
PUBLIC & TRIBAL FORUMS
ON
HYDROPOWER LICENSING REGULATIONS

TRANSCRIPT OF PROCEEDINGS

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at

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Mr. Rich Torquemada, U.S. Forest Service

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Ms. Mona Janopaul, U.S. Forest Service

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Mr. Kenneth Hogan, FERC

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MR. McKITRICK: Good morning. My name is Ron McKitrick. I'm with the Federal Energy Regulatory Commission, staff with them. I'd like to welcome you to this morning's first hydrolicensing forum.

With me today is Rich Torquemada, that's going to be helping in the moderation and getting this corralled through today. So either one of us will be helping with that.

In addition, we have some folks representing different agencies that will be either giving presentations or here to help answer questions.

To my immediate right is Tim Welch, with the Federal Energy Regulatory Commission, that will later be telling us why we are here; Mona Janopaul, with U.S. Forest Service, that will be telling us a little bit more about the IHC; and Bob Dach, with the Department of Interior or Fish & Wildlife Service.

MR. DACH: Yeah, depending upon the crowd, it can go either way. Fish & Wildlife Service, but in the Interior.

MR. McKITRICK: Any questions dealing

with that. We have such a small crowd, I usually just have a show of hands, but why don't we just kind of go through and real quick tell us who you are and who you're with. Gloria, you want to start?

MS. SMITH: Gloria Smith, Solicitor's Office, Department of Interior.

MS. MILES: Ann Miles, FERC.

MS. DAMIANI: Stephanie Damiani, Fish & Wildlife Service.

MS. MORTON: Mary Morton, Commissioner Brownell's staff.

MR. HOGG: Jerry Hogg, AmerenUE.

MR. CLEMENTS: John Clements, FERC, Office of General Counsel.

MR. FRIIS: Mike Friis, Wisconsin Coastal Management Program.

MR. ENGLESON: Mike Engleson, River Alliance of Wisconsin.

MR. PLANTE: Tom Plante, WE Energies.

MR. EVERHART: Lloyd Everhart, Xcel Energy.

MR. OLSON: Rob Olson, Xcel Energy.

MR. URBANEK: Dennis Urbanek, Wausau-Mosinee Paper.

MS. KURTENBACH: Cara Kurtenbach,

Wausau-Mosinee Paper.

MR. EBERT: Lee Ebert, Gresham.

MR. SPAULDING: Doug Spaulding,
independent consultant.

MR. GAKE: Loyal Gake, North American
Hydro.

MR. SCHMAL: Nick Schmal, U.S. Forest
Service, Eastern District, Milwaukee.

MR. GIRMAN: Tom Girman, Tetra Tech.

MR. KUKA: Joe Kuka, Bureau of Land
Management.

MR. STROM: Paul Strom, Wisconsin
Department of Natural Resources.

MR. COX: Doug Cox, Menominee Tribe,
Wisconsin.

MR. THANNUM: Jim Thannum.

MR. McKITRICK: Thank you very much.

As you notice, this meeting is being recorded today,
so if you have comments to make in the later part of
this morning, I'd encourage you to, again, state
your name and who you're with and invite you to come
up here to give that presentation, and as we get
into discussion, do the same thing, as far as
identifying yourself, so that we'll know where these
comments are coming from.

As you see, we're here today in a public forum to talk about the hydrolicensing process. It's a co-sponsored forum with F-E-R-C, FERC, the Department of Agriculture, Department of Commerce, and the Department of the Interior.

One of the things you can do is comment on this process and how we're doing this and help us do it better. You guys are the first.

You might wonder why this is a co-sponsored meeting. You're probably -- FERC comes out to these things. Usually you're used to just seeing us. But there's been a number of people working together for a number of years looking at administrative proceedings, how to change the administrative process to make it more efficient, and those are the folks that you see up here that have responsibilities under the Federal Power Act.

Of course FERC does, but in addition to that, we have the Department of Agriculture that has special responsibilities, Interior, and Commerce that all provide conditions and recommendations and prescriptions to us, so they're co-sponsoring this forum in order to -- because of their responsibilities under the Federal Power Act.

Just to kind of give you where we

started, where we are today, and where we're going in the future, there was a public notice that went out from the commission on September 12th of this year, notice of public meetings and tribal forum, over two days in a number of different locations. We're the first in Milwaukee.

Today is the general public aspect of this. Tomorrow will be the tribal meetings. We'll then, for any of you that happen to be groupies, you can follow us around. You can look at the notice. We have meetings in Atlanta; we have meetings in Washington, D.C.; Bedford, New Hampshire; Sacramento, California; and Tacoma, Washington.

A very important aspect of this is that we are having these public meetings today, but there is a public comment period. Those comments are due to the commission by or before December 6th.

As we go through this agenda, you'll see that we're on a fairly aggressive time frame, and we would certainly hope that if you have prepared comments, you can get those to us before then so that we can digest them and get ready for the second -- the next thing that will be happening, which is by February of next year, depending upon the comments and what we see and what we hear, we

will put out a Notice of Proposed Rulemaking associated with the hydrolicensing aspects of what -- what you all are talking to us about today.

Shortly after that, in March and April, after that rulemaking -- proposed rulemaking or number is out, we will then hold technical conferences regionally and hear comments on how to make this process better, interpret what we are saying, and listen to what folks would like to see.

We will then take those comments, put them together into a final rule, and the commission would like to see that done by the end of July of 2003.

Just to reiterate, if you can get comments to us early, please do that.

Quickly, going through the agenda, you were handed that little blue booklet that will explain, you know, times. We may have to adjust that from the standpoint of given the number of people we have and to get through this process, but one of the things that we will have are some public -- people at the table here tell you a little bit about what's going on.

Tim Welch will tell us a little bit about why we are here, what would be expected to be

accomplished through the day.

Mona Janopaul will be giving you a brief overview of what the Interagency Hydropower Committee has been doing over the past few years.

There is no one here from the National Review Group, or the NRG, to explain their proposal, but both of those proposals are in that handout, if you haven't already read them. They were also in the notice to give you an idea of what two groups so far have looked at that may result in changes in the licensing process, are interested in what you have to say, and that's the next part of the meeting.

We'll probably have a short break and listen to -- have an opportunity to hear your comments about the licensing process and any proposed changes. Depending on the time, probably then take lunch, come back, and hopefully have some sort of interactive discussion where we can talk about some of the points that you've brought up to us, maybe talk about some specific language that you would like to see in any Notice of Proposed Rulemaking, and review these suggested topics of discussion that would help us kind of put together a better -- better Notice of Proposed Rulemaking.

With that, just a couple of points

that I'd like to bring up is that we will be asking you to come up here to give your comments so that they can be recorded, put on the record. I think we have four or five people --

MR. HOGAN: Six.

MR. McKITRICK: Potentially six. Ten minutes. If you could kind of keep your comments to ten minutes or so, we can kind of get through the morning, that would be helpful. If we can't get through them all, we will hear remaining comments in the afternoon and then have the discussion.

As far as housekeeping, make sure that you know when we close the doors, this whole thing is taking off. Turn off your cell phones, notice where the exits are so you can escape if you need to. The rest rooms are down the hall and to the right. You can read through your agenda and see what this trip's all about.

So with that, I'd like Tim to tell us a bit about why we're here today.

MR. WELCH: Thanks very much, Ron. Anyway, I'm Tim Welch from FERC. I've been at FERC for about 12, 13 years now. I know that many of you -- and I know at least a couple of you in this room -- were involved with the -- sort of the first

big spat of relicensing we had at FERC, the Class of '93, that everyone sort of refers to, and that's, if you all remember, that's back in '93 we had a -- back in '93 we had 157 license applications come into the commission for relicensing, and very -- however, very few of those licenses were actually issued before the licenses expired, which was two years later in '95, and there's a myriad of reasons for that, and I'm sorry to say that there's -- some of those Class of '93 licenses are still even at the commission today. The licenses still haven't been issued.

So we sort of identified that there was -- we thought maybe there might be a little bit of problem with the process there, sort of began to dawn on us that maybe things are a little bit more complicated. There's a lot of different processes going on. The state has their 401 water quality certification process. Department of Interior and Commerce, we have consultation under the Endangered Species Act. And then even under the Federal Power Act itself, we found a lot of those applications that came to us in '93 need a lot more information.

There were studies that needed to be done. There were study disputes between the

agencies and the applicants about what studies needed to be done. So there was a myriad of additional information requests that took a number of years. So it sort of began to dawn on folks that there's probably some -- some changes that needed to be made, you know, for future relicensings.

So our first effort was to kind of look at administrative reform, you know, what are some things we can improve coordination and coordination between FERC and resource agencies and applicants.

So one of the first things we did was we formed what was called the Interagency Task Force, the ITF, and the ITF once again looked at administrative reforms in the process. Once again, you know, how we could streamline things, how we could coordinate like ESA consultation, the licensing process a little bit.

And under the ITF, FERC and the resource agencies, Commerce and Interior, and the Forest Service produced a series of seven reports ranging from mandatory conditioning to ESA to NEPA, and a lot of those you can find those on FERC's web site, and that has gone a long way into sort of streamlining the process.

Now, in a similar parallel effort, the industry, through the -- through EPRI, created the National Review Group, which you'll hear a little bit more about later, and they put together, with the resource agencies, some -- some guidance about how to get through the ALP process. And so there was efforts in the industry as well about some administrative things that can be done to streamline the process.

The commission in December 2001, last December, we held a workshop where we looked at 51 of the pending cases of the commission that were five years or older, and we sort of examined that in a public forum about, you know, what is taking things so long, and we identified a number of things where there were sort of roadblocks to the process.

Now, the resource agencies independently themselves have come up with some administrative reforms; namely, in a process very similar to the Forest Service, is 4E's appeal process. Interior and Commerce got together and did a -- What, a policy statement, is that what I should call it, for the MRRP?

MR. DACH: Yeah.

MR. WELCH: -- a policy statement,

where they sort of created this process whereby their Section 18 prescriptions are sort of vented in the public forum, and they gather comments so they can have some comments on them before they become final conditions.

Finally, out of this hydroelectric licensing status workshop last December came some regional workshops with some of the state agencies, where FERC staff visited various parts of the country and met with state resource agencies and water quality certifying agencies.

Now, I think we had one right here in Milwaukee, where we met with some folks from both Wisconsin and Michigan to try to identify, you know, hey, how come, you know, how can we better coordinate the water quality certification process with the FERC process, and we came up with a number of ideas that we heard from -- from the states, and I'm just going to briefly mention a few -- few of these.

One of the things we heard from the state agencies was, you know, if we had more complete license applications from applicants when they're filed at FERC, that would help us in coming up with our conditions for the water quality

certificate.

So we sort of said, well, okay, but how do we do that? And they talked about early identification of issues through NEPA scoping instead of waiting until the application is filed with FERC and then have NEPA scoping.

A lot of them felt, you know, why don't you just do that early on. When the resource agencies are scoping the issues, FERC should be out there scoping the issues as well.

Everybody recognized that there's always study disputes between applicants and agencies, and the states were very interested in a process that would resolve these disputes early, like very early in the process, when the studies are being developed, rather than, once again, waiting till the application is filed at FERC, then resolving the study disputes.

The states were also interested in some kind of early establishment of the licensing schedule of FERC staff. Right at the very beginning, establishing milestones of the FERC process along the way that everyone can sort of buy into.

And, finally, the states felt that the

Notice of Intent and the initial consultation package should be filed right at the same time, when an applicant stands up and says, I intend to relicense this project. It would be helpful for the states to know exactly what the applicants' plans are for that project, right from the get-go.

So these are some of the things that we've heard from states, and you'll be hearing more and more about some of these issues later on today.

So, anyway, let's get down to it. Why are we here in Milwaukee today? Well, as I said before, the administrative reforms that we did, they were good, they were very helpful, they got the FERC and the resource -- or the federal resource agencies together a little bit better, were communicating a little bit better, but it's not enough. We need to do more.

So today, in Milwaukee, this is the first one. We're beginning a new journey of regulatory reform. We're taking the next big step further to actually change -- to propose to change the FERC regulations on hydroelectric licensing.

And so in this change, we're looking for improvements to the current regulations that are -- that are needed to reduce the time and cost

of licensing, while at the same time these are important, continuing to provide for environmental protection and to fulfill state and federal statutory and Indian Trust responsibilities.

Now, we're also bolstered a little bit by the National Energy Policy, which actually says in there that -- this is right out of the White House -- that we should make the hydroelectric licensing process more clear and efficient, while still preserving environmental protection.

So back to the September 12th notice. Just a little bit of review. As Ron said earlier, the September 12 notice provided opportunities for discussions through public and tribal forums. Today is our public forum. Tomorrow we'll have a special forum to hear about tribal issues. As Ron said, the notice also called for written comments and recommendations on the need for a new hydropower licensing process.

Now, specifically, that notice had two attachments to it as well. It had an Interagency Hydropower Committee proposal, the IHC, which is a consortium of FERC staff, Interior staff, Commerce staff, and the Forest Service, and the IHC has a proposal which you're going to hear about in a few

moments from Mona Janopaul from the Forest Service.

The other attachment was a proposal from the National Review Group, the NRG that I mentioned earlier, and that's the consortium of non-governmental organizations and industry folks that also have a proposal.

So these are sort of the two proposals that would have been filed with FERC for a structure of a new licensing process, and you're going to definitely hear from the IHC today. Unfortunately, we couldn't get an NRG rep to come.

The proposal also contained nine specific questions that we at FERC and the resource agencies are interested in hearing about, and I'm going to say a little bit about those questions in a bit.

So what are our goals for today's forum? The most important one is now we're ready -- You know, we've been talking amongst ourselves. Now we're ready to listen to your ideas. What are your ideas about the licensing process? What works for you? What doesn't work for you?

And we'd like to -- we'd like to get as specific as possible today, so we'd like you to identify specific problems in the current

regulations. And then once you've identified a problem, identify a possible solution to that problem. Like, well, you know, I think that the study dispute process is not adequate now because it doesn't provide for, you know, good input from applicants, and I think that a new process should do, you know, whatever you think.

Now, this fourth bullet here is -- is something we're going to try a little bit -- something new that we're going to try today and at our other public meetings, and we're kind of going out on a limb on this one, so we don't really know how this is going to work, but in previous rulemakings at FERC, it's been, you know, FERC comes out with a NOPR. What are your comments on NOPR? That's the Notice of Proposed Rulemaking, by the way. And we get the comments, we take the comments, we address the comments, and boom, we come out with a new rule.

Well, we're going to try to be more collaborative this time. So once we hear from you this morning on some of the problems and solutions, this afternoon we want to translate these solutions at least into some conceptual language that we can put in the Notice of Proposed Rulemaking, in other

words, in the draft rule.

So I'm not quite sure how that's going to work yet. I think that's going to be up to the group yet, but that's the discussion thing that Ron was mentioning earlier.

We want to -- We'll be up here with flip charts kind of taking notes, and we want it so that when that Notice of Proposed Rulemaking comes out, you can look at it and go, yeah, I remember we discussed that that day in Milwaukee. That's sort of our goal here.

So as I mentioned earlier, there's a series of nine questions in the notice, and the nine questions sort of go to these sort of suggested discussion topics.

So we're hoping that our discussion this afternoon, and hopefully this morning, will sort of center around these discussion topics, and we have them up here on the wall here just so you can refer to them throughout the day.

We're interested in hearing about integrated licensing processes. And what I mean by that is a process by which the FERC and the state and the federal agencies sort of are all together with their various processes from the very

beginning.

And two examples of integrated licensing process are the two examples that are in the notice, the IHC proposal and the NRG proposal, all we consider integrated licensing process.

So we want to hear about that. What's your feelings about that? What's your feelings about study development? You know, what's the best way of compiling information through studies that you can put in applications?

Little bit about the study dispute resolution. Both the IHC and the NRG proposals have ideas about how to resolve disputes and what studies need to be done. We want to hear some of your ideas about that as well.

Settlements. Some of you in this room may have been involved in a settlement in a relicensing proceeding. How can a new process accommodate settlements?

Time periods. You know, we have -- in the IHC proposal, there's various time periods in between some of their little boxes when things happen. You know, what do you think about those time periods? Are they big enough? Are they small enough? Do you have any other ideas about how long

this thing should take?

Coordinating state and federal agency and FERC processes. Things like 401 water quality certification, 10J recommendations, you know, other independent processes that go on parallel with the FERC licensing process. How can we fit those things into a new processes?

And, finally -- and this is probably one of the more important ones -- relationship to the existing processes. In other words, right now we have the traditional process, which is, you know, in the regulations, and then we have the alternative licensing process, which is our more collaborative approach, which we did a rule on a few years ago. Those are the two existing.

Now a new process. Is it a third process? Does it replace both so that it's only one process? Does it replace the ALP? Does it replace the traditional? I mean, there's a myriad of options there. We'd kind of like to hear what you have to say about that as well.

So what we're hoping for when this is all said and done, our target is to have a new rule by the end of the summer, and our -- sort of our goal there for that rule is sort of three things.

No. 1, we want a rule that makes sense. We want some -- and we want it to be understandable so you don't have to be a lawyer to understand it. We want it -- you know, everybody to be able to understand the rule.

We want most -- a level playing field. We want a rule that's fair. We want a rule that everyone has the opportunity to sort of, you know, provide input into the process.

And thirdly -- and this sort of wraps up the first two -- we want a rule that makes our lives easier, that, once again, that's understandable, we can all get our jobs done. Whether you're a state resource agency person, a tribal representative, NGO, we all have jobs to do. How can we get our jobs done most efficiently?

So those are the three things that we're looking for in a final rule. That's all I have right now.

MR. MCKITRICK: Thank you, Tim. Mona, would you like to tell us about the IHC proposal?

MR. TORQUEMADA: We have some handouts of this, if you didn't get this. If you'd like one, let me know.

Also, we have an attendance sheet, and

if you have come in late and didn't sign it, you can sign it out at the desk. And if you've changed your mind about giving public testimony, then go see Ron or myself.

MS. JANOPAUL: While we're waiting for Tim to get that up on the screen, in the blue book, the IHC proposal is in as Attachment A. Let's see, it's right in back of the rulemaking notice. And so there is the entirety of it, along with the shuttle wiring diagram that was come up with by staff.

I notice on the prior page, where it has staff listed, that none of the FERC staffers here put their name down, but they all take some of the blame or credit for it. John and Ann and Tim all worked on it as well. You'll see Bob's name there and my name, and I'm certainly glad to be here in -- out of the line of fire in D.C.

And -- But I will remind you that things have been going on in D.C. for a while, so I can't speak for Bob or anyone else, but if you do send in written comments on December 6th, in order to facilitate the Forest Service review of your comments, it would be really great if you sent me an electronic version because all of our paper mail still gets cooked in Akron, Ohio, to take care of

anthrax things.

So I can't speak for Bob, but I see his e-mail here, too. So if you do send in comments to FERC, I can at least speak for Agriculture, we would appreciate it, too. If you send it by mail, that's fine, I'd get it eventually, but if you'd like me to get it in a timely manner, so I have it when I go over to work with FERC with the Forest Service, send it to mjanopaul@fs.fed.us.

Bob, you want to get e-version, too?

MR. DACH: Whatever's easiest for folks.

MS. JANOPAUL: Okay, great. And is it just the return key, here?

MR. WELCH: No, the mouse button.

MS. JANOPAUL: The mouse button. My name, again, is Mona Janopaul. I'm with the U.S. Forest Service. However, my first experience in FERC was as an attorney at FERC. It was in the enforcement section.

And the first couple of things I worked on in hydropower were out here in the Midwest, a couple of projects owned by Wolverine, and one called Poysippi (phonetic), and there were projects that had existed for a long time but had

resisted getting a FERC license for a long time, and that was when I first learned why, in talking to those reluctant licensees, as to what a painful and expensive process it could be for licensees.

I then went on to work for Consumers Power of Michigan and learned from the licensee's side -- we had 11 projects coming up for licensing in '93 -- how it was from our side.

I also started working with the Michigan Department of Natural Resources with a couple of people involved in these FERC licensing issues for a long time. One gentleman is even retired now. Jim Trucken brought up a little of the issues that you heard Tim mention in the state forums back in 1993 at one of the earlier FERC licensings, and Gary Whelan, from Michigan, who's been involved in a lot that's been going on.

So the Midwest has been a leader, as Tim mentioned, coming up against some of these issues right away. So we're very happy to have our first meeting here and thank you for coming.

I'd like to talk about who's on the committee and how it formed. I'm going to discuss the proposals of this -- the objectives of this particular proposal. Even though it's called the

IHC proposal, we're actually working on a lot of things. So it's just this is our proposal for this particular issue. Sort of -- sort of one-step NEPA and scoping matters.

We are discussing a lot of other issues that came up in a lot of other areas, but for the purpose of this, we'll just call this the IHC proposal, and we'll talk about the benefits that -- that we thought of when we were putting this together.

Again, as Tim mentioned and as I mentioned, there were a number of staff from the FERC involved in this, as well as a number of staff from Agriculture, Commerce, and the Interior.

We also had people sitting in with us from EMA, CEQ. CEQ also has a White House Energy Task Force that the president started about a year ago, and they were about as well represented on this. And we also have the Advisory Council on Historic Preservation.

But mostly it was FERC, who's the lead in the license issuer, and the three agencies that have mandatory conditioning authority on this, and our idea was how could we work better together?

So we wanted to improve our own

coordination at the very least, and as Tim mentioned, we got together as members of the Interagency Task Force, and we carried things as far as we could go administratively, but now we were going to look beyond that. What could we do for regulatory reform?

We wanted to eliminate any duplication we were doing, and we focused in on the NEPA area as being the most fertile area, where we heard the most complaints from licensing and other stakeholders about duplicative NEPA. We wanted to reduce conflicts, at least among ourselves, and so we got together to talk about schedules, authorities, how we could work better together.

We wanted to expedite the implementation of agreed upon measures. So that was mostly licensing, but prelicensing, particularly in areas of settlement, and we certainly wanted to reduce the overall time and cost of the licensing process, while ensuring environmental safeguards.

It's also costly for the federal government to drag out licensing, as well. There's a lot of staff time, a lot of waiting for new licenses for us, too.

If you turn to the last page, 14,

that's the shuttle wiring diagram I referred to, and I'm going to break this up into four parts. The -- Kind of the first two rows, up until Block No. 9, where it says study dispute resolution, I'm going to talk about on the first slide, and then study dispute resolution, which is certainly one of the biggest stumbling blocks for everyone in licensing, and then the third line down here, I'm going to talk about the study period through the draft license application. And then finally the last two tracks, A and B, I think I'll get somebody from FERC to address this, but I believe FERC has a changing policy.

There was a shift back in 1993 to include draft EAs, as well as final EAs. We're now looking or FERC is at least looking at going more to a final EA in order to, again, accelerate the process.

We've tried this out, and FERC -- FERC thinks that in a number of cases, we can go right to final EA and accelerate the process. So I'll let them talk about how that's -- how that's coming along, but we did look at that, and in our discussions with NRG, they were very supportive of that, thought it was a good idea.

So in the -- that first section, they're talking about something new, an advanced notice of license expiration. Right now, five years before the license expires, the licensee files a Notice of Intent as to whether one is going to seek a new license or not in a relicensing situation.

Well, this is something a little different. This is to get FERC and the rest of us involved early. We have prescoping during this, where the applicant would develop a NEPA-like document. So now some of the things we see come in in initial consultation package or initial consultation document will look more like NEPA, again, to facilitate the matter.

And the commission is definitely going to play a role. This has been encouraged by states and others, and they think they can do this now. Again, I'll let you question FERC staff about what their role would be at that time.

The commission is actually going to be the issuer of the Scoping Document 1 based on prescoping document and the involvement of our agencies, Interior, Commerce, Agriculture, and other stakeholders that you bring in.

The commission and applicant are going

to jointly hold scoping meetings. Some of you may have seen something like this in more recent alternative licensing proceedings, where the commission has stepped forward and jointly worked with the applicant, and that's definitely a key part of this proposal.

And development of final study plans, the applicant takes into consideration comments from other parties, including the agencies.

But the situation may continue to arise where a licensee just doesn't agree with studies proposed or -- or required or requested by agencies like Agriculture, Interior, or Commerce.

So what we're trying to do is maintain the commission's authority to make those decisions. We're not interfering with its responsibility and authority here, but we are saying that we don't want to wait until after the license application is filed to take care of these study disputes, saying let's go ahead and have that dispute resolution now.

At this point, our proposal is that a panel would consist of three representatives from the requesting agency. If it was Bob's in Interior, Fish & Wildlife would be someone there, someone from the commission, and then a neutral third party.

We'd have established criteria that we had all agreed upon for studies, in-stream flow studies, historic studies, fishery studies. We would have a set of findings from the panel. Were the criteria satisfied or not? And then the commission, again, would make the decision.

Licensee would go ahead and finalize study plans if there were differences, and then the commission would issue Scoping Document 2.

And then, finally, we had a study period. This has been a real debate area as well. The NRG proposal, I think, mostly talks about having one season. This would require a lot of up-front work on the part of people, which think that would be great.

Other agencies had been concerned that if weather goes bad or things go badly, you might need to go into additional seasons. This is a very open area that I think we can all discuss.

We talked about an annual review. If there needs to be further dispute resolution and a final review, was the information actually collected that was intended to be? Has it been made available to others? And is it sufficient for the agencies to develop terms and conditions that are transparent to

you that you can see are scientifically justified?

Finally, the draft application would come out, and the environmental section would be the same format as the commission's NEPA document.

And then this is the part that's supposed to go like a hot knife through butter. Final application through licensing. Interventions, comments, recommendations, and conditions. Pretty much as you're used to now in the two types of processes.

Track A, and this would be where there was going to be a draft NEPA document, we have agency mandatory conditioning review procedures, and then FERC would issue the final NEPA and license.

This is a real shift at this point.

This is a promise by the agencies to move their -- or at least certainly for the Forest Service -- to move up earlier to get their final conditions included in the final NEPA document.

In Track B, where it's no draft NEPA, agency mandatory review would follow the issuance of the EA, but they would be included in the record, and they would be included in the license.

Again, I want to point out this was the federal agencies and federal agencies' staff

sitting in D.C. We all have a lot of broad experience to draw upon. We were doing this at the direction of senior staff in our agencies. This is a -- this is an ongoing idea.

And when we -- when we looked at it from our point of view, these were the benefits that we saw, and I'll just go over this again. Eliminate the duplication in the NEPA process. Some people have complained, well, licensees have got to do NEPA before I file my application, then I've got to do it again afterwards. This is to get rid of that so that you'll have one NEPA process.

Early identification and involvement of stakeholders. This is to avoid folks coming in at the 11th hour or feeling they were kept out of the process, either way.

Early identification and resolution of disputes so that that's done prior to the filing of the application at FERC.

Set time frames for all participants.

That was an important point in the National Energy Policy. It was just beyond what Tim said, that the president has directed that all agencies set deadlines and work and coordinate with the other agencies.

Concurrent filing of agency

conditions. Rather than -- rather than coming in at different stages from Interior, Commerce, and Forest Service, we've all committed to file at the same time, which should make it easier for the other participants in FERC's staff doing the licensing.

And develop adequate information for settlement. My agency has really been encouraging settlement, sees the benefit of it. I can't speak for the other agencies, but I think, in general, I've certainly seen some things from FERC encouraging some.

And, Ron, did you want to take questions now or some other time?

MR. McKITRICK: Sure. I mean, if there's any points you just want clarified from the presentation, not kind of a discussion type of thing, but if there's something that you'd like to be cleared up, I guess this is probably a good time to do that.

Is there from Mona's presentation, was there anything you'd like her to kind of explain a little bit more? If not, I'm sure there's more detail in their proposal that you have in that hand --

(There was discussion off the record.)

MR. McKITRICK: Right. And in addition to that, if you don't want to grill her up here, we will be taking a break here very shortly, and we'll all be available to talk.

MS. JANOPPAUL: Speak for yourself.

Thank you very much.

MR. McKITRICK: Thank you, Mona. We are a little ahead of time here, just because, well, a number of things. We don't have anybody from the NRG right here to kind of walk you through their proposal, but I would encourage you to read -- read the proposal, as well as the IHC proposal.

I think you'll gather some idea that in some places they're very similar, in others, there's different approaches to the same ideas that we're talking about here, and in some cases they diverge and are different. So that may help you formulate some of your ideas.

I would just -- We are ahead of schedule, but I think we probably had our coffee, and this is probably a good time to take maybe a 15-minute break, kind of adjust to this.

We'll come back, hear from you. This is the most important part of this is what we're

going forward from now is to hear your specific ideas, not just the system's broke, but how do we fix it? That's what we're really interested in. And then to have some sort of discussion around those topics later. Before we do that, Tim.

MR. WELCH: Yeah, I got one thing that I failed to mention. When I talked about the process for the rulemaking, we put a little chronology up on the board. We have a more detailed flow chart available that shows exactly what -- what we are plan -- hopefully that will happen between now and July, and there's some more opportunities in there for public input, and we have a flow chart handout, and it's out on the table, so please take one. And if you have any questions, I'd be happy to answer any questions about it.

MS. MILES: Can I say one more thing about that? They're actually before the NOPR and after the NOPR, they're actually going to be drafting sessions. They're fairly short. They are in D.C. But we are -- will be taking everything and putting it into -- Well, we'll be -- we'll be having this drafting session before the NOPR, where we can take things from this meeting and try to actually get those concepts into NOPR language. So

you all are invited to those. They will be publicly noticed, and the actual dates of them are on the schedule out here.

And then there will be about a one-week drafting session in Washington after the NOPR goes out where we actually have the opportunity to do some red-line strike-out and see if we can get some consensus over areas where we may have heard differing ways of handling it.

MR. McKITRICK: And in addition to that, recall from the introductory comments that we will then put out the NOPR, and you'll have a chance to look at that, and we'll have additional regional meetings that will be public for you to interact with us to fine tune that.

With that, why don't we take a 15-minute break. I got almost 10 o'clock. Be back at 10:15 or whatever your 15 minutes are on your watch, and we'll hear from you all. Thank you.

(A recess was taken.)

MR. McKITRICK: One other person has joined us up at the table, Stacey Nathanson with Commerce. So she will also be helping us through this discussion.

I'd like to reiterate this very

important part of this meeting, hearing from you all. Rich Torquemada from the Forest Service will be helping leading us through this. He's with the Forest Service up here in Wisconsin. Many of you may have worked with him already.

But I would also like you to be thinking a little bit about after we have your presentations about what we do next. We're looking for a discussion on topics that we've talked about today, but we're really open to the best way of doing that.

You know, our idea was just to have some sort of dialogue back here, but if there's better ideas of what would be more productive for everyone in this group of how to do that, be thinking a little bit about that, and we can talk to you all later, just to make this worthwhile.

Those of you that are going to be staying after lunch, we want to get as much as we can out of this. So with that, Rich.

MR. TORQUEMADA: Sure. Okay. We have lots of time here this morning. We have at least 15, 20 minutes per person. So feel free to try to keep it within that, but if you go over, there's no problem.

Also, if you have written testimony to turn in, our court reporter, Julie Poenitsch, will take that from you as well.

There's no particular order in this, so I'm just going to go right off the list, and looking at the page I have here, Dennis Urbanek.

MR. URBANEK: Thank you. My name is Dennis Urbanek, and I'm the Senior Vice President of Engineering and Environmental Services for Wausau-Mosinee Paper Corporation. Wausau-Mosinee Papers is a diversified paper manufacturer headquartered in Mosinee, Wisconsin. It was founded in Wausau, Wisconsin, in 1898.

The company operates five production facilities in Wisconsin and an additional six other production facilities in other states. Wausau-Mosinee's management live in the communities in which we have facilities. We have a long history of participating in our communities and supporting our communities.

The company owns and operates two FERC license hydropower facilities on the Wisconsin River, one at Rhinelander, Wisconsin; one at Mosinee, Wisconsin. The Rhinelander hydroelectric electrical generator has generation capacity of

approximately 2100 kw, and the Mosinee hydroelectric generator capability is 3,050 kw.

The Rhinelander and Mosinee hydroelectric plants were constructed respectively in 1882 and 1910 and have been in continuous operation. Relicensing of the Rhinelander hydropower facility commenced in 1995 and in 1999 for the Mosinee hydropower facility. So we are in the relicensing process.

Both Wausau-Mosinee hydroelectric plants have historically operated within their FERC licenses and have existed in harmony with their communities and users of the water resources. These hydroelectric plants have also provided economic value to the company and to the communities in which they are located.

The current FERC hydroelectric relicensing process is very costly, it's effort intensive, and it's dollar and resource wasteful.

From a cost perspective, the relicensing of our two hydroelectric plants will cost Wausau-Mosinee between 500,000 and a million dollars. This is just for external costs and does not deal with the costs that are just internal to the company, like my time and some of my colleagues.

The relicensing process lasts at least five years and deals with a plethora of governmental agencies, various groups, and individuals. At least five years of multiple studies, analysis, and discussions are required to submit an application for hydropower facilities that generate clean, renewable electricity, and what I may also say in some cases have been there well over a hundred years.

Again, the current relicensing process is extremely costly, inefficient, and fraught with obstacles to relicensing. In some ways, I think it's not a relicensing process, it's a process of trying to overcome obstacles for the licensing of a dam and -- or hydropower facility.

Many license study requests by third parties are offered without any tangible, objective reason to perform the studies. Opinions and unsubstantiated information is often provided as justification. The tangible economic or environmental value of many of the respective studies is absent, minimal, or not considered at all.

Often surprise, subjective, and hypothetical issues appear in the relicensing

process. Wausau-Mosinee is closely linked with its employees, communities, and resource users, who are also unaware of these surprise concerns.

In my opinion, the relicensing process has become politicized. The inclusion of some interested parties as equal and knowledgeable stakeholders with an equal stake in the relicensing process is unrealistic. Many of these stakeholders are only interested in a dam-free river and have no tangible stake in the benefits a hydropower facility provides to the recreational users, the community, and the licensees. Recently, a regulatory agency stated that the best dam is a dam never built, and the second best dam is a dam removed.

Specifically, I have a number of concerns with -- excuse me -- the current FERC relicensing process. Some of this is a bit repetitive, but, first, it is the relicensing process for existing hydropower facilities is very costly and wasteful. The relicensing process appears to be not driven by FERC. FERC's role and decision making is unclear, and we feel there's a lack of guidance to the licensee and other parties and agencies regarding scope of study work, reasonableness of study requests, study

recommendations, and valuation over some of the work that is being requested.

We have reviewed the proposed FERC dam relicensing process and have the following comments: The proposed FERC dam relicensing process does not appear to simplify or streamline the relicensing process.

The proposed FERC decision-making process seems to be further obscured with the inclusion of a panel into the decision-making process.

FERC's decision-making role appears unclear to the licensee. FERC's decision-making authority appears to have been significantly diminished from historical levels.

And as part of changing the relicensing process, clearly define the issues this proposed relicensing process intends to improve. And the proposed -- the process, as proposed, has not identified the issues to be solved, the root cause of the issues, and the solutions.

Our recommendations are as follows for a more effective hydropower relicensing process: Establish a relicensing process that primarily occurs between the licensee and FERC.

Two, reconfirm that hydropower provides economic, recreational, property, and environmental value to licensees, users, and communities.

FERC to develop relicensing criteria that will assure that objective, factually warranted, valid issues and concerns are addressed during the relicensing process.

Fourth, FERC to define the information and conditions required to relicense a dam.

Fifth, FERC to clearly establish their relicensing process and decision-making authority.

Six, FERC to streamline the relicensing process to eliminate waste and reduce relicensing costs.

And lastly, FERC to document relicensing costs and subsequent costs and environmental impacts of relicensing conditions.

Again, as I said, our costs, we think, are going to be within 500,000 -- 500,000 to a million dollars. If we put our internal costs in there, it'll be substantially higher, and then there are significantly other agency costs involved. I think this is a very, very costly process for the relicensing of an existing hydropower facility,

facilities.

In summary, we appreciate the opportunity to participate and comment on the revised FERC hydropower relicensing process. We believe that the current and proposed FERC relicensing process requires substantial amendment. Wausau-Mosinee, as a licensee, has a desire to participate and support an optimized FERC dam relicensing process.

Those will conclude my remarks.

MR. TORQUEMADA: Thank you, Dennis.

Can we have Doug Spaulding, please.

MR. SPAULDING: Thank you. By way of introduction, I am an independent consultant. My practice includes small hydro operators who are faced with the daunting task of relicensing hydroelectric facilities.

My background includes 20, 25 years of experience in hydrolicensing, probably over 20 projects, and the range of size of those projects goes from a 600 kw facility on one hand to a thousand megawatt pump storage facility on the other, and the focus of my comments deal with the contrast between those two facilities.

And I think if you don't know or don't

realize it, most of the facilities that are up for relicensing are not the thousand megawatt projects. They're the two, three, four kw -- or megawatt projects that we have here in Wisconsin.

When I look back on a thousand megawatt project, I look at the process we went through, and I looked at the cost and broke them down, and the way I broke them down was the way a business owner might break down cost between fixed cost and variable cost.

And the fixed cost in licensing is the process cost, it's the process of implementing consultation, it's the process of going through consultation, preparing a draft license application, looking through the regs, and going through the checklist and making sure you cover every topic.

The variable costs are the costs of the studies, and those can vary widely. When I look at the budget for the thousand megawatt pump storage facility, the process costs were about ten percent of the total budget. Ninety percent of the costs were study costs.

When I look at my 600 kw project, 40 percent of the costs were process costs, and only 60 percent were study costs.

So my suggestion is that any new FERC regulations for relicensing recognize that most of the projects that go through this are small projects and that the -- there perhaps should be two or three different scenarios or processes to go through, depending upon the size of the project.

Now, I recognize that impacts don't necessarily scale directly. Given that. But when you're spending 40 percent of your budget on process that really benefits nobody, that -- that's an important factor.

So I would suggest that in looking at new regulations, FERC take a hard look at the size of the projects and look at the administrative costs of going through relicensing versus study costs and balance those.

And that's my comments. Thank you.

MR. TORQUEMADA: Okay. Thank you very much, Doug. How about Jerry -- Is it Hogg or --

MR. HOGG: It's Hogg. Good morning.

My name is Jerry Hogg. I'm the Superintendent of Hydro Regulatory Compliance for AmerenUE. I'm the project manager for the relicensing of the Osage Project. I work at the Bagnell Dam, which creates Lake of the Ozarks and is located in central

Missouri.

Bagnell Dam is a 176 megawatt facility which impounds Lake of the Ozarks, which covers 55,000 acres and has 1,150 miles of shoreline.

AmerenUE has 1.5 million customers in both Missouri and Illinois and has its headquarters located in St. Louis, Missouri.

The Osage Project is using the ALP process and started relicensing proceedings in January of 2000. To date, we have had 26 stakeholder meetings and a joint public meeting with FERC. We're currently completing the second year of studies, and the process is now trying to move into the settlement agreement and negotiation phase.

Our original license was received in 1926 and was a 50-year license, and in 1976 we received a 30-year license, which will expire in February of 2006. In 1976 the relicensing was accomplished with one person and one clerk at Ameren, which did address all the same issues that we're addressing today.

Today we have a staff of eight to 12 Ameren people admitted. We have several consultants with many years of relicensing experience and are involved in a very open, collaborative ALP process

that is very costly.

I want to thank FERC for its leadership and recognition that changes are needed to reduce both the cost and time to relicense hydroelectric projects. I do not intend to address all of the issues today but will cover them with written comments by the comments due date.

The main points I want to cover are a few of the questions which FERC requested comments on. The first is a need for a new licensing process. The answer is clearly yes, we do need a new process. The proposal developed by the IHC, in my opinion, is a good start, but it's just a start. FERC needs to be more involved in the study scoping and needs to resolve scoping disputes before studies start.

In our process, we worked with all the stakeholders and developed study scopes. And when I say all stakeholders, I have over 160 stakeholders registered in our process and every state and federal agency that I can name.

When we started the study scoping process, we solicited all of the concerns from all of the stakeholders that have a whole gamut of concerns brought forward and had in excess of 160

concerns expressed. We formed 10 subcommittees to narrow those down in study scopes. We involved them in that process to let them review the qualified bidders list, with the intent that we would exclude contractors performing studies they did not consider would perform valid studies, that they would ultimately accept the results of when those studies were completed. However, I hate to report that there's been no end to continual requests for additional studies and changes to study scopes.

I came on board after the process had started in January of 2000. In August of 2000, I started at the Bagnell Dam and assumed this position. The budget for the Osage Project was increased by me after the second year by one-and-a-half million dollars. I further hate to report that now, to the third year, that I have already exceeded the third-year budget by in excess of a half million dollars this year alone.

I want to stress that it is vital that all parties have a schedule which includes their input at the start of the study process and that FERC requires and supports a process which controls the cost associated with studies.

The current budget that I am looking

at for relicensing of a project that's been in operation for 70 years is going to be between 12 and 15 million dollars, and I can only say I hope that I do not continue to go over budget by over a half a million dollars per year for the remainder of the licensing period.

Time periods was another issue. Are the proposed time periods reasonable? The IHC proposal defines specific time periods for completion of each step of the relicensing process. It is essential that all parties are required to meet a FERC-defined schedule. A jointly developed schedule at the start of the process is essential. The stakeholders do not feel any obligations to meet the dates defined as part of an ALP process.

As our process moves into the settlement agreement phase, it is necessary that FERC maintains their involvement and provides guidance that issues must be resolved and that resource agencies are expected to participate. It must be made clear that resource agencies waiting until after the filing date is not in their best interest.

AmerenUE supports the Commission's rulemaking process outlined in its notice and hopes

that a one-year timeline to achieve final rule is implemented.

I worked for 23 years in the nuclear power industry and routinely interfaced with the Nuclear Regulatory Commission and have observed their enforcement of regulations. The NRC has the central authority and has used it in such a manner that we have outstanding performance by our nuclear power plants, both from an environmental and a safety standpoint.

I believe that FERC must operate in a similar manner, and it is their responsibility to balance environmental, recreation, and generation interest.

FERC, as the central licensing agency, must make the improvements it can under the authority it currently has. At the same time, it is important that our country develop a national energy policy which takes full use of the cleanest, renewable energy for generation, which is hydropower.

The stakeholders and some resource agencies refuse to face the basic question of if we lose hydrogeneration, how will we replace those lost megawatts? The licensees understand that we must

provide reliable, low-cost power to support our nation's economy. We are committed to doing it while being good stewards of the environment. Hydro relicensing changes are needed for us to achieve these goals.

AmerenUE's 70 years of operation of the Osage Project speaks for itself. The Lake of the Ozarks provides one of the best fisheries in the United States, valued at \$80 million annually. The tourism and recreation industry at Lake of the Ozarks accounts for 10 percent of the tourism revenue in the State of Missouri. Anything that would jeopardize that revenue could cause a collapse in the Missouri state government and of the revenue system. We are currently under severe financial straits in the State of Missouri.

There is a good fishery in the Lower Osage River and a reproducing mussel population, and we have found several of the rare endangered species after 70 years of operation.

AmerenUE uses the generation from Bagnell Dam to provide reliable, low-cost electricity.

The current weakness in the ALP process is the resolution of disputes. Everyone is

hesitant to go to dispute resolution. This must change. Resolving disputes must become a part of the process, with FERC leading that process.

The 401 water quality certification and the endangered species Section 7 consultation must be a part of the process in the early study phase.

I want to again thank FERC for initiating rulemaking on the hydropower licensing process and encourage the Commission to seek the broadest possible input from licensees.

This concludes my remarks.

MR. TORQUEMADA: Thank you, Jerry, and thank you for the reminder of that December 6th deadline for written comments. We'll move on now to Michael Engleson.

MR. ENGLESON: Good morning. My name is Michael Engleson. I represent the River Alliance of Wisconsin, which is a member of the steering committee of the Hydropower Reform Coalition. We thank you for the opportunity to provide these comments, and I would also add that it is the intention of both River Alliance and, I would imagine, the Hydropower Reform Coalition, to file written comments at a later time.

The River Alliance of Wisconsin is a statewide river conservation organization, with over 1700 members dedicated to the protection, preservation, and restoration of the flowing waters of Wisconsin.

The Hydropower Reform Coalition is a consortium of national, state, and local conservation and recreation organizations working to achieve river conservation and restoration through improved operation of hydropower dams. The Coalition is dedicated to improving the quality of rivers, ensuring continued public access to rivers, and reforming the relicensing process to ensure river protection in every FERC licensing.

River Alliance of Wisconsin and the HRC welcome and thank the Commission for the opportunity to make these comments.

The proposed rulemaking changing the hydropower facility licensing process is, in general, a positive step. This rulemaking provides an opportunity to create a procedure that allows more active and meaningful participation by the public in a determination impacting their own water resources for 30 to 50 years.

By rebuilding the process, the

commission will be able to craft a procedure that gives equal consideration to energy conservation, protection of fish and wildlife, protection of recreational opportunities, and preservation of general environmental quality, along with the power generation potential of a river, while creating a more efficient, open process.

Any new system must keep these fundamental principles in mind and must not be designed merely to make it more convenient and streamlined at the expense of thoroughness.

In addition, the commission should refrain from consideration of elements beyond the scope of the suggested proposals, as this would make it difficult to meet the stated purpose of the rulemaking, to reduce the cost and time of licensing without sacrificing environmental protection, reduce the prospect for consensus, or even a stable conclusion to the rulemaking, and in any event, jeopardize the timely conclusion of this proceeding.

That is not to say, however, that a simpler, timelier process would not be beneficial to all interested parties. Certainly a more efficient system that allows for the balancing referred to above would be to the benefit of not only the

applicant, but to the commission, as well as interested federal and state agencies, NGOs, and other public stakeholders, and hopefully to the natural resources being impacted.

The National Review Group proposal meets many of these needs, and its basic elements should be incorporated into any new rules. The new system should also enhance public participation, facilitate settlement and adaptive management, improve the transparency of the decision making, and promote timeliness without sacrificing the thoroughness of the process.

Finally, the new procedure should be either a single flexible process, or at the very least, continue to provide alternate procedure for collaboration between stakeholders.

And I'll now expand a little bit on some of those points.

First, enhancing public participation.

A new licensing procedure should increase the minimum level of public participation beyond what is currently required. Under the traditional process, public participation is not ensured until after the application has been filed. The alternative process, on the other hand, provides only vague

guidelines, and public participation is hardly ensured.

Earlier, more comprehensive public participation has several benefits. First, earlier input means earlier and better record development to aid in resolution of any conflicts. Second, it provides for more time and opportunity for interested parties to reach settlement. And, finally, it would ultimately lead to better licensing agreements, which is best for the management of these public resources.

Next, facilitating settlement and adaptive management. A new licensing process should attempt to lead participants towards settlement, rather than commission arbitration of a contested proceeding. This can be accomplished by early and meaningful public participation. If work towards settlement begins before the official licensing process, it is more likely that if a settlement is not reached, the whole process will not be behind schedule.

In addition, early FERC involvement and NEPA scoping, as well as joint study development and implementation, will facilitate settlement. All of these suggestions are incorporated in at least

some manner in the NRG proposal.

In addition, many stakeholders are finding that adaptive management practices are allowing them to reach mutually agreeable solutions that effectively mitigate environmental impacts. The settlement process would also be facilitated, therefore, by clear guidance from the commission regarding acceptable settlement terms that include adaptive management.

In general, a primary goal of the new procedure should be to improve the transparency of the process so that all stakeholders understand how decisions have been made at each step in the process. For instance, the public, as well as all interested parties, need to be involved in the early scoping process and study development. In addition, analysis in the NEPA document should not just state conclusions, but also show the rationale behind those conclusions.

Though stricter time -- stricter timelines need to be established and met by all parties to a licensing, including FERC itself, this should not be at the expense of a thorough, well-considered process. Licensing decisions are made for 30-to-50-year terms, and the damage that

can be caused by uninformed decisions that are rushed to meet deadlines can be more harmful than a comparatively short delay in approval. Still, the sooner a licensing procedure is completed, the sooner environmental mitigation can begin.

The timelines set in any new procedure should prevent foot dragging that causes unnecessary delay, but also be flexible enough to allow truly informed decision making. And, in addition, FERC itself needs to be subject to deadlines in order to keep the process moving.

The commission should strive to develop a single licensing process that retains enough flexibility that it enables participants to tailor it to fit their local needs and conditions. Short of this, some form of alternate procedure needs to be kept in place to encourage collaboration and settlement between all the interested parties.

The current alternative procedure to the traditional method of licensing certainly provides for a collaborative approach, and those elements which allow for collaboration should be retained in any single new system.

In general, more than one process leads to unnecessary complexity, and thus we prefer

that a single process be developed to maximize simplicity and understandability of the process, while maintaining enough flexibility to allow for individual circumstances surrounding an area or particular project to be accommodated.

A single system too rigid to handle the variances of each project, however, would be more detrimental, because of the lack of flexibility, than a standard/alternate approach, as is used now. Therefore, if a single flexible system cannot be developed, an alternate procedure should be retained.

The basic elements of the National Review Group proposal are sound and should find their way into any new licensing system. These elements include early FERC involvement in the process, interagency cooperation --

MR. MCKITRICK: Could you please slow down.

MR. ENGLESON: I'll start that point over again. The basic elements of the National Review Group proposal are sound and should find their way into any new licensing system. These elements include early FERC involvement in the process, interagency cooperation, coordination of

NEPA and application development, a more robust study dispute resolution, and publication of draft license articles by FERC staff.

In addition, any new process should coordinate better with state processes by starting the clock for the 401 certificate after the state deems the application is complete, granting states greater deference in study requests, and incorporating state issues in the NEPA study analysis.

In conclusion, the NRG proposal is a good example of a plan that meets the goals stated above, and whatever new process is adopted should follow its basic elements. It encourages and enhances public participation, attempts to move the parties toward settlement, rather than contested proceedings, is much more transparent than the current traditional approach, and while establishing timelines, does not do so at the expense of well-considered decision making.

The commission should make the most of this opportunity to change the licensing procedure in a way that while making it more efficient, also protects and enhances the interests of all stakeholders, not to mention the very water and

other natural resources being impacted by the project being licensed.

That concludes my comments.

MR. TORQUEMADA: Thanks, Mike. Okay.

We next have Cara Kurtenbach.

MS. KURTENBACH: Hi, my name is Cara Kurtenbach, and I'm the Corporate Director of Environmental Affairs for Wausau-Mosinee Paper Corporation.

Wausau-Mosinee Papers is an integral part of the communities in which we operate and a good environmental citizen. We acknowledge our responsibility to safeguard our natural resources and the environment for future generations.

Wausau-Mosinee Papers owns and operates two hydroelectric dams, one in Mosinee, Wisconsin, and one in Rhinelander, Wisconsin, and we have a total generating capacity of almost 5200 kw. Our hydroelectric dams generate clean energy for use in our manufacturing processes and are licensed by the Federal Energy Regulatory Commission, or FERC.

Little Bull Falls, Wisconsin, which is now known as Mosinee, Wisconsin, had its first dam built in 1842, and our company built the first hydroelectric plant on it in 1910. The first

hydroelectric plant was built in Rhineland, Wisconsin, in 1882. So clean, renewable energy has been generated at these hydroelectric plants for almost and over a century, respectively.

A U.S. Department of Energy report found that two-thirds of all hydro projects relicensed since 1986 have lost generation as a result of this expensive and time-consuming licensing process. Another government report found that relicensing results in an average eight percent loss in hydropower generation.

We cannot afford to reduce our ability to produce this clean energy from a renewable resource. In fact, our federal government has challenged us to increase our use of clean energy from renewable resources. The current dam relicensing process, which results in the loss of clean, renewable energy, is counterproductive to this challenge.

The current relicensing process is expensive and time consuming. We started the relicensing process for our Rhineland dam in 1995, have already spent over \$400,000 on studies and other external costs, and we still haven't received our license. We are in the midst of the relicensing

process for our Mosinee dam, which we began in 1999.

A new relicensing process is needed to reduce the time and costs involved in dam relicensing. A key flaw in the current process is the selection of stakeholders and their relationship to the FERC. From our experience, the stakeholders involved are not those citizens who live, work, and recreate around the dam in question. They are members of environmental groups and regulatory agencies that are not familiar with the actual wants and needs of the community. The citizens who actually live, work, and recreate around the dam tend not to get involved with the relicensing process because they do not have any major issues, and hence their opinions are not taken into consideration.

We're concerned that there are stakeholders that are not just interested in addressing the public rights, but, in fact, are trying to utilize the dam relicensing process to eliminate dams.

The Wisconsin Department of Natural Resources is a case in point. The Wisconsin DNR must grant water quality certifications in order for FERC to issue a license for a dam to operate. A

recently written Wisconsin DNR guidance document states that the best dam is a dam never built, and the next best dam is a dam removed.

The Wisconsin DNR utilizes this guidance document during their water quality certification process. Water quality certification requirements in Wisconsin tend to be very costly, we believe in an effort to encourage dam removal.

The only way to put a stop to excessive and expensive relicensing requirements is to restore FERC's authority to quickly overrule and delete burdensome requirements. FERC needs to have the ability to deny any unreasonable stakeholder requirement before excessive time and money is spent on them.

We feel that the relicensing process can be improved by giving the FERC more authority to determine what criteria need to be evaluated and met in the relicensing process. FERC also needs to have the authority to veto any unreasonable stakeholder requirements.

While stakeholder involvement is still warranted, the involved stakeholders should be limited to citizens that actually utilize the resource in question.

We understand that legislative changes would need to -- would be needed to allow these improvements to the FERC relicensing process; however, we feel that these changes are warranted.

In summary, we want to thank you for the opportunity to contribute our ideas to the revamping of the FERC relicensing process, and we'll be submitting additional written comments. Thank you for your time.

MR. TORQUEMADA: Thank you, Cara. That concludes the speakers. Any other -- Unless there's any other speakers that would like to come forward at this time. So anyone else desiring to provide input? Not seeing any.

MR. McKITRICK: I guess just a couple of quick comments. I would encourage you -- Realizing, as Tim indicated, we've gone through a lot of administrative types of changes through -- through a number of years, we are focusing on regulatory changes that FERC can make through a rulemaking, it would help if you focus your comments, written comments to us, in that regard, realizing that there may be legislative changes, but that's a different arena from what we're working in here.

So I appreciate the comments, and we certainly hear them, but if there's changes that we can make from a regulatory standpoint, it would certainly help to focus very specific types of not just identifying problems and concerns or -- but very specific things that would allow us to make changes in the regulatory field.

I would like -- like to maybe just have a real quick discussion. I mentioned we would like to continue this dialogue with you. Does anyone have a good idea of how they think we should proceed and maybe flesh out some of these things, as far as schedule and dispute resolution we talked about, participation, number of processes that we should be involved with here, a good way to have that dialogue, rather than -- If there's any suggestion, we're open to that.

MR. EVERHART: I guess I would suggest making it informal and have it more just an open floor type discussion, rather than asking people to come up front and to give formal comments.

MR. WELCH: Yeah, that's a good idea, Lloyd. I'm wondering if maybe we could -- I don't know, the time's kind of weird because it's almost lunch, but not really lunch.

MR. McKITRICK: We could break.

MR. WELCH: I'm wondering if we could maybe break a little bit and then go -- get sort of rid of the kind of the theater, up-us-here/you-out-there kind of thing, and maybe arrange some tables in a more of a roundtable type of thing. And, you know, those of you that would like to participate in the discussion could do that. And maybe a show of hands, who would like to sort of stay around and just kind of discuss these things in a more informal basis? I mean, don't feel pressured or anything, but how many people would like to do that? Well, a lot of you so --

MR. DACH: Tim, I don't want to interrupt, but before we break, I don't know the protocol for getting a little clarification on some of the comments. I was wondering, are we going to do that? I'm not sure where we ended on there. I mean, I had a couple -- I just wondered if we could get a little elaboration on that.

MR. WELCH: Somebody spoke, and you want to say, what did you mean when you said X?

MR. DACH: Right.

MR. McKITRICK: I think that was the plan. I mean, unless there's --

MR. CLEMENTS: I think that's a good idea to do that now, because we have a reporter, and if you break up into groups at separate tables or that, it may be a little -- I'm not sure quite what her role becomes at that point and how you keep a record. So --

MR. WELCH: I was thinking of one table.

MR. CLEMENTS: Okay. As long as we don't lose the service she's providing here.

MR. PLANTE: I think it's a good idea. On the other hand, some of us have four or five-hour drives to look forward to today. The more breaks we take and the longer we delay, the later tonight I'm going to be on the road. So I would only ask indulgence. If we're going to do this, it's eleven o'clock. If we're going to do lunch at noon --

MR. MCKITRICK: Would you care to proceed and come back?

MR. PLANTE: We're going to have to do lunch sometime, but I would just as soon we keep things rolling as much as possible.

MR. MCKITRICK: Bob, did you have a number of questions or --

MR. DACH: I only had two.

MR. McKITRICK: Why don't you go ahead. You're chomping at the bit.

MR. DACH: There were two things that I had. Doug Spaulding, I think, mentioned different processes based on the size of the project, and I was sort of wondering how you envision that shaping up. I mean, like what would be different about the processes?

I mean, I understand how you would think that a smaller project with less environmental impact wouldn't need to take as long. Were there specific parts -- specific components of the process that would be eliminated, or they just sort of take less time to complete?

MR. SPAULDING: I confess I have not -- my comments were somewhat extemporaneous this morning, listening to a variety of speakers, but I hadn't really given that thought, to tell you the truth.

I thought about that on the plane coming in, because I read through the proposals on the table, and, quite frankly, that impressed me as a group of licensees with 200 megawatt projects that were looking at large 12 to 15 million dollar budgets. I've been there, done that, understand it,

how they're looking at it, but I've also been on the other side, and I said, wait a minute. The people that were drafting those suggestions were the people that had the staff that could afford to be there and be involved. And the two, three megawatt projects that are owned by an individual owner, Wausau-Mosinee, they don't have the time to have their staff attend and give input into that. So that's what propelled me to say what I said today.

So that's a long way of saying I haven't given specific thought to what the process would be, but I do understand I think that there should be two different processes and that the one-size-fits-all would probably encompass the 200 megawatt projects and be very burdensome on the two-to-three megawatt projects.

MR. McKITRICK: I mean, we have that concept in mind, certainly, the IHC, when they were developing this. We are having a problem trying to see what particular components of it would benefit from streamlining, for instance, on a project that didn't have a lot of environmental effects.

When you're -- when you're sending in written comments, it would be helpful to elaborate on that because I think there are certain areas, of

course, that we're still trying to figure out how to make work, and we do understand that there are some projects that are just going to be more difficult to license than other projects, and you shouldn't overburden those smaller projects with that -- with those other issues. So, I mean, it's a good point. I was just wondering if we could get some more on it. Tim.

MR. WELCH: Just a quick to follow up on that, and Mona mentioned it earlier. In the IHC proposal, they had the Track A and Track B, where the Track A involved a draft NEPA document, where Track B you went right to an EA. And it sort of follows along.

We're just talking about, as far as the Track B goes, Mona was right, there is sort of a movement among FERC staff. In certain situations we don't feel that a draft NEPA document is always necessary, and in four projects there are limited issues.

And, No. 2, there's agreement on those issues, so it seemed to be not an efficient use of time to again do the comment period thing. So that sort of -- Doug, that's sort of linked to your big projects/small projects sometimes, but not all the

time.

MR. HOGG: Jerry Hogg, AmerenUE. In regard to this comment about the size of projects, I don't understand how that comes into play. Whether it's a small project or a large project, it comes down to all of the federal agencies and FERC and the licensees and the appropriate stakeholders sitting down on the front end and really blowing down what are the issues.

If there are significant issues on a small project, then they need to be dealt with. If there are significant issues on a large project, I feel likewise. But if a large project is assessed and it is boiled down with the agencies' involvement, where they are forced to be committed into the scoping and to define what the true issues are, then the magnitude of the relicensing should be targeted to the scope of the issues and not based upon the revenue that stakeholders see might be available for pet projects.

And there are other issues to be addressed. To run an ALP process, where you allow 160 stakeholders to come in and ask for anything they would like from the utility, because they perceive the finances are there to pay for it, is

not reasonable, nor is it reasonable to expect a licensee to be able to be the one that rejects those proposals because they do not have merit. That needs to go through some type of screening process.

The licensees are put in the ALP process out there on the firing line, and we are forced to take the brunt of public opinion in the press and otherwise for any single individual who does not get what they are requesting.

So my point, to summarize, is up front there has to be a process that identifies the issues that are going to be dealt with that are appropriately dealt with in the process, irregardless of the size of the project.

MR. CLEMENTS: John Clements from FERC. Jerry, does it help you that the IHC proposal provides for the FERC staff to be involved right from the beginning, at the time the Notice of Intent is filed, the prescoping document comes in, and the commission staff is going to comment on that, along with everybody else; does that help you any?

MR. HOGG: I believe it does help. I want to compliment FERC in that they, for our project, since Day 1, has consistently had their FERC representative attend all of our stakeholder

meetings, which, I said, are quite extensive.

That role that is played currently in the ALP process is to strictly advise upon the process. And recognize in Missouri that there are only two FERC licensed projects, that Ameren has both of those, and this is the first project that has been licensed in 20 years. So you're dealing with state agencies and local people and local interest groups that have no real understanding of the FERC process. So that involvement has greatly expedited our ALP, to have that FERC presence.

The role that FERC does not play, though, is to be on the forefront, sitting at the front of the room, actively discussing what is -- what are the issues and what is the appropriate scope.

FERC is very hesitant in the ALP and leaves it very much up to the licensee to make the calls on whether we're going to agree or disagree to do something, and there is not a formal set of criteria for any of the study areas that that study is going to be held against to ensure that the interests of the various state or federal agencies are being considered properly.

So there is always a complete unknown

of the term that we utilize called BATNA, the Best Agreement to Negotiate Agreement -- Best Alternative to a Negotiated Agreement.

So we are constantly guessing as to what FERC and the agencies will ultimately request and whether or not we should entertain continuing to do what we're being asked to do, with the hope that we will develop a relationship that will allow us to get to a settlement agreement.

MR. CLEMENTS: Do you think it's possible to develop more or less objective study criteria that could be applied across the board if the commission were to try to call balls and strikes on more of these things?

MR. HOGG: I guess I want to qualify my statements. You know, I've been in hydrolicensing for a couple of years and certainly don't have the background to speak for a broad basis for smaller projects and so forth, but I believe there has to be criteria set, and I'll give you an example of our fishery studies.

Our fishery studies are quite extensive. The first year alone we ran a half a million dollars over budget, after what was agreed to by the subcommittees, as there was continuous

requests for different information, and we needed to do multiple habitat sampling, and then some habitat sampling, and then we needed to have triplicate samples, and it's very difficult for the licensee to sit there and refuse these things from the agencies without some type of criteria to hold it again -- up against to say what information is truly needed, recognizing that the objective that came in was that we assessed preproject condition. They have worked around that with a concept now, coming up with a mimicking a naturally flowing stream.

The criteria as to what information is required needs to be somewhat defined. Our FERC representative frequently has spoke up and said, this relicensing has already obtained far in excess of the information that we typically receive for a relicensing proceeding. So it leaves us to the point now of saying no and going to some type of FERC dispute resolution process, which as I said, all parties involved are very hesitant, for many reasons, entering into that process.

MS. MILES: I think we're actually getting into the discussion of the topics, and I don't know whether -- Because I would want to follow up on that. There is a list of criteria in

the IHC proposal, and I would like specific feedback on that, but I'm wondering if we want to --

MR. McKITRICK: Yeah.

MS. MILES: -- wait on that.

MR. McKITRICK: We've started this and just kind of continued. I mean, folks, maybe take a pause. If there's somebody that has to leave and isn't going to come back, fine. I don't see that arranging tables and taking that break, I don't know if that's going to be productive. But if you'd like to get a little bit closer so that we can continue the give and take with this, I think we've started a very good discussion. Is there any other people that thinks there's a better idea? I'm certainly open to --

MS. MILES: I just had one -- I was wondering if it would be worthwhile for us to sort of identify the topics that people really want to give input on. I know I heard a lot of discussion about time -- time schedules. I heard a lot of discussion about studies, dispute resolution, and I heard quite a bit of comments on integration of state process with the federal process, how all that works together.

So it might be that we just want to

list the topics that we want to discuss so we've got a bit of a focus for how we'll go through these various areas this afternoon or starting right now. We obviously are on studies right now.

MR. DACH: What I wanted to tie back to is a comment that another speaker made, and I think it was the folks from Wausau-Mosinee. And it led right into the criteria issue, and I was trying to differentiate whether or not there were actually sort of two sets of criteria we're talking about.

There was the study criteria that I think is where you're headed, but it sounded like, certainly from your response and from your comments, that there was an idea about sort of the criteria required to license the project, and I was sort of envisioning that as sort of this, you know, specifically there were these nine things that you had to do in order to license the projects, and FERC was going to come up with what those nine things were, and once you did that, there was some expectation that the license was issued. Was that sort of where you were headed with that? Again, I'm not trying to put anyone on the spot.

MS. KURTENBACH: I think they kind of overlap because some of it is the study criteria.

What studies -- what studies do we actually have to do? And as everybody's talked about, that's a big problem.

MR. DACH: And we can get more into that, as Ann was saying. And then there's the --

MS. KURTENBACH: And then it goes into what criteria really needed to get looked at, and that gets into all the environmental issues out there, and is that really an issue that the dam is causing, or is it, gee, here's a convenient opportunity, similar to what he talked about, this interest group would love to have this changed, and, gee, here's someone who we might be able to get to pay for it. Let's bring that up as an issue. If we can get some criteria set that we don't even need to go there because that's not relevant to the dam.

MR. DACH: Okay. Thanks.

MR. TORQUEMADA: Mona had a comment and then Bill.

MS. JANOPPAUL: You know, there was one more issue that I heard a lot about in the statements, and that was FERC's authority and FERC's involvement, and I just -- I just don't know how open people are to discussing that. I don't know if that's really integrated in those discussion topics

or not, but I wanted to hear more.

I heard a couple of speakers say this proposal somehow diminished FERC's authority or that they wanted more FERC involvement, I'm hearing, in studies or earlier, and we certainly thought that this did get FERC involved earlier and in a more committed way, as well as our agencies.

I'm kind of curious about those who thought that somehow this diminishes FERC's role or makes their decision making less clear. So that I'm interested in if anybody wants to respond.

The other thing I'm also curious about, we mentioned the Interagency Task Force, and we had about six interagency agreements off that that were just administrative practice, didn't need to go to regulatory or rulemaking, and there were a couple in there that had to do with studies, and FERC does have both an informal and a formal dispute resolution process in place now, and I'm just curious if anybody is familiar with those documents or has -- thinks that we're living up to our promises there for studies or not, or you don't even know about them. If you don't even know about them, that's fine, too, but if any of you have had experience with the informal or the formal -- the

current FERC process, I'd be curious about that, because that'll figure out -- help us figure out what needs to be fixed, if anything.

So I'm going to ask FERC what about that other topic? Is that open for discussion or not? Do you want to hear more about those comments about FERC's role?

MS. MILES: Oh, yeah, I think that's a good idea. Great.

MS. JANOPPAUL: Okay. Because from the first speaker on, I was hearing things about, you know, what FERC's role was going to be in that, and I'd like to hear more about those, if people don't mind elaborating a little bit.

MR. McKITRICK: No, I think that's good, and somebody that's been involved, speaking for myself, from both the traditional and alternative process, realizing that in the traditional there is defined dispute resolution process that was mentioned isn't really used in the traditional process.

Often what happened is that there were these continuing disputes that continued after the application was filed, and it took a long time to get that resolved after the application was with us.

In the alternative process, we were hoping that discussion would result in what studies need to be done, but we've also heard that those seem to be going on and on and on, with no -- no end. So the idea of if there's a dispute resolution process early or how to resolve that, I think, is a very important point, otherwise we might just turn this back into a traditional process if those things aren't resolved. Then it's going to be after the application is filed, people just aren't going to go away. So there has to be a resolution.

MR. TORQUEMADA: We had a comment over here first.

MR. SPAULDING: Okay. I'd like the representative from Ameren, who said looking at scopes and studies and agency requests up front, basically virtually all the projects I've been involved with, you've gotten a list of requests for studies, and there's always been a suspicion that the requested study is not just to assess the impact of the hydro facility, but to develop some general resource information that would be helpful for a given agency to manage a resource or evaluate something.

So it's not just a general category of

studies, fishery studies. It's the specific scope of the studies, and are those studies needed to assess the impact of the hydro facility?

And from my standpoint, that requires development up front of a specific scope of a study and then agreement or some sort of a ruling that that study should be done to assess hydro impacts and that this part of it isn't needed for hydro, but it's a good study. The agency can fund themselves.

So I think that the study requests, it's not just a generic type thing up front. It's very specific and site specific, needs to be identified up front where the dollars need to be spent to assess the impacts.

MR. McKITRICK: Let's take one more follow-up question.

MR. DACH: Can I just respond?

MR. McKITRICK: Sure. I'm sorry, Bob.

MR. DACH: We had that in mind, and I'm specifically not up here to tout the merits of the IHC proposal. However, we are aware of that, and we were thinking that by moving to scoping right up front and coming to terms on what the issues of the party actually were and putting in some criteria for study requests, then we can limit the scope and

the breadth, if you will, of the studies we actually require of the applicants.

So we have it in mind, and the reason it's important to sort of bring it out is it might not be coming across on the proposal we have on the table, and that's why -- and I think to FERC's benefit, they want help drafting the language so we all know what it means and what it says.

So the comments that come in, if they're really specific with regard to that, I think they'd be helpful. But that's good, thanks.

MR. PLANTE: I'm Tom Plante again. I'm curious, with all of the -- And I think this is good. I think we're all looking at moving in a better direction than we were of how does all this, particularly the studies and the costs, the front end costs of this thing, how does that resolve itself with a state that says, we'll be anything that we wish that we don't get through the licensing process in our 401, and you can't proceed until you get that anyway.

How is that being addressed in this process? Because right now the state will say, we didn't get it there, we're going to get it here, and we're just going to dig our feet in the ground until

we get that study.

So I know you can't answer the question, but the reality is FERC can't move forward until we get that water quality certificate from the state, and they have the authority right now today to put anything they want in it. So that needs to be looked at somehow in the relicensing process, and I don't know how to do that.

MR. MCKITRICK: I think we hope to.

One of the things, we asked the states to participate in this, and we realize timing, information, those kinds of things are issues with the states, particularly 401s.

So I think we're looking for their comments in this process to see how, you know, they can get what they -- they believe they need in order to participate in this. So hopefully we'll hear from them, and it may help us.

What I'd like to do before we go any further, though, is Tim started putting some discussion topics here for us to proceed through the rest of this morning and into this afternoon. I'd like to kind of list those. He has up here some of the issues that people have brought up that we think might be good to focus on.

One is the development of studies, particularly the scoping out of those studies, the costs, obviously, involved with that; the dispute resolution process, how that may happen or what we want to call it; and how should FERC be involved, how much -- and how can we do that, with the idea of when we start discussing these things, we realize that these are problems, but we're really interested in language -- types of things that we could talk about that we put in a regulatory framework that would allow this to work.

So, Ann, did you have --

MS. MILES: I'd like to add the one you just raised, which is the integration of the State 401 with the FERC process and have a discussion, since we have -- we have State 401 people here.

(Man raises hand.)

MS. MILES: Good. That's terrific.

MR. McKITRICK: He raised his hand. I wouldn't have done it.

MS. MILES: And then I also heard a lot about setting time frames and sticking to schedules.

MR. McKITRICK: Okay. We have time

frames, keeping to time frames, the idea of settlements.

MS. JANOPAUL: Early identification and scoping of issues, so scoping down.

MR. McKITRICK: Is that prior to the study involvement, or is that part of that, do you think?

MS. JANOPAUL: I heard a lot about a lot of people it involves and no way to winnow down.

MR. McKITRICK: Okay. Scoping down.

MS. JANOPAUL: Scoping down.

MR. McKITRICK: Other issues you'd like to see some sort of discussion?

MR. URBANEK: I think the issue and role and responsibility of FERC would be helpful to us. There's a question, what does FERC need? They're getting involved earlier. I'm not sure it's a matter of timing, but it's a matter of how they're going to be involved, what value do they bring to this process?

You know, this might not be a good simile, but when I go to get my driver's license renewed, I go to the appropriate agency, and I deal directly with them, and they have the authority to grant my license or not grant my license. I get a

book ahead of time in terms of what I need to know, and then I may need to go on a road test or whatever. Very clear.

Dam hydro relicensing process is becoming extremely more complex, I think in many ways unnecessarily so, with dams that have been in existence for over a hundred years, for which there are minimal to no known problems.

And where is FERC in terms of if they are to be leading relicensing process, then so state it. What can they do? What can't they do? What things do we need to study? That's a repeat of what's up here. This resolution process is after the fact. We all prefer to be able to go into this thing up front, agree on what we need to do.

And one other thing I'd say, understand why we need to do what we're doing. What value does it bring to the environment? What value does it bring to the public? What value does it bring to the licensee? So that we can understand the objective reasons of what we need to do. What is included, and what is excluded?

And then with that, it will help us, it will help FERC, it will help in some cases many of the folks who bring what I'll call frivolous

requests because they feel the licensee has got deep pockets, and, boy, this is a way to get what I want, whether it's justified or not. So, anyway, FERC's role is the key in that.

MR. MCKITRICK: Is there any -- Are those topics generally covered there, or is there one specific thing that you'd like to see added?

MR. URBANEK: I'd like to know what FERC's responsibilities are and what their role is in executing the process, their involvement. Involvement doesn't -- Let's see, you've got role and responsibilities.

MR. WELCH: I just put it as a subtopic because it had FERC there.

MR. URBANEK: Yeah, role and responsibility of FERC is key for me.

MR. SPAULDING: This is not really a major topic, but it's a topic of annoyance and its environmental impact in relicensing is the number of trees cut down because we sent draft applications to 40, 50, 80 people, and there are really only three or four people actively involved.

If there could be some way to get a service list early in the process of people that want to be actively involved and eliminate the

necessity to send out all these extraneous copies, I think it would be very helpful to everybody, and that's a -- not a significant topic with you, it's an annoyance.

MR. WELCH: Should I put an A by there?

MR. SPAULDING: Something.

MR. McKITRICK: Good. Any other specific topics that you'd like to add here? This is developing some real good issues for discussion. Should be pretty good. But if not, I think --

MS. JANOPAUL: We've almost got all the discussion topics except a couple over here, and maybe the last one is something that we talk about among ourselves, but does anybody have a strong sense of whether they want the other two processes maintained and available? Do they see this as a third one? Is that really on your radar at all?

MR. McKITRICK: There was some discussion of that, and that would be -- that might be good, just to -- Because we're still here till four o'clock and need something else to discuss.

MR. WELCH: Well, I don't think -- I'm sorry. Did somebody have --

MR. McKITRICK: No, Tim.

MR. WELCH: I don't think we're going to be able to talk about all of these things, so I was wondering, is there a way of -- I don't know. Ann had an idea -- see, I always blame Ann unless it's a good idea, then it's our idea -- had an idea that maybe during lunch break or during the break, people could come up and actually vote, put your little tick mark by what your number one project is, and then we could at least satisfy the majority of the people or something.

And, you know, we could just sort of rank them, and we'll try to go through as many of them as we can, but I'd really like to hit the hot button issues that really a lot of people are interested in delving much deeper in. So while we'll attempt to go through the whole list, I really want to make sure we hit what the majority of the people want to go through.

MR. URBANEK: I have one more issue. I think it would be helpful for FERC and all involved to understand how costly the process is of relicensing dams. This gentleman mentioned it was going to be 12 or -- plus million dollars. Does he really appreciate the full costs involved and what the value is of a multimillion dollar relicensing

process on an existing facility that has -- and I'll speak for our place -- that has operated in harmony with the community, the environment?

And the issue is not that it's operating not in harmony, it's that there are, in many cases, a number of groups that either see this as an opportunity to take -- to work agendas outside of relicensing, for one, and there are groups who see that there is no need for a dam whatsoever, and so the process becomes very costly.

If you understand the cost and what's happening, maybe FERC can say, look, we're here to relicense the dam. You don't want the dam is a separate issue. Handle that through your legislator. But that's not for the licensee to -- to work on issues, and we are working with you. And the costs are just horrendous on some of the things that we're required to do, with no value.

MR. MCKITRICK: Okay. We added the cost of licensing. What I have is about 11:30. I think Tim's idea is probably a good one, just to help us prioritize -- Ann's idea, excuse me.

MR. WELCH: No, my idea. Maybe.

MR. MCKITRICK: Okay. It was a good idea. Maybe put, what, a couple -- no more than

two -- Don't go check everything.

MR. WELCH: Yeah, no multiple voting here. This is not Florida.

MR. McKITRICK: So we can then put this together for this afternoon, maybe get back here around 12:30, and focus this discussion on what we have here. Does that seem okay? Or is there anybody else that has some suggestions? John.

MR. CLEMENTS: Do we need an hour for lunch? I mean, if these gentlemen have long --

MR. McKITRICK: I mean, I don't but --

MR. WELCH: I would think you need at least -- if people have to go somewhere and come back.

MR. PLANTE: That's fine.

MR. McKITRICK: He conceded now. It's okay.

MS. MILES: Do we know what our lunch opportunities are?

MR. McKITRICK: Some of you may know this better than I do. The only thing I know that's close is that outside the Marriott, you walk right into a mall, and if you go up to the third floor, there's a food court, so there's all the Arby's and that kind of stuff you can possibly want. Those of

you that know of really nice restaurants, feel free.

So it's fairly close by for some quick food.

MR. WELCH: So anyway, the markers are up here. Put a tick mark for two of these that you want to talk about. And we'll be watching so you don't like load them up. Wait a minute. There's more tick marks than people in this room.

MR. McKITRICK: Thanks a lot. We really appreciate it.

(A lunch recess was taken.)

MR. McKITRICK: I want to thank you all for coming back. We have some real good topics. Proceeding through this list, from the check marks, it looks like studies won, and so we will -- we'll start with that.

I think maybe just to get some sort of framework about some of the work that's already been done, we have the IHC proposal as one effort, not to say that this is the answer. We're looking for clarification and maybe other -- other approaches.

If you've read the NRG proposal, and that has issues that you'd like to bring out or you have separates thoughts, that would be great, but I'd like maybe Bob to give us some sort of framework around how the IHC proposal started looking at

studies, and then the group, I think, can respond to that, add to it or subtract from it.

MR. DACH: What we had done when the IHC was working, we developed this flow chart that you see on page 14 of Attachment A. That was actually what we did first, and then we put words to the back side of it.

We had, certainly conceptually, a lot of the issues in mind that folks are bringing up right now, and the biggest one, of course, that we saw with respect to studies was the idea that, you know, the bank vault was opening up, and the sky was the limit on the requests that anybody and their brother could ask of a licensed applicant.

So -- And we -- we sort of drew that back to the fact that the project itself had not been scoped through the NEPA process before the study requests were actually made.

So what we wanted to do is use the scoping process to identify all of the issues and then to sort the available information with respect to those issues and then to develop the study requests based on wherever we needed information to address the actual issues that were a result of project effects. So we put the process together

with that in mind, or at least that was our intent.

With respect then to the study requests themselves, we listed out a set of criteria, and the idea behind the criteria was that these will actually focus the study requests to specific project effects and to specific information that's needed by either the commission or one of the resource agencies to develop their mandatory conditions.

We hadn't considered the states. We hadn't considered NGOs. We had looked at it purely from the development of our authorities under the Federal Power Act. So that's, in essence, what's reflected in those criteria in there.

So that the process was, or at least the idea behind it was, if we made a study request that satisfied all six of those criteria, then it would admit that threshold, and it would be implemented by the licensee without a lot of squabble.

Now, of course, we recognize that there's always going to be some squabble, so that's why we included the dispute resolution process. In the dispute resolution process, as we envisioned it, would simply look at the study request made by one

of the mandatory conditioning agencies and determine whether or not it had indeed satisfied those six criteria.

If it had satisfied the criteria, then there would be a recommendation made to the commission that that study should be conducted because it's going to be needed eventually in order to license this project.

The insurance that we tried to give with that process was that if once we made it to the final study plan, so it's after scoping is completed, the licensed applicant finishes his final study plan, once that final study plan is completed, then that, in essence, is the Bible for the studies that are going to be required to license the project. So we would want to make sure that the final study plan was good to go.

If we had a disagreement with the final study plan, that's when we would then implement the dispute resolution process, and it would be based on those six criteria, and then a set of findings would be made to determine whether or not it was actually required in the final study plan.

But once the final study plan was

done, once the dispute resolution process had run its course, then, you know, we were looking at that as sort of the Bible of studies. This is what had to be done, get them done per the schedules developed, and once they're done, we would be very hard pressed at that point to bring something new to the table. So if everything was done according to the process, then we didn't foresee having to bring anything new to the table.

And we -- we, of course, left some caveats, like there was -- as Mona pointed out during the presentation, there was a bad year, you know, extremely low flows, and we didn't get any good data, we would -- if we thought that the test had to be repeated, then we would go through a similar dispute resolution process to determine that. But everything would be based around that final study plan. We were putting a lot of weight into that.

So it was the development of that, through scoping and through the dispute resolution process, that would actually lay the framework for the studies that were required to get a license. That was the intent behind that process.

MR. McKITRICK: Thank you, Bob.

Before -- before I was remiss and alluded to that we're starting with study requests. I didn't mean to say we're going to stay with that till four o'clock.

So as we move through here, it looks like in second place was FERC involvement. So after that, we'll move from there and go through the checklist.

I would encourage people, as you think about responses and study requests, we know that there's problems associated with this, and there's issues, but I think we've heard a lot of that about costs and timeliness.

What would be a good way to solve those types of things would be very helpful. And we've heard from three federal resource agencies that have -- including FERC, four -- working together to look at their issues, but there may be licensees responding to that. NGOs specifically may have some sort of other idea, and, particularly, the states were very interested in how the states feel that they could get the studies they need.

MR. HOGG: I would like to request that consideration be given that the state and federal agencies' obligation to protect and enhance

the resources do not start with a federal action under a license.

We operated a plant for 70 years, and if there are issues that exist out there today, they should be identified and be brought to the forefront for the licensee to be aware of.

So it seems to me there is quite a distinguishing between known issues that exist that are to be addressed and a process whereby we start a relicensing activity, and then all the people that have -- look at that as an opportunity to say, well, what if there is an impact there from that facility, say on the Lower Osage River fishery? It doesn't seem reasonable to me, even under the Endangered Species Act, that the Department of Interior has responsibility to protect, enhance, and has a whole plan published for the proliferation and propagation of that endangered species that if it's known to exist in the river, that they would not, if there is an issue, it should be brought forward to the licensee, and it should be known prior to relicensing event.

It is as if we start with licensing, and then people that have the responsibilities for the protection and enhancement of the various

resources step forward and say, well, maybe we ought to look down there to see if there is something going on.

Well, I don't understand that's where their authority or their responsibilities start. And so if there's a known issue, I think it should carry significant weight moving forward through relicensing to be resolved, but I don't think it's appropriate to expect licensees to go do extensive studies to try to identify what if there is a concern in these areas.

And that is where most of the dispute comes in, it's in the study requests, because they are what if. Well, we don't really know, or we would like to know, rather, is a better way to phrase it, if the project is having an impact upon these resources.

MR. DACH: I agree. The problem that we've been dealing with, which I think we would like to have some -- some input on, is we -- from a biological perspective, we think it's sort of pie-in-the-sky to think that you could figure out all the biological answers for a project -- for a complicated project. I mean, for a smaller project you could, but for a complicated project, you could

figure out all the answers in two years or one year, or however long it was, and it's sort of -- it makes you second-guess yourself because you know you're issuing a license for a long time, and the way that we had done it traditionally is pretty much how you just said, which is once the license was issued, you didn't hear from us or see us again until it was time to get your next license.

The point that you bring up is if there were information brought forward or -- or issues brought forward -- and I think this is what you were saying -- during the actual license term, and you said, you know, we think there's a problem here, and there was a dialogue established, and if it was looked into during the license term, and it wasn't all sort of piled up and waited for the end, it would offer us some flexibility for sure. I don't exactly know how to make that work.

We had always been concerned that a lot of licensees were like, look, we went through that process. We don't have to hear from you guys again until the next time we have to go through it.

A lot of our settlement agreements now are coming forward with monitoring plans that take place over the course of the license just so we

would have some information in place that we would be able to utilize during a licensing process. I mean, ideally, it wouldn't take you five years.

What it all comes down to, to us, is what information is there, and what information do we need, and how long does it reasonably take to get that information?

Framing that up is what's been the difficulty so far, and making sure that it's connected to project effects, and making sure that the appearance of us just not opening the bank vault is there, but making sure that everything's focused.

I mean, they're all issues, we're aware of them, and certainly we take a lot of heat over them, and we're not sure exactly how to deal with them. We had hoped through this licensing process that we could sort of put something in place that either addressed it now for this licensing or put us in much better shape for subsequent licensings that were coming, even though certainly none of us are going to have anything to do with them, we thought we could at least benefit somebody.

MS. JANOPPAUL: I guess I'd like to ask what about this tension? We get a lot of complaints

from licensees that our conditions don't have a sufficient scientific basis. How can you help us out on that issue?

You know, we do need -- we do need scientific information to support our conditions, other -- otherwise, you know, then they get challenged for lack of basis.

So how do you help us on that tension issue? What would be your suggestion on how -- how to work that, that we do, you know, we have the ITF agreement that we are going to justify our studies, we are going to link them to our management plans, we are going to provide you with goals and objectives. Are you seeing that? Are you not seeing that? So I'm curious -- I'm curious about how we're performing out in the field on that.

And then, you know, what about this issue? You don't want the cost of studies that are superfluous, and that's understandable, but how do we get enough studies so that we have enough information to give you conditions that are tailor made for your project rather than too conservative or too onerous? How can you help us with that?

MR. MCKITRICK: Do you have a response?

MR. HOGG: I guess my response starts with a question, and the question is you're asking will the licensee do enough studies and -- to provide you with the information necessary for your conditions.

From my perspective, the question becomes the conditions themselves. I mean, as we operate a project for 70 years, and no agency steps forward and expresses any type of concerns that they have a management plan or that they have some basis for that management plan that would warrant changes or investigation or the need for data, it just seems kind of unusual that all of a sudden, at a relicensing point in time, that an agency steps forward, writes management goals and objectives, and then comes forward and says, we need some evidence as to whether these are being carried out or if they're even valid or not.

I don't think the licensees, at least speaking for my case, object to doing the studies that are necessary to answer, you know, project impact type statements about issues that there are some reason to believe that they might exist and are warranted to investigate.

I guess the question comes in to say,

is it appropriate, as an agency, to create very broad goals at the last minute for relicensing and then walk in and say, well, we don't really know, but what if there is a concern out there in these areas?

The states have regular responsibility on a routine basis to manage all the resources of the state, at least in our case. As they manage those resources, they monitor on an ongoing basis whether or not there are issues. And that's feedback, whether it's fisheries or creole surveys or hunter surveys or so forth.

If there are no issues brought forward, it's just not realistic when the licensee starts this process for them to walk in the door and say, oh, we want to change the world, and we need this information to investigate if we can justify that.

There's a complete difference there, and I think the onus has to be on the agencies, both at a state and federal level, to have clearly defined objectives and management goals and be responsible to have those in place and then feed those to the licensees, and that is currently not the way the process works.

MR. DACH: You're right, it doesn't work like that right now, I agree.

MS. SMITH: Can I just respond to that?

MR. McKITRICK: Gloria. If you don't mind, just so that -- the court reporter is good, and she's got everybody, but before you speak, if you don't mind giving your name again so we know who you're with.

MS. SMITH: The Department of Interior. The way the previous process has been constructed was that we assumed -- and I think FERC assumed -- the licensees wanted security. So there's a certain amount of insurances that the licensees wanted, and for us to sort of come in the middle of a license -- in your license and say, we'd like for you to, you know, alter your project operations in this manner, we just didn't see that going through a whole reopening process was something that you wanted to do, and so the resource agencies have always waited until their licensing came to pass, and then we brought -- that's when we set up our resource management goals and objectives and said our conditions and prescriptions.

If it's in your interest to go ahead

and be subject to a reopening process throughout the licenses, we can do that. We just thought that the way a license works, insurances were more in your interest.

MR. McKITRICK: Do you know, do you get -- You've had a license for 30, 40 years now --

MR. HOGG: Seventy plus.

MR. McKITRICK: Well, I mean, yeah, the new -- the second license.

MR. HOGG: Yes.

MR. McKITRICK: Did you have interactions with the resource agencies at all during that period of time, or set up meetings to see -- either them or you, to see if there are changes?

I mean, my experience is that some -- what Gloria said, some licensees would like take their license and keep it, not do others. Others are more interactive and would like to make changes or amend, not particularly reopen, but may amend licenses as things change.

Is there some way that -- Is that a regulatory thing that we can set from the standpoint of every so often something happening to check back so it doesn't all occur, or what's your perspective

of how you've interacted with resource agencies?

MR. HOGG: Well, the federal resource agencies have not interacted with us routinely, and certainly there's not any licensee that I would imagine who would sit here and say that they want a lot of reopener clauses and things brought up in the midst of things, but we routinely interface with our state agencies. So that is where, to me, the integration of the issues from state to federal, you know, need to be married together.

And certainly in our existing licenses, as issues such as an unfortunate fish kill that occurred several years ago and a condition came up, and we were approached by the state agency, and we partnered with them and resolved -- came up with a whole memorandum of agreement to resolve that issue. Those are very appropriate things.

I would also think that the state agencies would not have hesitated, that if they had feedback that there was something being impacted in any of the resources underneath their purview, that they would have approached us as a licensee for us to have taken some type of action or work with them.

So we've had a very good working level relationship through the years with our state

agencies as they've brought things to us, and we looked at it and said, okay, if there's an issue here, we need to solve the problem. So from -- I think that type -- somewhat answers your question.

MS. SMITH: It's just been the tension back and forth trying to figure out if we should just wait until relicensing or maybe go in and ask the licensee to do something right now.

MR. HOGG: Well, let me address -- I hate to be the only one speaking here.

MR. McKITRICK: No, no. We have time.

MR. HOGG: And everybody take the mike away, please. We have a federally endangered mussel in the Lower Osage River, and it just is not logical to me personally that if that is a situation that -- that is a serious situation, that that mussel became enlisted on the Federal Endangered Species List, and there were published studies of that done in excess of 25 years ago in the river, that no one would have come forward to try to protect that species. If you waited till the relicensing period is up, it might have been extinct. In this particular situation, fortunately, it is not, and we've found more than they ever found previously.

But it's not logical that you would

wait for the relicensing period to come forward and say, we know this is in the river, we think there are some issues here, you know, and something might have been looked at.

MS. SMITH: I couldn't agree with you more on that issue. Without getting into a big discussion here, there's been a legal question about whether or not the wildlife agencies could go in and do something about enlisted species in the course of a license, and it used to be the FERC's position that the nature of a license didn't allow the necessary discretion to go in and do consultation and maybe do a biological opinion for enlisted species without getting in that battle. The wildlife agencies have just sort of sat back and tried to wait for relicensing, when there was a better opportunity, and there wouldn't be so much heat and controversy and potentially litigation over the issue. So that's where the tension from there lies.

And the ESA is a separate statutory authority that's completely different than the Federal Power Act, so, unfortunately, you're stuck going through two processes, and we're trying to resolve that, also.

MS. KURTENBACH: I think there's a difference here --

MR. McKITRICK: If you don't mind, just your name real quick.

MS. KURTENBACH: I'm Cara Kurtenbach from Wausau-Mosinee. I think there's a difference here between what you're talking about when there's an actual issue, between what he was talking about earlier, which is a big concern for us, is when the states are going on a fishing expedition, and they want us to fund them, and I think that's usually the bigger issue.

We see that as their function. That's where our tax dollars go. Why should we be funding fishing expeditions? Gee, what if this problem exists? Can you do a study to see if it really exists? Which is a separate issue from what you were just talking about, if there really is a known problem.

MR. McKITRICK: So like in our existing regulations, either under traditional or ALP process, is there something that would allow us to make those kinds of changes or bring your ideas -- I mean, how do you -- how do you frame that in some sort of language that would say no

fishing expeditions?

MS. KURTENBACH: And I think that's something we've been getting to with criteria. FERC needs to set specific criteria what is reasonable to be looked at, trying to get rid of these open-ended fishing expeditions that we're forced to do.

MS. JANOPAUL: I have a question. Is that in the FERC process or the 401 process or both?

MS. KURTENBACH: Both.

MR. McKITRICK: And if you'll let me, I'll try to regulate this a little bit, but I'm sorry.

MR. URBANEK: Dennis Urbanek, Wausau-Mosinee. You talked about having criteria. It asked what studies can be done and what cannot be done in a resolution process. I would offer that the criteria is not specific enough. If you -- We don't know how to approach those -- those items, and is it very generic that you'll have these types of studies or whatever.

One of the things I would really like to know is what does FERC see their responsibility and the licensee's responsibility in terms of managing or working with the license that we do have? What are our responsibilities to the

environment? Is there something there that we need to know that we don't? And be a bit specific about it.

Secondly, I think, wandering a bit here, resolution process without having the licensee involved is quite interesting. How can you do that? Who has the largest financial stake in the whole piece? And they're not apparently involved in the resolution process. That does not seem workable or credible from a licensee perspective.

And the third piece is on some of these studies -- And Cara mentioned fishing expedition. Another gentleman mentioned about all these what if's. When we've gone back and asked for information and someone say, well, we think there may be a problem. We say, what's that based on? Well, we have -- last week we went out on the reservoir. Do you have any information you can provide, any reports? No, we don't, but we know -- we think there is an issue. Not a very good input in terms of going out and spending \$75,000 on a study, based on we think there is something and I was out on the reservoir for an hour last week. Unacceptable from a licensee point of view. And so I think something has to be in here.

And, also, when we talk about things is what is the problem that -- that we, as the licensee, are trying to solve? And for many of the inputs, there is no problem. There has been no problem. There is nothing to indicate that a problem will occur. But we want to go and study things for -- for some reason.

And, again, there's some real adversarial positions taken. If we make this dam relicensing difficult and expensive enough, you ultimately are going to get out of the hydropower business. I think FERC needs to address that, and FERC's role is either they're here to license dams in an environmentally and cost effective way, or they're not, and right now I think they're in a gray area, and we're in a gray area.

What we're doing is setting of criteria, and it's not working very well. We really need a lot of -- lot of help on a responsible approach to this.

MR. McKITRICK: I appreciate the comments, and we'll try to get back to the FERC involvement, which was No. 2, and also dispute resolution as we have time, but I'd still like to focus on the studies, and particularly criteria was

very interesting. I saw Ann and -- Are you from the state?

MR. STROM: Yes.

MR. MCKITRICK: Let Ann --

MS. MILES: Mine was just a question.

Ann Miles, FERC. I wonder if -- A number of people have mentioned criteria. There are some criteria listed in the IHC proposal. I'd like to see if we can make a list of criteria that might be useful to a range of stakeholders in the room.

MR. WELCH: You want to make a list and then compare it against the list that's in here, or do you want to talk about --

MS. MILES: Whatever. Whatever people would like to do. I'm curious, you all have mentioned the criteria several times. Cara, if you've got suggestions on what that criteria might be.

MS. KURTENBACH: Can you start out and let us know what page the criteria is on?

MR. WELCH: If you look in the notice, it's under Enclosure C. Then you flip to the back -- This is really hard because we don't have page numbers. Well, we do, but they're all separate.

If you look at Attachment A, which is the Interagency Hydropower Committee Proposal for an Integrated Licensing Process, and then of that attachment, you turn to page 11. Under Section 4.3, this is the study request criteria that Bob and Mona were mentioning earlier.

MR. McKITRICK: Is there a chance that you can read through those real quickly?

MR. WELCH: I could, and I will.

MR. McKITRICK: Okay. Thank you.

MR. WELCH: Under the study request criteria, the first criteria is whether the request describes available project-specific information and provides a nexus between project operations and the effects on the resource. That's the first one.

The second, whether the request includes an explanation of the relevant resource management goals of the agencies with jurisdiction.

The third, whether the study objectives are adequately explained in terms of new information to be yielded by the study and its significance relative to the performance of agency roles and responsibilities.

The next one, if a study methodology is recommended, whether the methodology is

consistent with generally accepted practice in the scientific community.

The next one, whether the requester has considered cost and practicality and recommended a study or study design that would avoid unnecessary costs, while still fully achieving the objectives of the study.

The final one, if the license applicant has provided a lower cost alternative, whether the requester has considered that alternative, and if not adopted, explained why the lower cost alternative would not be sufficient to achieve the stated study objectives.

So these are the study criteria that the IHC proposes that every study request by an agency will be measured against.

MR. McKITRICK: Does that get to the types of criteria that you were alluding to, or were there other --

MR. WELCH: So we were looking for if you had any additions to this list or subtractions from that list, we'd kind of like to know about it.

MS. KURTENBACH: I guess this is the kind of criteria we were looking for, and some of them are good, though we'd certainly want more

in-depth, going into what kind of discussions we had earlier, is there actually a known problem to exist?

I think -- I know for sure in our projects, we just have gone on fishing expeditions. Go look, see if there is any problem. Well, we've spent a lot of money doing that, and I don't think these necessarily get to the heart of that issue.

MR. MCKITRICK: If there's some way you can help us frame that in some sort of language, if not today, that would certainly be helpful, but when you're putting your comments together, it would be good.

MR. EVERHART: Yes, Lloyd Everhart. I'd just like to clarify, does the last point there include existing data, if there has been studies? I think maybe that could be made a little more clear.

MS. JANOPPAUL: Forest Service has a practice they call existing information analysis, and this is an administrative practice we're having, and probably not many of you are familiar with Forest Service projects. We have a couple of projects that are on Forest Service lands in this area, but not many, but we do -- we do that very thing, and some of this has come out of those ITF documents we talked about earlier, where we agreed

to do some things for study, and some of it has come out of our different agency practices.

Again, I want to emphasize, this is a wide open area. That is not a shutdown proposal. If you have more criteria, or I keep hearing things about if you have ideas about how to involve the states in this criteria, you know, think about those for your written comments if not -- if you aren't ready today. This is not shut down.

MR. MCKITRICK: Would helping to get existing information -- I know when you put together like your initial information package or initial consultation document, depending on the process you're in now, you do some of that. Would there be something in a regulatory field that would help get existing information earlier, or what are your thoughts on that?

MR. EVERHART: Well, I asked that question because when we went through the Class of '93 projects, you know, you would get the standard lists of study requests from the agencies, and for every project, fish entrainment study would be one of those requests, which is a very costly item.

And since the Class of '93 was completed, there has probably been 40 or so fish

entrainment studies that have been done here in the Midwest on warm water fish. And, basically, it's pretty well known what the impacts are of fish entrainment on these warm water fisheries.

So, you know, it seems like there is a good database there, and for the agencies to keep asking for those types of studies, it just creates controversy, and it is very costly.

So where there is a database, you know, I think if the licensees, especially people who are new to this process, if they could be made aware that there is a database, or maybe that's where FERC comes into play in the scoping, and you can say, this isn't -- it isn't necessary to do this type of study, there is an existing database, and the impacts are basically known.

MR. McKITRICK: Do you think that's something we can do, or do we need to reach agreement, like on entrainment, that these 40 studies basically represent the Midwest, and we can accept that information and move forward from there, or is there something that just needs to be a handshake, that people agree that --

MR. EVERHART: I think what you're saying, that would be the big step. The Fish &

Wildlife Service plays a real important role in this, too. They're involved, just like the states are, as far as the study of conditions on fish entrainment, and if that could be written into their agreement that they work out with FERC, you know, that might be helpful.

MR. WELCH: Let me just say another thing about the IHC proposal. The IHC proposal has a provision in it -- or -- in it that even prior to the Notice of Intent, like, what, two -- two years maybe prior to the Notice of Intent, that FERC would send out a letter to the prospective applicant saying, you know, this is just to remind you your license expires blah, blah, blah and would also provide some sort of a very general list of these are the types of categories of information that are typically associated with relicensing of hydropower projects, and in addition to that, there is -- we would send out information about the contact people for the resource agency.

And the reason we're doing that is to encourage applicants to start thinking about their initial consultation package early, talking to the agencies and finding out what you just said, Lloyd, about what -- what is the existing database, you

know, maybe even pulling on some studies from the Class of '93, to sit down with the agencies very early on and say, what have you got? You know, this is on my river. You know, have you done fishery surveys here? You know, really encouraging that, even before the process starts.

MR. EVERHART: I think most licensees that are involved in the system, that has been our standard practice, I would think most everybody does the same thing. You go to the state and federal agencies, and you ask the questions, what data do you have? But that hasn't stopped the demands or requests for studies. These -- And very expensive studies.

MR. SPAULDING: As I look through the study request criteria, it seems to me -- this relates, perhaps in part, to what Cara was saying -- no words do I see specific project impacts.

And I think, you know, the intent, it may be inherent in some of those, but I see on Item B it says whether the request includes an explanation of the relevant resource management goals of the agencies with jurisdiction over the resources to be studied.

Well, that's fine. Agencies may have

an overall goal, but does it relate to a specific impact that the project is causing that needs to be studied, and does it relate to impact that a future license can address?

Obviously, a facility has been there for 50 years had impact 50 years ago, but I think what the study requests need to focus on, is there an ongoing impact that needs to be studied in terms of providing information on whether mitigation is needed, or what type of mitigation is needed, and I don't really see that specifically pointed out.

MS. JANOPPAUL: Is your name Doug? Is that right?

MR. SPAULDING: Pardon?

MS. JANOPPAUL: Doug?

MR. SPAULDING: Yeah.

MS. JANOPPAUL: Yeah, okay. So A doesn't do that for you, and that's the intent of A, is just what you're talking about, and it gets back to Lloyd's statement. Is there existing information? Do you have a direct nexus? So if you don't think A, Lloyd or Doug, get to what you've been saying, help us out, give us some language.

MR. SPAULDING: I guess I would, you know, like the words specific project-related

impact, something like that, something that you can really tie to that that facility is doing.

And I read that, that's why I said it, it kind of gets there, but it doesn't get as specific as I would like it.

MS. JANOPPAUL: Okay. So instead of nexus between project and effects, you would like it to say?

MR. SPAULDING: Something -- Provide a description of potential -- and the relationship -- potential project impacts and the relationship of the project to those impacts or something like that, along that line, so that you're really focused on rather than a general type of study that provides a bunch of information, you're looking at the facility, what are the potential impacts, and let's design the study to identify what the impacts are, if they're there.

MS. JANOPPAUL: How do we work that with Lloyd's idea of you've made warm water entrainment -- warm water entrainment studies of these other projects in the region, why don't we just apply it to this project? Now you're talking about being project specific. So can you talk to us about criteria of when you need a per project study

or when I can use something from another project.

MR. SPAULDING: There -- I mean, that's obviously a good question, but I think there -- all of these projects are individual. They have individual operational characteristics, individual environmental studies, and I think if you look at the total range of impacts that have been studied, some of them are very site specific, and some of them, like Lloyd said, are basically generic.

I mean, there were three entrainment studies run on the Wisconsin River system, for instance, and those studies do apply, I believe, and can be used. But when you get into a specific flowage, a water level pattern in the flowage, the type of recreational use on that flowage, those become very site specific to that flowage, and the question is then, A, is there an impact from the ongoing way it's been operated; and, B, if so, what is that impact, and what are the potential mitigations?

And, I mean, so it's both, and I think some can be studied in terms of larger databases of information, and some are very project specific, and -- and I think the more that you can -- more

that you can focus on what the impacts potentially really are, the more that you can design the studies to address those, and the less costs these studies are going to be because it'll be that big and not that big.

MS. JANOPAUL: And I guess back to yours and Lloyd's. F is supposed to get to that, too. If you have a lower cost alternative that is existing information, have you proposed that to agencies, and it hasn't worked out?

I mean, if you have some instances to show us, or, again, if you want different language there, but certainly a lower cost alternative would be existing information.

MR. EVERHART: I asked that question to begin with, because I didn't know if that was the intent.

MS. JANOPAUL: Okay. So we could -- we could clarify that --

MR. EVERHART: Maybe put existing data in there or something like that.

MS. JANOPAUL: Okay.

MR. DACH: There certainly wasn't -- and you shouldn't be hearing any objection to the points, certainly by the IHC and to the folks that

worked on that, because, I mean, we really -- it's in our interests to make sure these issues are focused to project effects.

We tried to write that clearly in these, and, again, the fact that the commission is going to let us all help actually draft the language is a good thing because it -- from the discussion, I don't -- I'm not hearing anything objectionable.

I mean, it seems like we should be able to figure out how to draft this language to make this work because I don't think we disagree with what you're saying at all. I mean, we want to make sure that we're focused on project effects. We want to make sure that we're not reinventing the wheel in every case, which would be an entrainment study. We want to make sure that we're only requiring things that are necessary for that project to get licensed and to identify the effects of that project.

So the criteria we put out were our effort to do that. When we -- We keep harping back to, you know, we want to see some specific language because we want to make sure that everybody reads that into these criteria. If they don't think that they say that, then the comments that we would

expect to receive back would sort of help us say that in more clear language, if you will.

MR. MCKITRICK: I'd like to hear from the state, bring somebody else into this discussion.

MR. STROM: I'm Paul Strom from the Wisconsin Department of Natural Resources. I just wanted to reply or comment on a couple of the things that I've heard here today and then maybe ask a question or two.

Just a little while ago, it was implied that the state and federal agencies had an obligation to know what the resource issues were and always have had that. So over the past, whether it's 30 or 70 years, whether it be us and the state agency or someone else, we should know what those issues are and that we haven't made those known for some reason and that they're coming up all of a sudden at the time of relicensing.

And I just would comment that, in a broad manner, that that's an erroneous assumption, in that at least since the '70s, when the emphasis has been on water quality planning and resource assessment, states have been heavily involved in doing those sorts of broader studies to identify the larger issues in the river systems.

Dams clearly have had an impact on river systems, regardless of the fact whether they were built a hundred or 70 years ago or more than that. They're having that impact, and those impacts, in at least in a general sense of pointing out the concerns, are documented, and, you know, maybe Item D in your criteria is getting to that, where it's talking about relevant resource management goals of the agencies and that sort of thing.

Those -- those documents, whether they be basin plans or fish and management plans, or whatever, for many, many years have -- have stated limitations to the resource as a result of the modifications of the river system over the years.

Now, to take that a step closer to the project-specific information needs, it would be impossible, and I would think everybody -- I would think everybody would agree, it would be impossible for a public resource agency to have site specific information on every location on every resource in the state where there was some, be it industry or whatever, that might be having an impact on that resource.

Obviously, the resource agencies do

have a lot of site specific information, but to expect that they would have all of the detail site specific information that would be needed to reissue a particular license, in the case of talking about the hydropower issue here today, or maybe it's a wastewater permit someplace else. That's why you do site specific monitoring, and that's why it comes up at relicensing time.

So as I look through these criteria, I was fairly comfortable with the general language that's in here about requiring project-specific information, and certainly it ought to be tied directly to the management goals of the agency.

It's interesting, I've only personally been involved in this area for a few months, and some of that time I've spent reviewing some of the water quality certifications our agency has written and some of the responses that -- that we've provided, and some of these other things have been addressed.

I ran across some where alternatives were proposed and where someone in our agency made a determination that it wasn't adequate, and the reasons for the inadequacy were provided.

I've got examples and have read

through examples where the fish entrainment that was just mentioned was offered up as an example where it had been done elsewhere, and the response that it was inadequate was provided as to why it was not appropriate to extrapolate from one location to another.

So pretty much as an outside observer here today, to get a feel for what the process is going to be over the course of the next year and listening to some of these comments, reading through these criteria, and kind of meshing that with what I've read in some of the files back in the office over the last few months, things seem very consistent.

What I'm left with, and the question -- maybe it's two questions -- that come up that I am a little confused about in these -- in the comments that have been made, I've heard about -- that we are requiring fishing expeditions, that's just one characterization, or extraneous studies or data that are not related to the project, and I'm curious as to what those are.

I just -- I haven't heard specifics mentioned. I've just heard fishing expeditions, I've heard requests that weren't related to the

project at hand, and, you know, personally I'm -- I'm not aware of that. I don't come across anything like that in the files. In reading through some of the case history, I don't recall reading a response from an entity or licensee saying this particular request has absolutely no relation whatsoever to the licensing question.

So I'm wondering what -- if some of you in the audience could give specific examples of the types of things that -- whether it be our state agency or a different entity -- are requesting of you during studies that you feel are unrelated to the issue at hand. I'd like to hear that.

And then the other thing was a comment made this morning that -- that the participants, the stakeholders, should be limited to -- and I'll roughly paraphrase here, rather than a direct quote -- but to the local citizens that somehow directly -- that directly use the resource, or something like that. And trying to understand why these other stakeholders that were identified, such as environmental groups or resource management agencies, wouldn't be considered stakeholders in your mind.

So two questions, specific examples

and -- and why wouldn't environmental groups or resource agencies be considered stakeholders?

MR. McKITRICK: Before we get a quick response to that, your agency, just for my clarification, you're the water quality folks, as opposed to the fish and game people or --

MR. STROM: In the State of Wisconsin for the state agency, the fish and wildlife folks and the water quality folks are in the same state agency. It's the Department of Natural Resources. So the fish folks and the water quality folks are also in the same division, as a matter of fact, in the state agency.

MR. McKITRICK: So you would have both of them.

MR. STROM: Right. We have the fish folks and the people working on water quality certifications in the same division of the same agency.

MR. McKITRICK: Then I guess I got just a general question dealing with studies and timing is that some of the things that the IHC has been doing is moving this so it's happening earlier and earlier, getting with the resource agencies and seeing what have you done, realizing that you don't

have all the information, and what types of studies may you need set up with these kind of criteria, perhaps. Do you feel comfortable as a state agency participating earlier, earlier, particularly fish and game, as well as water quality?

MR. STROM: Participating early?

MR. McKITRICK: Yes.

MR. STROM: Yes, yes. I've been discussing the issue with other states as well, and I think people are pretty uniformly in agreement that we would like to begin the process and be involved in it earlier, that we'd like FERC's involvement earlier, to get started on what's needed for the project.

The one thing that our state and several others have pointed out is a need for at least two years worth of study, field study time, to be a part of that. I just feel that to go with a process that would limit it to one field season would be too risky.

MR. McKITRICK: And do you feel good with the water -- for 401 water quality, that you can participate in that process prior to, let's say, an application being filed for the 401?

I'm just thinking that if time --

I've heard sometimes that that's an issue of when it's requested and when we can participate, and then we run into this one-year problem. I was just wondering how you guys --

MR. STROM: I'm going to hold back on a final comment from our state on a specific like that.

MR. McKITRICK: Okay.

MR. STROM: We certainly want to participate earlier and include at least two field seasons of study.

MR. McKITRICK: Okay.

MR. STROM: I had hoped that the people that actually work on water quality service -- That's why this morning when you said do we have somebody here from the state agency that does 401s, I said sort of. My hope had been that we would have had one or two of those folks here today to comment on that specifically. But we will be submitting written comments as well so --

MR. McKITRICK: Fantastic. I don't want to get into a whole lot of kind of discussion outside of the types of things that we need, but there was a specific question, if anybody would like to respond, to what kinds of extraneous information

and -- What was the other part?

MR. STROM: Well, it was what type

of --

MR. McKITRICK: Stakeholders.

MR. STROM: -- information was

requested, and then why wouldn't resource agencies

or --

MR. McKITRICK: If there's anybody

that wants to, that's fine; if not, then we can just

move forward.

MR. EVERHART: I'd just comment --

MR. McKITRICK: Lloyd.

MR. EVERHART: I can't think of any

examples where we -- where they were unrelated

studies, but we got, I would say, several requests

for studies where there was existing data.

For example, one project there was 26

years of historical water quality data that the

State of Michigan had collected themselves on eight

times per year on a monthly basis, and 26 years of

data wasn't sufficient. That's been our type of

experience.

MR. McKITRICK: Would the IHC kind of

address that from the standpoint of looking at

existing data, and is that then extraneous, or is

that needed new information? How do we get at that?

MS. JANOPAUL: That sounds too specific for us to comment on.

MR. McKITRICK: Yeah, so it's something that's going to have to be either resolved among parties, or does FERC need to get involved at that very specific level? I mean, determining if 26 years of water quality data -- Just assuming there's this study; there may not be.

MR. EVERHART: That would be the type of thing that would be resolved during an early scoping meeting, I would think. And if FERC was there to participate in that, if that person could act as an arbiter in that type of role, or if he would be willing to take on that role, that's the question I have, as far as the early scoping and the resolving of these issues. You're putting a lot of -- you're putting a big burden on that FERC staffer that's there in that meeting.

MR. McKITRICK: I understand.

MR. EVERHART: I think that that's an important role, and he's going to have to have a lot of backbone if he's going to be the one individual there that's representing FERC.

MR. McKITRICK: So that's at least

where it could come forward and be resolved or find some way to resolve it at that point before you move forward.

MR. EVERHART: That would be my opinion.

MR. DACH: Yeah, we were -- When we developed the criteria, the thought process was to try to make it as purely objective as we possibly could. So if it was obviously needed or if it was obviously not needed, that was how we wanted to set up the criteria, so you wouldn't have to get into this huge gray area, well, it might be or it might not be.

Because we understand that what it's going to do is it's going to fall down to the agency that has the discretionary authority because they're going to be the ones that say we think it's necessary, whether or not FERC does under the current, you know, schematic.

So we had hoped to try to make our study requests meet these specific criteria just so they could be looked at with that sort of objectivity so somebody -- so this panel in the dispute resolution process could say whether or not it was actually satisfied. But it's a -- The gray

area is the tough one to deal with.

MR. HOGG: Jerry Hogg, AmerenUE. The study request criteria seems to be very focused upon resource agencies studying these, and I think that was the intent of the IHC, and I see heads nodding yes.

I would say that study request criteria -- and I don't have specific words today, and I'll propose some in writing -- needs to also be applicable to your broader stakeholder base, which would be a FERC responsibility to look at.

Now, I'll give you an example of people with recreational interests and concerns that are brought forward. Maybe there's too many boats on the lake, and they want a specific boating study, or the National Parks Service, which is a resource agency, but more applicable to public use access, and this is -- seems a little -- as I read it, I can draw some broad-based parallels to those types of studies. Maybe a very broad-based erosion study from some downstream farmers or flood protection issues.

And I think the study criteria has to -- Some of them I can draw those conclusions, but all the wording is very slanted toward resource

agencies and their needs for data and criteria hold against that, and I think we need to think a little broader than that to the full list of stakeholder concerns and study requests that come in because they are very broad.

If you're doing an ALP process and you sat down with 160 people, the vast majority of those concerns are from individuals and so forth and not collected summarization of resource agencies, and we need some criteria to later screen those against criteria as well.

MS. JANOPAUL: And I guess I have a question on that. You know, we did focus on ourselves because that's -- we do have the power of mandatory conditioning authority, and we do have more power when it comes to studies in discussing this.

So I would ask you, what are the criteria that you're using to winnow out requests from stakeholders who can only make recommendations to FERC, rather than those of us who can require conditions be put in the license?

Why would you agree to a study from, you know, someone -- someone who doesn't have mandatory conditioning authority? I mean, what's

the benefit to you? What criteria do you use?

And that's -- would be -- would be of interest to us, but I'm not quite sure how we would enforce it or put it into regulation. Maybe you want to talk to FERC about that.

MR. HOGG: I see this as a FERC issue, with the licensees to work out. The difficulty in an ALP process is that it's a very public forum, a very collaborative open forum, with press present most of the time, and when you say no to an individual request in that forum, oftentimes that becomes more of a political issue for you to deal with than it is to be able to deal with resource agencies that do this for a living and have very set policies and procedures in-house that you go through, and that becomes quite a strain on both resources and your in-house resources for managing all of the issues to deal with that, and if -- if there was some screening criteria and a little process that we went through as well for those issues, I hate to bring up the term "party cove," but for those people with big lakes, with big recreation, it is a phenomenon in America today that is on most reservoirs, and is certainly prevalent on ours, and when you have lots of stakeholders

counting on you to correct or change what they feel is going on from a moral standpoint, it becomes a huge issue, and at some point there has to be a process in the screening criteria that that type of an issue is held up against, and at some point you make a decision and support it through a formal process with FERC that that issue is not going to be pursued by a licensee.

So this guidance just needs some clarification and expansion to cover those kind of issues, and I wanted to just get it on the record today.

MR. WELCH: Thanks. That's a good point.

MR. McKITRICK: Tim, did you have anything specific? I thought you said you had a comment.

MR. WELCH: I had a question, but I yield to --

MR. URBANEK: Dennis Urbanek. Another comment on studies. I think some of them are very specific that would need to be discussed with the appropriate forum with FERC there and whatever agency is there.

One of the things when -- when

requesting information from the agencies, their thought is is we have more important things to study where there are real problems, and so we're looking for you to study the things that we can't justify studying on our own budget. I don't think that's acceptable.

My second point is more of a question, and it has to do with study request criteria Item B, and it talks about relevant resource management goals of the agencies with jurisdiction over the resource to be studied.

And I would ask you, because we're wrestling with this, is what if that goal is that there is no dam on that river? How do we address that when we're going through a relicensing process that's been openly stated that their goal is that they would like to have these dams removed?

MR. MCKITRICK: Tim, you want to talk about the commission's policy on those?

MR. WELCH: Well, I mean, we -- Of course, you know, just having a goal of no dams on the river, I mean, there has to be some sort of a basis for that particular goal, and I guess it's commission staff who would be interested in, you know, why that would be your agency goal, and if so,

is that something that is shared kind of universally by the -- by the -- by those who depend on a particular reservoir that may be created for a dam for recreation and other --

So we would look at like all aspects, not just whether there's an agency goal for no dams on the river. We would look at all aspects of recreation and water quality and what else have you before we would make a decision on whether or not, A, a study of dam removal is necessary; and, B, whether dam removal would even be an alternative that would be in a NEPA document.

So, you know, one thing we did do in the Interagency Task Force under the studies category on one of the reports is that we got together with the resource agencies, and we came up with like 17 criteria that FERC should look at when considering whether the dam removal should be an alternative. And as I said, it goes to recreation and water quality and, you know, that type of thing. So it's a pretty broad-based community look at dam removal.

MR. URBANEK: Dam removal and the studies are two different issues. We can be studied to death, with the intent that the dam would be

removed, which you would ultimately decide.

MR. WELCH: Yeah, I hear what you're saying on that, and, yeah, that's a hard one.

MR. McKITRICK: John, did you want to comment?

MR. CLEMENTS: At the risk of making this kind of sticky, I just read B again, and I think the IHC probably needs to go back and look at that because as I read that Criteria B, it doesn't contemplate that there would be any look behind the agencies' management goals in determining whether or not a study is necessary.

The criteria says if -- if that agency has that goal and the other criteria are met, the study should be done. So there is no sort of broad public interest look at that in terms of whether or not a study's going to be done, and I'm not -- you know, I don't know what the answer is, but I don't want to kind of lead anybody astray with the discussion here.

MS. JANOPAU: Ron?

MR. McKITRICK: I'm sorry, Mona.

MS. JANOPAU: Yeah, I just want to put this in perspective. Again, we're looking at what we can do in a rulemaking at FERC on FERC's

regulations, and we in the agencies would consider doing whatever needs to be done for our own regulations to work with that.

But if you have issues with states and the Clean Water Act or 401, I mean, send us those comments, but, you know, we just can't do much about that.

We are working with the states, but if -- You know, I don't know of any agency -- getting back to the comment about dam removal -- I don't know of any federal agency sitting up here who stated that's their goal, you know.

MR. URBANEK: It's a state agency.

MS. JANOPPAUL: Well, again, I appreciate your comment, but, you know -- And I do agree with John that FERC has a responsibility to -- to look for the public interest, so, you know, and we could certainly provide that, but look beyond what is our stated objective.

MR. CLEMENTS: Actually, I wasn't saying that. I was kind of questioning what Tim was saying when he was saying, okay, whether or not we would decide a study is going to be done, we would look at the broad public interest,

MS. JANOPPAUL: Got it, got it.

MR. CLEMENTS: And I was suggesting that that's not reflected in these draft criteria.

MS. JANOPAUL: I would say I participated in an ALP where I thought FERC staff was very effective when there were what I've called -- heard called HOBOS, Homeowners and Boatowners, who were looking for specific studies of, you know, this and that and the other thing, and I found that FERC staff there -- and, again, as were most of us from agencies there -- as a resource involvement as resources, not as active participants or referees, but they were very effective in saying we don't usually look at that in a licensing, that's not usually part of the licensing.

So I think, you know, that would be helpful, although we're talking about this kind of proposal. If you have comments about how ALPs are run, this is -- please include those in your comments because we -- most of licensings that are coming up now are ALPs, and if you think the ALP process needs some support or guidance, love to hear about that, too.

MR. PLANTE: Tom Plante. As you scope the studies, okay, and I don't know if you can answer that today, but certainly give some thought

to the process. What is the base? Where do you start from? Is a free flowing river the base that you start and study from? Is a dam that's been there a hundred years and converted a fishery from a cold water fishery to a warm water fishery, is there an X number of years to where the warm water fishery is the base?

I think there -- it seems to me anyway, in some of the stuff that we've done over the years that if it started as a cold water fishery 350 years ago, it remains a cold water fishery, even though it's been converted for 300 years, and so all the studies get slanted that way. So all I'm asking is as part of the scoping process, someone's going to have to take the time to decide what base are you starting from.

MR. McKITRICK: I appreciate the comment, and that's a good question from two standpoints. One, just from a general FERC perspective, our baseline is from moving forward from today.

On the other hand, I have seen legitimate state goals and objectives that have been on the record, not just put forward the day they came to you, that says something that we'd like to

manage a lot of the state streams for cold water fisheries, and that may be a legitimate concern. I think there needs to be talking about that and how to move forward from there, but it just isn't something that kind of pops up.

MR. PLANTE: Yeah, I just would like to see it touched on for the scoping so that --

MR. McKITRICK: Sure.

MR. PLANTE: -- when you start forward with the study we can concede it's not a cold water fishery, it'd save a lot of money.

MR. McKITRICK: Sure. And did you want to respond to that?

MS. MILES: No.

MR. McKITRICK: Gentleman here.

MR. WEHNES: My name is Dave Wehnes, and I guess I have to start with an apology because I kind of wandered in on the lunch hour here today.

MR. McKITRICK: It's hydro that you're interested in.

MR. WEHNES: And I'm going to sneak off and go back to work here in a few minutes, too.

MS. MILES: Who are you with?

MR. WEHNES: Myself. I'm a whitewater kayaker, and I've been so for 30 years, I guess. I

am a member of the American Whitewater Association, I joined, I think, in 1971; American Rivers, I've been a member of them for however long they've been around; and a lot of the whitewater boaters in Wisconsin are part of the Sierra Club, and I've been a member there for, again, since '71.

MR. McKITRICK: Sure.

MR. WEHNES: And we've talked about recreational use, and I was reading, I picked up your document here and kind of read -- skimmed it over the lunch hour here, and, you know, you mentioned in there that recreation is -- should be viewed on an equal setting or equal footing as power generation in the process, and now I've heard some comments about recreation, and they seem to always center on boating in the reservoir, which is certainly a wonderful thing, and I like to sail, too, so I guess boating in the reservoir is a great thing as well.

But we happen to have a number of dams across the country that have some wonderful whitewater boating opportunities in the riverbed that is -- that the water is typically aqueducted around. Examples in Wisconsin would be Grandfather Falls on the Wisconsin River. I don't know if

there's anyone here from a power company that runs that dam. Or there's another one up on Pine River, I think it's called Big Falls on the Pine, it's down below LaSalle Falls, where there's sections of riverbed that are aqueducted around there. Normally there's no water in there, so it's awfully hard for whitewater boaters to comment on the applicability of that stretch of river for whitewater use.

But it would be wonderful if the boaters got an opportunity to -- to study that, to help study that, if they were somehow contacted by the licensee going into this process to -- to facilitate that study.

I have done -- I've done the Grandfather Falls section a couple of times, purely by accident, I guess, because they were -- had the power generation facility was shut down for repairs, and the water was flowing through the riverbed for a few weeks, and so kind of word spread through the whitewater community, and we rushed up there, and we had a great time and found that at certain water levels, it was very appropriate for use.

I also worked with a fellow in the state by the name of Bill Beverly, who the DNR may recognize the name because he used to be on the DNR

board, working with the Public Service Commission on the dam up on the Pine River, and we actually arranged for a weekend in April when there were high spring flows.

We met some power company people there, and we actually regulated the water through the -- through the riverbed and paddled -- I actually brought a few pictures. I guess I didn't know if it was going to be show-and-tell time. But there are opportunities to do that.

The other thing is that whitewater boaters will travel long distances for those opportunities if they are good opportunities. The Ocoee River down in Tennessee you folks are probably very familiar with. Some of the power companies here probably aren't. But there's lots of recreational use in those riverbeds. The Gallee (phonetic) River is another example that's very, very well known. People from the whole eastern half of the United States flock there in the fall for planned releases of water down through that waterbed.

So there are -- there are some opportunities around the country to do that, and I think there are some in this area of the country as

well. The challenge is to get the opportunity for the whitewater boaters to somehow get involved and find out about the process and get involved in this study.

And so I guess my -- my request is that somehow in this process that the licensee be asked to contact some of the national organizations that are associated with those boating activities and see if they could rally their members to participate in this -- in this study.

And you mentioned in your document American Rivers and American Whitewater, and so those would be two great ones. And as I said, I've been a member for 30 years, and I've never gotten any postcard in the mail saying, oh, would you like to participate in a study like this.

MR. McKITRICK: Actually, that was my question, specifically, was have you -- I guess you haven't participated in any of the relicenses dealing with recreational boating.

MR. PLANTE: Actually, if you were with Bill Beverly, that was the study as part of the relicensing for the Pine project, and that was precipitated through the National Park Service through Bill Beverly, so you were invited, and you

did partake in the study.

MR. WEHNES: Yes, actually, I got involved even before the park service. The park service was kind of -- We got with the power company people on the side initially, and then the National Park Service got involved, Angie, I forget her last name, and we got involved.

MR. MCKITRICK: I guess it was kind of related. I mean, one of the things we did have in the traditional process was sometimes public interest group stakeholders were left out and didn't really come in until later in the process.

But the ALP process is existing now. Typically the outreach is fairly broad, including the boating community. I guess what I would ask is that if you haven't either in one of those two processes that exist now been getting access and feel like it's a regulatory problem, from the standpoint of the way things are set up and how you're contacted, if there's something that needs to be changed to have that done, that's kind of what we're looking for.

It is understanding that it's going to be difficult to call up everybody in the state, but, you know, if it's not -- if it's not being done

under current regulation, how can it be done in the future if we're going to make changes?

MR. WEHNES: And as I say, I kind of just wandered in here with --

MR. McKITRICK: No, I didn't say -- I'm just trying to -- I was just trying to explain where we were with this.

MR. WEHNES: What we'll have -- I'll probably go back and talk to some people and see if I can provide some written evidence.

MR. McKITRICK: Great. That would be very helpful.

MR. TORQUEMADA: If I could look at the IHC No. E. on there, a good tie-in to that one would be how can whitewater boaters or other users participate in a study, so it's not just licensee and agency involvement in the study. But what you're saying is resource users can contribute information and study applicability.

MS. JANOPPAUL: I'd also say this fits into Criteria F, if -- if it reduces -- reduces the cost with boaters helping design the studies.

Also, this somehow fits into our issue of early service lists. How do we identify early the stakeholders and scope the issues? Certainly

whitewater is -- would be a great idea in some places, but it doesn't necessarily have to be everywhere. So that would be helpful in scoping out if it's really feasible for a particular project.

MR. WEHNES: This all looks good to me, it really does.

MR. McKITRICK: We appreciate your comments.

MR. SPAULDING: Just as a point of information, I think every project I've been involved with from a licensing standpoint or preliminary permit filing, John Gamanji (phonetic) at the American Whitewater Association has filed a standard for about the past six years. I would suggest if you want to keep track of that, contact him and let him tell you what projects are up and coming in the area would probably be the most efficient way because he obviously tracks it.

MR. HOGG: Jerry Hogg, AmerenUE. As I look at your flow chart on page 14 of your docket and your issue here, and as I review your definitions, your first step in the process was to notify the licensee three years before a Notice of Intent to file. And then you really start your process with Step 1. At the bottom of that, it says

the applicant distributes a prescoping document.

I think that there needs to be a lot of consideration between what is the expectation and maybe clear definition as to a process that leads to that prescoping document.

If I compare that to an ALP process that exists today, the reason stakeholders meet with licensees, and, in particular, there are certain specific steps that have to be delegated to a licensee by FERC in order for us to do Section 7 consultation, in order for the State Historic Preservation Office to even be willing to talk to a licensee versus FERC, there has to be clear delegation in writing.

It's also true in the ALP process that you have preliminary meetings to determine if the group will do that, and then FERC delegates their authority to the licensee to do that early scoping, okay?

With -- Without some preliminary steps defined prior to that prescoping document being developed, I think that the licensees will have a difficult time being formally charged with a process and the authority to meet with stakeholders and the stakeholders to give it their due input,

which takes place in the ALP very well, as far as I'm concerned, because there is clear delegation, and in our case, the state agencies, DNR, there's foremost solicitation of stakeholders' input required.

So you do very broad-based solicitation, and you do a very broad scoping up front, and I would assume that that's your expectations in this three years prior to NOI, and I think that there's going to have to be some formalization on what authority and how the licensee will do that.

So I think there's quite a gap on the front end of this process that the ALP currently covers, but that will need to be rolled over into this.

MR. McKITRICK: Any comments from --

MS. JANOPPAUL: Jerry, we couldn't agree with you more. We spent, I would say, an inordinate amount of time just on Boxes 0 and 1, and we think this is a very fertile area for licensee input about what you need to hear from FERC.

We talked about having web pages, outreaches, but we agree -- we agree, and maybe Ann or John want to respond more to this, but I will

tell you, we consider Box 0 to be the start of the process and -- but this is an area that we really did need input from you on and the other people here.

MS. MILES: I agree. One specific thing that you were talking about, licensees being delegated for Endangered Species Act consultation or consulting with SHPO on historic natural resources. We've given some consideration to if we could work with these various agencies to have generic, you know, and sort of programmatic agreements that that will be done in all cases rather than having to do it in each specific hydro project, so if you have input on that, it would be useful, also.

MR. WELCH: Just tagging a little bit what Mona said. The IHC did spend a lot of time on Box 1 on that prescoping document and came up with some very specific categories of information, very specific things that need to be in that scoping document, and that criteria would be reflected in that letter that you would get three years before license expiration so you know -- We want you to know what the expectation is early on to that prescoping document, and hopefully that would be in some sort of a regulation.

MS. JANOPAUL: Both to inform you and to give you something to deal with to explain to people that perhaps water rights or the golf course on the other side of the mountain isn't your responsibility, or the helipad that's upstream 50 miles isn't your responsibility, something to that effect, both to inform you as a licensee and to help you in dealing with the other stakeholders figure out what is appropriate for your licensing.

MS. SMITH: But wait. I just want to say the flip side of that, also, is to not create unreasonable expectations of the applicant. The point was sort of instead of you coming out with your initial consultation document and having it be stylized one way, and then pursue it enough down the process, you flip it over, and all of a sudden we're working with the NEPA-style document. Why not just start with the NEPA-style format from the beginning, knowing full well there's going to be a lot of empty space in that document to begin with, and then fill it in as we go along.

So it sort of sounds like from the panel like there's a huge amount of expectation on you from the very beginning. Now, that's -- at least when we started out -- was not the goal, and I

don't think that remains the goal, you know, to have you come out of the gate with a full NEPA document.

MS. JANOPAUL: I don't think anybody said that, Gloria.

MS. SMITH: No, I'm concerned that maybe that's the way it read. I didn't think any of you said that. I just wanted to make it clear that we just didn't -- we wanted to start out with a very skeletal NEPA-style document.

MR. WELCH: With the idea, just keying on what Gloria said, that the application would be essentially built, you know, as these gaps are slowly filled in, it would be sort of built from the very beginning.

MR. CLEMENTS: Jerry, just for the record, we have done some work on an actual guidance document, but it's in very crude form. It's nothing that anybody could look at. So any specific kind of guidance that you think you'd like to get is -- would be really helpful, assuming that we went that way.

MS. MILES: One other thing that's troubling, too, is we're talking about trying to reduce the time and the costs, so by adding all this information very early, you know, it's a good thing.

It'll be less down after the application is filed, but when you look at the pre-filing time, it gets to be more than three years, which I think is pretty typical today. So, again, input that you all have on what is a reasonable amount of time up front to begin doing these things.

MR. HOGG: This is Jerry again. The only thing that I'm concerned about is that without more of a formal process on the front end of this, and without knowing what that guidance and expectations will be, it's very difficult for the licensee to look at this and say that I'm willing to buy into this process and what I'm expected to have done in Step 1.

In addition to that, when I look at the time frames that follow in the next subsequent steps up to the point of FERC holds the scoping meeting in Step 6, that's a very short number of months to go through to solicit comments from your resource agencies and your stakeholders.

If they have not been in some type of formal process leading up to that prescoping document, I cannot imagine that they would want to support that type of short time frame for them to be able to provide their input.

If I compare it to an ALP process, on the other hand, where they've been heavily involved in the concerns and the scoping going into the prescoping document, then I think those time frames are very realistic to hold people accountable and for FERC to hold a formal scoping meeting and for them to be prepared and having had the front end involvement and information so that they can do an -- feel like they have time to be adequate into their comments.

MR. SPAULDING: We've been talking about relicensing and time frames and up-front periods of time to start the process. I guess I'm curious, stepping away from relicensing and looking at new licenses, what kind of thought process FERC is thinking about in terms of how this would relate to a new license process.

MR. McKITRICK: That's an original license, as opposed to a relicense.

MR. SPAULDING: Yes. I mean, where you have a 36-month term of a preliminary permit to work in, and you have a definite confined time period, is the intent that this would be folded into that, or would there be a separate process, or do you have any thoughts on any of that?

MR. McKITRICK: Did you guys --

MR. WELCH: No. We're looking for it.

Doug, help us out there.

MR. McKITRICK: We don't get a whole lot of original licenses, but we certainly got a lot of preliminary permits out there.

MS. JANOPPAUL: I guess I have a question for Doug, since he talked about small projects. At this point, if a project is in a permit stage, or even for the small projects, is an exemption an alternative that you would consider; if not, why not, rather than -- rather than a small project that would have to go through periodic licensing.

We're curious why we don't see more applications for exemptions because we have right now in the forest numbers of small projects coming up that are very tiny, and the licensees are struggling through relicensing. So you're the one that talked about small projects this morning. Why not more exempted projects?

MR. SPAULDING: Because essentially it depends on the regulatory environment in the state that you're in.

MS. JANOPPAUL: Okay.

MR. SPAULDING: And, frankly, some states it is easier to get -- go through the exemption process and live with what the local and state regulatory agencies hand you at the end of the day, and in some states it's not -- it's impossible, basically.

So I think that's a call, depending on where your project is and what the history has been, from a regulatory standpoint, of what you end up with at the end of the day and whether you have a project that's viable or not, regarding the exemptions issue.

MS. JANOPPAUL: Our workload at this point is mostly relicensing, but we do have numerous applications for small projects on national forest lands out west and up in Alaska, but they aren't moving forward at this point in time.

MR. SPAULDING: The criteria in the physical document that you end up with isn't that much different for a small project. So the workload, in terms of compliance on these, is not that different, but just how likely are you able to get something that's livable with at the end of the day.

MR. MCKITRICK: Ann, did you want to

say something?

MS. MILES: Yes. I wanted to say one thing on original projects because one place we do have quite a few is in Alaska, and they've all chosen to use the alternative licensing process. It's being done a little bit differently up there, but I think people have found it useful in that -- And it's kind of the best of NEPA. You're really using NEPA at that point to design the project. So you're using the scoping process, and you're making those changes as a group, so I personally see some value of using this type of process with the originals.

MR. MCKITRICK: Just as a quick check, I don't want to stop this discussion by any means, because it's been very good. Just to let you know, I got a little bit after two o'clock, and we have a couple of other topics to go through. I think we'd kind of like to get to that, but I just want to get a sense of have we pretty much got the types of things that people are looking for dealing with studies, discussed the issues that we need to get out, and any kinds of things move forward from there, or have we about exhausted this and need to go forward?

I saw Lloyd with another -- a hand over here. Is there anybody else that feels that there's something else that we need to get out of this studies? We've got three hands. Okay. Let's go with Lloyd.

MR. EVERHART: I just wanted to comment, from a licensee's perspective, that the process that we were talking about, and hopefully shortening, has suddenly gone to eight-and-a-half years from a five-year process, and that, to me, is -- it's just unacceptable.

I mean, what we got is really an extended process, and we're trying to shorten, so let's look at ways to do that, rather than to extend it.

Also, I'd just like to support Jerry in his comments about the time frames. I think the time frames at the front end of the process that are outlined in either one of the proposals, they are -- if they could be met, they would be good, but I think it's unrealistic to presume that they will be met. And, also, who's going to enforce those? What happens if the time frames aren't met?

The traditional licensing process that we've used in the past had time frames, but FERC was

very lenient about granting extensions, particularly, it appeared to us, in support of the agencies' requests, and it just extended the process, and I can see that the same thing would happen here.

MR. McKITRICK: I think those are three excellent points. Any thoughts that the IHC went through, particularly as far as the time frames given for studies and responding?

MS. JANOPPAUL: Sure, and I'd like to say -- and this ties back to some of Jerry's earlier comments -- we did expect to be heavily involved, early involvement, early issue identification, all those things. We are very much front-end loading this. So starting at Box 0, we were making the commitment to get involved, and that's why we thought we could agree to those short time frames.

About the math. Five years now from -- from the Notice of Intent to -- to expiration, but in actuality, I think we're finding that it's taking much longer. There's many projects that are working on annual licenses. So I don't want to quote any numbers. I think Interior has done some summary studies on these, but, in actuality, most licensings, I believe, are taking on

the area of 10 to 15 years.

MR. EVERHART: I agree.

MS. JANOPAUL: As opposed to the model five years from now.

MR. EVERHART: It's the regulatory process. It's not the prescribed process is five years.

MS. JANOPAUL: I agree. I agree.

MR. EVERHART: And if it suddenly goes to five -- or eight-and-a-half years, I think you're defeating your purpose.

MR. DACH: The Box 0, again, was -- and we did spend some time, and we did develop this package of, you know, here's the information that you're going to need in order to get your license is basically what it says, and the thought process was we ship it out or FERC would ship it out this three years prior to, not actually expecting the formal process to begin, but allowing the applicant to get ahold of the available information to sort of get his ducks in a row so he could have that in, to the extent that it was available, the prescoping document, which is when the formal process would begin.

So what somebody mentioned earlier,

more guidance on exactly what was necessary for the licensee when it came time to put together this prescoping document, that was the idea behind the Box 0, was that they could get that information, they knew how to put together the prescoping document, so when it came to us, it was in a form that we could then run with.

There was the suggestion to contact resource agencies in order to get information that they had, that sort of thing, but I don't believe the expectation was that there would be a lot of on-the-ground studies in that period three years before the prescoping document.

The expectation was that folks know that their license is coming up, they know that the first step is a prescoping document, let's show them what we expect to have in that prescoping document, and then they have some amount of time to try to put that information together. That was kind of the -- We were very, very cognizant of everybody looking at this saying, well, they just added three more years onto the process.

MS. JANOPAUL: My thought is this goes to our last issue, relationship to existing licensing processes. My recollection back from the

FERC '93 roundtable, or the last time there was a rulemaking that came up with the alternative licensing process, is that some licensees still want that traditional licensing process. They saw that as the most efficient, effective, cost economic for them.

So I would encourage you, if you've got -- you know, if you think that the traditional licensing process should still be left in because it is shorter and fits you or your needs better, just make it clear in your comments you want to retain that on your menu of opportunities, that this should just be another alternative.

MR. EVERHART: We have time to do that.

MS. JANOPPAUL: Yes, you know, if it doesn't look good to you or if you want to keep that option of traditional licensing.

Now, remember, the traditional licensing process came around in the '70s. There was something else before that. So just let us know that -- that you want that. Some people say they want this instead of the traditional licensing. Just tell us.

MR. DACH: With respect to that, the

idea that we had, of course, is that we're going to develop the perfect process, and no one is going to need any of the other things. So when you're commenting, I mean, tell us what the perfect process is, because, I mean, frankly, we would rather have one process that everybody liked. It would be much easier for us. And, you know, we have no false expectations or hopes that that's going to happen, but if we could put together a process that was worthwhile to folks, we would like to do away with everything, you know, at least the service would like to do away with everything.

So when you're reviewing this, don't review it as, well, it's not going to matter because we're still going to have these other options on the table. Look at it as an opportunity to get the perfect licensing process. That's sort of what our goal is, and, you know, those are the kind of comments we'd like to have back.

MR. STROM: Paul Strom, Wisconsin DNR. Just to reiterate a comment on a question, I guess. Again, here in this state, we would support the kind of accelerated process here with up-front timelines and deadlines for milestones along the way.

Just as a comment on that, from the

state we've got the administrative code requirements for us to issue our 401 certification within 60 days in this state. The delays have not occurred as a result of the state agency not issuing a 401 certification, but more in terms of appeals on that sort of thing. We don't have -- we don't have a problem with an accelerated process and working with deadlines and timelines up front.

And then to reiterate a question from earlier, before we leave this topic of early involvement of everybody, this gentleman kayaker that came in this afternoon came in after my first question, and -- and that was he's a perfect example of the type of stakeholder that was excluded from someone's testimony here this morning as being directly relevant to licenses being reissued, and, again, I'm wondering why that testimony was given, suggesting that stakeholder involvement should be limited just to the local citizens directly having use of that resource or something. And if somebody would respond to that, I'd appreciate that. That's all.

MR. McKITRICK: I don't know if anybody wants to respond, excluding -- or how to exclude anyone from the process. I think we look at

public interest determinations, and people that are using the river have an opportunity to participate, but if there's ideas that are out there that we could look at some sort of regulatory field and legally, please send us those kinds of comments.

Ann, did you have something about the studies?

MS. MILES: I just wanted to make sure we weren't leaving dispute resolution. You consider that a separate topic?

MR. McKITRICK: That's a separate topic. At least that's what --

MR. WELCH: Yeah, because I had a question about it.

MR. McKITRICK: Yeah, is there anything else with studies? I was going to go from studies to FERC involvement, I thought was the second one up here, and associated with it is the role and responsibilities.

My gut feeling is that that may not take too long, but I certainly could be wrong, too. Let's see, anybody -- What was the question -- There was a specific question back here, I think either from Cara or -- dealing with our role, FERC's responsibility in this process? Is there specific

comments with that or whoever checked this three times?

MR. URBANEK: Dennis Urbanek. The question really is is what does FERC see their role in this process, what are they accountable and responsible for, and how -- how do they see facilitating this process in order to get it to something that is more efficient and --

Because I'm not sure what the -- what FERC's role is ultimately with the -- It gets into the previous topic with the lack of guidance that we have as a licensee is that we feel pretty much floating on our own for a good part of the five years, and then at the end, you guys either approve it or disapprove it, and then we go from there. So it's not clear. Whereas, as I speak to some of the folks that have gone through the relicensing process 20 years ago, it was a very clear process, a very quick process, and that is not the case today.

MR. MCKITRICK: Let me just quickly see if I characterize this as I understand it, because I'm not sure if I understand the question, but I guess I've been with FERC since 1980, and I would agree that what we did in 1980 is different from 2000, but there's also different concerns,

different issues, different laws, all kind of things that have put us into a different nature into the relicensing process.

But is your question dealing specifically of FERC's role in this Notice of Proposed Rulemaking, or is it if there is a new rule, what our role will be in that new process?

MR. URBANEK: It's really how can FERC -- what does FERC feel responsible for in -- in optimizing the process and in -- in the approval? Are -- Is FERC the decision-making group? Is it a joint decision-making process with multiple agencies involved, in which you're one of several? So what is FERC's role? Is it written down anywhere?

MR. McKITRICK: I think -- Well, John, why don't we let John address that.

MR. CLEMENTS: Okay. I'm starting from the premise that FERC's roles and responsibilities are established by the federal statutory seam, and that includes, of course, our Section 10A requirement to develop a license that's in the public interest, in response to the specific criteria under 10A and 4E, but we don't do that in a vacuum, the way we might have done it 30 years ago.

Relative to other federal agencies,

you know, we know we have the Clean Water Act, we have Section 4E, which gives the Forest Service and sometimes other agencies mandatory conditioning authority, we have Section 18, fishway prescriptions. Departments of the Interior and Commerce have that authority. So we have to work within that framework.

And the assumption here is that we're going to continue to work within that framework. If Congress changes it, that'll be a different ball game, but where we are now, if you look through -- and I'm just -- for discussion purposes, I'm going to use the IHC proposal because that's the only one that's really been kind of articulated and on which people are focused here, for the most part.

In this active commission involvement of forest right from the beginning, you were talking about a lack of guidance. We indicated that under that proposal, there would be more guidance right, you know, from the beginning, even before the Notice of Intent is required.

The commission staff would be there to deal with the scoping issues, so there would be a commission decision on the scoping document, and that would be long before the license is filed.

There would be commission decisions ultimately on any study dispute resolutions, and that would occur before the license application is filed.

Finalize the scoping document. So that the commission will be making decisions into this process even before the application is filed.

The concept under the IHC, and I think the NRG as well, the whole integrated licensing process is that the commission will begin their participating in making decisions very early on. So to the extent that the commission has decision-making authority, I think the contemplation is regardless of which integrated licensing process model might be followed, if any, assuming the commission decides to even go this way, is that that's how it would work, that we will be doing what we can do within our authorities as early as we can possibly do those things.

I don't know if that's a satisfying answer, but I think it's a pretty frank one.

MS. MILES: Can I add one thing to that, John? The one other thing that's in there is setting schedules and having people keep to those schedules.

MR. McKITRICK: Anything else about --

Did that respond to some degree?

MS. JANOPAUL: I guess I have a question for this person. I'm sorry, for some reason I can't -- Doug?

MR. URBANEK: Dennis.

MS. JANOPAUL: Dennis. Thank you.

This morning did I hear you say something that you thought that the IHC proposal would reduce FERC's authority or make it less clear what it did? Did you say something to that effect?

MR. URBANEK: That's my sense, is that it doesn't strengthen it, and it doesn't strengthen it in that there's an additional inclusion of a panel for some resolution issues, and it didn't include licensees, as well. So that's the basis for that comment.

MS. JANOPAUL: On the study dispute issue.

MR. URBANEK: Yes.

MS. JANOPAUL: So how would you propose that we do -- do this study dispute different?

MR. McKITRICK: I'd like to kind of wait on the -- We'll come to the dispute

resolution.

MS. JANOPAUL: I'm sorry. We aren't on the dispute topic.

MR. MCKITRICK: No, we're not there yet, Mona. Because I would like to take a break, but that's okay.

But if -- if -- The FERC involvement, if that answers people's questions or like to know anything more, that's -- may end that discussion, or if anybody has any other thing they'd like to bring up dealing with that.

What I'd like to do -- If not, what I'd like to do is maybe take a 15-minute break, give people a chance to, if nothing else -- well, do whatever you need to do, but think about what's been discussed, and then maybe real quick, review studies of FERC involvement, you know, five or ten minutes, if anybody has -- you know, they walk out, and the deep question comes to them or answer comes to them, we'll give you a chance to do that. If nothing else comes up, we'll just move into the dispute resolution after we do this.

MR. KUKA: Joe Kuka, BLM. I wanted to say something on the web, you know, FERC has some very, very detailed handbooks on the processes, the

relicensing process, you know, boxes, charts, the whole thing, and I would assume that if other rulemakings or whatever, that sort of handbook would still be available to them. The only drawback I see is sometimes it's not well known you can go to the web, print off this 300-page document that goes into such detail.

MR. MCKITRICK: With that, why don't we take a 15-minute break, come back, I heard you, come back. It's been a very productive discussion, and I'd like to continue with the dispute resolution. Thank you.

(A recess was taken.)

MR. MCKITRICK: I'd like to pick up with dispute resolution that everybody's been trying to get into, and we'll do that now.

I guess, first of all, I did say we'd take a quick pass over anybody got the right answer for studies or FERC involvement and how to do this? If not, we look forward to your comments on those topics and move into the dispute resolution.

What I'd ask Bob again, to kind of give us the IHC overview of how they approached the dispute resolution process. That, again, kind of focuses on what the IHC thought and how their

approach and maybe help you all think about that and give us any input to, yeah, it's great or there should be changes or it should be expanded or thrown out.

MS. JANOPAUL: Ron, just to get back to the FERC involvement, and I'd certainly invite an IHCer to add on to my comments, but the IHC proposal was intended to get FERC involved more and earlier, and certainly with the single NEPA document, we appreciate that FERC is not just looking for a NEPA document to make its decision with, but to fill -- fill our needs, as agencies, as well.

So, I mean, that was certainly a key element of what we were working on was earlier and better FERC involvement, and I really think FERC has stepped up to the plate on this, albeit still at an informal staff level.

You know, if you see that it needs to go beyond this, you know, please say so in your comments. And, you know, Bob or Gloria or anybody else who wants to add on to how we saw the FERC role changing with the IHC proposal.

MS. SMITH: No, just that we, from the beginning, we all, everybody in the IHC, talked about having FERC involved early for the same

reasons that you're identifying.

MR. McKITRICK: Okay. Yeah.

MS. MORTON: My name's Mary Morton.

I'm on FERC Commissioner Brownell's staff, and I'm mainly here just to listen and report back to my commissioner or other commissioners and chairman on how things are going, but the apropos of that comment, I will sort of make the observation that I think the current commissioner, certainly the chairman and my boss, are really struggling with how much involvement there needs to be at the commissioner level and some of the stuff that goes on in hydro.

A great deal of it is delegated, and I think a lot of that makes sense, but, I mean, I think the commissioners are -- the current commissioner is probably one of the ones that's been more engaged on a commissioner level than those in the past on trying to think through some of these hydro issues.

The meeting that we're going to have November 7th, I guess, I understand the chairman, and certainly my boss, will be sitting through all-day hearing presentations like this, and if folks do have thoughts about how -- how the

commission at a higher level can get involved in different ways in individual licenses that they perhaps haven't in the past, that would be very helpful to hear.

MR. McKITRICK: Thank you. Bob.

MR. DACH: Okay. So on the dispute resolution process, there's a couple of, I think, important points to note. The first is the dispute resolution process is purely a dispute resolution process. It wasn't intended to help folks come to some sort of development of a study.

If -- if you notice in the process itself, there's -- there's three opportunities to work out the studies without a dispute resolution process prior to this final study plan. So we had consciously limited the scope of the dispute resolution process because all of the stakeholders were participating in sort of a collaborative process, if you will, for those first eight boxes.

So we've scoped, we've talked about issues, we've put things on the table, we've gone back and forth. By the time we implemented a study dispute resolution process, the idea was we were at loggerheads, and somebody just needs to come in and say one way or the other. So the dispute needs to

be resolved. It's not helpful information to both sides to whether you may go back and discuss some more and come to some sort of resolution.

So just so you know, when the dispute resolution process is implemented, the idea is that it makes a decision, and then we move forward. There's no turning back, as it were.

So we had framed it up in the IHC as a dispute between specifically the commission and then whichever the agency was requesting a specific study. And the basic reason was because we had worked with the applicant all along, our study did not show up in the final study plan, even though we had worked with the applicant and tried to resolve the issues beforehand.

So where we're at in the process right now is a final study plan that doesn't include an agency with mandatory conditioning authorities study. So we would then notify FERC to implement this study dispute resolution process so we can show you why it is that this agency study needs to be implemented by the licensee itself.

So when you look at this, at first you say, well, there's a dispute resolution process, it doesn't have the licensee in it. And the licensee

is able to provide information to the process when the dispute resolution process is initiated, but the idea has been that for the previous six or seven or eight months, we've been working in a collaborative way with one another, and we could not resolve the differences. So now we need to just say, okay, FERC, what's the answer?

Now, we set up the list of criteria and a panel so we could look at it from more of an independent position. So, for instance, if I was the one going to the meetings and pounding my fist on the table saying we absolutely have to have this study, I would not be the one representing my agency on the dispute resolution team. There'd be somebody else. And that person would then work with somebody from FERC, who would then get a -- sort of a neutral third party to add balance, if you will, to the equation.

And those three folks would look at the study request, with respect to those criteria, and say, well, here's a study request from this agency with mandatory conditioning authority. They say they need it for reasons. Do they meet these criteria, yes or no?

And then the three of the team

members, they hash it out, and they can do whatever they want in the context of hashing it out. They can ask the licensee for more information. They can ask the -- the requesting agency for more information. They can have written comments. They can have a meeting. We didn't specify. Just said at this point, they just work it out.

They get the information they need, and then they make a decision with respect to those criteria. If the decision is that the study has met the criteria, then what they would do is have a set of findings that say we think it meets the criteria, and here's why, and then that would go to FERC, and then FERC could either say yes, we agree the study should be required, or FERC can disagree, as the case may be.

If the dispute resolution team says no, you haven't met these criteria, then they would not make the study request, and the expectation would be, okay, we move on now.

One way or the other, either the study gets done or it doesn't get done, but this dispute resolution team comes to a set of findings, they give it to FERC, FERC makes a decision if the study is going to be done or it's not going to be done,

but the decision is made, and we move forward.

That's sort of how it was set up to work.

MR. PLANTE: I'm Tom Plante. So your contention then is what, Bob, is that the applicant has agreed to the study, but FERC has turned it down?

MR. DACH: No, the applicant has not agreed to actually conduct the study, and that would be apparent by whether or not it was contained in the final study plan that the applicant puts on the table. In that final study plan is a product of several meetings in a collaborative process before that point.

MR. PLANTE: So then the dispute is between an agency, for instance, with conditioning authority, and the applicant.

MR. DACH: No. FERC would then take the final study plan and determine whether or not all of the information that had been provided in this collaborative process had been incorporated into the final study plan in a satisfactory way.

So FERC is actually going to pass judgment, if you will, on the final study plan, and it, in essence, becomes their study plan. They're going to put it into their scoping document.

So if it goes to the point where they have a final study plan, it's going into their scoping document, and we don't think it's right, we have an issue with FERC.

MR. PLANTE: Understood. But the only way it cannot go into theirs is because the applicant chose not to place it in.

MR. DACH: Right.

MR. PLANTE: And the applicant had reasons to do that.

MR. DACH: Right.

MR. PLANTE: But the applicant is not going to have an opportunity in the process the way it's set up to express those reasons, and that's my problem.

MR. DACH: No, no, the applicant will have an opportunity to express his position, and, again, that would either be in writing or in a public meeting or some way, as requested by the three-member team. The applicant under this proposal would not be in a voting role saying that, well, we think we don't have to do it. They wouldn't be in that position.

MR. PLANTE: I understand. I don't know that I agree, but I understand.

MR. DACH: Okay. And I don't want to -- I'm not trying to sell anybody.

MR. PLANTE: I understand.

MR. DACH: I just want to make it clear how we developed it.

MR. McKITRICK: John.

MR. CLEMENTS: Yeah. I think I actually need to clarify just a little bit what Bob's saying there. If you look at the boxes there, and you look at Box 7, and then you look at Box 8, in Box 8 you file a revised study plan, and it says there the commission makes a decision on the study plan.

So when you've decided which studies you think you should do, you'll file that plan, sort of your final -- that's your final shot at it, and then the commission will make a decision or somebody on commission staff. It's only then that there would be a dispute resolution process.

So that the license applicant would have a day in court before the commission staff on its study plan. And then under this theory, it moves to a dispute between the agency and the commission staff.

MR. DACH: Yeah, I thought I said

that, so, I mean, that's correct.

MR. PLANTE: Okay.

MR. MCKITRICK: And we are certainly looking at, you know, any additional ideas, either this is good or it needs to be changed in some fashion. So as you think about that or understand what the -- at least the IHC proposal was. I don't have the NRG proposal, but read through that, also.

MR. CLEMENTS: And then during the dispute resolution process itself, the panel could ask for your input so that you get another bite.

MR. EVERHART: But the -- but the agency -- the agency who the dispute is with will have voting rights, and the licensee does not.

MR. PLANTE: Correct.

MR. CLEMENTS: Yes, it would have a representative on the panel that would make the recommendation to the higher authority at FERC.

MR. EVERHART: It seems unbalanced.

MR. CLEMENTS: And you would not.

MR. PLANTE: We know which way that vote is going to go. It's our vote that's in dispute. That's the appearance here.

MR. CLEMENTS: I'm not going to touch that.

MR. DACH: It actually was -- The way I visualize it was, you know, FERC, for right or wrong, FERC is going to take the side of industry, we're going to take our own side, we need a neutral in there to try to make everybody see reason. And then the reason that he's trying to make them see is these criteria.

It's like, look, you guys, did they meet these criteria; did they not meet these criteria? That's all -- I mean, that's what you're focused on. The criteria are pretty important in our scheme because they're the decision. I mean, does this meet the criteria or not?

MS. SMITH: And that's the goal, is to avoid any appearance of bias is despite whoever it is that's sitting on this panel, they are required to follow the criteria. So even if you did sort of get a biased panel, the record would reflect that, hopefully, in the end, and then you can seek rehearing in FERC, or if it was really egregious, you could seek Court of Appeals action.

MR. PLANTE: So then what are you afraid of in allowing the license applicant -- the licensee to be there? Why did you -- You made a specific move to exclude that one party in this

whole process. What is the fear? What is the concern? As long as we're just going to go by the criteria anyway, there should be no concern over having that party there.

MR. DACH: Well, the -- Where we had -- How we had gotten there was that we had already been trying to determine or trying to negotiate or collaborate with each other, as it were, on whether or not these criterias were met -- these criteria were met with respect to the study, long before the dispute resolution process was put in place.

So it was our thought process that once it was put in place, we -- there was no -- I mean, we were at loggerheads. There was a dispute. There was a clear no, you didn't meet the criteria; yes, you did meet the criteria. So -- so the FERC would then come in.

The reason that we maintain our own position is because we look to these as being necessary to fulfill our statutory authorities under the act. So, you know, we would want to say that we think this is necessary for our statutory authority, and we think we've met these criteria like this, FERC. Then the FERC person would say either, you

know, we don't think you met these criteria, we think you did meet these criteria, and then the third neutral in there would, in essence, you know, be a swing vote.

And depending upon how it all came out, where we were prepared to go with it is we'll live with the answer. If it doesn't go in our direction, then, you know, we have to swallow it and move on.

The whole time frames issue comes into play in a number of cases, but certainly in this one, because the way this is set up, there's no one party that can hold up the process. At a certain time, the next thing happens. You know, if you don't get -- if you don't follow the process, you miss the boat. It's going to go on without you.

So -- And we -- we know that something like that needs to be in place in order to keep the process moving, otherwise you will get hung up in loggerheads for months or years, as it were. Usually it's years.

MR. McKITRICK: John.

MR. CLEMENTS: Just again for the record --

MR. DACH: What do I keep messing up?

MR. CLEMENTS: There is no assumption on the part of the FERC staff that the FERC member of this dispute resolution panel would always vote with the licensee.

MR. DACH: No, no.

MR. CLEMENTS: And there was also no assumption that the underlying decision on licensee's final plan would always go in favor of the licensee. The expectation is that this dispute resolution would be resolved or would be needed in few cases.

And I think if you look at the history of study requests, the commission has, I think, a long history of requiring an awful lot of studies that were requested by agencies.

MS. MILES: I actually would like to turn the conversation a little bit to what you would like for -- I mean, you obviously don't like the process that was set up, and do you have suggestions that you can give us right now about what you think might be a fair way to do it?

MR. PLANTE: Just a simple suggestion. Include the licensee.

MR. WELCH: On the panel. Put the licensee on the panel.

MR. PLANTE: Yes. And if that requires another neutral party to break a tie vote, certainly it would make the licensee feel better to know that -- I know how the agency is going to vote, and they got one vote already in the pocket. It would be nice to have our vote in the pocket, too. And that's very simplistic, I'm sorry, but it would feel much more fair that way, and, also, you'd be there to say your peace.

MR. WELCH: Couldn't you say, though, that the licensee -- the licensee is already, quote, "voted" by the -- they vote with their study plan?

MR. PLANTE: Yes.

MR. WELCH: So you've already essentially voted.

MR. PLANTE: And they're going to cast a vote on the dispute resolution. That's the concern.

MR. DACH: You know, it doesn't sound nearly as good when you say it.

MR. URBANEK: Dennis Urbanek. I would have to second that piece, and I would say how acceptable would it be if the agency wasn't there and the licensee was?

Why don't we just think of that

scenario for a bit in terms of how the vote would turn out. I think the agencies would say that's not acceptable. I think excluding the -- Or if it is, why don't we proceed with that as an idea.

Or I think we need to have the licensee there, and I would also think are we getting into voting on issues, you know, we're going through a five-year process or longer on -- on this relicensing process. I don't know who this disinterested or neutral third party is, but many of the items can be complex, they can be technical, they require some background in either hydrology or fisheries or whatever.

And so this -- this neutral party who's going to come into something, is it a one-hour discussion, without having background, without having education or the exposure to this, may be at a real disadvantage in looking at some criteria, which seems rather simplistic, okay?

He asked how can you make decisions? Well, a couple of things. One is you need clear, and we need clear criteria to make decisions against.

The second thing is I think in making decisions is there's not necessarily a cookbook

approach for all situations, all states, all dams, regardless of size, et cetera, and it requires some -- some common sense criteria and someone maybe that is FERC making a decision based on the facts at hand with regard to criteria that provides some -- a reasonable modicum in which to check that decision against.

But voting, I think, is something that should apply more to a political process than to one in which there is a relicensing process, and that's my spin on it.

MR. McKITRICK: John.

MR. CLEMENTS: Let me just say two things. And, again, the theory, I'm not saying this is, you know, necessarily in defense, but the theory of this was that the state has -- not the state, but the other federal agencies that would be represented on these panels have a special role because they have a special role and a special responsibility under the statute, whether 4E or Section 18, and so that's -- they have a regulatory vested interest. So that's the theory, I think, behind why they would be represented on that dispute resolution panel.

MR. URBANEK: That's not consistent with we're all stakeholders, and the licensee

certainly is an important one.

MR. CLEMENTS: Well, I can't respond to that really, but the other thing is -- and I think you're right -- we shouldn't be talking about votes. The idea is that this panel would resolve these disputes based on the criteria, and I'm sure the criteria can use some work to get them better, but the idea isn't that people would just be coming willy-nilly just casting a vote to reflect an interest, but the panel would have to sit down and collaboratively, if you will, weigh the request for a study against these criteria, and they would have to render some sort of a decision in writing, which would relate or not relate, depending on the facts, to the study request to the criteria.

So it's not like you and I walking into a voting booth and saying, I like Bush, I like Gore. There's criteria there that has to be reflected somewhere on the record in order for that to go to the commission and make some sense and have some validity.

I don't know if that gets you any further along to thinking it might be a good or a bad idea, but I think --

MR. URBANEK: I don't think it moves,

at least my perspective, any closer to it in terms of special agency responsibilities. I know they have responsibilities, but the licensee also has an important stake in this whole piece, significant financial stake, and it'd be nice to participate in this fashion, as our legal system tends to have, you know, you're there to represent yourself if there's an issue, rather than be represented by a party that may or may not have your interests at heart. So I think it's really soft in that it's going to cause other issues down the road.

MR. McKITRICK: Yeah, I think we --
Hopefully you understand the proposal from the IHC, and then we look forward to the licensee's comments as far as expanding or changing, whatever.

Mona, you had a --

MS. JANOPAUL: Yeah, two things.
Please take a look at the NRG proposal. They take a slightly different spin on dispute resolution. See if that works better for you. Let us know about that. We're -- You know, this, as are many of the areas of the proposal, this is still a very fertile area for your comments and suggestions coming in.

I would like -- The other thing I'd like to say is the genesis of some of this idea of

voting. A lot of the proposals from licensees over the last 10 to 12 years have been critical of agency mandatory conditions, saying they were not sufficiently scientific based. There were some proposals that all conditions be scientifically peer reviewed, which necessitates a sort of voting by a state-of-the-art science panel, and that was -- that was many of the things proposed by the National Hydropower Association, proposed by NHA and its rulemaking that led to the ALP that we've seen a lot of legislation. Scientific peer review.

So that was some of the genesis here is that, as Bob mentioned, we would provide an independent scientific expert from our agency and others to look at the criteria, not necessarily those who had been advocating, in fact, not those who had been advocating for the study.

You know, again, I mentioned earlier, we have existing -- FERC has an existing opportunity for both formal and informal dispute resolution now on the books prior to licenses being filed for reasons I, you know, that would take a long time to explain.

None of us use that particular dispute resolution process. This was something we stepped

forward to and thought would benefit all of us with certainty. But, you know, as opposed to Bob -- and I will quote him directly -- saying we just have to swallow it, that is not quite the thought from at least the Forest Service point of view, it's that it gives us certainty that it is -- will be everyone's point of view that we do have sufficient evidence to support our conditions if that's what this panel says.

If this panel says no, you do need additional information, that study does need to be conducted in order for you to get at a condition that is required by your authority, that study will happen. If the panel decides instead there is sufficient existing information, then we have that to support us in our condition from an attack that there is not sufficient evidence.

You know, and I also want to point out to you, stepping back from this a little bit, there's a number of studies that the Forest Service does pay for having to do with licensing. For instance, we have almost a half million dollar contract for the last three or four years running with different IFIM experts to support us in our comments and study design, in the necessity for the

study, and the study analysis. Now, that comes out of our budget. But on the other hand, when we submit our agency costs to FERC every year to be included in your annual bill, that charge is in there.

So, I mean, that's just something for you to consider for those of you who have said, well, the agency can do the study on its own. At least for the federal agencies, we have the opportunity, if we can dig it out of our budget, to go ahead and do it, but then we're going to include it in our cost back to FERC the following year to be divided up into your annual bills.

So, you know, those are some of the things you might think of balancing. I mean, that's something we didn't bring in here. That's just a thought.

MR. MCKITRICK: Thank you, Mona. The gentleman from Missouri has been waiting patiently.

MR. HOGG: I have a couple thoughts here that are associated with this. It appears that in your process, that the applicant starts out preparing a prescoping document. Then in your process, you transition through the steps here, where FERC issues Scoping Document 1, not the

applicant. FERC holds the meeting. That isn't a joint meeting, as it is with the ALP process. Then you transition into getting stakeholder comments sent into FERC, turning those back over to the applicant, and having the applicant prepare the study plan.

At some point it seems like we have transitioned from the applicant preparing a study plan, to FERC taking the lead, back to dumping it to the applicant, back to the applicant revising a plan and submitting it to FERC, and then FERC giving final approval.

And it just seems to me like that's a little bit convoluted in the process. Either the applicant is delegated to do certain things to a point that FERC reviews it and approves it and carries the ball forward, but this just seems to pass the ball back and forth a little bit and isn't quite as clear as I think it should be as to exactly how you intend for that process to work.

Secondly, there -- this is at a very high level flow chart, with the mandatory conditioning agencies again focused into this flow chart. You provided nothing for us to comment on about 10J state agencies and the recommendation

agencies as to how to resolve the disputes we have over study scopes with them in this process.

So there's kind of some underlying assumptions either not to omit it, or it's expected that the licensee somehow, as we work our way through the prefiling phase, working with the agencies, have somehow been able to resolve what's going to be included in that prescoping document and the initial study plan presented. Quite honestly, a lot of the applicants and licensees are hung up with the state agencies on study scopes, not the federal agencies.

You know, as you sit here as a licensee and you're looking across the table at this federal agency with mandatory conditioning authority, you consider very heavily before you turn them down and say, no, I'm going to refuse to do that, because you recognize what path that's leading you into.

On the other hand, if you're dealing with an agency that only has recommendation authority, and you look across the table at them and they're asking you to do something that you feel is pretty well not needed and well beyond the scope of the information required to make decision in

relicensing, you're much more likely to tell them no, which gets us very hung up at that point in the process, which is well before we turn it over for FERC and the Scoping Document 1.

Second -- Another point is the licensee, as we're working our way through this, is typically dealing with a local level of a federal agency representative. As we work through this process, usually that's who we've come to loggerhead with, and I don't see a process that bumps that up to a reasonable level of the federal agency or national level of the federal agency, and you're never quite sure what level of support that position has.

As we go through this process then further, and say we work out the details of dispute resolution process, once I get between Step 10 and 11 and the applicant is required to conduct the first year of studies, I would certainly hope that we will be at a national level of endorsement from the federal agencies and at the top level of the state agencies, where they have said that this process has been -- gone its course, that we've resolved the disputes, and everyone is going to sign that they're going to live with this moving forward.

Because if that is not the case, then this process has accomplished nothing, because the current process has all these back end opportunities for all that to be brought back out and to be back into this phase again.

And it's going to take something similar to what the NRG, if not what they propose, to where there ultimately is a memorandum of agreement signed at -- at the top levels of all the agencies that, with FERC, that this study plan is the agreed to plan, this is the information required and will be the information used. There are certainly a couple other steps here that you would adjust that, depending upon what the study scope is.

And then I heard a statement a moment ago that if you did not get these studies done, you might not have the evidence necessary for your mandatory conditions, to support them. And it just blows me away to think, in my native Missouri language, that you've got a mandatory condition already in your mind that you're needing this study to support, in lieu of what -- what's really the phase we're in is you're needing the information just to assess the conditions, to try to determine if the mandatory conditions might be required, and I

believe that's the correct way. I see heads shaking yes there. And that's really what you're in loggerhead over, is whether this needs to be studied to determine if there is an adverse impact out there that would require a mandatory condition.

I take strong exception to the people that have mandatory conditions already decided and want to negotiate studies to try to justify that. I have no problem, as a licensee, supporting the need for information to fully assess the situation to determine if there's an impact there that might require a condition.

So as long as we're doing that, assessing the conditions and the project impact, later in the process here some place, after you're in the field and have done studies, should be the loggerhead over whether conditions are required and whether that evidence states that that's necessary or not.

MR. DACH: It was a good -- The clarification made is the right one, and the correction that Mona made, the clarification she made, I think was appropriate as well.

When we're requesting the study, it is because we think that information is necessary,

either to whether to determine -- at that point it would be to determine whether or not eventually some sort of prescription would be necessary or 4E condition or something. So ideally, it's -- we wouldn't be trying to support a predetermined conclusion. So you're absolutely right there, and I apologize for misspeaking.

The point that Mona made was that if the resolution of the dispute team is that you already had this information, then if we did find it necessary to do a prescription, we would use the information that the dispute team said we already had, and we would expect then that that was sufficient to support or to justify whatever some sort of license term we added into the final license.

So it's -- the -- that juncture in time is sort of, to me, a critical piece to the whole puzzle. Depending upon what we decide there, is what information will be on the table in order to make our final recommendations, terms, and conditions.

So we -- I think all the clarification is good, and the language that we have in the document should read like that because

that -- that certainly is our intent.

MR. McKITRICK: Did the IHC address any kind of disputes that the states may have with the licensees?

MR. DACH: I'm glad you brought that up. We specifically did not look at disputes from the states, whether or not anybody requesting a study would go through this process, whether or not these criteria would apply to everybody.

It came up earlier this morning, and Mona addressed it, whether or not -- and you yourself just addressed it, whether or not you want the surety of meeting these criteria to be applicable to anybody who brings a study forward. Our assumption was that you probably wouldn't want that, but we could be wrong.

Also, with respect to the dispute resolution process itself, whether or not somebody requesting a study that met those criteria, say it's a state agency or an NGO, whether or not they, too, then would have dispute resolution available to them to determine whether or not the study was necessary.

In this process, we stuck purely to the criteria that it was for a mandatory conditioning authority agency, and we left it at

that, and I'm not saying that it can't be expanded, I'm saying the one thing we knew when we were doing the process was our own authority, and we knew that this was something that we would want, but we don't mean to preclude anybody else, and if this can be worked out such that it addresses everybody else's needs, as far as I'm concerned, the better.

MR. WELCH: We'd be really interested in your thoughts on that because, you know, the big fear is that, you know, you have all these dispute resolution processes going on as far as states and other mandatory conditioning agencies, before you know it, you have like five dispute resolution panels going on with the same process, and that doesn't serve anyone well. So definitely interested in your thoughts as to how that would work.

MS. SMITH: Just to add to what Tim said, we clearly left out 10A, 10J, and any state interaction. One, we just sort of didn't have time to do some of this stuff; and, also, we just -- we couldn't speak for the states and these public meetings, and then the more technical ones following in NOPR are designed just to address these exact issues. You brought them up a couple times, and it's stuff I've written down, everything you said,

because it's a huge unknown so far.

MS. JANOPAUL: I don't know that it was a matter we didn't have time, although we were certainly pressed, but, again, it was thought that the power of a mandatory condition warranted this kind of treatment, whereas with the 10A or a 10J, you know, you clearly have -- have some resistance. I mean, they're recommendations. The same with regard to the states on 10J, as opposed to a mandatory condition. So --

MR. McKITRICK: If we can get Lloyd.

MR. EVERHART: Just a couple of points. We did use the dispute resolution process. We had one opportunity. We lost in that process with the dispute with the state. FERC settled the dispute, and we accepted the decision and just went forward. And so our experience with the existing process was, you know, it worked. Wasn't to our favor, but it worked. So, you know, whether or not we need to change in the existing process, it's debatable to me.

Also, another point. I'm sitting here thinking about the mandates of FERC in ECPA, and it's very specific that they are to be the balancing agency. And it seems to me that this might be more

or less usurping their authority. Do we really need another process when they are supposed to act as the arbiter and to balance the issues?

MR. HOGG: This is Jerry Hogg with AmerenUE. I just want to make it perfectly clear to FERC that in the ALP process, leading one of the processes in the country right now, that I am continually every day in the dispute resolution process with a myriad of over 160 stakeholders. That's daily we make decisions about do we go forward with this, do we give into that, and to be honest, that's how the costs get run up, because there isn't a formal process to resolve all the different little disputes, and, ultimately, you're trying in ALP to get to a settlement agreement that you think you can live with and present to FERC.

In order to do that, the licensees feel compelled in many cases to give into study requests and stuff to try to maintain some type of a relationship that might get them to a settlement agreement in the end, and that's exactly how our costs have gone up.

We have made multiple concessions, and I can guarantee you well in excess of a million dollars in the last year in study scopes in order to

try and maintain relationships with resource agency personnel, with some hopes of getting to a reasonable settlement.

And it is a constant decision on a daily basis to be made, and you settle disputes all the time at a variety of levels, and you really don't have the final say that FERC has, and FERC's not there to make that call.

MR. MCKITRICK: John.

MR. CLEMENTS: Jerry, if you -- if you had to choose between something like the IHC process or the NRG and the ALP, would you rather just drop the ALP? I mean, if you had to do it all over again.

MR. HOGG: If we have it all to do over again.

MR. CLEMENTS: I mean, others in the future might face that decision, and one of the issues here is if the commission does adopt something like this, should it keep the ALP, or should it just, you know, try to make this flexible, but, in a way, one size fits all?

MR. HOGG: Well, my thoughts are that I don't know that one size fits all, but certainly the ALP process puts the licensee in a position

where it doesn't truly have the full authority to run a very efficient, expedited process.

I do think that between some combination of the ALP, the IHC proposal, and the NRG proposal, as we work forward in a collaborative manner with all the parties, I believe this next year, I believe there can come from this a very enhanced process to what I'm in currently, and I do believe that we would seek to use that process in the future in comparison to the ALP.

MS. MILES: I think this study dispute process is one of the tough things we've got to grapple with, and it seems to me the place that we're trying to go is where all the disputes are decided on, regardless of who they come from, within some fixed period of time early in the process, and then you can go forward doing your studies.

The difficulty we have, and I think the value you've got -- or and everyone in this room in helping us -- is how does it work? Where does it fit in best in this process? What period of time is it reasonable to say, okay, you've got enough information, we can put a close on these things? What should it look like? You know, you've got some things that we've thrown out. You all have a lot of

comments on those. So I would say if this is an area where we can really come up with a good process, that all the stakeholder groups feel comfortable with, it could be a tremendous accomplishment.

MR. McKITRICK: I think that's good, and I'm not sure if that's going to happen right now, but it sounds like a lot of people have some good insight into this and how to get involved, and I think we've given you some information to help focus your comments, and we appreciate that.

MR. URBANEK: Dennis Urbanek. Just one comment. I think why the dispute process is so difficult, it ties into the comment is they have a process where all stakeholders can feel comfortable with. That's why we are in the dispute process is because not all stakeholders have the same stake at the same respect -- have the same goals and objectives, and maybe something more in terms of the scientific basis, rather than what I'll call the political basis, may be a basis for making decisions, but I think if we can get all the stakeholders to agree on that process, my guess is that there wouldn't be any disputes, and if there is that process, I would welcome that, see how we could

participate, make that work.

MR. McKITRICK: We've worked ourselves into not a whole lot of time to finish up the day, but I think we've had some very productive discussions on some -- some of the most important issues, that is there anything else dealing with dispute resolution?

If not, the next topic -- and somebody's going to have to help me out -- is integration -- I guess integration of the state process with the FERC, relicensing process. We've got one guy from the state that's going to tell us how to do this.

MR. WELCH: We assume you're the one that voted for it.

MR. McKITRICK: If there's anybody else, not to put a burden on you, but --

MR. STROM: Actually, no. Paul Strom from Wisconsin DNR. A, I didn't put it up there; B, I didn't suggest it there either. You pointed your finger at the wrong person.

MR. McKITRICK: I'm sorry.

MR. STROM: I think it might have been the individuals over here that had suggested that because of their problems with working with the

state resource agency, that somehow this process with FERC needed to be looked at in an integrated fashion with the state agencies. I think that's how that got up there. It wasn't -- it wasn't me suggesting anything or putting my check mark up there.

So like you said, I would need somebody's help before we talk about this. I have to ask the question, why is it up there? What was the issue that somebody put it up there? I don't know.

MR. McKITRICK: I don't know either, specifically, but I know one thing. The NRG, as well as the IHC, looked at specific things, and the states weren't directly involved with any of those proposals, and as we move forward and look at your comments, I'm sure we'd like to understand that, as far as you've kind of accepted early -- working early in the process, if that works with you and how that might blend in with the process. If there is something specific that someone had in mind. John.

MR. CLEMENTS: Actually, I'm just speaking for someone else's name. I can't remember, but I'm sure they won't mind.

I think the reason that's up there is

because -- and I think I heard it before once or twice today -- is that the commission can -- We'll start back from scratch.

One of our goals here is to try to come up with a process that doesn't take so darn long, and someone pointed out earlier that the commission can have all the time periods and deadlines that it wants to, but if the time comes when the license application is filed, and the commission is trying to move forward, and the licensed applicant is still having disputes over what the evidentiary record is going to be in support of a 401 application, and the state's not moving on the 401 application, then the whole -- you know, everything that the commission and others have tried to do to bring these things to completion is for naught, because we're sitting around waiting for the 401.

And I'm not saying that the state is necessarily doing anything wrong or in bad faith, but this doesn't get anywhere unless there's some way to get the 401 moving in some kind of a parallel track, at least time-wise. I think that's the problem that the people were -- were getting at when asked how do we integrate the state processes.

MR. STROM: Paul Strom, Wisconsin DNR.

On this one I can speak for Wisconsin, and I know that we have submitted written comments to FERC in the past. The problem in Wisconsin is not due to the state sitting on a 401 certification. We have state administrative code requirements that we complete and issue our 401 certification within 60 days, and we do that.

We have certainly had disagreements with licensees over those requirements, but, again, to my knowledge, we complete those and justify in those requirements why the studies are being requested and why material that might have been suggested as -- as existing data was inadequate or not justify it be used.

So from what you just said, all I can say is that isn't the case here in Wisconsin. We would take exception to that.

MR. CLEMENTS: Is that within 60 days of an application being filed or 60 days of the Wisconsin DNR accepting the application?

MR. STROM: I believe it's 60 days within it being filed we need to issue a water quality certification.

MR. CLEMENTS: There are many states

where the time period doesn't start, you know, the one-year time period under the Section 401 approaches, and the licensed applicant is persuaded to withdraw the application for a 401, or it's rejected -- denied without prejudice.

And the next one-year cycle will start, and the thing that's holding these things up, at least in a lot of other states, is the state's study requests have not been completed, or they're still negotiating it.

So, you know, I'm not casting aspersions on Wisconsin; I'm just telling you why we're here and why that's really a big issue for us. Because we go back, and we look at our oldest cases, and in the vast majority of those cases, for whatever reason, they're waiting for a 401 certification, and that's why the issue can't move forward. And --

MR. STROM: Correct.

MR. CLEMENTS: And can I ask you another question? When you say you issue something within 60 days, what happens administratively if that 401 is appealed? Does it take effect in any event, or is it stayed or withdrawn pending the appeal?

MR. STROM: This is the point where I beg out here because I'm not the individual to be addressing and answering those specific questions about the process.

As I stated earlier, I'm not the one who's been involved in issuing 401 certifications. I tried to get any of those individuals here today, and that wasn't possible. So I can't answer that specific question and assure that I can give you an accurate answer, and rather than give you an inaccurate answer, I have to pass on that, take your question back, and I can get the specifics of that.

We -- we do issue -- or reject without prejudice, as you've said, when applications are incomplete, so there are issues where a 401 isn't complete, and certainly things are delayed, but I would take exception to saying the state isn't acting on it.

MR. CLEMENTS: Okay.

MR. STROM: Beyond that, I can't address the specifics today simply because I'm not the individual to do that.

MR. CLEMENTS: I guess further to illuminate my second question, for the benefit of everybody, there are at least some states when a

water quality certificate is issued, and it's appealed, that it automatically under the state regulations is -- I'm not quite sure what the word is -- not vacated or withdrawn, but it doesn't go into effect, and so while it's under appeal, that precludes the commission from issuing a license because there is no 401. Again, I'm not saying that's good, bad, or indifferent; I'm just saying that's sort of a fact that we try to deal with.

And so what we're trying to do here is to find ways to get fully completed, issued, squeaky clean 401s so that we can move forward, too.

MR. TORQUEMADA: If I could jump in here as a co-facilitator and do a quick check here. We've got 20 minutes. I've been trying to keep track of the topics that we've been discussing and how they relate to what was up on the board, and really, I think there's four that we haven't touched on in one way or another.

And I guess we do have the option of extending this on, if anybody is really wanting to do that, but what I have down that we haven't -- and maybe we have -- we have this processes, which maybe that's just everything we've been doing, and we have done that. We have the topic of settlements. We've

got early service list was mentioned, and the costs of licensing, although this has been mentioned in testimony and in discussions.

So I just wanted to check now. We've got 20 minutes, and is there any strong feeling about what's a priority within those last four? And if not, we can move on and just --

MR. McKITRICK: Maybe move through each one, if anybody's got a quick comment, because I'm not sure, after the integration of the state, we really look forward to comments on this because it is extremely important. But is there a feeling for what the bullet with processes --

MS. MILES: I think that went with integration of state processes. It's not a separate --

MR. WELCH: I wrote that.

MR. McKITRICK: Time frames, we've talked in generalities about this, and the importance of schedules. Is there -- And also time frames dealing with schedules. Any other comments, either for clarification or comment, that would help us put some language in the NOPR dealing with time frames? There was some general discussions. We don't need to rehash that.

MR. DACH: Under time frames, one of the issues that's still sort of looming out there that's been touched on a couple times is under what circumstances would an extension be a good idea or a bad idea? We haven't addressed that at all.

We have these very specific time frames, and I think it would be helpful to us to know when folks thought it would be a good idea to offer time extension, when they thought that it wouldn't be a good idea, because -- because we all know that in certain circumstances, it might be a good idea to get another 15 or 20 days or something, but under the process and how it was designed, we keep moving.

So I've heard it a couple of times, saying, well, you know, if we could stay on this track, we need to stay on this track, we don't think it's reasonable, or we don't think that we will stay on this track, because somebody is going to request a time extension and get it at some point.

I mean, it would be helpful to know when folks thought it was reasonable to get a time extension versus moving forward with the process.

MR. MCKITRICK: Mona.

MS. JANOPPAUL: I just thought I'd go

back to state processes for a minute. Some of the things in the IHC proposal all dated back to Jim Trucken of Michigan DNR representing the states in the FERC's '93 round table on hydro issues, and he and many of the other panel participants made the pitch that if FERC front-end loaded NEPA, that would help move them forward in their decision that they would be less requiring of studies, that would be more informational, and that they would be able to accelerate their processes.

So that was some of our thinking, although we didn't communicate with the states in this particular session in doing that and indeed front-end loading NEPA.

So if some of you are having issues with the states, and you think the IHC proposal would help or not help, I just like to know thumbs up, thumbs down on comments from your point of view.

I will tell you when I was working on the Energy Task Force, although I hope I don't have to now file a FOIA report on this, there was kind of a surprise that CZMA or water quality certifications could add to the time of licensing because many said, just as you've heard, oh, well, we have to have that out in 60 days, we have to have that out

in one year. They were not familiar with this practice in hydrolicensing of advising the licensee they might not get the certification and withdrawing and starting the time log again.

So it is an unusual practice, and just think about what some of the options are, but we do not have, again, the authority in this particular rulemaking to change the Clean Water Act or order the states to do certain things under their regs.

So your comments are of interest, and the state's comments are of interest, but we cannot force them to change that. You have to go to Congress on that one.

MR. HOGG: Jerry Hogg, AmerenUE. As we've discussed this process, I'll make one final suggestion for the day. Present this time frame prior to Box 1, I strongly advocate that FERC consider leading a joint meeting of all of the resource agency personnel and state personnel with -- in conjunction with the licensed applicant, sitting down and looking over the issues, looking over the time frames, and on the very front end of this process, I think there should be a jointly developed schedule, with all of the key players, where they sit down and state what their state

requires, what each federal agency requires, what issues they're aware of going into the process that would have an effect upon the process, and that there would be an agreed-to up-front schedule that FERC has led and developed that is established.

That could easily then be tweaked and modified, obviously, as you work your way through the steps. But I think it would preclude a lot of this from occurring because you would set down with the DNRs of each state, the water quality certifying agencies, the wildlife and resource agencies, the licensees, and you could resolve all this up front and sit down and have those dialogues.

Recognizing there are states like Missouri that will only two FERC licenses in the next ten years and hasn't done it for 30 years, so there's all new people that do not know this process, that really do not understand the integration of the various federal agencies' role is, what the state role is, what FERC's role is and the expectations, hammering all that out on the front end would really resolve a lot of this and clearly define a plan moving forward.

MR. MCKITRICK: And I guess that would include NGO groups?

MR. HOGG: I believe the more you could include of your stakeholder base, recognizing that without a lot of education like you go through an ALP, you're not going to get a lot of the local involvement, but certainly all the NGO groups and people in the area that have interest could be solicited, and you could have initial -- that could be your prelude to your kick-off of your concerns and your prescoping phase that would give the applicant then not only a schedule, but kind of the first phase of the scoping of issues, which had been factored into that schedule, and then you talk about how you get all the local groups and all the other local input involved.

MR. WELCH: Could I just ask a quick question of Jerry? I'm looking at the shuttle wiring diagram, as Mona calls it, and B, cognizant of the fact of not extending the process any longer than it needs to be and putting it within the framework of these boxes, does anybody have any idea like when that meeting should take place? Like does Box 6, the scoping meeting, would that be too late? I would think that would be too late. Should it come between Box 4 and 5?

MR. HOGG: I believe it comes 18

months prior to Box 1.

MR. WELCH: Yeah, I understand. I'm very cognizant of extending the process out any more than it needs to be. I mean, if we could fit it into this framework early on, I think we might accomplish the same objective.

MR. HOGG: Well, the only thing I'll draw a parallel to, we did not start till 2000, and we have to file in 2004, so we're on a four-year time schedule, doing an ALP process, which we have to do everything that's in those boxes, as well as that first 18 month front-end loading, which is a very compressed schedule. Shame on us.

My point being is I'm not sure the time frame has to be extended. I believe that there are certain steps that if they happen up front, will save months of agonizing through the study phase two years, with open-ended issues and multiple meetings and ten subcommittees meeting in conjunction with your stakeholder meetings every month.

I mean, if you can kind of picture what we've been going through, I wish that we had had a process up front that was heavily front-end loaded that we sat down with all the people, we identified the issues, identified the schedule,

identified the scoping, had commitments, I believe FERC will have to do some training, maybe with licensees, as well as other stakeholders.

Even at the resource agency level, there are local people around the country that will be involved in these that you've got to train or bring into this process that have not been involved previously and getting them up to speed. But all that on the front end being done, and maybe it starts at Box 1.

MR. DACH: That's especially true with the Forest Service, by the way.

MR. HOGG: The Forest Service.

MR. MCKITRICK: It's getting late in the day here.

MR. WELCH: You're losing control.

MR. HOGG: I truly believe that all that done on the front end will eliminate all of the problems that are taking place and the confusion that are creating all of the delays in getting through some of the other phases.

So I don't think it extends the process. I believe if we get the front end done properly, we can compress this process significantly, and you won't have all the cost

overruns in the interim steps.

MR. McKITRICK: Paul.

MR. STROM: Paul Strom, Wisconsin DNR.

This is why I should have been here as an informal observer, as opposed to a commenter. I need to correct a statement I made regarding the 60 days.

MR. McKITRICK: Okay.

MR. STROM: It's actually 120 days.

MR. McKITRICK: Just extends it.

MR. STROM: The caveat there is that we only have 30 days in which to determine the completeness of the application, and if we determine it to be complete, we've got 120 days in which to issue a certification or issue a certification with conditions or to deny it.

I think the key -- the key comes in in that first 30 days, in that if we determine it to be incomplete, we do deny it without prejudice, and if I'm not mistaken, part of the reason for doing that is to allow the process to continue, to allow the applicant to have an opportunity to submit a complete application, and I believe that the consequences of them not doing that would not be good for the applicant, if I recall the process correctly. But, again, I'm not the expert in that

field.

So, yes, we do deny without prejudice for an incomplete application, and there's a list of specifics of what constitutes a complete application that's specified in the administrative code.

And then with -- Then one last thing I wanted to read. It says, "With very few exceptions, delays associated with issuing water quality certifications are a result of disagreements over potential conditions. Wisconsin prefers to work with applicants to resolve differences prior to the contested case stage. Wisconsin has employed various methods to resolve differences, including informal consultation, mediation, and FERC's ADR service, and has been generally pleased with the result."

MR. McKITRICK: And our wish would be that you would get involved with study requests and understanding what you need prior to any kind of 60-day, 120-day --

MR. STROM: Right.

MR. McKITRICK: -- period of 401 conditioning and that happen early.

MR. STROM: We understand. And that's fine. As I stated earlier, we were moving on the

process and having the deadlines and timeliness.

Others were interested in that.

MR. MCKITRICK: I understand.

Anything else dealing with it? Looks like we backed up, and that's fine, into the state process, integrated state process. Did you bid, John, or is that just --

MR. CLEMENTS: No, I'm just wearing my reading glasses.

MR. MCKITRICK: Okay. If not, I think we mentioned time frames, kind of moved through that with some clarification from Bob. Talked about settlements. I guess either the new process encourages them or not. The idea of when do they start, when are they finished, that type of thing. Mona may have --

MS. JANOPPAUL: I think particularly, you know, we are all interested in seeing more settlements. We think that's a savings and a benefit, particularly when the new license comes out and we're all working together on it, instead of having still differences.

But the question is do the time frames or does this process somehow impede or inhibit settlements, or does it facilitate them? So if

going back to some of these other issues, time frames, integration with state processes, the dispute resolution, does that -- is that at a point where it would sort of make settlements less likely or more likely?

A few other things. Just think about pretty much every step in the context of is this going to help me to settlement? Is it going to hurt me to settlement? So that's some of where that's coming in because --

And I think, also, people mentioned several times today that the question of what about extensions of time? We have -- we have a number of situations now where licensings have gone on so long that the commission feels regardless of the parties' sense that settlement is still possible or probable, that extensions are difficult to grant at this time.

So, you know, what would be the criteria for granting an extension as it relates to a settlement? When -- Do all the parties have to support an extension in order to break to have someone happen?

We mentioned this earlier. If some parties are requesting a time extension, do all parties need to agree to that? What is it that will

help out so that we don't have this argument that licensing takes forever?

Again, that's the tension, to give them time so they can sit down and settle the thing, or do you keep that licensing moving forward regardless? So that's some of the tie-back to the issues.

MR. McKITRICK: In addition -- I guess with that, I mean, there's always the extension type of comments, and that's well and good, straightforward, but the scheduling idea of when -- I mean if -- when do you acknowledge that you may be -- I've run into problems.

I work on seven ALPs, I suppose, and we run into a problem of are we going to settle or not? Is that even an issue? And we may not even reach that decision until maybe the last six months prior to filing.

I mean, do we need to make some sort of initial documentation that we intend to settle, or is that just something that evolves? Is it something that has to be done prior to the application being filed, or is there a period afterwards that has to be completed?

I think those are issues that come to

me a lot that I see and often leads to delays in extensions, and I think something early -- early on, if it's an intent, may be helpful to declare early on, not to say that you have to do it, but at least puts everybody at some sort of understanding of -- which may be a different approach if you go to settle or not, but that's a thought of some other participants in the process. Be interesting comments.

Early service list. Boy, if anybody has got an idea. I've never gone to a meeting where we haven't incorrectly sent out service lists, we haven't invited somebody, or somebody's got 40 copies, or how we go about doing this. Or restricting the service list, I think, was also brought up. Is that a good idea?

Any comments about service lists and who gets invited, how to make sure everyone's invited. Individual mail them? Anybody from the --

MR. TORQUEMADA: I think some of that was based on the 160 stakeholders and the need to narrow it down early on in the process to those that truly need and are active participants. Is that --

MR. HOGG: It's not a comment by me.

MR. DACH: The comment -- The idea

was they just didn't want to have to print up 165,
you know, scoping docu -- or preliminary
consultation documents.

MR. CLEMENTS: I believe it was
Mr. Spaulding.

MR. TORQUEMADA: Okay. Who's left.

MR. HOGG: I mailed out 160 ICDs. It
was a great piece of work. You don't need to put
that down.

MR. MCKITRICK: Typically the service
lists expand dramatically as you go through the
process.

MS. JANOPPAUL: I guess I heard it from
the other side, too, if somebody wanted to, the
opportunity for -- I don't know, it was either the
licensee or FERC to take responsibility to go out
and find all those stakeholders and get them on the
service list, and I did hear somebody say that.

So I guess if anybody had any comments
about, you know, who's the appropriate party to go
out and take that responsibility, go out and beat
bushes, or if there's some other way to make that
happen as a standard.

We've talked about a number of things.
We've talked about river basin interest lists,

regional interest lists, something for people to get ahold of. Certainly from the agency point of view, we take the responsibility of if you tell us in D.C., we'll make sure that the right person on the ground gets it.

I, again, want to point to our regional person here. Nick is in Milwaukee, and he will make sure that it gets to the right forest level, as will our regional assistance person, technical person, Rich.

MR. WELCH: And he'll make all the copies, too.

MS. JANOPAUL: So, I mean, the agencies have made it a commitment to get it up and down the agency level, but for meeting the ground, for a particular whitewater boater, just work with the national groups or else make a comment that it should be FERC's responsibility or the licensee's or not.

MR. McKITRICK: And I think we've talked about other processes, responding seeing if we should have all three of these, two of them, any mix or match. I think that may be where it came from.

And cost of licensing we talked about

quite a bit. Be interested in how you document that and get people invested in what these actual costs are and understand them, I think it would be helpful.

If there's additional comments or just to kind of -- we skipped over something too quickly, if you'd like to clarify a point, I would be very interested in hearing that now. Certainly looking forward to your comments prior to December 6th, but certainly no later than.

In addition to that, I'd be very interested, you guys are the first ones that we've come to, it was a small group, fairly easy to interact, and you pretty much controlled how you were going, but if you got any idea how to do this better in the future, to make this better, more effective, I'll certainly be around. I'd be more than willing to listen to that.

If anybody on the IHC have any kind of closing comments or --

MR. WELCH: It says in the agenda wrap-up.

MR. McKITRICK: I'm sorry.

MR. WELCH: Next steps or something.

MR. McKITRICK: In what was that?

MR. WELCH: I don't know. I can do it, I guess.

MR. McKITRICK: Okay.

MR. WELCH: On behalf of FERC, I'd like to thank all of you people for being here, and I, for one, it's definitely exceeded my expectations today, and I've taken a lot of notes in various margins and stuff, and thank you all for really sticking to the problem/solution format. I think that worked really well today, and that was definitely something we were trying to get out of these meetings, and we heard a number of problems, and we've heard a number of good solutions, too, so thank you all for making those kind of comments.

Now, as far as we are in the process, once again, I would encourage you, we have this little -- this flow chart that sort of outlines our process, and it's on the front table, so make sure you have one on your way out.

As Ron said, you know, this is our first stakeholder forum, our public forum, and we'll be having one tomorrow for the -- specifically for the tribes, and then we move on to Atlanta, one in D.C., New Hampshire, California, and Washington, finishing up the week before Thanksgiving.

Then from there, we will be compiling our comments that we -- both the written comments that we get on the notice, plus the comments that -- based on the transcripts, that we've heard here today, and on December the 10th in Washington, we'll be having a post-forum stakeholder meeting to sort of wrap up what we heard around the country and kind of where we're going.

And then after that public meeting, there will be a post-forum stakeholder draft session, also in Washington, D.C., where we'll actually begin drafting language for the proposed rule, and that'll happen on December 11th and 12th.

So just very briefly then, after that, FERC, with the assistance of our federal resource agency, will begin preparing draft rulemaking. Then, hopefully, the commission will propose it for commission action, and we're targeting this for commission action the last meeting in February.

And then, once again, once the notice of proposed rulemaking goes out, then you'll actually see the draft of the proposed rule. And it seriously is a draft. We want to treat it that way.

And then we'll be back out on the road again. So maybe the next time we'll see all of you

is at our regional stakeholder workshops, where we'll actually have some language up there for you to look at, and our Midwest region one will be not too far away from here, in Chicago, somewhere in Chicago. So we'll probably be -- hopefully be seeing you then.

Then following that, back in Washington, we'll have another post-workshop stakeholder -- actually, drafting session. There will be public notice, and everyone is invited to come to that. And, once again, we'll sort of repeat what we did with the NOPR except for the final rule. The agencies and FERC will draft the final rule, and then we'll prepare a final rule for commission action, hopefully in the end of July. So just go through the process.

So I hope to see many of you again, at least at our Midwest region or regional workshop. So until then, once again, on behalf of FERC and hopefully on behalf of my sister federal agencies, thank you very much.

MR. McKITRICK: Thank you.

(Concluded at 4:15 p.m.)

STATE OF WISCONSIN)

) SS

COUNTY OF MILWAUKEE)

I, JULIE A. POENITSCH, Certified

Realtime Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that the preceding transcript of proceedings was recorded by me and reduced to writing under my personal direction.

I further certify that said transcript of proceedings was taken before me at Marriott Courtyard, 300 West Michigan Street, Milwaukee, Wisconsin, on the 16th day of October, 2002, commencing at 9:15 a.m. and concluding at 4:15 p.m.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto set my hand and affixed my seal of office at Milwaukee, Wisconsin, this 22nd day of October, 2002.

JULIE A. POENITSCH - Notary Public

In and for the State of Wisconsin

My commission expires March 23, 2003.