thing on schedule, the process is expected to continue and

move forward under this proposal.

We would have current filing of the agency conditions so the Forest Service, Commerce, and Interior would all file at the same time so everybody would finish at the same time. We're hoping that the whole process itself would ensure that we had the information that we needed, not only for the remainder of the license, but for also any settlement negotiations that folks wanted to make. I think that is it. I can clarify some stuff, if necessary. If there are issues, we're going to spend all afternoon talking about various issues, so -- but if you're unclear on something --

MR. MILES: On that point, what we've tried to do is keep the questions to clarifying questions because we want this afternoon to be a substantive discussion, so please, clarifying questions. And we have Ken out there.

MR. ESTES: Hi. This is Christopher Estes with the Alaska Department of Fish and Game.

When you considered your two-year period for the data collection, did you take into consideration locations such as Alaska where we have little to no hydrologic data? Perhaps you could give us a plus or minus 50 percent here -- without collecting data, which in the lower 48 take, you know, sometimes 20 years to settle and

in the hydrologic community 5 years. Have you taken that into account -- or salmon life cycles of five to seven years -- for your data needs?

MR. DACH: What we did is, we included the two-year -- we knew when there were planning purposes, and we anticipated that issues like that would be identified during scoping. Then the result in the study plan that was developed also would reflect those kinds of issues.

MR. ESTES: Thank you.

MS. JANOPAUL: Christopher, this is Mona Janopaul with the Forest Service.

Perhaps, in considering that most projects in Alaska are unconstructed projects that would face original licenses, one of the things that you all might consider making in your comments or discussing this afternoon on one of those issues about how many processes we have is whether this process will work only for relicensing situations for new licenses for existing projects or if there needs to be something different if you're considering an original project.

I ask you to consider that either in your verbal comments or your written comments when considering relationship to existing processes.

MR. METZGAR: Roy Metzgar, City of Everett.

Is ESA embedded in this? I'm assuming it is, but just as a clarification, is ESA embedded in this?

MR. DACH: ESA is actually not embedded in this. It's not as if we -- in essence, we knew that it was out there. We know that there were a number of other processes that were out there that we had not included.

We were kind of seeking input and were getting a bunch on how the super-process, as Tim put it, will include all of those things. But this particular proposal doesn't have it in.

MR. FRYMIRE: Bill Frymire with the Washington Attorney General's Office.

This study dispute process looks like study disputes between the federal resource agencies or the tribes and, I guess, probably with an applicant. By that language, did you include anybody else in that study dispute with the applicant, or were you thinking of another process for those types of disputes?

MR. DACH: Actually, it's between the federal resources agencies and tribes and the Commission. It's not between the applicant. The eight and a half months ahead of that was the time for everybody to agree. If they can't agree in the final study plan that comes out from the Commission, then if it doesn't include something

that one of the resource agencies or the mandatory conditioning needed in order to make their decisions, we identify it as a dispute between that agency -- requesting agency and Commission.

We had not included in this process any sort of other dispute resolution that might occur between the parties during the previous eight months.

MR. MARTI: Hi. This is Jeff Marti with the Department of Ecology's water resources program.

My question also regards the study dispute process, and Bill kind of hit on it. Specifically, do you anticipate that it would apply to study requests made by a state that it would need for the purposes for the 401?

My other question on the study dispute is, can you give me an example of a neutral third party?

My third question is --

MR. DACH: I can only remember two at a time. The first one was --

MR. MARTI: Would it apply to --

MR. DACH: Would it apply to the states. Again, we wrote it from the federal perspective, this proposal. It could apply to the states. If the states thought that was a good idea, that's the kind of input that they would send in, or if they had another study proposal -- or another dispute resolution process that would

work for them.

We're not saying that it couldn't apply to the states. The way that we had written it, it was for the resource agencies with mandatory authorities.

The neutral third party -- we smile when we say that too. What we had batted back and forth was -- certainly the federal agencies all have study dispute resolution professionals that are on staff. We consider them to be relatively neutral in these things. They're not there to benefit the agency or anybody else.

If there's a disagreement, let's say, between the Fish and Wildlife Service and the Commission, the neutral party may not be from the Fish and Wildlife Service but may be from the Forest Service. We think there's a pool of folks out there, and we had sort of left it at that.

MR. MARTI: I would be willing to offer myself.

MR. DACH: Yeah. We've actually gotten the same -- we got that same comment from American Rivers at a previous meeting.

MR. MARTI: My final question was, would it be kind of a majority rule, you know, two out of three votes?

MR. DACH: Yes. The idea was that

that three-member team made a finding. We didn't give them the option of saying, "Well, we can't decide."

MR. MARTI: Thank you.

MS. JANOPAUL: And the Commission makes the final --

MR. DACH: Yeah. Jeff, just to point out -- that's just a finding. That finding then goes to the Commission who would then make the final decision.

MS. THOMAS: Liz Thomas, Preston Gates and Ellis.

I was wondering -- how do you anticipate this would play out if somewhere toward the end of Part 3 or the beginning of Part 4 someone comes up with a recommendation, not a mandatory condition, but just a recommendation for a change from the operations proposed up until that point? If that's going to be changed in order to have a new impact, which in turn can trigger a request for additional studies, how do you expect that would be handled?

MR. DACH: In our view of the rule, they came to the table in Box 0, so that wouldn't happen.

If it did happen, I have no idea. We haven't really discussed what would happen at that point.

MR. MILES: Any other questions?

MS. JANOPAUL: As you look through

these boxes in your handout, you'll see there's a good bit of flexibility between Boxes 10 and 15, but I totally agree with Bob. The idea was to figure out when the Commission starts working with the licensee or the applicant in Box 0, how to reach out and bring everybody in and early identification of stakeholder and early identification of issues and through scoping to see if we can minimize that kind of circumstances. Our later boxes do allow for that kind of flexibility, if it's significant.

Please submit criteria and suggestions as to how to handle that issue in your comments.

MR. STILLZ: Will Stillz with Preston and Gates.

Bob, my question goes to the dispute resolution process. Is the proposal that -- once the Commission adopts a staff recommendation and that staff recommendation is on a factual matter or a scientific and technical matter, all of the agencies are thereby bound by that finding in formulating their subsequent recommendations, or do they reserve the ability to reconsider when they later submit their mandatory terms or engage in consultation under the ESA? How does that work?

MR. DACH: The idea was that the setoff findings would help establish the record. All of that information was on the record, and it was on the record

that this neutral body came to this conclusion. It's not necessarily finding on the rest of the process, but it establishes sort of a pretty high bar that would have to be overcome by anybody who wanted to go against the findings of this neutral party that decided two and a half years ago that it wasn't necessary, for example.

MS. MALDER: I'm Nan Malder, Acres International. One question I have for you -- everything you said so far deals with agencies and FERC. What happens where you have local counties, local water districts, other local entities involved who are very much dependent upon the project, and they don't have a formal role? Have you thought about how you are going to integrate them?

MR. DACH: When you say they don't have a "formal role" --

MS. MALDER: They don't have any conditioning authority, but they take the water from the river to serve all of their load.

MR. DACH: Of course all of their -- that stakeholder group, they would be involved in the entire process the same way everybody else is involved in the entire process. What this proposal -- specifically this study dispute resolution part of this proposal -- is specific to was the federal resource agencies with mandatory authorities.

MS. MALDER: I understand that. I'm suggesting that you think a little bit broader than that.

MS. JANOPPAUL: If you have a proposal, that's welcome.

MS. MALDER: Okay.

MR. DACH: Yeah.

MS. MALDER: Second question is back here where you are coming up with your description of your project and your defining the geographic and temporal scope and the definition of accumulative effects. It would be very, very helpful if there was more guidance in your proposal on how and when those decisions would be worked out, particularly where you have projects located on one side of the state or in the north of the state and the benefits occur in the south of the state.

MR. DACH: The way that I would -- I just want to remind you of one thing, that the proposal was out there to sort of stimulate these kinds of discussions, so those issues as they come up -- we've been encouraging folks to make sure that they provide them in their comments to us so we can consider them when we actually write the rule.

MR. CLUBB: Bob Clubb, Douglas PUD.

I was wondering what the consequences of missing some of the time deadlines might be. For example,

going from Block 4 to Block 5 is 45 days, but that might not be possible to get the information completed in 45 days.

MR. DACH: Yeah. We have left that -- we're aware and we've heard in various forums that maybe those time frames between those steps isn't appropriate. We were concerned with that. We put a question in the notice that said, "Are these time frames appropriate?"

You know, how we move forward is completely up to the comments that we get in from folks. If it make sense to have kind of a schedule -- if there's criteria that would apply towards a request for a time extension if people don't want to have specific dates, you know, we expect to utilize all of that kind of input on how we move forward from here.

In this proposal, we just have these hard-and-fast time periods, and we are anticipating that that will be before. Whether or not that actually will be the reality of the situation --

MR. CLUBB: Are there any consequences for not meeting those time lines?

MR. DACH: We haven't discussed whether or not there would be consequences.

MR. MILES: Any other questions? Okay. Then why don't we turn to our next speaker. Julie Keil will make the presentation on behalf of the National Review

Group proposal.

MR. (Unidentified): Did you print out the PowerPoint for the NRG proposal? We have the IHC, but --

MS. KEIL: No, I didn't. I'm sorry. That's an error on my part. Somebody said they were left over from yesterday. Greg Carrington had a few copies of the PowerPoint.

If you folks really have a burning desire to have them, give me your business card, and I'll be sure and stick one in the mail to you or e-mail anyone.

Since I was on a 6:00 a.m. flight this morning from Portland, putting things in my bag wasn't really high on my list.

MR. (Unidentified): Perhaps you could put any PowerPoints or comments on the Web site?

MS. KEIL: You have to ask Tim that question.

MR. WELCH: Well, both of these proposals are on the Web site in the notice, but you're asking about the PowerPoint presentation. Yeah, I think we could probably do that.

MS. KEIL: You guys already have it, right, Tim, the PowerPoint?

MR. WELCH: Mm-hm.

MS. KEIL: Okay. Good morning. As Rick said, my name is Julie Keil. I work for Portland General Electric Company. At least when I left Portland today that was still the name of the company. We're under a little bit of stress at the moment.

I'm here today to represent the proposal of the National Review Group and the proposal for a coordinated environmental review relating to licensing.

Just real quickly, what is NRG? The NRG was a task force of licensees and public interest groups. Bob Dach has mentioned to you that the IHC proposal was from the federal perspective. That sort of comment tends to raise the paranoia level in licensees a little bit and I think in the conservation community as well with the idea that the federal agencies are going to go behind closed doors and fix our problems.

This was really an effort to bring together a group of folks who were willing to have the discussion in a collaborative setting and in a more or less open forum to try and figure out what we thought some of the solutions might be to our collective licensing problems.

The group's mission is really to improve licensing outcomes. We tend to get there through process recommendations, but it's really about making the outcomes better. Tim said that with FERC there was about three

things making the process so that it was easy to understand, a process that makes our jobs easier and a level playing field for everyone. Those are all really noble goals.

The NRG's goal, on top of all of that, is to make sure that we get licenses that are better for all parties involved, not just a better process to get there, but better outcomes at the end, both more widely accepted environmental protection and enhancement measures and more acceptance of the interest of the licensees and applicants in having a project that continues to provide benefits to customers and continue to operate economically. Those things are very important to the folks who are at NRG. We think you guys have good ideas and will help us get there.

This group, in a variety of forums, has been working since 2000 to try and come up with some of these solutions. We focused first on the voluntary. While you might think that coming up with a list of things that were voluntary for people to do would be easy, it was very painful because, you know, once you write those things down, you get the "yeah-buts." "What happens if..." And "What happens if..." And "What if I don't want to do it?" We were successful there. Those guidelines are available now on FERC's Web site, and we hope people are still using them.

This proposal goes beyond the voluntary and really looks too at some significant changes in the way licensing is done as it changes the law, rule, and policy.

Just real quickly, look at the breadth of the participants here. We have a wide range of folks from the conservation community, a long list of industry participants both from the more liberal side of life and some from the less liberal side of life, and a very skilled facilitator. I think what level any of these presentations go past without thanking NOS and Kearns & West for all of the work that they put into this process in terms of getting the parties together -- we also had a crew of agency advisers. As you look at this list of folks who participated with us in meeting -- I want to sort of be clear about their role here. They were indeed advisers. They did not comment specifically on any of the terms of the proposal.

I characterize it as one of those sort of hide the button games, you know, when they tell us if we were warm or cold, but they wouldn't really participate in a way that was specific in the proposals. That allowed them to maintain their neutrality and kept us out of hot water with the Federal Advisory Committee, which seems to trip us every time we turn around these days.

Very much like the IHC, the NRG hopes

that the proposal that we have on the table will serve as a discussion tool to put some good ideas out there that people can think about and integrate back into Tim's super-process.

It not intended to be an entire licensing process on its own. As with the IHC, it's not going to be modified as we go forward. It is what it is at this point, and we are hopeful, though, that there are some good things in there that people will carry forward.

It represents some compromise on the part of all folks who participated in that process, so if you look at it you might say in some parts, "Well, what's in it for an applicant in this part," or "What's in it for a licensee?"

We hope that there's a balance of give and take, that there's some things that the licensees or applicants of the NRG agreed to have in the proposal which wouldn't have been their first choice but hopefully they get a benefit somewhere else in the process and hopefully there's counterweight to that.

Again, it's not really intended to be a complete licensing scheme. I don't have the little chart on the wall with boxes. We did not spend very much time at all on time frames. We sort of integrated a process to move it from step to step. My own personal approach to things is -- that's fine with me. I'm not a boxes and

lines person. Eventually we're going to have to figure out where all of these ideas fit together in time frames.

As I said, the overall approach of NRG was to try to come up with a process that would lead us to better licensing outcomes. Once we broke that overall focus down, it was really two overlapping problems.

We seem to have -- and this comes back to our old favorite study development and study dispute resolution. Project effects seem to be studied repetitively. We couldn't seem to break our way out of the cycle, "Yes. We have enough information." "No, we don't." "Yes, we do." "No, we don't." Those kinds of disputes have a tendency to taint the entire licensing process, whether you're doing a traditional process or an applicant prepared EA or even a third party Environmental Impact Statement under the alternative licensing processes. So you have a problem of having those disputes carry all the way through the process and really taint people's ability to work together well.

The other problem that we identified was that FERC and the federal agencies tend not to work very well together around the Environmental Analysis. Some of that has to do, again, with the question of available information, but that really was one of the keys that we were trying to address, which led us basically to the same

place that the IHC landed, which is, what you need here is a more coordinated process.

I think it was Bob Dach who mentioned part of the goal here is to get things off on the right foot. I've done, I think, every kind of licensing process that the Commission permits. We have the traditional. We have the applicant prepared EA. We have a third party driven EIS. We also have a removable, but that's a lunchtime topic, not for here.

Lack of coordination is a problem in all of those processes. We have not only the federal process going on, but we also, in Oregon at least, have a state process that runs parallel. For water rights and our state 401, we have endangered species, as many licensings do, so we have a Section 7 consultation problem where it has to be taken care of. We also have Section 106 under the National Historical Preservation Act issues to take care of, preferably in some sort of coordinated way. An environmental process, as coordinated, gives us a number of benefits.

We hope it will improve agency participation in the process, eliminate late discovery of key issues -- and there was an issue raised here earlier about, "Well, what happens if you get a different proposal late in the game?" The NRG doesn't deal with that

specifically, but I will tell you that that's going to happen in processes, and that's part of the nature of all of this.

If you do one year of studies, let's say, and your hydrology from that tells you -- maybe it even tells the licensee that there's a better way to run the project than what they proposed initially, you're going to have to go back and reconsider the necessary information. I think that's just a fact of life, if you're sort of modifying the proposal as you go along.

We wanted to make sure we had a combined NEPA process for consulting agencies and for FERC and for those efficiency benefits and for better decision-making. (Inaudible) conflicting environmental documents.

We have a situation under the current alternative licensing process that if you're doing an ALP where your proposal -- if you're doing an EIS one, at some point you have to produce a thing called a "Preliminary Draft Environmental Impact Statement."

That's way too many modifiers for me. I don't know about anybody else. There's got to be a way to sort of collapse those analyses down, not have to repeat those documents over and over again and take up everyone's time with sort of repetitive review cycles of written word

product.

We would also like to reduce the uncertainty for licensees or applicants about whether or not you've met the study requirements. The NRG proposal, as does the IHC, include the dispute resolution process for study disputes.

The one that is proposed by the NRG is somewhat more inclusive. It's designed to take everyone's study disputes, not just ones between the federal agencies and the Commission. It also proposes -- and we can talk about this little bit in more detail -- some will have a binding effect on participants so that if you go through the dispute resolution process and the applicant does the studies, then the applicant has comfort that they are done then.

You know, but for some openings, there will be a presumption in the process that if you do the study plan as proposed, you are not then subject to additional information requests from agencies later in the process.

That's one of those quid pro quos that licensees get as a function of this sort of thing. You go through a more intensive dispute resolution reprocess, but you also gain certainty at the back that you do indeed have the information that everyone agrees you need to move

forward.

In a coordinator review process, you need to provide procedures for cooperation including those dispute resolution tools. Reducing the late information request from agencies is a part of that, and to delineate responsibilities for each agency for information gathering and document drafting.

The NRG includes a cooperative drafting of the Environmental Analysts Documents. That's a little bit of a radical idea and when we get to that part, let's talk about that a little more.

Some key elements: Early consultation. Again, this is, I think, in line with what the IHC proposed. It requires very early information from the licensee or the applicant. This is one of those ones that maybe doesn't work as well for original licensing as well as it does for new licensing, but the NRG proposal removes what is now the draft application almost in its entirety up to the very beginning of the process. We wanted people to have enough information on the table to make sure that scoping was done right early on, and that requires the party who knows the most about the project -- that would be the licensee -- to put that information on the table in a way that's acceptable to everyone and really moves the process forward. That's a real important attribute and one of those

things that, you know, someone says, "Well, I don't want to do that early," but it is very key to get the scoping done right to put that on the table.

The NRG proposal includes the use of MOUs and MOAs between FERC and the federal agencies to establish how those folks are going to work together and -- particularly as we get into the analysis pieces so that we understand what everyone's role is and to understand how the record is going to be developed.

Here's our old friend, the study and study dispute resolution. Our goal, as was the IHC's goal, was that there would be adequate and appropriate information for everyone in the process. There's a certain comfort level for licensees, you have to admit, to having FERC say, "We don't need it for our NEPA analysis, so we're not going to make the licensee do the study."

That sounds really good on its face until you consider the fact that you've got mandatory conditioning agencies, ESA agencies and all sorts of folks who need information to drive their analysis, including 401 agencies. If you don't provide that, all you're doing is creating that festering dispute that arrives all the way through your licensing process and really doesn't help you get to a better outcome. Mona Janopaul once described it as if you were trying to buy a piece of clothing from

someone. If you don't give them your measurements, you're going to get a muumuu. If you want something that looks a little better on you, you need to provide enough information for those agencies to craft you a condition that actually fits your project, and that really requires that you provide the information.

Now, I will tell you that I have had my disputes with mandatory conditioning agencies about information, and that's why there's a dispute resolution process involved here. These issues get very emotional with folks, and they're very expensive for licensees. When folks talk about just the agencies resolving that, I think it's easy to forget that it's the licensee that's going to get the bill at the end of the day for that study, so it's important that there be a fair dispute resolution process around what information is actually required.

Then the next one actually -- we got to sort of -- at one point we reached a dead end, and that's one of our overall goals is to not have process dead end. The dispute resolution process by the NRG actually goes up to the chairman and secretary level in these worst outcomes. My sense is that that would only happen about once for a federal staff person to take a study dispute up to their secretary level. I don't think they would be in that office again on that sort of thing.

Development of NEPA documents and license conditions: The NRG's proposal at its core separates analysis from decision to allow everybody to use the same EA or EIS without unnecessarily buying into FERC's look at what the preferred alternative is.

It is really designed to facilitate joint ownership. This idea comes from the experience of lots of folks, both on the applicant side and the conservation comment side, about joint drafting of documents and how much more stable those documents tend to be if everybody's got the pen in their hand as opposed to just one party. It's designed around recognizing mutual expertise amongst the agencies and having a jointly drafted NEPA document. FERC would produce draft license articles. This is something that doesn't happen now, but that helps the separation between analysis and decision.

Lastly, a lit bit about key time lines. Again, I don't have any boxes to show you, and we don't have any sort of 35s or 45s here. It's designed to fit within the existing statutory requirements, so a five-and-a-half-year trigger date for the NOI, a two-year date for license application, and hopefully a license issued by the time the license expires.

I have to say, I'm not sure that fitting within the existing statute that is making this

within five years should be one of our collective overriding goals. I have heard that California has put out a proposal that is six and a half years. While we all want to be faster, better, smarter, these are difficult issues, and we're making decisions that are going to affect the nation's resources for 30 to 50 years. It pays to take the time to do it right, but you also want to use that time efficiently. You don't want to spend that time rehashing the same disputes over and over again.

This proposal does allow for two study seasons. That seems to me to be the sort of minimum that people agree that these things ought to allow for. Having been at least in one licensing process for ten years where the studies are still going on, I tell you, that for some projects, it's not enough, but in terms of crafting a process, it's probably the right balance.

As with the IHC, it requires some discipline and some focused action among all parties. Everybody is going to have to get in and roll up their sleeves and take these things to completion; otherwise, none of those processes will work.

I think that's it.

MR. MILES: Okay. Are there any clarifying questions? Okay. If there aren't any, it's time for our morning break. Why don't we get back here at ten

of 11:00. Okay? Ten of 11:00. at that point, we'll be taking the presentations by the speakers who have signed up.

If you have changed your mind and want to make a presentation, please let me know. Okay? Thank you.

(Pause in the proceedings.)

MR. MILES: We have four presentations that are going to be made, and the first one will be by Terry Flores with Pacificorp. Terry, are you going to need the overhead? You can go ahead and put the overhead up.

Okay. If you have any question or clarifying questions, please do the same format. Okay? Terry?

MS. FLORES: Okay. Thank you, Rick.

Good morning. I'm Terry Flores, hydro licensing director from Pacificorp. We're headquartered in Portland, Oregon. Pacificorp is a member of -- and participated in the National Review Group. We belong to the Natural Hydropower Association, and we also participated in the License Reform Task Force.

I need to start out, of course, by saying that the industry really appreciates the leadership that this Commission is showing in initiating this rulemaking. These issues have been around for a whole lot

of years, and we really appreciate the fact that the Commission has stepped up and is really seriously looking at trying to enact some reform.

I also want to say many, many thanks to the FERC staff. You folks are the ones that are going to be doing the real heavy lifting and trying to bring some discipline into this debate and discussion, so I really -- I wish you well and Godspeed.

Anyway, let me tell you a little bit about PacifiCorp. We are one of the largest utilities in the west. We have over a million and a half customers spread out through six western states. About 10 percent of our generation portfolio is actually generated from hydropower. We have 20 FERC licenses. Our portfolio, I like to think of it as -- it a challenging portfolio. We have projects that range in size from less than a megawatt to over 240 megawatts, and they are spread throughout five states, so we have a lot of geographic area to cover.

They're all in some stage of relicensing, and we have employed what I would call, I guess, traditional plus process, ALPs. In fact, we are in 3D commissioning processes.

Now, while only 10 percent of our overall generation portfolio is hydro -- and of course I readily admit that I'm very biased working in the hydro

department. It has a special place in our hearts.

We're actually a thermal utility, but we absolutely rely on our 10 percent hydro to meet our customers' peak energy needs. It's the one resource, even wind and gas, that we can turn to and store up overnight. In the morning when people plug in coffee pots and head for their showers, we can turn to it to meet those customer needs.

I've been asked today to speak to NHA proposals, so I have a bit of an NHA hat on today. I will attempt to provide an overview of that proposal.

It is a work that is in progress. NHA will submit some comments, some detailed comments, on December 6th, and they intend to participate in workshops.

Quite frankly, if you have any specific question on the NHA proposal, one of the best people to ask that of is sitting right down there, Julie Keil, because she's also been participating in the actual drafting of some of these proposals.

In a nutshell, NHA's proposal is to promote a single licensing system that includes several tracks that you can -- if you can see that, it's captured up there on that schematic. The idea is that, depending on the circumstances that a particular project may have, the issues a particular project may have, the stakeholders that

they may have, that licensees would have the ability to tailor and select a process that would best suit that project.

The process potentially starts in the same place as some of these other proposals. Pre-Notice of Intent meetings between the licensee and stakeholders, strong up-front FERC involvement with the idea that they need to establish a plan with a time line, identify key issues and respective roles and responsibilities.

In the end -- it ends in about the same place, with FERC connecting or confirming its NEPA work. As you'll see from that, there's essentially four different tracks. The NHA proposal retains the traditional track of relicensing with NEPA scoping and filing the post-application submittal.

It also provides a track. I believe it's Track B for an abbreviated process that includes less formal consultation. That process might suit smaller, less controversial projects that would have fewer issues and stakeholders. It retains the current ALP or settlement track, and it also has a track that would be an integrated process track, incorporating some of the elements of the IHC and NRG proposals.

Now, there's been a lot of discussion, and what I thought I could offer today, really, in terms of

talking about the NHA proposal is kind of a real-life example of why we think it's important. There is some flexibility and options for licensees and making choices amongst these various tracks.

I'm going to talk a little bit about our Klamath project because I think it's a good illustration of a pretty challenging project. We're relicensing. It's 151 megawatt project located on the Klamath River. It has seven dams and associated facilities. It's located both in Oregon and California.

In this process we have, of course, a number of federal agencies with mandatory conditioning authorities. We need to get two state 401 certifications. We have a number of tribes involved both upstream and downstream including the Klamath, Hupa, (inaudible), Karuk, and Shasta.

We have endangered fish upstream, suckerfish, and we have endangered fish downstream, coho salmon. We have over 50 active stakeholder participants. The meetings are very large. We have to get a very large room.

Of course, our projects are located in the middle of the Klamath irrigation project where Bureau of Reclamation is responsible for allocating water to project irrigators, endangered species, tribes, and wildlife refuges.

For any of you that have picked up the paper in the last, I don't know, couple, three months, you know that one of the big problems down in Klamath is that there are huge disputes over how a limited amount of water will go around and who gets it. Needless to say, obtaining a license for this project is going to be more than a little challenging, which is why I have someone else working on it in the department and not me.

We did decide to take a more traditional approach initially, and that was in recognition of the sheer number of stakeholders, the issues, operational complexities of the projects, and plus a lot of contractual complexities in that basin.

That said, in response to stakeholder input, we've modified the traditional process so that we could incorporate a lot more public and stakeholder involvement. We are using facilitation and mediation teams to help us assist in study resolution and put our draft license applications together.

With that said, I'm going to -- bear with me a little bit longer. The company's desire would be to try and reach a settlement at Klamath, but, frankly, we're not convinced that that is possible. In fact, in 2001, an assessment was done on the prospects of reaching a collaborative settlement on water adjudication issues in the

Klamath basin. I'm just going to quote from that. This says, "Conditions at this time are not conducive to broad stakeholder mediation effort in the basin."

There is significant polarization between certain stakeholders accompanied by deep suspicion and lack of trust. These dynamics mean that, given a choice, stakeholders are unlikely to be willing to take the kind of risk needed to reach speedy resolution of issues.

MR. MILES: Can I make one observation, Terry?

What we've been trying to do throughout these conferences is avoid project-specific issues. While we can use them as examples, we don't want to get into a situation of who said and what said, you know, for a particular project during these presentations, but they can be used as generic examples of what we're trying to achieve ultimately in this process.

MS. FLORES: Right. So all this said, we really do believe that some of the modifications that we've made to the traditional process down in Klamath is absolutely going to help us, both in making an assessment of whether we move to settlement and also lead to a better application and a more successful outcome.

My point, though, is that if at the outset -- since there's been so much consternation over

"Shouldn't we just have one process and not a lot of other choices?" My point is that if our only options were -- for example, an ALP, at the very beginning, given the characteristics of this project -- and again, I just provided it as an example. All of the issues that play in this basin -- it's really hard to ascertain whether a settlement would in fact be possible.

That said, by embarking on an ALP where, of course, you front-end load all of the NEPA work, stakeholders put just a ton of time and sweat equity into it. It's very possible that we could end up not reaching a settlement and with FERC in fact having to go back and either redo or do much of the NEPA work at the end anyway.

All I'm trying to say here is that it's clear that hydro licensing is going to continue to be a very emotional process. It's going to continue to require inflection analysis of large amounts of scientific data. For some projects it is probably going to take a little bit longer than for others.

NHA's approach conceptually is simply to allow different tracks to suit different projects, simpler process for less controversial projects while accommodating a more extensive process for more controversial projects.

Again, if you have any real specific questions, I guess we can get into that this afternoon a

little bit. Julie Keil is going to --

MR. MILES: Are there any clarifying questions about the National hydropower proposed licensing process? Okay. If there aren't any, then let's move on to the next speaker. Thank you, Terry.

MS. FLORES: Thanks.

MR. MILES: The next two speakers are Polly Zehm and Tim Sterns.

If a member of the audience would like to have a written statement copied into the record, hand them to me during the course of today's session and I will ask the court reporter to include them in the record -- the transcript. Since I'm doing that, I'll go ahead and start that now.

The first document is a one-page letter from the State of Washington, Office of the Governor, signed by Governor Gary Locke, dated November 22th, 2002. It's to the Honorable Pat Wood, Chair of the Federal Energy Regulatory Commission.

The second document is from the State of Washington Department of Ecology dated November 22nd, 2002, to the Office of the Secretary at the Federal Energy Regulatory Commission, signed by Polly Zehm. It has attached to it a 7-page attachment entitled "Washington State Agencies Response to FERC's September 12th, 2002,

Advanced Notice of Proposed Ruling." I'll ask the reporter to include that.

MS. ZEHM: So the good news is, I'm not going to read all seven pages of the comment letter. I will, however -- I highlighted some of those comments, and I would very much, in large part, let FERC know how important it is to Washington State that FERC is out here and the other federal agencies and all of you to get the states' perspectives on this proposed rulemaking, so I am going to read Governor Locke's letter. It's very short.

"Dear Chairman Wood, I want to welcome the Federal Energy Regulatory Commission to the Northwest as you discuss in improving the process for licensing hydropower projects. I appreciate the consultation efforts you have incorporated into developing new regulations as I believe states, tribes, citizen groups, and licensees all have much to contribute to the Commission's deliberations.

"The Departments of Fish and Wildlife, Ecology, the Interagency Committee for Outdoor Recreation, and the Attorney General's Office in Washington State have devoted enormous effort over the past two decades to individual private licensing activities including participating in numerous traditional and alternative licensing processes. These experiences have given us a strong knowledge base from which to offer recommendations

about building a better approach.

"I would encourage the Commission to adopt rules that reduces the time and cost of licensing, ensures full environmental protection and allows thorough consultation with states, tribal and non-governmental parties. I am confident this can be achieved through a process that one, coordinates schedules studies and public involvement; two, integrate Environmental Impact Assessments; three, defines roles and responsibilities; four, clarifies dispute resolution mechanisms; and five, adequately funds state agency participation.

"My administration is looking forward to working closely with your staff in the coming weeks and months to craft a regulation that will meet the nation's need for hydropower effectively and efficiently." Signed, "Sincerely, Governor Gary Locke."

Again, thank you. We very much appreciate FERC coming out and appreciate that you chose Washington State for this workshop.

Now, to get a little bit more in substance to our comments. Again, I just want to highlight some of our key points. I know we'll have an opportunity this afternoon to talk in more detail about some of these.

A couple of general points I want to make at the outset is, we very much support good

coordination of studies so that they're done in a timely and reliable manner and that they -- that's what's going to provide the information base for a good relicensing process and for the state and local agencies to be able to carry out their permitting responsibilities and other non-mandatory responsibilities in a timely way and in a responsible way and avoid appeals. That process does need to be integrated so that local, state, and federal Environmental Impact Assessment needs are met.

I can tell you from recent experience that if the Federal Environmental Review Document does not meet the state's needs under the State Environmental Policy Act are corollary to the federal NEPA. We are really looking at an absolute minimum of an additional nine months just to do our state environmental review process. That is a critical, critical improvement that needs to be made in the current process so that we avoid that duplication of effort, time, and expense to the applicant. That is one of our most critical points is the single Environmental Review Document needs to serve all levels of government.

Jointly establish schedules will greatly improve efficiency in the process. We need to be explicit of the roles and responsibilities of different parties and specifically where state and local governments have responsibilities. Those authorities need to be respected.

The time frames need to be incorporated into whatever kind of new process we develop. It's absolutely important that local government and tribal needs are fully considered in development of schedules.

We need to have funding so that we can participate. Everybody wants a collaborative process. Collaboration requires collaborators. The two impediments in this state to being able to do that are -- we have no funding mechanism specific to doing -- carrying out our responsibilities within the relicensing process or licensing process.

We have some utilities who are working with us to provide funding and helping us to integrate both the Fish and Wildlife needs and other water quality and water resource needs at the state level, but we have a lot of projects who are dissatisfied with how we're able to participate and we believe that has the mechanism to help solve that problem, and we ask that you continue to work with Washington State and other states who need that to find a way to provide adequate funding for the needed level of participation.

Also, licenses -- any regulatory action is only as good as the commitment compliance with it. I know that something that hasn't come up in a lot of discussions to date, but an approved licensing process is

important, as Julie Keil from Portland mentioned. We also need better environmental outcomes. A big part of that is making sure that there is a commitment by FERC to issue the license assuring compliance without license over time.

I'm going to pause for a minute as I move through some pages here.

I know the role of settlements is a big issue that's been discussed in all of the groups today, and the notice for proposed rulemaking asked the question, "Should a licensing -- a new licensing process include specific provisions to accommodate settlement negotiations?" Washington's answer is "Yes," provided the rule's explicit that the settlement process must accommodate agencies independent authorities.

It would not be appropriate for FERC to establish settlement provisions in the rule that precludes due process to parties and other provisions that are explicit in state processes such as water quality certifications.

A new licensing process should strongly encourage settlement, but should not require it. I think we all understand what the benefits of reaching settlement are. I think it certainly makes FERC's job easier in the end because the license conditions are largely presented on a silver platter.

A lot of the potential controversy around the project is hopefully taken care of if a broad set of stakeholders are at the settlement table. Again, there are a tremendous amount of benefits to settlement, but there are cases, and we recognize it, where a settlement is just not possible, and it is not appropriate to mandate it.

Also a critical point around settlements is, FERC needs to allow the time necessary to create a settlement agreement without putting negative pressure on the process of deadline. I think one of the things that has to be built in, in terms of flexibility is -- while we're trying to make this process faster and more efficient, there has to be some accommodation to parties who are in good faith settlement negotiation to allow them the space to reach a final settlement.

Sometimes pressure is the last thing a negotiation process needs. It would be foolish for FERC to apply so much scheduling pressure to a situation that it breaks the settlement process midway through.

We are not, of course, advocating that settlement negotiations be allowed to go on forever. We do not in any way advocate that -- that licenses be able to expire and get into this annual licensing process that I think everybody recognizes as a pretty negative situation. But again, we're looking for some space in the process in

order to provide for a good healthy settlement that everybody is committed to in good faith in the long run.

Again, settlement, for Washington State anyway -- participation in the settlement processes requires that we get some help finding a mechanism to fund participation because when we have to make a choice about whether we are going to put our resources into fulfilling the mandatory conditions, that's where we're going to have to go, and sometimes that means we're going to have to decide not to go to the settlement table.

Information development or study plan development, we also agree that a huge -- a huge benefit would be met by all parties agreeing early on what kind of information needs there are, what the schedule is going to be, what constitutes adequate information. Again, I -- as a speaker noted earlier this morning, sometimes you need information to know what information you need or you get different study results than you expected. There has to be some accommodation to bring in a request for studies a little bit later in the process than would be the best-case scenario. We also believe there needs to be a mechanism instituted by FERC to ensure that studies are completed in a timely manner. We have a whole -- we have a set of criteria in our written comments around information development.

Study dispute resolution also I know is one of the key topics in all of these forums. Washington supports a mechanism for a dispute resolution in which FERC plays a role; however, any proposed rule should be clear that FERC may not determine what information a state needs for the purpose of deciding on water quality certification requests, whether to concur with postal zone consistency requests or other state requirements. However, we certainly wouldn't object to FERC playing a facilitation role in resolving study disputes.

I think the bottom line here for Washington State, for example, with 401 certifications, is, if an applicant refuses to do a study, that we need to issue a 401 cert. We're either going to issue a very Draconian kind of certification that's probably going to be appealed by the applicant, or we're going to have to deny it. I think there's a lot of incentive for folks to provide the information that's requested, and those requests need to be taken very seriously.

Time periods -- Washington acknowledges that we're in a major reg reform effort in our efficiency in this state, which certainly recognizes that this aspect of the rule-making process is critical to really accomplishing streamlining and for the world to recognize that streamlining is taking place. I think it's important

to create or establish a process with time-line goals.

Again, also noting that sometimes there has to be flexibility in those schedules when things don't exactly happen as planned.

I'm going to wrap up here shortly.

State processes -- a couple of notes. We have a concern with the NRG proposal as it appears to require the states to submit final 401 conditions and other state permit actions before an environmental review is done or before a final NEPA or a final SEPA document is issued, and that's prohibited by state law, so that is unworkable for us.

In the IHC proposal, as I read it, looks like in one of those little arrow boxes, the states have 30 to 90 days to issue all of their final determinations, so make a SEPA adequacy determination, determination, coastal zone determination, 401 certification, and for the local agency to issue their shoreline permit. It's not clear to me that that's workable, and I think that's the value of forums such as this to, at this point, get the State's input on what a reasonable time frame would be. I'm sure that will be a topic of conversation this afternoon.

Early FERC involvement is essential. I think we have an example on a project, which I won't name, a couple of months ago where folks have sat down with FERC

staff included in the meeting. This is early in the process. Start to develop schedules and time lines, note key milestones, who needs to be involved. It's a tedious process to do that, and you end up with lots of boxes and arrows, but it gets people's full commitment to moving through the process. I think it provides the clarity and commitment of all of the parties. Again, what I want to stress here is that FERC's staff also would be involved in that process.

Finally, I'm going to wrap up with, how many processes should there be? Should there be one? Should there be three? There are a number of reasons from our point of view in Washington why a clear single process which incorporates the best elements of existing and newly proposed processes make sense.

I know we're not taking a strong stance on whether single or multiple processes or approaches is most appropriate. We continue to recommend that the principles of adequate funding, early and regular coordination among all parties, establishment of agreed upon time frames, opportunities for settlement and enforceability and public involvement be used in determining the best approach or approaches to licensing.

Thank you very much for the opportunity to comment.

MR. MILES: Thank you, Polly. Our next speaker, Tim.

MR. STEARNS: Good morning. Thank you for the opportunity to comment. My name is Tim Stearns, and I'm with the Energy Policy Division of the Office of Trade and Economic Development for the State of Washington.

I would first like to thank my colleagues who worked together to draft joint comments, as the State has tried to speak with one voice on a number of very important matters. I would also like to thank the folks from the NRG and the IHP and FERC for having put together proposals that hopefully we can refine into something that will be workable for all of us involved in the process.

The agency I work for has a number of goals, and they are to manage and to maintain and improve the quality of life for the State of Washington and try to do that with planning, action, and investment. We try to encourage sustainable development that's compatible with healthy growing communities. We're trying to capitalize on trade and economic opportunities for products and services.

My division's goal, the Energy Policy Division -- we have a parallel, but more specific obligations to maintain a stable and clean energy supply, monitor changing both supply and demand, understand and

encourage efficient use and thoughtful use, and more importantly these days, manage security emergencies of energy supplies, and finally, to try to guide investment and policies in the energy future of our region.

It is appropriate that we meet here in Washington as FERC notes in the discussion here that hydropower is 5 percent of the nation's supply. Washington's 10 federal dams and 91 nonfederal dams that are regulated by FERC constitute 25 percent of that 5 percent, but the state of Washington relies for 85 percent of our energy on hydropower. We also have thousands of dams, thousands of culverts, and thousands of structures that affect our rivers well.

Our goal in this process is to retain these key economic advantages that we have from hydropower and to use them wisely, but we also have to recognize that rivers play key biologic functions and societal functions as well. In the human development, not just hydropower has affected the health of those rivers, but the species dependent on those rivers and the human communities that interact with those rivers.

We're in a real state of transition with the way we manage rivers. The FERC process and these 91 dams that you pay attention to are only part of that context, and that's what I want to particularly emphasize as

the broader context here.

We need this process to help us address clean water and water quality needs, help us address declining species and water shift help, help us meet our state responsibilities of instream flow and wildlife. We want to meet our federal and state laws and our trust responsibilities and work with you to meet those. To do that, we need a process that provides us certainty and some predictability, and it is not one that you can gain. It's got to be clear.

We're committed in state government to speak with one voice. And as government, we need to speak with our citizens with one voice. There is nothing that gives government a worse reputation than to have black helicopters come from every different agency to offer confusing advice to our citizens and businesses, and we have to grow beyond that.

Secondly, we need to -- for my purposes and specific responsibilities, we need to understand and manage that energy supply. We need to be able to factor changes into it in our planning, to operations, to markets, to transmission, to coordinations, and we need information. It's not to be able to fold so our original planning models, whether they're for water quality, water quantity or energy or planning. To date we get inconsistent

information, and we have to come up with a more standardized format.

Polly emphasized, and I would like to reiterate that this process has to be coordinated and integrated with the other goals we all have. It's got to be an efficient process, but it also has to produce durable results. State tribal participation needs to be supported to be an integral part of the process.

And finally in that regard, when we do issue permits and conditions, they need to be enforceable. They need to mean what they say and say what they mean. If there are problems, we need to have reopeners that are workable, that address problems because we only get one chance every generation to address these projects.

The State of Washington and the region is investing hundreds of millions of dollars to manage and restore our rivers. These investments have to be protected, and they have to be part of orderly transitions. We are sacrificing dollars and investing dollars from local, state, federal, tribal, from taxpayers and rate payers and private interest as well to finance water shift improvement, project modifications, operation changes.

These things are going to affect businesses, utilities, agricultural operators, and communities. They're going to form investment decisions, so

we need to make sure that we understand the way we're going to effect those investment decisions because our economy is very dependent on it. We don't have a bottomless checkbook to finance and improve rivers, and we only get one chance, especially with these projects, once a generation.

Finally, we need an honest broker, but with Washington's energy supply so dependent on hydropower, FERC raises questions to us about the honest broker role.

The California energy debacle, FERC did not help us very much, did not manage it well. The ability of FERC to manage a crisis was very much called into question. The ability of FERC to represent state and citizen interest is called into question. The ability of FERC to structure markets that work, that are fair, that protect our regional responsibilities is challenging. Recognize we have some concern about an agency that wants to be in total control.

Finally, we look forward to working with you to develop an efficient process that meets all of our multiple responsibilities and objectives and makes these rivers work for us and for the country. Thank you.

MR. MILES: Thank you. Our next speaker will be Nan Malder. Nan, please?

MS. MALDER: I think I can say that everybody has said what I was going to say.

MR. MILES: Do you want -- do you need more time?

MS. MALDER: No. I'm just kidding.

Good morning. I'm Nan Malder. I'm with Acres International. We are a firm that has specialized in hydro for over 77 years. We started with the first powerhouse -- first underground powerhouse at Niagara Falls.

My claim to fame is -- I was born and raised in Grand Coolie Dam where my father was project manager, so I came by this honestly. I then went to work for BPA. My father thought that I was falling into some situations where it would be better if I was with the Bureau of Information.

I came back home 20 years ago and I have 16 relicensings under my belt. I'm currently working on relicensings in Alaska, in Washington, and we just got a 50-year license -- it was a birthday present to me from FERC -- a 50-year license for a project on the Ponderay that occupied 2.4 acres of land inundated by the Juanita Dam. I kind of wondered if that really needed to go through relicensing. My client wanted me to make that point today.

I'm also working on relicensings in Oregon and California. I represent municipal and state applicants. I represent water agencies. The notes that I'm

going to give you are a result of telephone conversations with several of my clients, so they're all kind of blended together.

Basics: The biggest problem, both from the agency side and from the applicant side and from the affected parties, which I'm including the water district, is this perception versus reality of what is sufficient data. That's just the first one.

The second one is, what do we mean by accumulative effects? How do we define geographic scope particularly where you're dealing with water that's collected in one part of the state and sent by pipe to another part of the state.

How do we deal with the temporal scope? I heard just a few minutes ago that people were concerned that this was your last change for 40 years. Well, I know you can go in and complain to FERC and get all kinds of things changed. You don't need to worry about that. I used to be on staff.

One thing I would recommend to FERC would be that you have, in addition to the ADR Crash Statement that Rick has, that you have a technical group that would be available to come out and sit down with an applicant and with the participants in the process and address those sufficiency of data and accumulative effects,

geographic scope, and temporal scope up-front so the applicant and everybody around the table understands what FERC is going to require.

Accountability: Having worked for agencies, I know that we are not often sufficiently staffed and that the funding is always a big question on October 1 and whether we're going to have a program or not. That's something that is difficult, and I don't know that we can do anything about that. That does affect our licensings.

The other problem we run into are where our resource agencies are required under their own statutes to gather data. They don't have the budget to do it, so they ask the applicant to collect the data.

The third thing is that need for a level playing field is essential. If you're going to be talking about an ALP, we need a process where the participants can better understand the process. All of the participants -- participants are not equal. They're not equal in authority, and they're not equal in their resource, and it becomes a game.

When I started the ALP process, I was pretty pleased. The first one I worked on was in New York State, and it was a high level of trust. We had American Water -- whatever it is -- AWA and New York DEC and my client, which is the city of Watertown. A bunch of people

sat down and we turned in the first post-filing agency applicant prepared EA and settlement, which we reached at the table with FERC present in Washington. It was a good experience. I can't say that for what I'm working on right now, guys.

Recommendations: One, agencies who plan to condition a project need to come to the site more often than just the first site visit at the kickoff, in particular where you have multiple purposes that are served by the project and where you have conflicting resources like hatchery and wild fish. You really need to go out there and walk through it and look at it more than once. I know it's a problem because of lack of funding, but that's just a major problem that I've run into, most recently in Alaska.

At the scoping, we need to have the FERC staff identify the studies they need. It's kind of hard when we get a major request for information from FERC staff after we have provided the draft. It would be much better if they would also give us their requests for information at the front end.

We are in a big battle down in California over what is and what is not jurisdictional and subject to FERC compliance. We've had a very difficult time getting an answer out of the Commission as to where does the line get drawn in flood management that's controlled

under other authorities and water supply that is under the state water rights.

We need better guidance on what to include in the socioeconomic analysis in relicensing. Again, in California, I'm working with a client, 27 water agencies, and the socioeconomic questions come up. We have a FERC adviser, and he said, "Well we really don't have any advice on socioeconomics at relicensing," and we need it.

I think I already said this, but we need a better definition and better guidance on accumulative effects, geographic scope, temporal scope. We need a better understanding of how much is enough information and how many seasons, how many locations, and what kinds of data is required. We also would like to see the Endangered Species Act integrated at the scoping stage.

On the structure of the ALP, some of the problems I've run into are the confusion around the table on how consensus is reached and voting. Well, can I bring 20 people in from my organization and outvote you? Then they ask, "Well" -- they ask the Department of Water Resources, "Well, how many people are you going to bring in to vote?" That sets up a very contentious situation immediately.

There needs to be a better integration of the role of other agencies. I'm talking here about

counties, water agencies, and flood management districts. I've started representing water districts because I realized they had no idea what the relicensing process was, to help them be a better participant. That's become a new group that I like working with. It sort of goes back to my roots.

Integration of publics: I know that they can be a nuisance. Believe me, I've run into plenty of them, and they're nuisances. I think I've been a nuisance myself, but again, integration and the role of the publics. When you have organizations in the local community, they feel that they need to get together and have five different names for organizations and have the same people but a different person representing each one of them because they really feel like they don't have a place at the table. We need to think how to better integrate that.

Conditioning, accountability: All parties, they need to be related to the project, to its presence and its operation. We need timely responses when we ask questions about conditions that agencies are proposing. I understand the problem with State of Washington, but I do encourage you to look at integration of the 401 and CCMA earlier than after the FERC's EIS. I think that you'll be a lot happier.

Adapted management versus certainty --

that is last one of my concerns. My clients want to know, are we going to be able to generate power at a rate that our rate payers are going to be able to continue to have a solid economic base in our community? For water suppliers, it's, are we going to be able to continue to receive the water that we have under our water rights? The biggest risk there is not FERC, it's ESA. That's why I would like to see ESA brought up in the scope. I thank you very much.

MR. MILES: Thank you, Nan. Our next speaker is Greg McMurray.

MR. McMURRAY: Thank you.

MR. MILES: Okay. Let me identify to be put into the record after this presentation a two-page document, four pages captioned, "Oral Comments of the State of Oregon in Tacoma, Washington, November 22, 2002 Federal Energy Regulatory Commission Advanced Notice of Proposed rulemaking."

MR. McMURRAY: Thanks. My name is Greg McMurray. I represent the State of Oregon. Thank you for the opportunity to comment on FERC's proposal to modify the present hydroelectric licensing review processes.

I am going to read four pages. I guess the best part is that I'm hearing it as you're hearing it. That's not totally true. I got to read it

once.

The State of Oregon is presently an active stakeholder in seven FERC hydroelectric relicensing processes. Oregon's five principal natural resource agencies spend about a half a million a year on federal project relicensing, and this participation is supported through annual fees and negotiated contracts with the applicants. To fulfill its obligations, the State of Oregon has developed a statutory process to provide timely, coordinated and meaningful feedback to applicants and FERC. So we do fund our state process.

A general comment here is that, while both the IHC and the NRG proposals represent significant improvements to the FERC licensing process, neither proposal fully integrates the State's authority and interest. The states are not just parties to FERC proceedings, we are regulatory partners that implement delegated federal authorities under the Clean Water Act and the Coastal Zone Management Act. Moreover, states have independent authority to issue water rights and authority under the Federal Power Act to make 10(j) recommendations. The State of Oregon urges FERC to address deficiencies in the IHC and NRG proposals as follows:

Oregon believes FERC should modify the current licensing process. While we will be submitting a

more comprehensive review of your issues in writing by December 6th deadline, we want to address a few primary concerns here. Modification of the process should include, among others, the following elements:

I'm going to list five, and then I'm going to go through the five with some examples from actual projects that hopefully we got sanitized in the last ten minutes. So here's the take-home message, the five priorities issues:

1) Scoping before the final application issuance;.

2) Improved study dispute resolution process;.

3) Locally directed settlement agreements;.

4) Increased document review times over current FERC regulations as well as those proposed in the IHC process; and.

5) Better coordination with the 401 certification process.

I'll briefly go through each element in light of Oregon's experience, and then make a recommendation.

One, FERC should apply conduct scoping before the final application is issued.

When FERC initiated scoping at a certain project in Western Oregon, following submittal of the final license application, there were many unanswered questions regarding project impacts and needed mitigation. FERC spent many months analyzing the application and comments from stakeholders before it issued an extensive list of additional study needs.

In response, the applicant initiated a multifaceted watershed analysis that attempted to address FERC's study request. This effort ultimately took as many years to complete as pre-filing studies and cost as much or more to the applicant. State agency participation of a study design and review for both the pre-filing and watershed analysis phases resulted in heavy workload for this single project over an extended eight-year process.

**Our Recommendation:**

To avoid these kinds of issues, scoping should be initiated near the beginning of the licensing process rather than at the end, as is typically done. Early collaboration in scoping and developing NEPA documents would help ensure that the final documents meet everyone's needs, reduce duplicated efforts, and substantially diminish additional information and study requests after the application has been filed.

Two, the study dispute resolution

process should be improved:

The State of Oregon is presently working with an applicant who has a bi-state project and has adopted a "traditional-plus" relicensing process, which incorporates many of the features of collaborative stakeholder participation to pre-filing consultation.

In response to a somewhat general Initial Consultation Document, Oregon agencies as well as other participants provided the applicant with a list of issues and study needs and objectives. The applicant responded that it disagreed with the need for certain field studies such as fish passage evaluations and proposed instead to conduct literature reviews.

Oregon attempted through meetings, phone calls, e-mails and written comments to convince the applicant that field evaluations and computer modeling were needed to make fish passage determinations.

Oregon preferred to work directly with the applicant rather than to elevate this issue to a third party, which would be FERC, which would ultimately promote adversarial rather than collaborative relationships.

Unfortunately, we have been unable to convince the applicant to conduct the studies we believe are necessary. We are quickly approaching the end of second stage consultation with no study to evaluate project impacts

on fish passage nor information to compare passage options.

This example is not uncommon. One of the chief causes of delay in the current process is that parties spend months and years arguing over study proposals. Then, either the applicant does not begin the study until the end of the second stage of consultation or, alternatively, the applicant begins to collect study data without consensus on methods.

When the final application is filed, key project impact studies have been conducted, and participants lack information needed upon which to evaluate the license application. This results in parties filing additional information requests, which are a further cause of delay.

Neither the IHC nor the NRG proposal adequately address resolution for study disputes. In particular, the IHC proposal fails to address how state agencies with recommending authority under Sections 10(a) and 10(j) would participate in study dispute resolution.

**Our Recommendation:**

The dispute resolution process should be modified to provide assurance that study disputes are resolved early in the process while recognizing and deferring to the agency's expertise. In addition, disputes with applicants over studies should be resolved by the agency with mandatory authority, rather than by a body under

FERC's control. Finally, there should be some appeal procedure built into the process.

Three, a modified licensing process should provide for locally directed settlement agreements:

We recently concluded a settlement agreement on a project located on a major river in Western Oregon. A settlement agreement was critical to ultimate resolution of many complex issues and included the state agencies, the federal land management agencies, and the US Fish & Wildlife and National Marine Fisheries Services.

Through the settlement agreement, consensus amongst these parties was reached on major issues such as dam removal and fish passage requirements that otherwise could have lead to lengthy delays associated with the legal appeals of both FERC's decision as well as federal mandatory conditioning agencies and state decisions such as the Oregon DEQ 401 certificate and the Oregon Water Resources water right.

Settlement agreements amongst stakeholders avoid conflicting conditions between the federal and state parties and have the added benefit of allowing limited resources to be spent on project benefit rather than litigation.

Our recommendation: We recommend that both the traditional and alternative licensing processes

include provisions to accommodate settlement negotiations.

The provisions might include the following: One, a 12 to 18 month "time out" for parties to negotiate a settlement and submit to FERC as a preferred alternative for NEPA analysis; and second, guidelines for settlement.

Fourth, FERC should increase document review times:

While Oregon agrees with IHC's interest in reducing delay in the relicensing process, we do not agree that these short periods for review and revision of study plans, draft applications, and terms and conditions will result in efficient licensing decisions.

The State of Oregon specifically supports: Earlier NOI filing, draft application filed one year before the final application, and a 120-day review period on the draft application.

Earlier NOI filing: Hydroelectric relicensing issues are complex and often require more than two years of study in order to get statistically reliable results. As a case in point, any studies that rely on survival of juvenile anadromous fish to adult stage can take up to five years for one generation. As a result, the sooner the licensing process gets under way, the better. We support the proposal for an earlier Notice of Intent filing.

Adequate review of draft application:

We are presently reviewing an estimated 30,000-page draft application for a three dam project. FERC allows a 90-day public comment period. This review period is simply not a reasonable period of time, for a number of reasons:

First, it is insufficient time to begin to read a technically complex document.

Second, preparation of comments that must be in coordinated with an average of five state agencies and sometimes more requires additional time to allow each agency to review the document, prepare comments, get internal agency review, and share comments with other state agencies, and resolve any outstanding conflict.

Finally, it is insufficient time to not only analyze the document for deficiencies, but also prepare terms and conditions. States have limited resources for review and generally more than one project to review at a time.

Our recommendation: Requiring a draft application at least a year in advance of the final application with at least a 120-day review period after the draft application is submitted is recommended. Such modification would not only provide the state adequate review time, but allows the applicant sufficient time to review the comments and modify the final application in

response to those comments.

Fifth, modification to the existing process must affirm the states' 401 water quality certification review process and improve coordination with this process:

During relicensing of another project, because of 401 applications was not filed until after the draft application was released, the 401 permitting agency, that's the Oregon DEQ, was put into a position of requesting new information from the applicant after all of the studies had been completed. This caused a delay in project relicensing. Earlier completion of water quality studies and integration with the pre-filing consultation process would have substantially reduced in efficiency and delay.

Our recommendation: Having a factual record during the development of a 401 certification is critical to the states executing their responsibilities, making their decisions and defending those decisions in state administrative and judicial processes.

We believe that the process works best if those studies are done up-front. We also propose that that requiring a draft 401 application to be submitted with the draft application would help the permitting agency identify gaps and other information necessary earlier in the process.

That concludes the State of Oregon's oral comments. I would like to point out that we believe our comments to be entirely consistent with the California proposal that was announced and presented to FERC on Tuesday.

As I mentioned earlier, Oregon will provide complete and substantive comments to FERC in advance of the December 6th, 2002, deadline. Thank you again for your attention.

MR. MILES: Thank you, Greg.

Our next speaker is Brett Swift.

MS. SWIFT: Hi. I'm Brett Smith. I'm with American Rivers. We're involved in relicensing all around the country including a number here in Oregon, Washington, and Idaho.

American Rivers supports the Commission's efforts to develop a final rule that both improves the timeliness and cost-effectiveness of the licensing process while maintaining environmental protection.

I want to echo, I think, what Julie commented about earlier regarding outcomes. I mean, ultimately we're interested in this process because we care about what actually happens on the ground and the environmental protections that are implemented for our rivers to improve the health of our rivers. Our goal is to really

improve the environmental decisions and decision-making, which in turn should limit disputes and delay.

I have just a few comments, and American Rivers and the Hydroform Coalition will be submitting much more extensive ones by the deadline. Just a few things I wanted to highlight:

We do believe that there is a need for a new relicensing process as illustrated by the prevalence of annual licenses that are issued. We believe that the Commission should adopt a single process, one that replaces the traditional and the alternative licensing processes while taking the best elements of both, including the Environmental Analysis Document and the encouragement of settlement agreements.

Because hydro projects do vary significantly, in terms of the scale that impacts the controversy, surrounding that, the process must allow for some flexibility to deal with those differences, but we do support a single process.

A few key issues, and one of the Commission's questions related to what key issues the process should address -- I'm going to highlight just a few. Some of them are already highlighted in both the IHC and the NRG proposals.

First is the failure to accommodate the

multi-jurisdictional nature of relicensing process, in particular, the analysis and decision-making by multiple federal and state agencies and tribes.

Any new process must recognize and respect the various regulatory authorities that come into play in the relicensing process. A couple of ways to possibly address that: The new process should promote joint development on a single NEPA document upon which all decision-makers can base their decision, so it's got to look at, for instance, what the State needs for its Environmental Analysis review.

Any cooperation that there is in the development of the NEPA documents must not preclude an agency's ability to become a party to the proceeding. The energy proposal provides some additional detail on that issue.

Related to that, and I think you've heard it a number of times today, is that we strongly encourage early FERC involvement in the proceeding, scoping of issues, identification of information, and that kind of thing.

The second key issue is the failure to identify, implement, and analyze relevant quality studies in a timely manner. Problems with lack of adequate information in the early stages carries forward throughout the entire

process leading to delay. A couple of ideas to address this is an optional Pre-Notice of Intent, meetings, and communication with stakeholders. The NRG proposal provides some detail on that as well.

The new process should call for early development of a comprehensive study plan consisting of a minimum of two field seasons of study. The study plan should be collaboratively developed and should reflect the information needs of the various agencies with decision-making applications.

There should be collaborative review as the study plan is implemented that could potentially result in modifications to that plan. Importantly, we encourage development of a much more robust initial information document, whatever you want to call it, that is filed simultaneously with a Notice of Intent. It should include all information on current conditions, and even a proposed study plan so that the study plan can really focus on the two years and can really focus on addressing and identifying protection, mitigation, and enhancement measures.

The final key issue is lack of a comprehensive schedule that includes all of the known and anticipated actions leading to a final decision including those of other agencies, the Clean Water Act certification, ESA consultation, and that kind of thing. We recommend that

at the outset such a schedule should be published and updated periodically and to ensure that we stay on track with the schedule as disputes that arise should be resolved as they arise.

Another issue that the Commission requested input on was the issue of settlements. We believe that a new licensing process should include specific provisions to accommodate settlement negotiations.

Settlements are an important and useful method of working cooperatively to develop appropriate terms and conditions for new licenses.

However, the continuing uncertainty over the Commission's view of settlements on the implementation has a chilling effect. Commission's made it clear that I believe there are limits to what settlement matters are appropriate for inclusion in a license, but hasn't made clear in identifying what those elements are, so I think someone else mentioned earlier a guidance on settlement documents would be -- should be included.

In addition, related to the schedule that we -- that should be developed at the outside, that schedule should include a time frame for the settlement negotiations. They should integrate into that schedule and should be encouraged generally only after appropriate information development and not earlier in the process when

the information hasn't been developed. It should be set forth in the schedule that way.

I think those are the main issues that we wanted to highlight, and look forward to further discussing this afternoon.

MR. MILES: Thank you, Brett. Are there any other speakers that would like to make a presentation?

What we would like to do at this time -- Ken, if you could do this. We did this in Sacramento, and it worked fairly well. What we did is, after listening to the speakers make their presentations, we came up with a suggested list of topics that we might want you to think about over lunch, but they're not the only topics. In fact, we would encourage you to think of other topics or even ask us to take some of those topics off because maybe they've already been discussed in some detail or there may not be a need for them. Our goal is to cover as many topics as you would like to cover with the time that we have left this afternoon.

Now, what we did in Sacramento was -- at the start of it, we added some topics based on feedback we got from the audience. Once we got that list of topics, we sort of went through those and said, "Of the ones up there, which ones would you like to address first?" Because

we came up with a range of topics and because some of the topics were -- the discussions were so engaging, we weren't able to go through all of them. So we want to make sure that we tackle the ones that are the most important to you. Okay?

So these are the ones that we came up with based on the comments we've heard from today, not from past sessions, but today.

Time studies, role of local entities, settlements, flexibility to complete, funding of license participants, time lines, compliance and enforcement, FERC's role as a technical group to explain process to help identify study needs, guidance on how to address socioeconomic issues, guidance on cumulative effects and how that can somehow be incorporated into the process, ESA early in scoping, study dispute resolution.

As you also know, on the two walls to your right and to your left we also have these other suggested topics up there, so if you could let us know which ones you want to talk about. If you think about between now and when we get back after lunch, we'll take five or ten minutes to go over the list.

As indicated, this is just some of the thoughts we put down and are more than willing to start over on a clean slate if you like. Okay?

It's 12:00. You want to make it 1:15?

Does that sound reasonable? Okay. 1:15 promptly, please.

I'm giving you an extra few minutes, so let's make it 1:15.

Thank you very much.

(Pause in the proceedings.)

MR. MILES: Okay. Thank you. We can get started. I've been asked to take a vote. I'm not being the mediator here, but I've been asked by somebody to take a vote. We did this in Sacramento. What we would like to do is ask you a question. Would you like to see one process or two?

MR. BLAIR: One or multiple?

MR. MILES: One or multiple? One with some flexibility. Okay? And then multiple processes. All of those in favor of one process with some flexibility. All votes in favor of one process with some flexibility, could you please raise your hand? Sixteen? Okay. Sixteen.

All of those who would like to have multiple processes? Four. Okay.

MR. MILES: Okay. All right.

Undecided? One. Okay.

Well, thank you. Okay. Now, as I stated before lunch, we came up with a list of topics. Of course some of them we want to talk to you about, but we've

had an opportunity to think a lot about what topics you would like to discuss. If you don't see them up there, we'll put them up here. We'll find room because I think that some of those we can probably combine them, like, for example, guidance on a socioeconomic and cumulative impacts.

Any new topics that parties, individuals, or entities would like to put up on this list?

MR. FRYMIRE: I'm Bill Frymire with Washington State Attorney General's Office and I represent the Department of Fish and Wildlife.

I think two easy or smaller improvements that maybe just discussing them -- maybe just by noticing them would be enough of a discussion, but I think a review -- a periodic review of the service list in an official proceeding so that we could ensure that the service list is up to date and does not carry people who are no longer part of the process would be helpful maybe every five years.

The other thing is -- some examination of the FERC decision or notice issuing process by which a decision is dated a certain date but doesn't get out of the door at FERC for another five or six or seven days and that time counts against the parties who have to respond to that decision.

I do not follow all of the FERC

decisions on the Web minute by minute, day by day. I follow stuff by getting it in the mail. When I get a notice that something happened yesterday and the FERC notice came out two weeks ago, and it only got to me, you know, a day after it happened -- I think there's room for improvement there.

MR. MILES: Notification. We talked about that in California. Off the top of my head, while I'm thinking about it, why not have e-mail addresses on the service list so when a notice goes out to U.S. mail, it can also be sent at probably the same time by e-mail? I don't know what people back in Washington would like about this.

MS. JANOPPAUL: Clarification question.

MR. MILES: Yes?

MS. JANOPPAUL: Regarding your Statement of Periodic Review of service lists, do you mean service lists, or do you mean the so-called FERC mailing list? Are you talking about parties who intervened somehow losing their status in the proceeding?

MR. FRYMIRE: In my work -- in representing my clients, I think -- I only work with the service list. That's what the department files -- that's who the department serves when it files in proceedings, so I don't use the other mailing lists, but there are certain long-lived processes in Washington which have very long and

outdated service lists, people who would come to us repeatedly from agencies and other interveners. I think just a periodic -- just a postcard or a notice every five years that identifies your two representatives, your principal and your attorney or something like that, leaving out some of these people who have left years ago.

The service list, in answer to your question -- the official service list is the one I'm worried about. Who we need to serve when we're serving, you know, 30 parties only some of which are still active?

MS. JANOPPAUL: So you would vote in favor of an accelerated, more efficient process which wouldn't lead to years of service lists?

MR. MILES: All right. John?

MR. CLEMENTS: This is John Clements from FERC. I don't know if this helps you too much, Bill, but what we rely on now is people to write to the Secretary when names change and come in and come out.

People regularly do that, so the service lists don't just -- they're not frozen at a point at the beginning of a proceeding. They do change over time. Maybe we need to be doing something more proactive, but they're not frozen at that time.

MS. JANOPPAUL: To add on to John, I think the Commission has done a very good thing. On the

Web page it's made it much easier for you to go in and keep up your representatives on the service mailing list.

It's one of those things, really post-9/11 that I applaud the Commission for is -- you can go in and update your service lists. I think the Commission is also moving forward on that ability for the mailing lists.

MR. WELCH: Tim Welch, FERC.

One of the things that came out of the Interagency Task Force was that, within regards to the mailing lists, as far as resource agencies, especially when state agencies and federal agencies are concerned. When FERC sends out that initial Notice of Intent, we were going to attach the state and federal mailing list to it -- to the federal agencies to ask that very question, to please update this because this new proceeding is getting ready to begin. That's one safeguard.

As far as like individuals, it's a little more difficult.

MR. CLEMENTS: Just a quick question following up on that. Do you know -- is there a limit to how many parties? I've seen in certain proceedings, as the party intervenes or announces their representatives, they've gone beyond sort of what I thought was traditional, and then turning into principal, and there are now many

representatives. I was wondering whether that was --  
whether there was any rule on that, or is that appropriate?

MS. JANOPPAUL: FERC reg in -- is it  
2000, Section 2000? I think they give you the option of  
serving a party or their -- it used to be -- the term  
legal representative.

MR. MILES: I think the rule, if I'm  
not mistaken, John, allow two people to be on the service  
list, but the practice does sometimes get more than two.

MR. CLEMENTS: I think the Secretary  
just puts two names on it.

MR. MILES: Okay.

MR. CLEMENTS: You can ask for 50  
names, but I don't think that's what happens.

MR. MILES: Okay. Any other topics  
that anybody would like to add to the list?

Okay. Looking at the list, what we did  
in California, we took a vote as to which ones the parties  
would like to address first because it was a rather long  
list, and there was no guarantee we would get through all  
of the items.

We want to get to those you think are  
most important, so what we did was, we took a vote on each  
one. All of those who would like to -- maybe you can, you  
know, raise your hand only three or four times. If you

raise them every time, it won't work.

All of those who would like to talk about the original licenses, time to do studies, can you raise your hand? Seven. Okay.

Role of local entities? Two. Okay.

Moving on. Settlements, flexibility to complete, how many would like to talk about settlements? Thirteen? Okay.

Funding of license participants? Wow.

Eleven. Okay.

Time lines. Time periods. Twelve.

Okay.

Compliance and enforcement as a result of process. Who would like to address that? Zero. You can take that off. Delete it.

FERC technical group to explain process.

Not only process, but what role FERC may have early and throughout the process. Who would like to talk about that? Any thoughts on that? Discussions? No? Okay. You can sort of put a zero on that one too. Okay.

FERC to be present to help identify study needs early. Who would like to talk about that? Eight. Okay.

Guidance on socioeconomics? Two. Okay.

Guidance on cumulative effects? Two.

ESA early in scoping process. How many? Four. Okay.

Study dispute resolution. How do you resolve disputes involving studies. Who would like to talk about that? Fourteen. Okay.

Review of service lists and notification improvements? Okay. One.

MR. (Unidentified): I consider that one resolved. We have discussed it.

MR. MILES: Is that fair? Okay. Let's cross it out. As we go through this process, if you think of something else that you want to talk about, add it to the list. All right?

Let's begin with No. 1. That's been one of the top subjects in all forums -- all of the different forums that we've done. Study dispute resolution, how should we resolve disputes involving limits, using studies, scoping studies, you know, what should they address? Any thoughts? Who would like to begin the conversation? We had fourteen hands. Yes, Tim.

MR. WELCH: I guess I would like to maybe ask some of the state folks, given the dispute resolution process that you've seen in the NRG and IHC proposal, how would you -- I guess, how would you see the state, given your role as both a 10(j), FPA

responsibilities, 401 water quality certification responsibilities, how do you see yourselves, if at all, fitting into a study dispute resolution process? I guess I would like to ask that question.

If you've given it any thought either now or in your comments.

MR. FRYMIRE: This is Bill Frymire.

Maybe before, as I think about that, could you explain your experience with what FERC has done, just in general, how FERC currently does study dispute resolution?

MR. WELCH: Tim Welch, FERC. Well, currently -- under the current regulation, there is a dispute resolution process in the pre-filing period where Commission staff typically is not involved. It has been used a few times, not recently, however. It's been used rarely. The resource agencies have expressed to us that they don't really like to use it.

Basically you write a letter to the office director at FERC, which would be Mark Robinson, you know, sort of outlining what the dispute is. Then you get a letter back saying, "Well, I decide that you don't need to do that study," or "You do need to do that study," and that particular thing is a finding that is bound by no parties, so the process would just continue, so no one is

really using that.

I think the fact of the matter is that these disputes, as I said in my remarks earlier, don't get resolved. They don't get resolved until after filing when FERC goes out with its AIR and then says, "Okay. Now we need that information. Do the study." That's sort of how it works.

MR. FRYMIRE: Thank you.

MR. METZGAR: This is Roy Metzgar with the City of Everett.

I'm just going to share information. I don't have an answer for you. I recall that I attended a conference last year that was at St. George, Utah, dealing with resolving tribal water rights. It's my recollection that the Department of Justice, the Solicitor General was there. There is an existing federal policy where the EDR is accepted. I believe the Department of the Interior Solicitor was there also, so it was a matter of presence.

So there is some precedent here with federal government agencies adopting this, but I can't give you more information. In case people weren't aware of that, there is some guidance there, so that's just my sharing that that is out there already.

MR. MILES: Yeah. Let me follow up on that. Within the federal government, there are now four

working groups of billing with the events of ADR within the federal government.

One of the working groups is workplace disputes. The second is contractual. The third is the claims against government. The fourth was, up until two months ago, simple enforcement. I was asked by the Department of Justice to head up that fourth working group. I said, "Only if you expand it to include regulatory activities." So now there's the fourth working group who work on civil enforcement and regulatory activities within the federal government.

You're right. Elaina (phonetic) Gonzalez at the Department of Interior, my counterpart, we are both trying to advance the use of ADR and Interior in FERC. We're looking for other colleagues within the federal department to include within a regulatory arena.

If you're curious about the type of information, about the use of ADR at the federal government level, you can go to [www.aer.Gov](http://www.aer.Gov). You will find some very, very useful documents on there.

In fact, there's a nice document talking about how to create a dispute resolution program within your organization, be it public or private.

MR. METZGAR: Yes, Richard. I was going to add also that the EBA, the Environmental Bar

Association, also has a separate section. My understanding is that that's the fastest growing, so there is also a lot of guidance on this issue within the American Bar Association. You've got two places to go to be looking for this. One is the federal government, and that was also mentioned at the conference. Then they had a national conference here last year too, so there is quite a bit of information on this.

MR. MILES: Right. The next conference with the ABA and the dispute resolution is in San Antonio. You do not have to be a lawyer to be a member of that section. You can attend that conference because they recognize that in order to do dispute resolution, you can be somebody other than a lawyer.

MS. JANOPPAUL: Just to clarify, you all are talking about something else --

MR. MILES: Yes.

MS. JANOPPAUL: -- than we're talking about here?

MR. MILES. I understand that, but --

MS. JANOPPAUL: Yeah. You're talking about a voluntary Forest Service to USDA as ADR. All agencies have ADR. We're talking about something else here.

I would particularly like to ask for either verbal or written comments regarding either proposal

if you think they should be -- we talked about this in Sacramento earlier this week -- binding on the federal agencies or if that somehow diminishes or takes away our authority. We're interested in comments on that because there's been questions about whether the decision of FERC -- ultimate decision of FERC should be binding on the agencies as the current dispute resolution provided in the FERC regs, and it's just not binding. This is something we are debating upon ourselves.

Again, we're looking to have a clear, efficient, and certain process so there's some advantage to the idea of being bound, but as discussed earlier this week in Sacramento, there were concerns about -- that might be surrounding or improper abandoning of authority and responsibility. If you have comments on that, that would be welcome. Thank you.

MR. MILES: Okay. Any other thoughts?

MS. MALDER: I have questions on this topic. Mona kind of led me into one of them where you have dueling federal agencies. It also becomes an argument with the state 401. Do you try to do all of those studies that all of them are asking for? We tried to get FERC to -- the FERC advisory team on a relicensing to try to assist and FERC adviser said, "Well, that's not something the Commission does."

MR. MILES: Anybody at the table like to -- was that addressed? To some extent, that will be covered in the proposals, right? IHC and dispute resolution, does that address that?

MS. JANOPAUL: If you have a proposal or suggestion, please bring that in as to how you want that addressed.

MS. MALDER: The second question is related to socioeconomic and dispute resolution. When you have a project that's been in an area for 45 to 50 years in somebody's backyard and the benefits are not appearing to the local populist, they want to have a socioeconomic study as to what benefit ought to approve them or the fact that you happen to be there and you're serving the public interest, and you're serving it someplace else. Do you have any thoughts on how you would design such studies?

MR. MILES: Well, I'm not sure. I mean, I think that would be something that would be addressed in scoping session level. Okay?

I think the job would be to take a look at each project individually, and that's something that probably would be needed to be raised at the very earliest opportunity in a scoping session. Would that be the right place to address that?

MS. MALDER: Yes. It's been raised,

Rick, but the problem is that it's a broken promises kind of thing.

MR. MILES: Well, that's something that the process will need to address.

MS. MALDER: Because FERC, when you're younger, you didn't really have a whole lot of enforcement, so people got away with murder.

MR. MILES: Yes, John?

MR. CLEMENTS: All right. Just to quickly follow up something that Nan said in at least one other of these conferences because somebody suggested that it might be a good idea prior to any formal dispute resolution being initiated that there would be some opportunity for the parties to just informally resolve with some appropriate member of the Commission staff, presumably not associated with the specific proceeding and that that informal discussion might help some kind formal dispute resolution. That suggestion has been put out previously in that form, and we would sure like to hear comments on that.

I guess we will move on to another aspect of this dispute resolution business that's puzzled me for a while. How do you get neutrals in there if you have a panel? It's just my sense that licensees might be skeptical of neutrals that come from other federal resource agencies. It's my further speculation that there might be

some suspicion of "Well, if they don't come from there, where else do they come from?" I'm thinking, "Well, there's a possibility, state agencies, academics and consultants seem to be kind of running a gamut."

I can see difficulties that some entity or some group might have with each of those. I can see licensees being enthusiastic about using consultants because they work for licensees, and resource agencies are being less enthusiastic about them. Academics I can see being viewed as biased in favor of always asking for more information. I'm going, "Well, who would be neutral? If they weren't coming from the Commission or another federal agency, who would pay them?" I assume that if it's an academic or a consultant, they don't work for nothing.

I guess another kind of an angle to this is if you do work with groups from outside like that, how do you get things done in a real lickety-split fashion, which is part of the goal of this too, is to get these things resolved fairly quickly.

If you have any comments or responses to those questions I've been thinking about -- I'd be happy to hear them now, love to hear them in writing.

MR. MARTI: This is Jeff Marti with Department of Ecology.

I want to get back to Tim's question

about how the states feel, or at least this state feels about being wrapped up in a dispute resolution process including the federal agencies. I think Polly mentioned in her testimony that you don't think we can accept any kind of dispute resolution that would bind our authority, but we would be open to some facilitating sort of role that FERC could apply.

The reason we can't accept a binding decision is that we have to make up a legal standard. We have to have reasonable assurance that the project will meet our water standards.

If we ask for a study, and the applicant does not provide that study, and if I'm a member of the public, what I'm going to -- I'm going to look at that and I'm going to say, "Ecology didn't get the study they asked for; therefore, how can they have reasonable assurance that water quality standards will be met. That's kind of a big bull's-eye now when it comes to the appeal period of the 401 certification. We have to be able to go to our administrative hearings board and demonstrate that we have reasonable assurance that the project will meet our standards. There's a long list of studies that we asked for but did not get. That certainly is going to undermine our case.

The other likelihood is that if we

don't have reasonable assurance, we'll just take it upon ourselves to deny the certification or to keep denying them until we get that information.

We're a bit of an odd fit, but we would like to fit as much as we can in terms of, you know, FERC doing some sort of facilitation. If we could work those issues out before the appeal period, I think we're all for it.

MR. HOWARD: I just wanted to build on Jeff's comment a little, because in looking at the IHC proposal, one of the benefits that it lists is that to resolve disagreements early and ensuring an adequate evidentiary record, and I like the words that Jeff used, "a reasonable assurance," you know, an adequate evidentiary record. My guess is that if we polled attorneys on what they consider an adequate evidentiary record -- it's a hard standard to meet in terms of producing study results, and maybe one that doesn't have an end until you're actually in a legal case, so I think -- I bring that up as an issue to say -- to ask the question, you know, what kind of criteria can you really set there?

I understand mandatory conditioning authorities do need to be concerned about that, but it becomes a standard almost totally outside of -- or can become a standard that exceeds decision-making needs for

resources -- you know, folks, I guess.

MR. MILES: Can we get your name,  
please?

MR. HOWARD: Bruce Howard.

MR. MILES: Yes, sir.

MR. ROBINSON: Hi. Doug Robinson,  
Washington Department of Fish and Wildlife.

The issues of these studies is really  
kind of a Catch-22, at least for Section 10(j). Being that  
that's the authority I'm working under, you know, it says  
we're required to provide our recommendations to FERC.  
These recommendations need to be thoroughly justified.

In justifying the recommendations, we  
need to have these studies. So if these studies aren't  
done and if this dispute resolution process isn't giving  
enough deference to the agencies working with 10(j), it's  
hard to fulfill the requirement to do the job.

MS. BONANNO: My name is Kristin  
Bonanno. I work for the Oregon Water Resources Department,  
and I guess I just wanted to make a comment.

I think partly states have been  
reluctant to use the FERC dispute resolution process, we're  
worried about losing local control of the issue in turning  
it over to FERC or whomever who hasn't necessarily been  
involved in the project relicensing. It doesn't have enough

knowledge that that applicant and the state and the other stakeholders have, so I guess I would just encourage that -- at least the first step -- you know, keep the control locally.

Then the other thing is ensuring an objective third party, if it should come to that, and really being clear about what that means, and do all of the parties feel comfortable about who that third party is.

MS. JANOPAUL: So clarification -- so listening to that, I'm hearing that you like the idea in these proposals of earlier FERC involvement so that they will be cognizant and knowledgeable of issues and therefore might better participate in such issues. Is that the converse of that?

MS. BONANNO: Yeah. I hadn't actually taken it that far, but I would think at first thought, that that is probably a good thing to do.

MR. CLUBB: Bob Clubb, from Douglas PUD.

I was listening to some of this stuff on dispute resolution and mandatory conditioning, and from a licensee's perspective, I think what we need is some kind of an appeals process that when we get involved in some genuine disputes of information that we're not dealing with a personality kind of thing. It really is an issue that

could be resolved at a regional -- you know, administrative level or some higher process to take a look at what the particular biologist was proposing in this particular process.

MR. ROBINSON: Thank you. Doug Robinson, Washington Department of Fish and Wildlife. I want to add a comment on that.

Putting together a study dispute resolution process, time is going to be of the essence, of course. It has to be some time frame that has to be resolved. Usually by the time you get to that point, you've taken up a lot of your time in discussing how the study should be scoped or completed. Then you get into the resolution process and, you know, if you're even one month late and starting a study season, you made this the exact parameter you're trying to look at. So you've lost a whole year just by using a couple of weeks to get started. I guess a component of that would be the time it takes to do that resolution.

MR. MILES: Nan?

MS. MALDER: The last part of my question was in scoping, you identify all of the studies, you identify all of the resources that are affecting -- the questions that have come up in several relicensings, what does FERC have jurisdiction over? What can they condition and

what can't they? And do we have to do studies on things FERC has absolutely no say?

MR. WELCH: I'm sorry, Nan. Could you repeat the question? I know that your questions refer to a specific project that I'm involved in, that's why I'm a little reluctant to --

MS. MALDER: Well, I'm not going to put you on the (speaking simultaneously.)

MR. WELCH: (Speaking simultaneously) thank you.

MS. MALDER: We need a better definition of what is and what is not jurisdictional and what is subject to FERC compliance and what isn't, and what level of study needs to be performed on issues that are really way out of bounds, but because you have a federal action and you have the dining and debate and (inaudible) society that we have going down there, Anything is fair game. I think if we had some sideboards, it would be truly helpful.

MR. WELCH: Just another question I would like to pose to you all regarding a study dispute resolution process. I guess the big fear -- one of my big fears. I have a lot of them. Anyway, one of them is that, given the amount of studies and the number of stakeholders requesting studies that you typically see in a

FERC relicensing, the big fear is that there would be like ten of these dispute resolution processes going on at the same time and it would like totally overwhelm the actual licensing process itself. I was wondering if people could think about what kind of sideboards or limits, if any, that any dispute resolution process would have.

I think of the analogy -- and don't take this the wrong way. It might be a little harsh, but I think of like in the NMFS, when you ask for an instant replay, you know, if the referee's decision is overturned, that's fine, but if it's not, then you lose a time-out.

I mean -- I don't know. Some kind of a -- I don't know. Like you lose one study or something like that.

MS. KEIL: Rick, before we go off that -- I kind of sense that you're going off some other way. I want to respond a little bit to Mona's point about binding effect.

The impact of dispute resolution is an extremely important issue for licensees. I think folks need to look at it from a very -- at least it would be helpful if you recognize sort of our interest here and looked at it from the licensee's shoes a little bit.

As I said in my presentation, these are very expensive undertakings. The licensee needs some way of

gaining assurance that when they do what's requested, that's it. That's what's going to be done even if in the end result agencies disagree with the outcome so that we don't get into this continuing loop where we think we have people on board with studies, but at the end you disagree with the outcome, so we're back doing another round because people just can't believe that that's true.

We need to find that balance between certainty for licensees and having agencies have confidence that they're not unnecessarily waiving their authorities.

That's the only thing that's going to motivate licensees to go ahead when you request the study and do it because, to be real honest, if you're looking at an expensive study and you say, you know, "I don't have any real certainty right now whether that's going to do the job or not," you might as well postpone spending the \$500,000 or the \$1,000,000 on the study and do it post-application when you get it as a requirement from FERC in an AIR.

It's a very cut-and-dry sort of economic analysis unless there's some benefit there for the licensee. I don't want to be overly blunt about it, but that's what you're looking at when you see a licensee who is delaying studies, is they're saving the money in their pocket. If you want to motivate them to do it early, you've got to give them some certainty at the end.

MR. MILES: Bob, did you have something?

MR. DACH: The Interagency Task Force put together those -- one of the reports they put together was one on improving the study requests. I can't remember what the title was, but that report was a bunch of sort of ideas to improve the quality of the studies that each of the agencies requested of the applicant. What it did is, it tried to put on sort of those sideboards that people were talking about. We made sure that it was focused and that it was specific to project effects and those sorts of things.

We had taken that idea with the idea that these criteria -- the criteria, specifically in the dispute resolution process, but I think the thinking was that people would be making the request from the beginning with respect to those criteria, knowing that eventually it would go through the dispute resolution process certainly if it did meet those criteria.

What I was sort of wondering is whether or not that whole concept is good or bad, whether or not it make sense to make some criteria in order to put some sideboards on a study or that it shouldn't even be part of it. If something went to a dispute resolution panel, sort of the sky was the limit in every process.

I haven't sort of heard clearly one way or other if it's a good idea, if it's a bad idea, if it should be modified somehow. You don't have to answer right now, although it would be nice, but when you're commenting in your comments, it might be nice.

MR. ROBINSON: Doug Robinson, Washington Department of Fish and Wildlife.

Just a couple of comments. One from early is that -- you asked, "Well how can we form a sidebar?" You brought up earlier that we have -- FERC hasn't had that many dispute resolutions for studies, so it's kind of hard to look back on what you have had and develop something for the new process.

Also, another comment on the studies. Studies aren't cut and dry. They're, you know -- science is science, so, you know, we push for having started earlier so there's a little more assurance that it can be completed. Not only just completed, but be conclusive. If you're looking at something like -- (inaudible) you've got a drought year or two drought years, but you're forced to make a decision. What kind of decision can you make based on that?

If you're looking at the TGD and spill, and because you're in a drought or you don't have a spill for the duration expected, how can you base standards? It's

not that cut and dry. You have to have some room for these anomalies. It's just the way it goes. It's not something that we can always control. In this study dispute resolution, there has to be some flexibility.

MS. JANOPAUL: Mona Janopaul. Kind of getting back to what Tim was talking about, I'm thinking both in the context if it was brought up in our Milwaukee forum and this morning as well. Somebody mentioned a licensing where the licensee was resisting doing certain fish passage studies because they said there was sufficient information to make a decision in the existing literature or something to that effect.

One of the things proposed in Milwaukee and around, not so much a penalty, as Tim was talking about, but then the certainty for the agency requesting the study that should there be a finding from this panel and the decision that was then made by the Commission that there was already sufficient information of the nature somehow instead of a new study for the agency to base a mandatory condition on. That might be the benefit for the agency, is if then later on the licensee could challenge the condition saying it would have -- this condition wasn't science based. You didn't have enough information for this.

This is the converse then by saying that "Okay. There is enough information." We're saying

there's enough information in the literature for you to go forward and develop your condition. Okay. Conversely, later on, the licensee can't challenge it and say there was insufficient information. Now, that might be the trade-off for the mutual -- well, I'll just say the "gotcha."

MR. MILES: Okay. Shall we move on to the next topic? Okay. The next topic is settlements, flexibility to complete.

We had some comments on that this morning. I might note that settlements, that's with the process that the parties are looking at. The ultimate goal is not just to have solely a good process, it's only a good settlement, but at the end to make sure you have a result that meets everybody's interest. I think Tim touched upon that a little bit in his. I know Mona has made that observation in other sessions, and I think Bob talked about it a little. You know, in the end you want a good result that meets everybody's interest.

Any thoughts on settlements?

MS. KEIL: One idea that folks are going to see when NHA finally submits its comments out on the street is the possibility of sort of statement of mutual intent, let's call it for the moment, that all of the parties in the proceeding could file with FERC asking for that time-out that someone suggested this morning.

This is really -- it sort of goes counter to the Commission's current policy of moving things along quickly, and I think we all realize that, but if you got something official from the parties that everyone was signed off on with an alternate schedule, they thought gave the parties time to consider settlement, I would really encourage the Commission to think about some tool like that that allowed that breathing space in the schedule, even if it meant that some deadlines weren't met.

MR. MILES: Tim?

MR. WELCH: Tim Welch, FERC.

Maybe I'm stating the obvious here, but when people are thinking about a process and going on the concept that -- or this morning, that we were just talking about, you know, calling a time-out for settlements. You need to remember two things. There are two sort of fixed fulcrums under the statute within any -- no matter what process we determine, there's two fixed points that are actually in the Federal Power Act that this rulemaking cannot change, and that is that the Notice of Intent has to be filed five to five and a half years before license expiration. More importantly, an application itself must be filed two years before license expiration. Anything you think about, whether it be a process or how settlements have to resolve on those two fixed points.

MR. MILES: Okay.

MS. ZEHM: Polly Zehm from Washington  
Department of Ecology.

I just wanted to add a couple of things  
to the comments on settlements that I made earlier today.  
One -- and we've heard this from other folks, but Washington  
agrees that we need additional guidance from FERC on  
settlement components that would be appropriate for inclusion  
as license conditions. That's what the folks at the  
settlement table are working towards, and if FERC has  
sideboards around what it thinks is appropriate and wouldn't  
expect from settlement parties, I think it's critical that  
parties know that and not spend time on those things. I  
think rulemaking is obviously the place where that  
clarification could happen.

Also, just a process note around  
settlements is that we recognize from experience that good  
independent mediation or facilitation is generally a benefit,  
but we don't think that should be mandated by FERC.  
Settlement parties should be allowed the flexibility to  
determine what type of process assistance they need to be  
successful. And I think that could vary dramatically from  
situation to situation.

MR. MILES: Thank you. Any other  
comments? Okay. Here we go.

MR. CLUBB: Bob Clubb, Douglas PUD.

Of course we're very interested in settlement, but one question comes to mind is, what constitutes a settlement? Is it a settlement of all of the parties that are participating? If one party doesn't sign, is that still a settlement? You know, I don't know if this group can answer it, but when is a settlement from a group not a settlement but just an agreement of several parties?

MR. MILES: John. Let John talk.

MR. CLEMENTS: Any group of participants in a proceeding can file a settlement agreement. We've had a number of settlement agreements that were not unanimous that some parties either opposed or simply would not sign. The Commission treats them as settlement agreements nonetheless. I think a practical and -- when parties are not agreeable or do file a protest, the Commission will have to deal with those. I think if it's like a critical mass, I think there's sort of presumptions made in favor of the settlement, but those other concerns will have to be addressed and they'll be subject to the same requirements to the actual substantial evidence in a rational fashion like everything else, but the fact that one or two entities may not be willing doesn't necessarily crater itself. I mean, a lot depends, of course, on the dynamics of the individual case.

MR. FRYMIRE: This is Bill Frymire with the Washington Attorney General's Office.

In my representation in the Department of Fish and Wildlife, I think FERC has done a lot of good things recently towards settlement over the last number of years.

I think the ALP process was an enlightened process. It has led to some difficulties or some new challenges, I guess, but I think that was good thing.

I think your signing of the separated staff has been a very helpful thing in certain cases. They've been able to tell us some of the things that -- while not guaranteed -- the Commission is likely to be thinking about.

We've learned a lot from some of the Commission's decisions regarding adoption of settlements. Some of them had been good messages we received and others have been ones that we needed to help straighten out. I assume your Commission is moving towards the better understanding on sort of how settlements are, I guess, viewed by the parties, whether it's all the parties or whether it's a partial settlement.

I support -- at least my representation of the Department of Fish and Wildlife, I think one of the

things that I heard that would be very helpful would be a time-out concept because what has been hurting us out here, I guess, is multiple tasks at the same time.

You always hear that everybody is short staffed, but if it's the choice between filing a comment that ends up being a record comment to FERC or not spending that time doing that, instead going to a settlement meeting, which you're at some point in the settlement, but you're not done, so an uncertain length of additional settlement meetings. You've got to do the filing, so the settlement gets dragged out again. A good fair time for settlement at the appropriate time I think would be a real helpful thing.

Out here, at least in my experience, you know, we have a lot of resource parties who work together to try to get the issues resolved in a clear fashion. It helps the resources, I think, for the most part. Most of the utilities I've worked with or applicants that I've work with here appreciate the coordination we've tried to do of the many governmental parties, but they also know that it takes a lot of time. It's not particularly efficient if you look at it, you know, on a minute-by-minute basis, but that's the way it is.

If you do get a settlement and it resolves the fish issues and the wildlife issues and the recreational issues, at least from the government's

perspective, I think that's a really good thing for the citizens and resources and applicants. I think your appreciation of the settlement is well received out here. I think you can help us by enhancing your appreciation of how difficult it is, but also how hard we want to try to do it.

MR. MILES: Okay. Any other comments?

Nan?

MS. MALDER: Rick, back to my point of a level playing field being essential for settlement, I think that we need to think long and hard about the disparity and skills among the parties who were sitting around the settlement table and somehow come up with maybe a training/coaching program that you could do through your group there at FERC so that people who have never been involved with this before can understand why that guy is getting away with what he is saying, and they can't.

MR. MILES: Okay. Over here.

MR. ROBINSON: Doug Robinson, Washington Department of Fish and Wildlife.

To build on what my counsel was talking about, I think one important component of establishing some guidelines for settlement agreements is the point -- the time of initiation, the time that that starts to take place.

Building on, again, having completed

studies. If you have the majority of stakeholders saying "We want to negotiate right now," and we have agencies saying, "Well, we need to find out the results of these studies first," it would be nice if there was some guidelines saying, "Well, negotiations could begin post-study." I think that way everybody is assured that all of the evidence is in, now we can begin to talk.

If it's pushed that negotiations should start earlier, then I think they look bad on another state that would be part of that. They don't want to participate. It's not that they don't want to, they're just not ready to. I think the time that that should take place is critical.

Again, once those studies are completed, usually those studies are completed near, you know, near the end stage of this process, so near the end stage, you have a lot of stuff happening that needs to be complete that's required to be completed. It's also the point that near the end when these negotiation talks begin, that they be given enough time to work themselves out.

MR. MILES: Good. Thank you. Okay.

If there aren't any other comments, we'll move on to the next topic, which will be time lines. What are reasonable time periods? Okay? Any thoughts or comments? Nan?

MS. MALDER: Time lines -- I think one

of the worse things congress did was give us five years to address extremely complicated and complex issues. I think there should be some reconsideration. Certain licenses you can move through it in time and other times there's just no way in hell you're going to get the information. Part of it is because of the fish, and part of it is because there are pulverized parties who are not going to want to sit down.

MR. MILES: Okay. Julie?

MS. KEIL: I'm sure there's someone in the audience who will correct me, but I think the rule is no later than five years.

MS. MALDER: No later than, yeah.

MS. KEIL: So from a rule-making perspective, there's no reason that FERC can't maneuver around that time line.

MR. MILES: Bob, did you have something?

MR. DACH: A little clarification on that issue. Would it be starting the process earlier or letting the process take longer?

MS. MALDER: None of us like to drag these things out. I was working on the McCullony (phonetic) licensing for 23 years.

No, I think that at the front end if

you have a more quality beginning, perhaps you would avoid some of those things at the end. If you identify as you go through it that you're going to run into those kinds of problems, then you need to talk with FERC about, "Well, we'll file an application, and it will have this much information, and we promise you within two years we'll get this in to you." You can either start early, which all of my clients -- I tell them to start ten years before, or if you run into one of these things where it becomes, you know, a food fight, then have some understanding about what constitutes a deficiency at relicensing that could not be avoided because certain parties decided not to play with their marbles.

MR. MILES: Robert, did you have something to say?

MR. MATT: Yeah. This is Robert Matt with the Coeur d'Alene Tribe.

This issue on time lines is not having enough time to resolve issues, it's, I think, a legitimate discussion.

I'm not sure where you draw the line in terms of not having enough information or enough time to get resource information. There's nothing in the process that permits an investigation of resource issues prior to the issuance of a Notice of Intent, is my understanding. It

seems to me that this suggests a need for potential applicants, project managers or whatnot to be interacting with the resource agencies prior to the actual initiation of this formal process.

There are a lot of these facilities that have been in operation in our case for a hundred years where having had people at a table discussing the impacts of the projects prior to the time that the law forces us to be at the same table would be beneficial and probably more productive and probably more cost-effective in the long run.

I guess this goes more as a recommendation, I think, to the applicant side, and that is to be understanding of the need that there's a lot of unanswered questions that relates to the impacts these projects have and using time lines as a rationale for not accomplishing a meaningful evaluation of the project's impacts is something that probably should -- doesn't seem to be a real effective strategy.

MR. MILES: Thank you.

MS. KEIL: Rick, one thing that is a problem with these early starts though now, the way the rules are set up, particularly with traditional licenses is that agencies and organizations that are resource limited will tend not to come and play early because they know that there's a real game, quote, a real game, that's going to be

played later on once the project is noticed for interventions. They're kind of saving their issues and saving their resources. As we think about reasons that applicants would start early, we need to also build in some motivations for agencies to come to the table early and play fairly at that point in the process.

MR. MILES: John, did you have something?

MR. CLEMENTS: Yeah. One thing I hope to hear something about because in this conference and in the others, Milwaukee, Atlanta, Washington, and in a few to the written comments that that have come in, a lot of the people are saying, "Have schedules, have deadlines, and make everybody stick to them, including FERC."

What I have not seen in any of these except for a very few exceptions is any sort of rational discussion on consequences for people that don't meet deadlines or what the Commission should do if deadlines aren't met, how the process should continue forward or should not.

It's one thing to say "Have a deadline and make them stick to it," but there's got to be a discussion after that, and I'm not seeing it anywhere yet. I would really like to hear something about that because it makes all the difference in the world as to whether any new

process is going to be effective.

MR. MILES: Thank you, John.

MR. KIRKENDALL: Keith Kirkendall,  
National Marine Fisheries Service.

Responding more or less to Julie --

MS. KEIL: We're friends now, Keith, so  
be kind.

MR. KIRKENDALL: I know. I think back  
a couple of years ago when we had the Western Governors  
Hydro Summit -- and the point that keeps coming up that was  
made there, and we really agreed in FERC and we've heard it  
earlier this morning too -- regional to state workshops, and  
what was one of the points there? We need more complete  
applications.

FERC's response back in that workshop a  
few years ago was, "We need a complete administrative record  
on which to base our decisions." I couldn't agree more.  
Part of the tension that you have here, again, Julie was  
highlighting that part of the tension is -- you know, I can  
think of lots of projects where the applicants are  
knowledgeable enough to know that they have big issues  
coming, and so they start their studies eight years or ten  
years in advance. Again, what Julie said is very real,  
that the agencies don't have the ability to be there at  
that point because they are so stretched already. Then that

runs into problems. You see the problems come from that -- that side.

On the flip side, you get the more complete licenses. We need those studies, so there is a Catch-22 there. We need, you know -- I look at the two proposals in front of us today and I think of two years, you know -- John, you mentioned deadlines, and people need to meet those deadlines. You know, two-year time frames to do studies in this region is, to me, unthinkable. You know, I --

MR. CLEMENTS: I wasn't thinking about studies. I was thinking about other -- you know, there was a lot of points in the process for something needs to be filed or something needs to be done. I wasn't thinking of the studies. It was all that other stuff.

MR. KIRKENDALL: Well, I'm -- you know, my biggest thing is -- because I sit at the table and negotiate the studies, and then I try to work with the applicants to do those studies. You know, we do our best, you know -- I can think of -- I mean, one of the projects that belongs to Julie, and you just can't, you know --

MS. KEIL: Wait too long.

MR. KIRKENDALL: Well, I'm not thinking about that one. I'm thinking about like right now, we didn't have the rains coming, so we've spent the last two

weeks trying to rethink what to do with three different radio tech studies that we are dependent on, you know, the water hitting.

I mean, these are the realities. You know, when I see this two-year time frame, I'm just -- I'm perplexed because I'm not sure how we would ever get anything done. I mean, I understand that we need to have these things timely and we need to have them done cost efficiently. You know, I sat through the (inaudible) and I watched us generate 46 volumes worth of information. At the end of that time, we concluded that we didn't answer the questions. Then we had to go back and spend another three years and another \$14 million and do a whole bunch of analysis. I've been through that ground. I don't want to be on that ground. The agencies don't want to be there. Certainly the applicants don't want to be there.

My concern is that if we go for these tight time lines, we don't get the information we want and you're going to get the muumuus. No one is going to want the ramifications of that. We will not have fixed this thing.

MR. MILES: Okay. Greg?

MR. McMURRAY: Greg McMurray, Oregon  
DEQ.

Keith said that much more eloquently

than I was going to say it, but I was going to point out that there is nothing magical about two years or three years or five years to develop the level of certainty that we would say it takes to get to reasonable.

That's -- it's very difficult. We all want to get to that certainty, but the amount of time it takes to develop that with changes in the water years with anadromous fish is tough.

MR. MILES: Thank you.

MR. ESTES: Thank you. Christopher Estes, Alaska Department of Fish and Game.

I think that -- first of all, going back to this morning's discussions, as Mona was pointing out, there is a difference between -- one shouldn't lose sight of an original and new license and new project versus a relicense. I really think that that has to be or should be viewed for everything that we've talked about. When people provide their comments, I suggest they look at both.

We're certainly in a position in my state where we have both, and we probably have the most potential or the most -- compared to most all of the other states that have a majority of new or original projects, but we also have our relicensing.

With respect to this time frame concern, why not empower parties to where you have a minimum time

threshold established for where the clock has to begin and end, but allow parties to come together so that there's a carrot, so to speak, with agencies that if applicants, whether they be for relicense or new original license come together with agencies and other stakeholders that are essential to the process to agree upon a time frame so that by beginning the clock at a particular period of time, everybody is locked in to what they agreed at that beginning point so that they don't have a reason to skip out or not be involved.

I think that by allowing yourself to set a trigger date that begins with the actual formal process, that could bring or provide incentive for agencies to participate at the very beginning instead of waiting until later, knowing that the real process doesn't start within the period of time, whether it be an original license or relicense. That's just a thought for you to consider.

MR. MILES: Right there.

MR. ANDERSON: Bob Anderson with Avista.

One of our recent relicensings that was completed, we all realize that this was going to be a problem. We didn't have the time to figure out what we had to do. It was going to take a lot more than two years to do the studies. It was going to take maybe five to ten years. How we got by all of this was to come up with a

plan. That plan had some off-ramps and on-ramps. It had a schedule. It had points of decision-making that extends into the new license, some of these decision-making points on schedules that run out five, ten, fifteen years depending upon what the issue is. What we were able to do with that was develop a plan that we could all agree to because we couldn't make those decisions up-front.

I clearly remember a statement by one of the officials from the state of Idaho that said, "We're not here to build monuments to our stupidity," meaning let's -- don't go out and build stuff that's not going to work. Let's make sure we've got sufficient data to do that.

We couldn't do it in two years, so we came up with some really good plans for fish passage, for solving the real sticky water faulty issues and for water profile. Everybody agreed to what those decision points were going to be and what the on-ramps and off-ramps were and what some of the contingencies were and the alternatives, and it worked very well for us.

MR. ROBINSON: Doug Robinson, Washington Department of Fish and Wildlife.

I just want to reiterate -- I had in mind the same point that the gentleman from Alaska did, was having some sort of threshold time line that perhaps ten

years before the license expires, have some sort of pre-consult with FERC and agencies and whatever stakeholders are available to examine, you know, potential issues that would make it a lengthy process, you know, whether it be the timing of study on an ESA species that's being done by the Fish and Wildlife Service that's due out on a certain date or something, or whether there's, you know, salmon issues that are involved with lengthening that time line, or even the number of stakeholders that they anticipate that would add more time than say negotiations or just collaboration components of the relicensing process.

You know, my vote is for taking it earlier when the license expires than post-licensing. I think a lot of the stakeholders like to have some sort of conclusion, you know, before a license is issued, knowing that PMD measures that were negotiated or agreed upon or for the full term of the license, not ten years after the license when a study is completed, then obtain a PME they start for the license that's only issued for 30 years.

There's a little bit more solidity to doing it prior to -- starting a time line earlier than hearing something later.

MR. MILES: John?

MR. CLEMENTS: I was trying to come in kind of -- still trying to get off of the studies issue and

get back on to schedules and deadlines in a more generic way. If we can assume for discussion purposes that this study thing has been gotten over. There's some general agreement in a specific case that the record is reasonably complete or sufficiently complete that people would do things.

What I was trying to get at is, what kinds of consequences, if any, do people think should ensue if parties aren't meeting deadlines, and to analyze to the existing process. If you're an agency with mandatory conditioning authority under our regulations and you don't timely respond to the REA notice, then you lose your mandatory conditioning authority, and your mandatory conditions become recommendations. That's a consequence of not acting timely. That's the kind of thing that I'm trying to elicit here is, you know, if it's time to comment on a draft application and there's no disputes left about accuracy of the data set, what do we do when people come in and say, "I want more time to do that," yet the clock is ticking on the two years before the license expires deadline. People are saying, "Well, I just don't have the resources anymore to reply to these things." What times then? What should the Commission be doing?

MS. JANOPPAUL: Just a footnote to that.

I can't speak for Interior or Commerce, but Agriculture does

not agree with that practice and policy, nominally. You know, we have never surrendered that settling late filed 4(e)'s become merely 10(a)'s. Maybe and that's something that should be included if parties so recommend, but we have never agreed with that practice or policy. We have, in the interest of moving licenses along, made those deadlines and not challenged this elsewhere, but we -- you know, just to keep the record straight, we don't agree with that practice or policy.

MR. CLEMENTS: I expect you are probably speaking for the other agencies as well.

MR. WELCH: Just really quickly, John. One thing that was suggested by the state of California a couple of days ago in Sacramento as far as holding applicants to time lines is that they suggested that the Commission exercise its enforcement authority under Section 31(a) of the Federal Power Act and issue civil penalties.

MR. MILES: Okay. State of Oregon?

MS. BONANNO: I guess I'm going to help John move away from study issue, although I think it is very important. A comment that was made earlier today which is to require a draft application to be submitted one year before the final application notice.

I think there's requirements to submit a draft application. There's no requirements of when that has

to be submitted. Applicants like Julie Keil are really good about meeting and sending in their applications one year before the other applications.

MS. KEIL: Because the state law requires me too.

MS. BONANNO: But other applicants are more likely to submit draft applications much closer to when the final application is due. What we're finding is a request for having adequate time to review those studies, get those comments to the applicant even though there's a 90-day requirement, then the applicant having time to address those issues and perhaps go out and do more investigation and actually revise the final application in time for that requirement.

I guess my one point is, require draft applications one year before the final, and second of all, 90 days of review on the draft applications is a really hard deadline for state agencies to meet and actually get really meaningful comments to the applicants.

MS. KEIL: Kristin, the conundrum, of course, is you have to balance that against what you're hearing from Washington, which is, they want more certainty around the science before the application -- before we sort of start the decision-making phase. When you push the draft filing back into the process, it, by its very nature, means

that the draft is draftier. It's got unfinished study results. It's got things that aren't brought to conclusion. It sometimes tends to crystallize disputes before you're ready to crystallize them. So there is a downside to putting those things on the table early as well.

MS. BONANNO: Yeah. I guess that goes back to maybe starting the process a little bit earlier.

MR. MILES: Moving over to the state of Washington.

MR. FRYMIRE: Bill Frymire with the Washington Attorney General's Office.

In representing the Department of Fish and Wildlife, I think one of the things, particularly in relicensing, that happens is that the Department of Fish and Wildlife usually believes that the new license is going to provide additional protection and mitigation and even enhancement measures for fish and wildlife resources, so that is an implied driver to get to the end.

Now, I know there are other things, so when agencies like my client need more time to file comments on EEIS or respond to something, they recognize they're doing it at their own long-term, sort of disinterest because the new license is more likely to be better for our resources, so they are choosing to work the process as best they can. But in a relicense, the best effort for us is

to get a good fair process, but we don't have an incentive, at least my client doesn't have an incentive, to drag a relicensing process out forever because we think it's going to be a better place.

I don't know whether applicants share the same views, but when we request additional time, it's sort of at our disinterest in the longest term, but it is in the short-term what is usually needed given budget and resources to get the information to you or to satisfy another agency's requirements or something like that. To us, I think particularly in relicensing, to my client, you know, we are anxious to be done, but we are anxious to be done in an organized fashion. Sometimes it just takes longer than needed.

MR. MILES: Moving farther north, to the state of Alaska.

MR. ESTES: Christopher Estes from Alaska Fish and Game.

I concur with comments from the State of Washington in that it certainly would not benefit anyone -- I think everyone -- just because you couldn't meet a deadline, all of a sudden you no longer have a place on the table, but I do believe that you might be able to again try a positive approach where we try to build into the applicant process whereby we built in specific processes in

the -- not only communications, but other elements whereby we specifically lay out that if you're not going to be able to meet a deadline, whether it be the developer or the agency, you must provide notice to the other party by giving a date; otherwise, you will have some penalty. The purpose for that is that normally both parties are dependent upon one other.

For some unforeseen reason a party can't meet its obligation to make a particular date, often the other party, which is dependent upon that other party reaching the date, is going to want to figure out what they can do to help or modify what they're doing in a timely basis.

I believe that perhaps adding a requirement for notification for when deadlines can't be met by having the flexibility to extend deadlines when all parties agree is really a critical aspect. More flexibility.

MS. KEIL: I hesitate to drag this back to where John didn't want to go, but the development of information and the timing of study seasons tend to affect people's ability to make other deadlines in these processes. One sort of pragmatic solution, that I actually have to give credit to Mona for thinking of, is for the Commission to do some analysis of license expiration months.

We've talked a lot -- over the many years we've all been talking about this, about coordinating license expirations in a basin by year, but your sort of ability to hit your study seasons depends a lot upon when your license expires. So if you have an end of year license expiration, for instance, and that's when you file your NOI, maybe that doesn't give you enough time to get your study plan in place to meet the next spring study season if you're seasonally dependent like that.

We ought to do some relatively concrete thinking about when people should start in the span of a year so that if people have a September date, maybe that's when they would start, but if they have a December date, maybe you, regulatorily, require an earlier start by month for those folks so that you have a better chance of hitting your study season.

MS. JANOPPAUL: For parents, that would be comparative with, you know, is your child born in December or May, do you move them forward a year or back.

MR. CLEMENTS: Those are good suggestions, I'm still trying to deal with the -- the two most frequent comments I've seen and I've been doing this running comment summary for myself, are early FERC involvement. That's coming from all over the place.

The other big one is having schedules

and deadlines and stick to them. When I hear other issues discussed, I'm hearing keep it flexible, we need these extensions of time. You kind of can't ask for one and ask for the other at the same time and expect to get a satisfactory result. I'm just trying to find some way to plow through that and get to that satisfactory result.

MR. MILES: Okay.

MS. MALDER: Time lines -- reasonable -- small municipalities. I don't really understand why you guys have anything to do with something that they built 50 years ago that belongs to them. What the hell are you going to (inaudible.)

It would really help a lot if FERC were able to address that problem somehow maybe in workshop explaining why the time line is the way it is. They don't understand why the time line is the way it is. They don't want to start any earlier than they have to. They don't want to spend the money, and they don't understand that all they have is depreciated concrete and some pipe.

MS. JANOPPAUL: Mona Janopaul.

Just as we have discussed for the purposes of a study dispute resolution or time-out for settlements or even party status having certain criteria, if you have ideas of criteria of when dates should be extended, that would be particularly welcome.

I wanted to share with you that a couple of years ago, in order to go along with the idea of more efficient and not getting in the way particularly in the relicensing situation, the Forest Service issued interim direction as a policy that we would not request extension deadlines from FERC, but we have identified certain circumstances where we will do it.

I mean, this year we had a large number of fires and people simply could not meet certain deadlines, so in cases where we hadn't expected fully to meet FERC deadlines, we did request a few extensions, although we definitely tried to work with the licensee.

Another criteria we came up with is if we were relying on a biological opinion or a biologic assessment in order to move forward with our 4(e)'s, we might also jointly with Fish and Wildlife or the licensee or the state ask for an extension as well.

Those are the kinds of criteria that my agency set up for itself, but starting from the proposition that we would not ask for extension of deadlines, so maybe that's something in your comments you want to think about maybe setting up just some guidelines for the Commission to consider or other parties, and when is an appropriate time to extend deadlines because that's -- we want to maintain flexibility, but guideline for extensions, whether it's

time-out for settlements or certain critical matters such as the necessity for an additional study season or something, that might be helpful to other parties, so input on that would be really, really welcome.

MR. MILES: Okay. Oh, Brett?

MS. SWIFT: In response to John's question, the other thing that has been said numerous times, so, you know, everyone has heard it before, but it addresses the situations where the applicants aren't actually meeting deadlines. You mentioned civil penalties, but the other thing is to actually start placing conditions on annual licenses to remove that incentive as another possible way to encourage more timely development.

MR. MILES: Thank you, Brett.

It's almost ten of 3:00. Do you want to keep going? Do you want to take a ten-minute break. Any preference? Break? Okay. Ten minutes? All right. Let's take a ten-minute break. Let's get back here by 3:00. Thank you.

(Pause in the proceedings.)

MR. MILES: Let's go ahead and get started. The next topic is funding of license participants. With the provision for Polly, we're going to start first with Polly.

MS. ZEHM: Thank you. I know everybody

is really tired of hearing this and that, this is a soapbox, but really and truly -- Washington State, both the Department of Fish and Wildlife and the Department of Ecology, want to fully participate in these processes. This is money that's funded. There's no fee to fund these activities in Washington State, so it comes out of our state general fund.

We have a billion dollar plus hole in our state general fund, and all I can assure you right now is that we're going to have less person power to do this work in the future than we have right now. As I indicated to the FERC staff yesterday, we have a whole 2.5 FTEs in my agency to do all of the FERC licensing and relicensing work right now. We really and truly are struggling to do what we need to do, and I really appreciate what Julie and others have said that, you know, there's a lack of incentive from licensees to do things early if they can't know that everybody who matters -- and we know we matter in this process -- is able to be there early and work together.

I certainly understand that this is a less than ideal situation. I want to just lay out three things in terms of a challenge for solving that. Part of it is appropriate for this forum and part of it is probably not.

Licensees in Washington State have the

opportunity to fix this problem. We have a 1929 fee statute for hydropower projects. 1929 is the year my mother was born. It was not a great economic time for this country. It's locally out of date, but we are not going to be successful as an agency in the antitax climate we have Washington State in getting that fee changed to support licensing work without the help of all of the utilities, so you can help us fix that, this legislative session. That's my challenge to you.

The second opportunity -- a couple of utilities are taking advantage of this -- you can contract with us for staff support for your work. That's how you can solve the problem of not having us at the settlement table. I recognize that's a big choice for utilities to make. I respect the choices each of you makes, but you do have the opportunity to get us there early and completely. If you want to do that, just come talk to me and I will help make that happen.

The third thing, and we are going to explore this in depth with FERC this year, is taking advantage of the license fees that are paid to FERC and trying to, you know, just take advantage of the avenue that it's been indicated to us may exist for states to use those fees to recover those costs.

I just want to let you know that I'm

not just whining. We're trying to let folks know what the options are and to get to sort of an accountability issue that came up earlier: What should the consequences or what are the consequences of folks not meeting deadlines? Well, we're a mandatory conditioning agency, and FERC can't take away our ability to do 401's, so you can't fix that.

We're in there unless congress or somebody takes it away from us. What the consequences are to us as a state regulatory agency is, we get a bad reputation, and that's a real consequence to us. We're in a major regulatory reform effort in this state because we haven't always performed well. Our customers have let us know, so we're under an incredible pressure to do our jobs better. That's the consequence for our agencies if we don't perform.

We also become the poster child for FERC. Sometimes we don't deserve it because states aren't the only reason why licensing processes take more time than they should, but that's also a real consequence when states and local governments in this state get held up as the reason licensing doesn't work. I want you to know, folks who commented on that, John, I guess, in back of me, that there are consequences for us. Thank you for listening to me on my soapbox.

MR. MILES: Thank you, Polly. Can I

just say one thing? You used the acronym "FTE." For those of you who aren't familiar with that -- I don't know what FTE stands for, but --

MS. ZEHM: Full time equivalency.

MR. MILES: Full Time? Okay.

MS. MALDER: Thank you, Rick.

Licensees also put out an awful lot of money especially when they are the small municipalities. They have a very small base to draw from. We just finished a license application for a community in Southeast Alaska who had to take money out of the school fund.

One of the reasons that it was delayed and they had to do that was that the agencies were not responsive on time. The licensees are very interested in things being cleaned up, responsive on time, and -- oh, by the way, if you can find a pot of money, we would like to be funded too.

MR. MILES: Thank you. Any other comments?

MS. KEIL: I'm not sure how much of this FERC can fix in this rulemaking. That's sort of beginning of the point. I guess, Polly, in response to you a little bit, the State of Oregon did manage to pass legislation that require applicants to fund state participation.

I would tell you, though, that it was a two-way street. It requires more accountability on the state agency parties to provide us a budget and actually, you know, sort of show us that they're going to participate responsibly in the process by having staff available.

There were also other legislative trade-offs about how the state behaves in the licensing process, in particular is a requirement for a unified state position so the licensees could gain some certainty. So I can't speak for Washington licensees, but for us it was very effective to engage in that kind of intraspace negotiation around a piece of legislation which wasn't just agencies saying, "Please fund us." It was licensees saying, "And we would like you to behave differently in the processes as a result of that."

MR. MILES: Mona?

MS. JANOPAUL: I agree with Julie. I'm just not clear on how this issue would be dealt with in a regulatory rulemaking. The Forest Service has been interested in these issues not only with regard to funding of expenses for licensing and administering licenses from our perspective but also the issue of what's the appropriate -- we call it a "rental fee" or an "occupancy use of federal land." Under the last administration, USDA and OGC drafted a proposed amendment at the request of OMB

to change the Section 10(e) of the Federal Power Act.

Again, that's outside the aspect of what we're talking about here, which is a regulatory rulemaking. Something, I guess, people could comment on and would be good information is -- have states attempted to file with FERC their expenses for incurred licensing or in administering a license for inclusion and licensees annual charges, and what has happened to that.

I know conversely that states receive -- I believe the percentage is 37.5 percent of the -- again, I'll call it "rental fees" or "occupancy in federal lands," for instance. You know a number of projects I can think of off the top of my head, Pacific Northwest helped (inaudible) that occupied federal lands, and a percentage goes to the state. I'm not sure whether that's directly from the Commission or back through the treasury. I don't know what happens to those funds. I'm a little curious how people think that this issue could be addressed in a rulemaking, and it might not instead require, as Julie suggests, legislation on the part of the State, or legislation on the part of the congress to another Federal Power Act.

MR. ROBINSON: Doug Robinson, Washington Department of Fish and Wildlife.

The topic is funding of licensing participants. If we look at each one of these points that

ties either time or money to these points, they're very interrelated. We're asked to come here and through this process we're asked how can we improve these issues, and a number of questions were asked.

Since, you know, time and money are so interrelated, I think it's important that this process look for ways to address the funding even though it may not be in the control of this just particular process, but we can look for that solution.

MR. MILES: Good. Any other questions or comments? Robert?

MR. MATT: In yesterday's meeting -- this is Robert Matt with the Coeur d'Alene Tribe.

I think most members of the panel received a pretty clear indication from the tribal perspective that this need for an increasing funding for participants in particular tribes is something that's probably one of the highest priority issues there is in this relicensing issue. There's been a lot of discussion and thought around the needs to get these resources to the states and their authorities, but it's worth pointing out, and I'm sure many of the project applicants have experienced that a significant source of the dispute in these process centers around trust and treaty rights and seeing that those are adequately represented and protected under the licenses

that are issued by FERC. There's only one way those are going to be presented, number one, and ensured protection, number two, and that's if the tribes are sitting at the table as well.

I can tell you one thing, Mona, and that's that I don't know where that money goes, but I know there isn't any way of it getting to us. There's a lot of these projects that have been occupying Indian lands for a very significant amount of time, so we would be very interested in Indian country in finding ways to work not only with existing regulatory options, but also with license applicants to identify opportunities to get the tribes to the table in a meaningful way that allows us to help accommodate the applicants in their quest to see these licenses issued on time and with as minimal dispute as possible.

I think FERC can play a role in that, and probably ought to. I know that tribes could be involved in providing information necessary for when they think they need to be included in a budgeting projection exercise and the BIA definitely has resources or resource limitations when it comes to being the trustee for the tribe or tribes in general. I would just encourage that that not be forgotten; otherwise, the disputes probably won't be resolved. And it's -- I'll kind of leave it at that.

MR. MILES: Okay. Thank you, Robert.

Mona?

MS. JANOPPAUL: I just want to -- I think I said this on yesterday's record, Robert, but the proposal to amend the Federal Power Act that we were requested by an (inaudible) draft, and we did indeed submit it to them.

What it provided for, as I understand the current system now, funds for both agency expenses, that is, agency costs and occupation of federal lands, which includes reservation lands, that those monies go directly into the general treasury, and they are not returned to the agencies. I don't know about the tribes, but I do know that our proposal -- and again, this goes under the last administration -- I don't believe has been carried forward by this one -- would have directly returned to the agencies, the clause they submitted to FERC to be collected from licensees with regard to annual charges, and the same with regard to rental fees for occupation in federal lands. I really don't know where that goes.

I do want to also ask then about the corollary for your comments with this concern about the funding and the expense of licensing. Do you think any of these proposals will reduce the cost of licensing from your perspective, whatever it be, licensee state or agency? Have

we been successful in coming forward with any proposal that you see would facilitate licensing that would be less expensive for you to participate in and yet have a successful outcome? That was something that was clearly a goal, more clear and efficient, but yet not requiring so much funds going into the actual licensing process. Do any of these proposals accomplish that, or do you have an idea about how to change these so that it wouldn't be as expensive to get a new license, particularly in a new licensing situation.

MR. MILES: Thank you, Mona.

MR. MATT: This is Robert Matt.

I would like to kind of comment on that. From our perspective, I would say no, pretty clearly. There aren't any funding mechanisms identified in the proposals. There's a request to accelerate the time lines and the schedules, you know, condense the study efforts and accelerate that, expedite results, review time, commenting time to crunch the time lines.

It's very clear that that constitutes an investment of resources to accomplish that. Not saying that we wouldn't do our best to accomplish that if we had the resources, but from the perspective of Indian country, I don't think either proposal has any pathways at the moment for addressing our limitations and reducing our costs.

We would be very interested in pursuing those opportunities, and I'm sure there will be plenty of comments submitted in writing from the tribes seeking assistance. In term of identifying the specific mechanisms for funding, I think that that's difficult for us to do because we know our pocketbooks aren't the place to look because there isn't anything there.

MR. MILES: Thank you, Robert. Polly?

MS. ZEHM: A couple of comments from Washington on that. I think there are some real opportunities in the proposals if we achieve, you know, 100 percent success on having a single Environmental Review Document and a single EIS instead of the State of Washington having to do a separate or supplemental Environmental Review Document, that would help a lot. That's a big resource hit on us and the licensee, and makes everybody grind their teeth, so you to get your teeth capped too. Having good study info be the result the first time around, that also saves time and money because you've only got one set of studies to review instead of more.

Organizing the Clean Water Act requirements fully into the process will also prevent uncertainties at the end, which helps prevents us from being appealed and us having to put more resources into litigation at the end of the process.

I share the Coeur d'Alene Tribe's concerns that on the face of it, you know, these processes with more up-front involvement and collaboration. I don't see less human beings from the State of Washington needing to be involved. If anything is a hundred percent successful across the five- or six-year span of time, yeah, I think we get better outcomes, and there's something to be said for how many people per good outcome did you invest.

I don't think I can look at these processes and tell you with a straight face that, "Yeah. Now I only have to invest one and a half FTE's in the process." That's my response to what I appreciate as your very direct question.

MR. MILES: Okay. Thank you. Let's move to the next subject topic, and that will FERC's ability or assistance in identifying study needs early in the process. Did I state that correctly?

MS. MALDER: That's one of my favorite topics lately. I have four points I would like to make on that. One, that during scoping -- and I think it's incumbent upon FERC to also provide a full disclosure to the applicant as to what they are going to need to be able to do their work and that they should do it during the initial scoping process. It's very difficult when you don't find out until the draft.

Number two, I think it would help less experienced licensees/applicants if the FERC were to beef up its outreach staff both in the field so that licensees who are going to be applying for a new license have a much better understanding of why they're going to be doing all of these studies in the first place. I think that would be a good service. I think that would reduce a lot of the uncertainty and a lot of the duplication and cost and also a lot of the arguments around the table.

The third one is that I don't think this is only incumbent upon FERC, but in the rulemaking it would be really good if we could bring all of the processes that are going to need to have studies identified, identified at the very, very front end and then negotiate the scope and negotiate the time that you need to do it.

The other thing that FERC could help with is when you know you're not going to have enough time to perform studies, especially out here with our fish, if there could be some understanding and some guidance from FERC staff. If you have a bad water year -- or you can start ten years early and have bad water years, but we do need better guidance from the FERC on the technical level. I think it would be helpful to arbitrate some of the disputes that have occurred.

MR. MILES: Good comments. Would

anybody else like to make a statement? No? Okay. Let's move on to the next topic then. The next one, time for studies for original license applications.

As I recall, most of the hands were on this side of the room. Anybody want to make a comment on that, how much time is needed to do a study?

I think that this was that if you started from scratch for a dam that hasn't been constructed, you need more time. Okay? Yes.

MR. FRYMIRE: I'll just make a quick comment. When I voted for this, I didn't actually look all the way down the line. I think the issues that I was voting on this for were actually covered in the time to do studies in the reasonable time lines and the dispute resolution processes.

MR. MILES: Thank you. All right. The next one is Endangered Species Act. How that is addressed early in the scoping process? Any comments or thoughts on that? Okay.

MS. MALDER: The ESA thing is a trump card. You tell your client that it's a trump card and they have to be very careful in watching out for it. You explain to them that, "Okay. If you're going to negotiate this with this group of re-creators who want to have that, you better have your biop done -- your biological opinion

done before you negotiate your recreation plan."

You get into a complete cycle of not having enough information on the fish because you had three bad water years and they didn't come back or the radio tagging didn't work or you had disease that was due to hatchery. ESA is a nightmare for all of us. I really think that you have convened forums on a number of the other pieces of the licensing processes that are broken. This is really broken.

MR. MILES: Okay. Any other comments?

All right. Yes, Robert?

MR. MATT: Robert Matt with Coeur d'Alene Tribe.

I have a philosophical comment, I guess, more than anything. If the Endangered Species Act feels like a broken process on the applicant, I wonder how the fish feel. They must really think it's screwed up.

MS. MALDER: It's not good for any of us.

MR. MATT: Alternatively, the Endangered Species Act, in the Pacific Northwest anyway, has really proven to be an interesting factor. From a trust and resource perspective, I would just like to kind of reiterate that the protection of a trust and treaty resource involves more than a museum species management approach to

relicensing. It's important to understand that perpetuation of that resource goes far beyond Endangered Act minimums. I think this process ought to strive for greater accomplishment and a greater level of accountability than the minimums to keep species from blinking out.

MR. MILES: Thank you, Robert. Okay.

Moving on to the next one. Oops. Julie?

MS. KEIL: I guess I want to say that I think there's a couple of fairly practical things that can be done with regards to ESA consultations that make things at least a little easier. One of them is for FERC to think about how the end of the process works and to make sure that they're not asking the ESA agencies who may also be carrying Section 18 authority to do their job twice. That is, to make sure that the licensing schedule lines up, the final terms and conditions that are due under Section 18 with the timing of the issuance of the biological opinion, so that's just maybe a sort of stupid-headed simple thing to say, but it's one of those places where you end up having agencies do the same work twice for no particular good end.

MR. MILES: Okay. Thank you. Okay.

Moving on to the next topic: Role of local entities. That was raised by Nan.

MS. MALDER: I think a number of us raised it, but I raised it in the context of the role of

local governments and local organizations who are not well versed in the FERC process and how to better fit them, better equip them to perform in the collaborative process. I think part of it is a misunderstanding on both sides of the table that this whole thing has just looked so much like it's the feds and the states that the local communities and the counties just get run over. I really think that you need to integrate those entities into the process early so that they have a chance to sit down at the same table and are treated equally.

MR. MILES: Okay. Polly?

MS. ZEHM: Are you getting tired of hearing from me yet?

MR. MILES: Oh, no. No. No. I do this for a living.

MS. ZEHM: I'm not trying to speak on behalf of global agencies because I'm not one, and I can't know what they know, but I do know that in the state of Washington, if there's a coastal zone management requirement, that triggers local involvement in the process because there's going to be a shoreline application and local governments, maybe the SEPA lead, and so I just have a couple of thoughts there. One, just important to recognize them in the process. If we're going to have an integrated process, you can't have one without them.

The second thing is, I just -- I know it's a challenge for FERC because they have limited resources too to work with 50 states and understand unique aspects about each of those states, but I very much encourage FERC as they are more active in managing these projects to have FERC staff on a project connect with local planning departments and really, you know, make a person-to-person connection with the local government involve staff and to, you know, be attentive to that part of the process. So that's what I have to say about local involvement.

MR. MILES: Good comments. I hadn't heard that connection before.

Okay. Let's move on to guidance on socioeconomics. Nan?

MS. MALDER: I'm not trying to be a nuisance, Rick.

MR. MILES: Okay.

MS. MALDER: It's just that I did a lot of thinking about this before I came here. I almost didn't come because a client wanted me to do something else, but I decided this is more important.

Guidance on socioeconomics and relicensing, the regs are totally silent. The guidance is totally silent on what is the applicant required to look at

in the way of the continuing effect of a hydro project in a local community.

If you're building a new project, you have a number of steps you have to go through. You have to assess the impact on schools and hospitals and all kinds of things. At relicensing, you're coming back forty years after the fact, and the community probably was not even involved in the original licensing. It had no understanding of what effect it was going to have, the location that project was going to have on the local community. I think that we need to have a forum to discuss that as well. It plays into the earlier topic thing -- the local entities, I see those joined at the hip.

MR. MILES: Okay. Questions, comments?

Okay. Moving on to our final topic: Guidance on cumulative effects. We have lost some people because of the need to catch flights. Anybody want to make a comment? Nan?

MS. MALDER: Again, this is a relicensing question, cumulative effects, and -- the project was built a long time ago. When you come back at relicensing, it would really help a lot if there was a better guidance on cumulative effects, particularly the geographic scope and the temporal scope.

You hold this to the baseline, but then

you've got the future years, 30 to 40 to 50, and you have some question on the geographics because of different resources. It would help just a whole lot. It's much easier to scope that out on an original licensing because you can see what it looks like before and then envision what it is going to look like after, but the relicensing is a nightmare.

MR. MILES: Okay. Any other comments or any topics? If not, then we'll move on to the final step or the final discussion that we're going to have for today before we adjourn, and that will be the next steps.

If I can ask you to take a look at the back of the blue book. Okay? You will see that we have now concluded and finished the stakeholder forums that were conducted to address the draft proposals that you've heard today and comments from other participants.

The next step will be on December 10th. There are a post-forum stakeholder meeting, and December 11th and 12th there will be drafting sessions. I'm going to ask Tim, if he would, to explain that. He has more details on this.

MR. WELCH: Yes. Thanks, Rick. Tim Welch from FERC.

As Rick said, our next step is to hold some post-forum stakeholder meetings in Washington, D.C., on

December the 10th. Basically the theme of that stakeholder meeting is what we heard and where we are going. In other words, we have envisioned that it will be some sort of a wrap-up of all of this things that we have heard from all six of those public and tribal forums in addition to a summary of the written comments that we will have received at that time.

That would be probably what we will spend most of the morning looking at. In the afternoon, we plan on having an interactive discussion much like the one we had today but on much more specific topics. We would focus on some of the more global issues such as how many processes should there be. That would be one example.

Now, as far as that meeting goes, that meeting will be available for viewing on the Internet if you can't make it to Washington, D.C., and in the notice that was issued a couple of weeks ago for that meeting, that is now on the Commission's Web site, [www.ferc.gov](http://www.ferc.gov), there are instructions as to how to subscribe to that Internet broadcast of that particular stakeholder meeting in Washington, D.C.

Now, the next day -- the next two days, December 11th and December 12th, we're having the post-forum stakeholder drafting sessions in Washington, D.C., as well. What we're going to do there is, we would like to break

people up into three working groups looking at various aspects of an integrated licensing process.

We'll talk specifically about an integrating licensing process on that particular day. We'll have all of the proposals that have been made thus far, the IHC, the NRG, the State of California, the NHA proposal, we'll have them in sort of a work-sheet format with associated questions, and each of these three drafting groups will be in charge of different aspects of those proposed processes.

We'll be splitting people up into sort of an early application development and pre-study period, then the second group would be study and just study dispute resolution, and then the third group would be post-filing.

Now, that is also -- information about that is also available on the Web site. We're asking people to preregister for those drafting sessions in Washington and also provide us -- there's an opportunity on-line for registration to -- and also let us know which groups you're -- which of those three groups in order of preference that you're interested in participating in.

Those drafting sessions, because they're going to be kind of spread all over a building, won't be broadcast over the Internet, only the December 10th part of that will be, so I would encourage you, if you are

interested -- each step in the process is going to be more and more specific.

We're talking a lot in generalities today, but each time we meet with stakeholders, we're going to be asking to really start to narrow in on more and more specific language about how a new rule should look. So that's our next two meetings.

MR. MILES: Thank you, Tim. Any questions? Yes.

MS. (UNIDENTIFIED): You mentioned, for example, on the first day that you were going to have people address specific questions like how many processes do you think there should be, and we really want to lay out those kinds of questions well in advance so -- as an agency, we need to go through the process and talk to our directors and make sure that we are all on the same page before we take a position in a meeting like that.

MR. MILES: Any other questions or comments? If not, then on behalf of --

MR. WELCH: Let me just say -- wait a minute. Let me just say a little bit more about -- now, if you look later in the process, after we issue the (inaudible), there's another round of regional stakeholder workshops. Right now you'll see three, one in Charlotte, North Carolina; one up in Portland, Oregon; and another in

Chicago, Illinois. We don't have dates for those yet.

What we would like to do -- if there's sort of known meetings that you might be involved with that we can sort of piggyback on that people would be attending, and we could do it like the day before or the day after.

We would like to know about that just to make people's travel a lot easier, so be aware of that as well. All right. I'm done now.

MR. MILES: Thank you, Tim.

Okay. Well, on behalf of the Commission and the Departments of Agriculture, Interior, and Commerce we want to thank you for coming today. On a personal level, I would like to thank you for the courtesy and the cooperation that you've extended to me.

We would also like to thank Julie for coming and working with us on the presentation for the NRG proposal. Thank you very much. Thank you again, and have a nice weekend.

(Whereupon, the meeting was concluded at 3:43 p.m.)

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CERTIFICATE

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I, Tia B. Reidt, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 5th day of December, 2002.

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Signature

Expiration Date

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