

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:)
Public & Tribal Forums)
on Hydropower Licensing)
Regulations)
)

Atlanta Marriott Century Center
2000 Century Boulevard
Atlanta, Georgia
Wednesday, October 23, 2002

APPEARANCES

S. Ronald McKittrick, FERC

Kenneth J. Hogan, FERC

Patti Leppert, FERC

Raymond M. Johns II, U. S. Forest Service

Joel Gardner, U. S. Forest Service

Mona Janopaul, U. S. Forest Service

Karen Hester Abrams, National Marine Fisheries
Service

David M. Diamond, Department of the Interior

Gloria Smith, Department of the Interior

Barry Lovett, Alabama Power

Stefanie Damiani, Fish & Wildlife Service

Mel Berg, Bureau of Land Management

John Molm, Esq., Troutman Sanders

Jeff Gardner, Brakington & Associates

Chief Gilbert B. Blue, Catawba Indian Nation

Lewis George, Catawba Indian Nation

Kenneth H. Carleton, Mississippi Band of Choctaw

Indians

MR. McKITRICK: Good morning, everyone. I think we've got enough room at the table, if everybody would just kind of like to sit around there. My name is Ron McKitrick. I'm with the Federal Energy Regulatory Commission. I have been in the licensing field with FERC for approximately 20 years, a little over 20 years actually. Myself and Ray Johns will be helping to lead us through this discussion today.

I think what I would like to do is, since it's a fairly small crowd, is just maybe go around and let everyone introduce themselves, maybe say who they're representing and, if you want, a little bit about yourself. Just kind of go around, starting over here with Ray.

MR. JOHNS: Ray Johns. I work with the U.S. Forest Service out of Asheville, North Carolina, been kind of working with the hydroelectric program in the state for about 12 years now.

MS. JANOPAUL: My name is Mona Janopaul. I'm also with the Forest Service out of D. C. I've been part of the Interagency Hydropower Committee for the last couple of years, and I work on general hydropower issues for the Forest Service.

MR. McKITRICK: If you don't mind, spell

your last name, at least the first time around, for
the court reporter.

MS. JANOPAUL: Do you need to spell Johns?

J-a-n-o-p-a-u-l.

MS. DAMIANI: My name is Stefanie Damiani
with the Fish and Wildlife Service. I have been with
them about a month now, so it's all new to me.

D-A-M-I-A-N-I.

MS. ABRAMS: I'm Karen Abrams,
A-B-R-A-M-S, with the National Marine Fisheries
Service in our Washington office, Silver Springs,
Maryland, headquarters office, and I'm in the Office
of Habitat, and we're the office that deals with a
lot of the hydropower issues and generally a lot of
energy development issues that are coming up on the
radar screen. I've been involved with this
interagency, hydropower, for the last year.

MS. SMITH: Gloria Smith, Solicitor's
Office, Department of the Interior. I'm also a
member of the IHC. S-M-I-T-H.

MR. DIAMOND: David Diamond. I'm with the
Department of the Interior as well, in the office of
Secretary of Office Policy Analysis, working on the
initiatives that have been going on with hydro
licensing, including the ISC. And it's spelled like

the stone.

MR. GARDNER: Joel Gardner, also with Forest Service out of the regional office here in Atlanta. I've been here a year working on hydropower issues around the southern region. G-A-R-D-N-E-R.

MR. HOGAN: Ken Hogan with the Federal Regulatory Commission, Fishery Biologist, hydropower licensing.

MR. LOVETT: Barry Lovett with Alabama Power out of Birmingham, currently one of the project managers working on the relicensing of the Coosa and Warrior rivers.

MR. CARLETON: Ken Carleton, C-A-R-L-E-T-O-N. I'm the Tribal Preservation Officer, Tribal Archeologist, for the Missouri Band of Choctaw Indians.

MR. MOLM: I'm John Molm, with the law firm of Troutman Sanders. Our firm has been a participant in the NRG process. I've been involved in licensing and relicensing and compliance issues for over 25 years.

MR. GEORGE: Lewis George, G-E-O-R-G-E, with the Catawba Indian Nation, Director of Planning and Development.

CHIEF BLUE: Chief Gilbert Blue of the

Catawba Indian Nation. I've been Chief for 29 years and in all kinds of things. B-L-U-E, just like the color.

MR. BERG: Mel Berg, with the Bureau of Land Management Interior Department, and I've been working on hydropower issues relative to the Bureau of Land Management mostly in the western United States. We have a little bit in the southeast down here. And B-E-R-G.

MS. LEPPERT: My name is Patti Leppert, L-E-P-P-E-R-T, with the Federal Energy Regulatory Commission.

MR. McKITRICK: Thank you.

Just to start, to tell you a little bit about why we're here, there will be a couple of presentations, and then we'll probably take a break, and then we can talk after that about what you all feel comfortable with. If you want to make some sort of public statement, that would be fine, or we could just have a discussion about some issues, and we can talk about that after the break. We don't want to put anybody on the spot. Whatever you feel comfortable with we can adapt to.

As we mentioned, today is the Tribal forum that is being conducted by the Federal Energy

Regulatory Commission and also through other Federal agencies, the Department of Agriculture, Commerce, as well as the Department of the Interior.

The reason that we've come together as a group here is because of a very special relationship that we have with the Federal Power Act. The Federal Power Act is a piece of legislation that actually gives the Commission the authority to issue licenses on nonfederal hydropower projects.

In addition to that, the Federal Power Act, the FPA, speaks to a relationship with Commerce, Interior, and Agriculture, that they can give recommendations and comment under that Act. We have been working together for years to try to improve that relationship and make it better and more efficient. So they are with us in this hydropower forum that's looking at potential change in regulations, to work together with us.

Just a little about where we started and where we plan to end up. There was a public notice, that is included in the blue book that we had out front, that was issued by the Commission September 12th. We then have started a series of public input meetings and Tribal input meetings. We started last week in Milwaukee. I think that was very successful.

We got a lot of good comments. Today we are in Atlanta. We'll then have meetings that are in the notice in Washington, D. C., as well as Bedford, New Hampshire; Sacramento, California, and Tacoma. Those schedules are in there, so if you would like to follow us around and listen to this, you're welcome to do that.

Probably as important as this meeting is the comment period, which is December 6. Certainly your formal comments today will be on the record, but after you listen to all --

(Interruption.)

MR. McKITRICK: Let's take a five-minute break until we get this resolved.

(Recess.)

MR. McKITRICK: We'll get started again.

The comment period is December 6. At that time your formal comments should be sent to us dealing with any potential changes that you would like to see in our regulations. We have gone through some administrative changes already. We don't plan to do that with this rulemaking. We are not looking at changes in laws, like the Federal Power Act. If you're interested in that, that's a different forum, a different place to handle that.

We're looking at changes in our regulations that we'll talk about today. Anything that might improve that as far as our Tribal relationships, how we may handle that, is what we're looking to hear from you today and also by the comment period or before the comment period ends.

After that we'll be digesting all that information. Particularly what we've heard from the Milwaukee folks is that nobody said keep it the same, everyone had recommendations for changes. So we'll probably go through a rulemaking. The first that will happen is a notice of proposed rulemaking, or NOPR. That will be out in February. Realizing that we're on a pretty fast, aggressive schedule here, your comments are very important to us.

After that our intent is to then have additional meetings, similar to this, where you will have the NOPR, be able to look at it, and make additional recommendations and comments. So you'll have kind of a draft before you, we'll look for additional comments, and then our plan is to go to a final rule by July of next year. So that's fairly quick, but any changes would be in place by then.

To encourage you for more details, there's a little chart out front that kind of lists some

additional things that are going on, but this is kind of an overview.

John.

MR. MOLM: Is that the March time frame when you'll have additional conferences like this to respond to the draft?

MR. McKITRICK: That's correct. Thank you, John.

Mona.

MS. JANOPPAUL: And the one for the southeast is going to be in Charlotte.

MR. McKITRICK: That's correct, Mona. Thank you.

The agenda today, like I initially stated, we will have a short presentation by Patti Leppert from the FERC telling us a little bit about why we're here today, followed by the Interagency Hydropower Committee, or IHC. Dave Diamond will be talking about that proposal, which is also appended to the notice that's in that blue book.

John Molm will talk to us about the National Review Group, or NRG, proposal for changes.

After that we'll probably take a break, have time to discuss how we'd like to handle the rest of the meeting. If there are things that you would

like to read on the record, we can do that. If there's specific issues that you would like to discuss, we can do that. We have the room until 4:00 o'clock. If we go that long, that's fine; if we finish up early, that's fine also.

Patti.

MS. LEPPERT: Thank you, Ron.

Before I begin, does everyone have a copy of this brochure? If not, we can get some. The reason I make a mention of that is because I'll be referring --

(Interruption.)

MR. McKITRICK: Excuse me, Patti. Can we just take a short break again and maybe get the microphones and everything set up, maybe five minutes.

(Recess.)

MR. McKITRICK: If we can, go back on the record and let Patti pick up.

MS. LEPPERT: Thank you, Ron. My name is Patti Leppert. I'm with the Federal Energy Regulatory Commission. Before I begin, I found a message very interesting from the Chairman of the Board and CEO, J. W. Marriott, and he states that people serving people, that is the heart and soul of

the hospitality industry. I think we can have that same philosophy within these various outreach meetings that we are presenting and working together in this collaborative process.

Since 1997 there have been efforts to improve the efficiency of the hydroelectric licensing process through administrative reforms. Some of these are the Interagency Task Force, EPRI, NRG reports, hydroelectric licensing status workshops that were held in December 2001, the Resource Agency administrative reforms, and the regional workshops with states.

For those that are following along, these are discussed in pages 5, 6 and 7 of the book that we have here as well.

To back up, the Interagency Task Force developed several reports. One of these was the guidance on alternative licensing process. The NRG and EPRI reports, as Ron had mentioned, they are attached as well. The Hydroelectric Licensing Status Workshop recognized that in the class of 1993 there were 157 applications that were filed with the Commission, and the workshop was designed to find a way to make the licensing of these applications a little bit more efficient. And since that time

there's an ongoing effort to complete the licensing of these applications.

The Resource Agency administrative reforms is similar to the existing Forest Service for appeals process, from what I understand, whereby Commerce and Interior have developed a mandatory conditions review process that allows for public comment on Interior and Commerce, section 18 Fishway Prescription.

And I'm glad Mona is here, because I'm sure you can elaborate and help us clarify and expand on that thought as well.

The regional workshops with the states were held March through June of 2002. Those workshops focused on ways to integrate the Commission's licensing process with the states' Clean Water Act and the Coastal Zone Management Program.

When we talk about the regional state workshops, some of the things were that through the early identification of issues through public scoping, we were looking to help resolve certain issues through study disputes, early establishment of licensing schedules, and the notice of intent and initial consultation package should be simultaneously submitted to the Commission.

As Ron had mentioned earlier, why are we

here? From the previous slides, administrative reforms, as the slide says here, is not enough. I would tend to think it's a beginning, that the administrative reforms are a beginning. It's a beginning to a new journey.

And what we've heard in other outreach programs and meetings is that improvements to the current regulations are needed to reduce time and cost of licensing while continuing to, one, provide for environmental protection; two, to fulfill the state and federal statutory and Indian trust responsibilities. And also there's a recognition of the President's National Energy Policy, which that policy states to make the licensing process more clear and efficient while preserving the environmental goals.

I'd like to also add that the Commission, the federal agencies, and the hydropower stakeholders, which includes all of us in this room and the community beyond here, are engaging in many of the activities to achieve the President's goal that was outlined in the National Energy Policy.

This brings us to the next slide. The September 12th notice, which this notice provides the opportunities for discussions through public and

Tribal forums, written comments and recommendations on the need for and structure of a new hydropower licensing process. The notice includes these various proposals, including the Interagency Hydropower Committee proposal, or the IHC; the National Review Group, or the NRG, proposals.

And there are nine specific questions, and if you look within your document on pages 7 and 8, it does list out those nine specific questions.

The various goals for today's forum are to listen to your ideas about the licensing process. I'd like to stress the "your ideas," what works, what doesn't. Identify specific problems in current regulations; however, I like to use the word challenges rather than problems. Discuss possible solutions to identify challenges, and translate the possible solutions into concepts for a notice of proposed rulemaking.

The last slide that we have is suggested discussion topics, which we also have posted on the wall here. How can we integrate the licensing process as well as look at the study development, study dispute resolution, settlements, time periods, coordinate state and federal agency, Tribal, and FERC process, and the relationship to the existing

licensing processes?

In particular, in regard to the relationship to the existing licensing processes, should a new process replace the traditional, the alternative licensing process, or, as we call it, the ALP, none, or both?

I would also like you to keep in mind that whatever process evolves, that we should also think about how this process may or may not effect your staff at your agency, and what would benefit the community as a whole, the community meaning the stakeholders, the tribes, the state and federal agencies, the NGOs.

As Ron had mentioned, the comments are due to be filed by you as the community, as the stakeholders, by December 6th of this year. Your input is very, very important to us.

Ron, is there anything else that you would like to --

MR. McKITRICK: No, that's fine.

MS. LEPPERT: Thank you.

MR. McKITRICK: We'll take just a short pause to set up the next presentation by David on the IHC.

Can everybody see the screen okay?

MR. DIAMOND: The hand-out for these slides is being passed around right now.

My name is David Diamond. I'm with the United States Department of Interior, but I'm not here to speak to you on behalf of Interior today, but on behalf of the Interagency Hydropower Committee.

It was a group of professionals from the four agencies -- FERC, Interior, Agriculture, and Commerce. I'm not sure we can get as excited about rulemaking as they're excited by whatever they're talking about next door, but I'm really happy to see you folks here today, and hopefully we can engage in a good discussion. We are here to listen to you, to engage in discussion.

But first I'm going to give you this proposal. This proposal and one by the National Review Group were included in the notice that was issued on September 12th, so these are some ideas that are out there that could be considered in going forward with the ruling.

First, I'll just give you some background on the Interagency Hydropower Committee, then I will go through the objectives, what the committee was thinking about when it sat down and began to work, then walk through the proposal in four parts, kind of

contrast how things might be different from the current regulations, and finally close with what the committee anticipates the benefits of such a proposal might be.

Again, the Interagency Hydropower Committee consisted of staff from the Federal Energy Regulatory Commission, and the departments of Agriculture, Commerce, and the Interior. Each department had a principal, a senior manager, that was in a principals' group that tasked staff to think about various issues. We also had input from the Environmental Protection Agency, the Council on Environmental Quality, and The Advisory Council on Historic Preservation.

The IHC grew out of -- as Patti mentioned -- early administrative reform efforts. The Interagency Task Force, which was convened in 1998 and concluded in 2001, the end of 2000, issued a series of reports that had some very useful kinds of best practices and commitments to improve processes and in various ways as that effort wrapped up. That effort included FACA, a charter committee, with representatives from the stakeholder groups. But as that wrapped up and we moved forward, the successor to that ITF was this Interagency Hydropower

Committee, and as the principals convened and started to direct staff to look at various issues, there was a thought that we needed to look beyond administrative reform and look at places where we might profitably change the current regulations.

Another of the kind of directives from the principals in moving forward was we wanted to make sure that the various statutory responsibilities of the agencies could be coordinated in any process.

So the objectives that we had in starting out, and this effort began in July of 2001, number one, was improve coordination in the process. We have a lot of activities with a lot of different roles and responsibilities. And so the proposal that we ultimately came out with had clear time frames for when things were supposed to happen, and clear points in the process where various activities were supposed to act.

We also wanted to eliminate duplication. The key element there was we've proposed moving the Commission's scoping under the National Environmental Policy Act before the filing of the application. This can be a contentious process, so the thought was we wanted to have early consultation, early identification of issues, and some mechanism to

resolve disputes. We wanted to move the process along so that we could get to better outcomes at the end quicker and reduce the time and costs, while ensuring that environmental safeguards are met. So that was what the group was charged with.

And now I'm going to walk you through what the group came up with. Attachment A to the Federal Register Notice notes in great detail what the committee came up with. On page 14 of the Federal Register Notice there's a scintillating box and arrow diagram, chutes and ladders, but I'm going to walk you through it in four stages. Again, you know, the time lines and the actions are all captured on that chart.

So in the big picture there are four phases in the new process envisioned by this proposal. The first goes from the advanced notice through scoping and study plan, and in this proposal that's envisioned to take nine months. Some of the major changes in this phase include replacing the initial consultation package with a pre-scoping document, and combining the pre-filing consultation with the Commission staff's NEPA scoping.

The next phase here is a period to resolve disputes for studies. It's envisioned to take about

three months in the case where there are such disputes, and this would be a new mechanism.

Third, the period where the studies are conducted through the draft application, this would take about a little over two years. The idea is you have to have the studies completed so that the information could then be included in the application to be filed with the Commission, and we wanted to make sure that there was time available for that so that then there wouldn't be additional information requests post-filing of the application.

The fourth phase is filing of that application through licensing, and this is where we were looking to get those time savings. With all the extra work done pre-filing, the idea is that the application could move more quickly through the Commission's process. And we had two different tracks, with the longer track to take about a little less than two years, and the total time for this process would be five years.

Okay. So to go into a little more detail now, the first phase, advance notice through scoping and final studies, first of all there's a box there at the beginning that doesn't have a number on it, box zero. A few years before license expiration, the

idea is that a notice would go out telling an applicant hey, you know, you have a process coming up, you're going to need to be getting a new license, and just to get ideas starting to flow.

The process would begin in box one, with the filing by the applicant of a pre-scoping document. Like I mentioned, this is going to be a more detailed document than the current initial consultation package. It would include information that the applicant has about their project, any consultations they might have been involved in, the summary of the issues that relate to the project that the applicant is already aware of. They have been operating the project for, in many cases, quite sometime. And an initial list of stakeholders. And it also is going to be basically trying to get the NEPA process started, and it could include things like preliminary study plans.

At that point, the Commission initiates the licensing proceeding.

John's got a question.

MR. MOLM: I have a question right there on that bullet. When you say the Commission initiates licensing proceeding, do you mean the formal proceeding? Does that kick in the ex parte

rules and all that formality that is now in place once the license application has been filed, or do you mean something else?

MR. DIAMOND: The proceeding would begin at that point. That is what that would mean. The thought is we need to get the Commission as an actor involved working in parallel rather than in series after filing, as it is now.

MR. MOLM: Thank you.

MR. DIAMOND: So, by the way, as the proceeding begins, the Commission is now involved, and that pre-scoping document that the applicant files is going to be the basis for the scoping document that's going to be issued by the Commission. So they'll issue their scoping document, one, and they will hold the scoping meetings, as they currently do post-licensing, here in this early phase, while the agencies are also going through their consultation, working to identify issues and information needs.

The final bullet there is one of the key elements, that is, developing what those information needs are, what information is going to need to be collected. And because the documents are being filed formally and the proceeding has begun, all parties

will be filing comments and it will be an open process.

So the next phase is okay, you have got a study plan, and what we have heard in a number of forums is that studies is one of your most contentious issues and has a potential to kind of derail or create an issue that's going to hang around for a long time. So the thought was early identification and resolution of those sorts of disputes could really help us move past and get to better outcomes quicker. And so this is a new element, this dispute resolution process. This is untested ideas. This is the first time we're coming out to the public saying hey, what do you think about this? Is this crazy?

But here's what it would look like in the eyes of the IHC Hydropower Committee. Basically what we do is we have a panel of three individuals, one from one of the Federal Resource Agencies, Fish and Wildlife Service, U.S. Forest Service, etc.; a representative from the Commission; and a neutral third party. And a request would be brought to this panel to look at a study request.

There's basically two issues that could be brought to the panel: Whether the study was

necessary for agencies, tribes, or commission staff to develop recommendation, conditions, or license terms, and whether the study methodology is appropriate to achieve that identified information.

So those are the two sorts of things that could be brought to the panel, and the panel would have criteria that they would then assess to make sure that things were met. They would look at whether the requesting party had established a nexus to the project and its effects. They would look at whether the requesting party had clearly connected the study and request to its management goals and to its roles and responsibilities, and would also look at the methodology and the cost and practicality of the study.

And one of the key factors here is that this can't be creating a dispute that's going to go for a long time; let's get this, contain it in a short time period, and then once it's resolved, move on. So the whole process is to be completed within 60 days, and 30 days from that point the Commission would then issue its scoping document which would then contain the final study plan, and the process could continue to move forward.

MR. LOVETT: Barry Lovett, L-O-V-E-T-T.

What was the reason for not including the licensee on that panel, being it's their project, may have a lot of expertise in that area? Was there some logic in not including the licensee in that panel?

MR. McKITRICK: Barry, that's a good question and it may take a little bit of discussion. I would rather have that -- I'm not putting you off, because we need to have that discussion. Rather than just have it here, let Dave go through his presentation; if there is a clarification of the words, maybe do that after you finish your presentation, and then after all that we'll discuss those types of things. It would be very informative for all of us. Thank you.

MR. LOVETT: Okay.

MR. DIAMOND: Okay. So the next phase is conducting the studies that are identified in the study plan, anticipated, including time that was left. There's two seasons of studies, with a kind of checkup after each year is completed to make sure that the methodology is being followed. And it's kind of a process, so we just keep checking in to make sure that yes, the information is being collected, we're going to have what we need, and that application is filed, so that we can get those

hoped-for gains post-filing where everything is just going to sail; so more work here pre-filing but we're going to gain from that.

Then there's going to be a draft application. And a thought here is to put the environmental section of the application in a format similar to the Commission's NEPA document, so again the Commission can build off of it as they did the applicant's pre-scoping document.

So then the moment everyone waits for is the filing of the application, and that's when interventions and comments and recommendations and conditions, after the filing of that document. And the IHC contemplates two tracks to completion once the application is filed. Track A would be for those projects that have an EA or EIS that is going to have a draft issue. And Track B is for those projects in which there may not be very many issues, it may be a smaller project, and it will be go straight to a final EA.

So again, just to summarize and conclude, and we will hopefully have a good full discussion here a little later this morning, what we're hoping to achieve with these proposals is a NEPA document that could support all stakeholder needs, early

identification and involvement of the stakeholders,
early identification and resolution of disputes so
that the process doesn't get hung up, time frames for
the actions of the various participants, again to
keep things working in parallel and moving towards
the final resolution.

Concurrent filing of agency actions, so
for the resource agencies that may be filing
comments, recommendations and prescriptions, making
sure that those are coordinated, and developing
adequate information so that all parties know the
issues and could potentially reach settlement.

Thanks very much. I'm looking forward to
a good discussion this morning.

MR. McKITRICK: John, you don't have
anything to put up here?

MR. MOLM: That's right.

MR. McKITRICK: Just one quick thing then.
John Molm will give us sort of information about the
NRG. After that I think we'll take a short break.
Then I think the discussion would be particularly
between either questions from the Tribal members to
either the NRG or the IHC about their proposal, or
any specific things that Tribal members may have for
guidance to us as far as changes in language, public

input from licensees. Other resource agencies should probably best be handled tomorrow, for their place.

We would like to really listen to what you have to tell us.

And, Barry, if you don't mind holding that until tomorrow, or later -- if it's a Tribal concern we'll certainly discuss it.

MS. LEPPERT: Patti Leppert. Ron, would you mention our bounding of our own ex parte regulations? I would rather not discuss any pending projects.

MR. McKITRICK: Patti just mentioned it; that's an excellent point that I was supposed to. If there are cases that you know that are in the court system or before the Commission, we can't really discuss those things. You probably know what they are better than we. But if there are general concerns dealing with that, without mentioning the project names or specific things, then that would be fine.

John.

MR. MOLM: Is there any way to do it while I'm sitting down?

MR. McKITRICK: You're doing it.

MR. MOLM: Does this mike work?

MR. McKITRICK: Yes.

MR. MOLM: Let me first state who I am and where I have been in this hydro licensing process. As I indicated earlier, I've been involved in this arena for over 25 years and, in fact, in the midnineties I was the first one on behalf of Georgia Power to really develop the alternative licensing process.

Moving NEPA up front, or front-loading, NEPA has been a concept that has been discussed for a decade or more. That is really not new. And, in fact, it was that concept that led to the alternative licensing process. The Commission at that time did not have any regulations or rules regarding the alternative process, but they decided that they would allow Georgia Power on an experimental basis to commence a new process that would involve the front-loading of NEPA, and that's what we did in that process, and we did it through requesting waivers of existing regulations, and we went through the process, and I think it all worked very smoothly. In fact, Georgia Power got its license six months following the filing of the application.

I have also represented tribes in licensing matters, and I think tribes have some

special tools that they can use and should consider using in a licensing proceeding, whether they are just intervening or whether they want to become licensees.

I got involved in the National Review Group, which has really been around since the late 1990s, when they were housed and sponsored by the Electric Power Research Institute, EPRI, and that was a process involving agencies, nongovernmental organizations, like American Rivers, so on, and some licensees, and they were to develop a set of principles that would be helpful and useful in licensing and relicensing proceedings.

A report was published, and then the NRG decided that they ought to take that and see if they could not come up with a proposal for reforming the existing licensing procedures. And so they moved from the EPRI house over to the National Hydropower Association house, and are now kind of housed under the auspices, not sponsored by, but under the auspices, or under the roof, if you will, of the National Hydropower Association.

The NRG was a group of nongovernmental organizations, including American Rivers, National Heritage Institution, and others, licensees,

including West Coast licensees, New York Power Authority, Southern Company, a couple of law firms, including Troutman Sanders, and agencies who were there in an advisory role.

I don't want to misstate your role, but you were there in an advisory role and not formally as a member of the NRG.

As we proceeded through the process, we discovered that the federal agencies had a parallel process that they were embarking upon, and that was this IHC process. The NRG members were a bit at a loss because we did not know exactly what IHC was proposing, and we wanted to be consistent so that we wouldn't end up with two proposals that went awry or had a train wreck. And I think to a large extent the two proposals came out with a lot of concepts that are similar, and a lot of processes recommended that are very similar.

Let me add a qualifier to what I'm about to talk about, and that's the NRG proposal. There are those among the NRG group who believe that the NRG process or any process that is developed should be an additional process, or should be another tool that can be used by the licensee. I think the overwhelming majority of the members would not want

to replace the existing processes. They have become comfortable by and large with the ALP over the past five years or so, certainly at the encouragement of the Federal Energy Regulatory Commission, but they're also comfortable with the traditional licensing process which is there.

If you cannot reach consensus on employing the alternative licensing process, you have to go through a procedure whereby you request permission from FERC to undertake the alternative licensing process, and you need to have most, if not all, of the stakeholders in agreement with that process. And if you can't get that kind of consensus, and there have been occasions when licensees can't achieve the consensus, the Commission will deny the request for the alternative licensing process.

So in that event you fall back on the traditional licensing process, which has been around a long time, or at least since ECPA, Electric Consumers Protection Act of 1986.

Let me first comment on the IHC proposal. I think it has considerable merit. It appears to be well thought out. I can say that when you try to get a group like the NRG together that's comprised of nongovernmental organizations, and governmental

agencies that are there in an advisory role, and licensees, it reminds me of why you never want to know how a law is made. Making law is a bit like making sausage; you don't want to know how it's made or what goes into it. And I can say it was a little difficult with all of these varying participants with all their separate agendas trying to come up with a process and procedure that had some semblance of logic and rationale to it.

The best I can say is that we have come up with a process that reflects considerable thought and sets forth some concepts that I think are very good. But I want to emphasize and state that Troutman Sanders, and I believe the majority of licensees, want this only as an additional process, or as a process that you can adapt to the existing process.

MS. SMITH: Gloria Smith. Is that NRG? Did NRG adopt what you're saying right now, or are you speaking in your private capacity?

MR. MOLM: I'm speaking as I have always spoken in these NRG meetings, and that has been my position from day one.

MS. SMITH: Well, I guess I'm getting a little confused whether or not you're laying out the NRG proposal or you're actually giving comments in

your personal capacity right now in how you view what this process may ultimately result in.

MR. MOLM: There have been several people that have made that position very clear straight through the NRG process, and it's just there. Some people believe the NRG process should be the only process; some people believe -- and it should displace or replace the existing processes. And there are others equally strong-minded who believe that the NRG process should be an additional -- you have been at both meetings. You've heard me and others state that.

MR. McKITRICK: John, if you don't mind, it's a good point. We have before us in the notice two proposals, the IHC and the NRG proposal, and if we could keep on what those proposals are from a clarification standpoint, as opposed to either preparing a contrast or giving personal statements, that's a different forum, and that would be helpful, just so that we know that what's on the record here is what was in the notice and it's explanatory in that notice. So if you could help us with that, we would appreciate it. Your personal comments are certainly welcome in any comments that you send to us.

MS. JANOPAUL: And that is one of our discussion topics, our last discussion topic, so maybe that would be good then.

MR. MOLM: Well, I didn't mean to interject something that I shouldn't, but I wanted to make clear which side of the fence I stood on.

MR. McKITRICK: We understand that's your position. If we could, just stick with the NRG.

MR. MOLM: The NRG that designs its process as the one-cycle NEPA process, in many ways it's consistent with what the Council on Environmental Quality recently came out with, and that is an attempt by the administration to streamline and make more efficient the NEPA review process that is undertaken by an agency whenever there is a permit or license to be issued.

What the NRG sought to do was to improve agency participation in the relicensing process; second, to eliminate new issues arising late in the licensing process, to combine the NEPA process for consulting agencies and in a more efficient and better decision-making manner, and to eliminate conflicting environmental documents, and to reduce uncertainty by the applicant as to whether that applicant has met the study requirements imposed.

It also established procedures for cooperation, including dispute resolution and decision making. It released informational requests from federal agencies, and it delineated the agencies' responsibilities in the creation of the NEPA document.

The NRG sent out its proposal to tribes, to states, to members of the public. And in its proposal included as Attachment B to the Commission order, the NRG noted that it had received several comments from the tribes, the states, and public, and they had some substantive comments that they responded to. So I think the NRG did go out to the public and hear from the public and the agencies, and try to come up with a process that would work for all.

Among the people that were NRG members were American Rivers, American Whitewater, Grant County, Kearns and West, it was a facilitator, Kleinschmidt, which is an environmental consulting firm, law firm of GKRSE, New York Power Authority, Pacific Gas and Electric, Pacific Corp., Portland General, Southern California Edison, Southern Company, and Troutman Sanders.

Basically what this document proposes is

that it did not mandate but instead it encouraged the licensee to meet with FERC and the resource agencies very early on to identify issues, to review existing information, and to come up with a preliminary study plan.

This document was framed in the context of encouraging licensees to do this as opposed to mandating that it should be done. FERC proceedings would begin with the filing by the licensee of a notice of intent that it was going to file a license application. It requires that there be an initial consultation document to be issued by the licensee no less than 5 years and no more than 5.5 years prior to the license expiration.

The document also requires the licensee to come up with the standard non-NEPA documents at the same time. So exhibits A, B, and F and G, and modified exhibits D and E and H, would all be filed along with the initial consultation package. There were some expressions by licensees as to whether this could be done or not, but those exhibits to the license for the most part are taken from existing drawings, for example. Existing records is another example.

It also required that the licensee show

what consultations have been undertaken, who's consulting, what was discussed, and what agreements, if any, were reached. You need a preliminary list of issues coming out of that consultation, and a preliminary list of information needed to address those issues.

The licensee at that time would come up with its initial study proposal and set forth any study requests that consulting agencies or other stakeholders might have suggested. As part of that initial consultation document, the licensee would come up with a draft scoping document.

All of that would be sent out by the licensee to resource agencies, to known stakeholders, to FERC for a 60-day comment period. That's what would happen five to five and a half years prior to the expiration of a license.

The next portion of the NRG proposal deals with the framework or context under which FERC and the agencies would work. There would be a memorandum of understanding, or an MOU, that would provide the framework or context for cooperation, for means to resolve disputes, and for other issues that were prepared between FERC and the agency.

This document, like the Council on

Environmental Quality document, would make all federal agencies cooperating agencies. Under existing CEQ regulations there's no mandatory requirement that federal agencies become cooperating agencies. Cooperating agencies is a term of art under CEQ regulations. It allows the agency to sit on the dais with FERC, to have a more visible and higher profile role in devising study plans, resolving disputes.

It would not be an agency that would be outside of the process, merely providing comment and recommendations. Instead, it would be there helping form the NEPA document.

The NEPA document as contemplated by the NRG proposal has an interesting feature to it, and that is that the NEPA document would not be a decisional document, instead it would be an informational document that would reflect the issues that were raised, the studies, and analyses that were made, and whatever other information is pertinent so that you would have a complete informational basis.

A second part of the NEPA document would be that the cooperating agencies would be required under the NRG proposal to provide information or at a minimum provide information to the licensee so that

the licensee could find studies or information held by the agency that the licensee could then use in putting together its NEPA document.

But it also provides that the agency that has jurisdiction -- for example, if the project is on Forest Service land, then the Forest Service would write that part of the NEPA document as it related to the Forest Service jurisdiction. The final document would be written by FERC, but FERC would take the cooperating agencies' drafts and assimilate them into one NEPA document.

The NEPA document, again, would not be decisional. What I mean by that, it would not state any preferred alternatives. That would be left out of the NEPA document and would be addressed later.

It would be addressed later by cooperating agencies and by FERC and by the licensee. The licensee presumably is evolving during the licensing process, so it -- the licensee -- better understands the issues and better understands what protection, mitigation and enhancement measures are appropriate. And so the licensee may have a preferred alternative that's different from its preliminary preferred alternative that it set forth early on in this process.

But the cooperating agencies would take this NEPA document that is informational only and would come up with their own preferred alternative. It would use the NEPA document that was jointly created and would submit the preferred alternative separately to FERC.

The NRG document also deals with the ex parte regulations, which is a nutty little problem we have under existing regulations. Under existing regulations, a cooperating agency, or any agency that decides to cooperate upon the request of FERC, cannot then later become an intervenor and participate in the licensing proceeding as an intervenor. And that's why there's a great deal of reluctance, I believe, about why agencies don't want to become cooperating agencies, because it would preclude them from later becoming formal parties to a licensing proceeding.

What the NRG document does is say look, if you're going to be a cooperating agency and you want to fully participate in that process, then to the extent you communicate about issues that are being addressed or being developed in either the NEPA document or the study plan, then you are exempt from the ex parte regulations.

It also provides for an off ramp, that at any time an agency can decide it no longer wants to participate as a cooperating agency, instead it can say, if it meets certain criteria, that it wants out of the cooperating agency's role and wants to reserve its full rights as a party.

MR. McKITRICK: John, to get back on schedule, we've got about maybe five minutes. Are you going to need more than that?

MR. MOLM: No.

I would think that the areas of the scoping and the issuance of the scoping document differ only in timing from the IHC proposal. Substantively, I don't think they result in any meaningful difference.

The study development I think is very similar in that there's a procedure for a dispute resolution, there are processes where the licensee submits a study plan, the agencies and FERC comment on it, licensee resubmits it. If there's a dispute on the scope or methodology, there is a dispute resolution process, minor differences in the dispute resolution process, but nothing substantive.

I think the end of the process is where there's a difference, in that FERC, under the NRG

process, kind of comes back to now we've got the license application, and we put it out for comment, and it provides a set of procedures whereby terms and conditions are submitted once the application is determined by FERC to be ready for environmental analysis, and so license terms and conditions, when they come into play in the licensing process I believe are different. The procedures under the NRG proposal are different from the IHC proposal in that the proposed license and proposed terms and conditions come much later under the NRG proposal.

I think that does it.

MR. McKITRICK: Thanks a lot, John.

I think we've heard two presentations, one from the IHC, one from the NRG. These should be taken as documents that were given to us as kind of two different ideas, or two ideas. That's not to say what comes out of any rule may look like either one of these or may not look like any of these. That's why we're here, is to listen to the input from the tribes to see maybe two or three things. One, would they like to ask some specific questions, either of the IHC or NRG, to help explain a little bit more of their proposal. I don't want to see either one of the two groups defending. They're not here to defend

this. They're just here to clarify. They're not here to really compare and contrast their positions, but just clarify what's in their documents.

The other is certainly to hear anything in addition or how you might change any kind of things that you have read or heard about or have experienced.

So I think, with that, let's take a 15-minute break, and I'd like to maybe talk to the Tribal members for a couple of seconds to see how they would like to conduct the rest of the meeting.

Thank you.

(Recess.)

MR. McKITRICK: Again, as we proceed, since this is on the record, if you would state your name before you speak, that would be helpful. We will have a short discussion.

The way I understood this was that Tribal members may want to make just a comment for the record, and I think we'll proceed along those grounds, realizing that formal comments are December 6th, and at that point if there's specific things that you see in either one of those proposals or your own proposals that may give us guidance as far as specific language to help us change regulations, in

particular with the nine questions, but anything else is certainly welcome from you all, would be very helpful.

Chief, do you want to proceed?

CHIEF BLUE: Chief Gilbert Blue from the Catawba Indian Nation, South Carolina.

I don't really have any specific concerns at this moment. We've had some things given to me today that's sort of new to me, so I'm trying to evaluate those things in my mind.

But the things that we're concerned about in Catawba, and myself of course, is that we do have the opportunity to have an input into this process so that our traditional things as well as the personal safety of our people is attended to.

Now, I've been very fortunate up in Rock Hill that the facilities close to my reservation, I get letters all the time from those people when they go through the process and when they have some changes that are going to be made. They solicit my input, my concerns. So we have a good rapport with those people in the surrounding area up there, which I'm very grateful for.

So, with that in mind, I'll just let someone else go. As I said, there's some things that

I have heard today that are new. I can see some differences between the two processes and maybe the need for some changes, but we'll leave that for a later date. That's just my personal feelings, to make sure that we have input to the process and that our, I guess, concerns are met head-on and listened to.

MR. McKITRICK: Okay. Lewis, did you want to add to that?

MR. GEORGE: Lewis George. The Chief brought out my concerns, too, is that we consult, make sure we're notified, and allow the tribes to participate in the process, in the planning process as well as the review process, and review their tribes', all tribes', concerns.

MR. McKITRICK: Okay. And as you review the two processes, any specifics about how and when that should happen and those kind of things would be very helpful for us.

MR. GEORGE: Thank you.

CHIEF BLUE: Okay. Thank you.

MR. CARLETON: Ken Carleton from the Mississippi Band of Choctaw Indians. I'm also new to all of this. I really have only started consulting with FERC over the Alabama licensing less than two

months ago, so I have not had an opportunity to read these proposals in detail yet.

I do, however, have just some general comments about a number of things involved here. One is consultation. We, tribes, do not consult with licensees. We consult with the government. Therefore, we will consult with FERC; we'll not consult with a licensee.

Now, the consultation requirements of like the National Historical Preservation Act, are a nondelegable federal trust responsibility to the tribes. Now, that doesn't mean we won't -- we're realists. We live in the real world. We'll talk to the licensees. However, the licensees should also be aware that it's not part of the tribes' governmental responsibilities to consult with them, and, therefore, we will be talking to them as experts, and they should be prepared to pay us for our time and trouble in doing that, just like they pay any of their other consultants for cultural resources or environmental resources.

My next concern, and I've seen this all along with everything from relicensing a hydrodam to, you know, building a tank maneuver range on a National Guard base, is that when NEPA is involved,

cultural resources get short shrift, and Tribal resources, Tribal cultural resources, get short shrift. I've seen this over and over and over. We get brought into a process later. And all the endangered species have been looked at and all sorts of provisions have been made to protect the endangered species, but no provisions have been made to protect the cultural resources that exist. We do not dispute the importance of the environmental concerns. They are a vital concern. But the cultural resources and the cultural heritage of the tribes is just as important and needs to be given equal footing.

In a similar vein, simply the whole NEPA process, the culmination of the NEPA process, is a NEPA document which is mandated by the law to be distributed to anybody who asks for it. The National Historical Preservation Act, everything that is gathered, all the information that is gathered there, is specifically exempt from the Freedom of Information Act. It is confidential information. So it always makes me very nervous when people use the NEPA process to comply with the National Historical Preservation Act. Even though the current regulations for section 186 of the National

Historical Preservation Act make provisions that the NEPA process can fulfill the requirements of 106, I objected to that and tribes do not allow that to happen, specifically for this reason. So, it needs to be kept always in the forefront of everybody's mind, particularly when you're writing new regulations, that this is a major conflict of interest. And we are, the tribes, are concerned, when you're talking about traditional cultural knowledge. That information is not public information and must be maintained as confidential. So any new regulations need to address that issue up-front and strongly.

MS. SMITH: Could I ask a question? In your written comments it would be very helpful if you could provide us with some sort of guidance on how best to achieve that because, you know, I have come across that problem before, and I think that would be very helpful for us. It doesn't sound like it's going to be easy.

MR. CARLETON: Exactly, it's not. It's a constant battle that we've had. Just one thing I want to point out is on page four of this handout, the statement is just incorrect: Other federal statutes may also be applicable to the license

application. That includes the National Historical Preservation Act. That's not a "may". A federal license is an undertaking under the Act. And that points out what I had to say about cultural resources. The National Historical Preservation Act does apply to this. A licensing is an undertaking under the Act.

CHIEF BLUE: One thought or comment. If you'll turn to page 3 in the booklet as well, where it talks about certain comments and responses, it's brought out in there that, as has already been alluded to, that in the early process, if the tribes are brought in about their concerns and they can get that information in the process, then it will cause less problems later down the road. From my point of view as an Indian Chief of the nation, I realize the importance of having these facilities produce electricity and other things that we get involved in, they're a necessity. We don't want, at least I don't want to, to do anything that would hinder the people of my area from having those things that we need in subsistence of our lives.

But at the same time, there are concerns that we might have an opinion on what they might want to do, and many times those concerns that we have can

be worked out, if there is something that needs to be moved, or something that we can do to make that process go forward without causing any disruption, that we want to do that.

And I think the gentleman down here is exactly right about our right to have consultation and our right to have, I guess, the other laws that apply involved in these things. When I went to the White House and met with President Clinton, he signed that resolution that said any, any government or anything to do with the protection of Indians, there would be consultation, it would be like a government-to-government relationship so that we can have our concerns brought out.

I think that's mostly what we're concerned about, is many times this doesn't happen until the decision is made, and then they want us to comment on it when it's already decided. If we can get in at the beginning of the process, and maybe we can't change everything, but at least we would have our input and we would feel better about it, and sometimes things can be changed. So we just want to make sure that we have the opportunity, and when I write my comments I'll try to put it down so that you'll know what I'm --

MR. CARLETON: That's exactly right.

Tribes are not the public. That's the thing.

There's a government-to-government relationship between federal agencies and the tribes. The government has legal trust responsibilities to the tribe. We aren't the Sierra Club. And, you know, I applaud -- I mean from what I've seen, FERC actually is probably one of the better federal agencies I've seen that deals with tribes and does it right.

CHIEF BLUE: I would agree with that.

MR. CARLETON: You know, I got contacted because of FERC's rules, you know, a decade before most federal agencies starting trying to contact us. But, you know, that is definitely one thing that needs to be reinforced: Tribes are not the general public.

MR. McKITRICK: One of the things that came up at Milwaukee, at least as far as I'm concerned, would be helpful to talk about consultation, and I think that may have different definitions depending upon how you want to define it, but how that initial consultation should start, and who it's between, and those kinds of things, would be very helpful.

MR. CARLETON: I was trying to think of

the other thing I wanted to say.

MR. McKITRICK: Okay.

MR. CARLETON: A letter is not consultation. Consultation for most tribes is this: Sitting down face-to-face talking about an issue.

MR. McKITRICK: And the best way to get that, to make that happen or to have --

CHIEF BLUE: Well, we went through this same thing with many other agencies in many other meetings across the country. Consultation means sitting down and talking with you about what you're going to do and how it's going to affect me, and what can be done or cannot be done to make sure that there's not encroachment, on whatever it may be, then get our input from that, and then based on those decisions go forward.

Consultation is not when you call me in and say we've decided we're going to do this and what do you think. That's not consultation. That's information. So that's the difference between consultation --

MR. CARLETON: And you started the process. You're talking to us.

MR. McKITRICK: I see.

MR. CARLETON: Consultation is a

relationship.

MS. SMITH: Per the executive order that you were just speaking about, the way we view it and the way we're doing it currently on projects is Tribal council sends us a letter and says when they will be having a council meeting, and we come, and then this is well ahead of any decision making, so we certainly haven't filed our preliminary conditions or anything.

CHIEF BLUE: That's fine.

MS. SMITH: So there is that.

But if you could comment on this proposal, and if you would like to see government-to-government consultation before we do the rulemaking, the tribes could also comment in that vein as well.

And just one clarification here. I think the reason it says "may" in this document is that these specific statutes don't apply in every instance. These are all mandatory statutes where they apply in a given proceeding, but they don't always occur on every one, so that's why we have the "may" in there.

MR. McKITRICK: John.

MR. MOLM: We were having a discussion outside during the break, and I would urge my friend

here to point out what he was pointing out to me out there, and that is in bringing it to FERC's attention, the difference between tribes in the east and their interest and their concerns, and tribes in the west, and I think that that would be helpful.

There was a common basis of understanding that what you learn by dealing with tribes in the west may not be and probably is not applicable when you deal with tribes in the east. They have different concerns and different interests. I would urge that that be presented and those comments made strongly because I, for one, would like to see that on paper, and I'm sure others would as well.

MR. CARLETON: Well, it is a real issue. I'm sure most of FERC's experience dealing with tribes has been in the west, and while there certainly are obvious commonalities between all the tribes in the country, there definitely are major issues that tribes in the east and tribes in the west look at completely differently.

The tribes in the west have, you know, reservations there, four million acres; the tribes in the east don't have that. I mean at most, I mean Mississippi Choctaw has 35,000 acres. I'm not even sure what the reservation that Catawba has. I think

the biggest one is probably eastern Cherokee, and it's 75,000 acres, or something like that. So one of the great concerns with tribes in the east is being consulted over off-reservation resources, because the vast majority of the ancestral lands are not reservation. I mean three-quarters of the state of Missouri is ceded territory for Choctaw, as well as a good chunk, like 20 percent, of the state of Alabama. So that's a big issue in the east that's not necessarily that big an issue in the west.

In the east, the tribes don't have treaty rights. So, you know, while, yes, they're concerned about the fact that, you know, the rivers are clean, it's not going to affect their right to go -- or salmon, they don't have those rights.

So those particularly are two real big differences between the eastern concerns and the western concerns.

I probably also should address the other one that I mentioned, which is the involvement of nonfederally-recognized groups as Indians. The eastern and western views of that are completely different.

In the east there are a lot, particularly here in the southeast, a lot of state-recognized,

quote, unquote, tribes. By and large, in fact, none of the groups that are state recognized in the southeast that I'm aware of are legitimate Indian tribes. Some of them might be legitimate Indian descendents, a couple of them are splinter groups from federally-recognized tribes. I mean one of them in Alabama is essentially a Boy Scout troop, seriously. And so these are not groups which the tribes recognize as legitimate.

In the west you have hundreds of California rancheros and other things that are legitimate Indian groups that are not federally recognized. So in the west you will hear the demands from the tribes to involve nonfederal-recognized groups. In the east, we adamantly oppose the involvement of nonfederal-recognized groups and most of us will not sit at a table with them because they aren't legitimate tribes.

CHIEF BLUE: I think maybe we need to clarify that just slightly. In South Carolina we have state-recognized tribes, and we naturally have some great friends among those people. They would love to be federally recognized, and some of them might even have the criteria for that.

But do all of you understand the

difference between a federal tribe and a state? You should. I mean it's basically, without going into great detail, the state tribes that are recognized, most all their programs come through the Veterans' office; money comes to the state, the state gives it to the tribes. They can't go out on their own and get grants and things.

And the federal tribe, of course, their administrative moneys and programs come directly to the tribes and they're administered themselves without going through a second party. That's, in a nutshell, basically it.

But we have a lot of good friends in South Carolina who are state-recognized people.

MR. CARLETON: I'll modify that. I'm used to dealing with Louisiana and Alabama and Georgia and Florida.

CHIEF BLUE: And we have some, like he says, who crop up every once in a while and claim that they are Indian tribes and they want to get a piece of this and a piece of that, and they're not legitimate at all. I agree with him, that's not right, that's not fair, regardless of where you live, who you are, just like any group trying to represent themselves as something that they're not. So I just

wanted to clarify that.

MR. MOLM: Again I urge you all to make these comments, because I think they're helpful. I see a lot of nodding or expressions of interest around the table.

MR. LOVETT: Barry Lovett. You mentioned earlier you were participating in a process right now, and I'm just trying to clarify that. Did you say Rock Hill?

THE WITNESS: Rock Hill, South Carolina.

MR. LOVETT: South Carolina. And you also mentioned the Catawba.

CHIEF BLUE: Catawba.

MR. LOVETT: Is that the Duke relicensing?

MR. McKITRICK: They're closely related, associated with the Catawba Water Project, Duke project.

MR. LOVETT: Thank you.

MR. McKITRICK: Any other questions that you may have for panel members here, or if there's just some clarification on either side?

MS. JANOPPAUL: Mona Janopaul with the Forest Service. I would just like to point out, when you're looking at these new proposals it does bring in the Commission much earlier in the process, and I

would be interested in whether you think that would make the consultation you're speaking of much more likely.

MR. CARLETON: Frankly, from what I know of, as far as we're concerned, the current licensing process probably violates all of our sovereignty and probably federal Indian law because, you know, they're trying to delegate them, essentially delegate all the consultation responsibilities down to the licensees, but until the license application is filed, which, as far as we're concerned, is not right. So, you know, from what I see, involving FERC from day one is the way to go from our perspective.

CHIEF BLUE: Let me make one suggestion that maybe I think it would be helpful to Indian country, as we know it in the east. We belong to an organization called USET, which is comprised of -- is it 25 or 24 --

MR. CARLETON: Something like that.

CHIEF BLUE: -- 24 or 25 federally-recognized tribes east of the Missouri. Well, we got one in Texas, one in Houston.

But maybe somebody from this group, from the panel, could make a presentation to that group. The next meeting is in Connecticut, and we will be

gone. You could do it maybe in the spring meeting. And I would be glad to work and coordinate and get you on the agenda where you could tell all those tribes some of the things we talked about, what your position is, and how we need to be aware of what's going on. Rather than me going back and trying to do it, I think you folks would be in a better position to do that. So if you can correspond with me, I'll see if I can't get you on the agenda maybe for the spring meeting.

MR. McKITRICK: The group was --

CHIEF BLUE: USET, United South and Eastern Tribes.

MR. McKITRICK: Thank you.

MR. MOLM: Does that consist of all tribes in the east?

CHIEF BLUE: All federal.

MR. CARLETON: I think there's a couple that are not.

CHIEF BLUE: There's a couple that may not, but for the most part a majority of tribes east of the Mississippi, fully recognized.

MR. LEWIS: I guess the only problem with being there in spring would give them the information, but they wouldn't be able to do the

December 6th comment period.

MS. JANOPPAUL: I just want to point out again that there's another comment period, that this is a very unusual outreach for the Commission. I mean other rulemakings, there's usually nothing before the notice of proposed rulemaking comes out. So this is a real opportunity for outreach. There's another opportunity next year for not only public meetings but for comments again.

CHIEF BLUE: Well, I wasn't saying this so much for this particular thing. I'm just talking about overall, as things go along, we need to know more about the process. I think you guys could fill all the tribes in and say here's what happens, here's how it happens, and here's how you get your input.

MR. CARLETON: The next meeting is what's called impact week, which happens actually the end of January, beginning of February, which is actually in Washington. The only problem dealing with that, it's already full.

CHIEF BLUE: You need to go in the spring meeting, which will be April, May. That would be what we'll work for. We're in D. C. in February. That's getting to be known as one of the biggest Indian meetings in the country, in Washington in

February, because we're over on the hill. We have people all --

MR. MOLM: Why did you pick such a miserable month?

CHIEF BLUE: Most of the stuff we deal with is --

MR. McKITRICK: One at a time. The court reporter is --

CHIEF BLUE: I'm sorry.

MR. McKITRICK: That's fine.

MR. LEWIS: There's also a subcommittee in the USET organization that's a natural resources subcommittee.

MR. McKITRICK: Okay.

MR. LEWIS: So we have people there that can be --

MR. McKITRICK: They meet at the same time or --

CHIEF BLUE: Yes.

MR. LEWIS: Well, they break up into different subcommittees and they have people come in and talk to them.

MR. CARLETON: I'll also say that there is the Heritage Committee which deals with the Natural Historic Preservation --

CHIEF BLUE: I'm on the board of directors. Of course, we have our own agenda, and then the committees break off into various meetings all week long. So you could actually spend a couple of days and talk to the board of directors, which would be the leaders, of course, and then you could go to the actual committees and talk with the environmental people and other people who deal daily with those things. So it would be a good opportunity to inform us in a very personal way about these things.

MR. CARLETON: As far as just a general comment on contacting tribes, while obviously the government-to-government relationship requires you to send letters, address letters to the chief of the chair, it's a real good idea to find out who the actual staffers are, like me, and copy them with anything you send to the Chief, because these guys get literally bags of mail every day.

CHIEF BLUE: No kidding.

MR. CARLETON: So just me waiting for a letter to go through the Chief's office can take a month sometimes. He is not there, which these guys are very busy and are not there a lot of times. So you can contact the HPO, I know Valerie Hauser at the

Advisory Council, who's the Indian liaison for them, and she has a huge database of Tribal contacts. I know her specifically. There are certainly, I'm sure, others who do. But get our names and, you know, call us and copy us with anything.

MR. LEWIS: Especially if it's dated material, because otherwise we get things all the time that, okay, it's past the deadline or something, because they're out of town, and we have sat on things.

CHIEF BLUE: Don't point to me.

MR. McKITRICK: Just for the record, the HPO --

MR. CARLETON: Tribal Historical Preservation Officer.

CHIEF BLUE: In fact, I get letters and they say you're supposed to be at a meeting tomorrow morning at 8:00 o'clock, and it's in some far off place. You know, but it's important, he has a good point, because we're very busy. I'm gone sometimes three or four days, something comes on my desk, and I can't give it to him till I get back.

MR. McKITRICK: Thank you.

Anything else as far as comments that you would like to make?

You've taken a few notes that we picked up. Maybe just kind of briefly summarize some of the things that we heard.

MR. JOHNS: These are just basically the high points. The court reporter will have the actual nuts and bolts of it. But basically we saw an opportunity for input into the process both on the cultural side and historical, but also in regard to public safety, definitely to participate not only in the planning process but the review process, direct consultation with FERC, not just the licensee, because of the government-to-government relationship, and that's in an effort to maintain the trust responsibilities by the Federal government.

And I'm not so sure I got this right. Cultural and Tribal resources kind of get short trapped, is what I --

MR. CARLETON: Shrift is what I was saying.

MR. JOHNS: Shrift, how do you spell that?

MR. CARLETON: S-H-R-I-F-T.

MR. JOHNS: And should be given equal consideration through, really, the NEPA process.

There's the issue of confidentiality of cultural resources during process and make sure that

that's maintained.

The Natural Historical Preservation Act does apply to the licensing process. It is a federal law. The consultation process should be initiated early and prior to any decisions which were brought in early to the process, and that be done, what I call face-to-face consultation, not necessarily by notification, by letter, which I think is required by FERC, but actually initiating that through meeting or attending the Tribal council meetings.

And there's a big difference between the Tribal consultations for the east coast versus the west coast. And just kind of highlighting, I think there is a lot of conflict there. Basically on the east coast, the consultation for off-reservation resources, your involvement in that, and involvement of nonfederally-recognized groups and how they integrate into this process.

The last thing seems to be an agreement to involve FERC early in the relicensing process, I believe you said from day one, was stressed there, and to involve not only the chief of the tribe, which is part of the formal process, but to insure that the staff are included in the notification, be it the HPO representative, or maybe you have a specific natural

resource manager.

MR. CARLETON: A lot of us, EPA, has really provided a lot of money for a while. We've got a whole separate environmental -- a lot of tribes do.

CHIEF BLUE: The reason we say about the early thing, just to give you a classic example, OMB every year has a budget meeting for the Interior Department, and before we get it as tribes. For years and years we never got involved in those early conversations about the budget for money to be appropriated for certain things, until later on in the process, when most things were already appropriated.

And when you go up there at a later date and try to get money, the only way you're going to get money is to take it from somewhere else, and no one else, naturally, wants to give it up. So you have got to get in the process earlier so they can appropriate moneys from the beginning for the Indian people, or whatever the cause may be, because, as I said, later on the whole thing is different.

And it can be the same way here. You may get down to a situation where you have already decided about how you're going to proceed, and if we

come in with something later on, and it may be a real problem, but you don't have some way to deal with it, and then you have all this conflict.

I'm a person who is a courteous, cordial person, I believe. I like to deal with people in a fair and honest manner. I don't like to try to be overbearing or anything, just cordially talk things out, listen to what I have to say and consider those things.

MR. McKITRICK: Okay. Is there any either clarifications that you saw up here or anything else?

CHIEF BLUE: I thought he did real well in summarizing what we came up with.

MR. JOHNS: Thank you.

MR. McKITRICK: Thank you, Ray.

We look forward to formal comments, and if you can specify them as much as possible that would be helpful.

I'd like to kind of step briefly through this, realizing that there is a lot going on in the next few months. We are at the beginning of this, having these meetings, Atlanta being the second. But realize that in December, 10th, 11th and 12th, there will be some open forums in D. C., where you can actually participate.

I guess going through some of the materials that we have, and drafting up the original notice, followed by what we call the NOPR, notice of proposed rulemaking, that will then be out towards the end of February, and then there will be a second, after you have that actual draft, of what it looks like.

There's three regional meetings yet to be scheduled, but it's in the March, April area, one in Charlotte, probably the closest, but you're certainly welcome in Portland and Chicago. That's followed by some additional workshops, and finally the drafting, with the regulation coming out towards the middle to end of July.

So there are opportunities, and as Mona indicated, unique opportunities, to participate in this, and we look forward to formal comments as well as participating in any kind of discussion that we may have as far as like this.

Mona.

MS. JANOPPAUL: I just wanted to bring out, on attachment A, which is the IHC proposal, on page 13 there's the listing of the names of agency contacts for the proposal. I see that David Diamond's name is down there as well as mine, and

there's our phone numbers and our e-mail addresses.

If you think later on that you have questions about this licensing process, or the others, we'd be more than happy to respond to you, or just in general how our agency would be working with this new proposal, we can respond to that.

I do just want to remind you, we continue to have trouble with mail in the D. C. area. Everything I receive gets treated in Ohio before I get it, so e-mail is a great way, or the phone I would definitely respond to. Thank you.

CHIEF BLUE: Okay.

MR. McKITRICK: Again, we really appreciate your participation with us in this and I think it's very helpful and a good beginning. Hopefully we can work from this and help each other out through this process.

If anyone here has a card, particularly that spoke, you may want to give that to the court reporter just so we get all the information right, or exchanged, so we have a chance to talk to one another.

Thank you very much. If there's nothing else, I'd like to officially end the forum in Atlanta, and talk actually after that. Again, I

appreciate it very much. Thank you.

(The matter concluded at 11:30 a.m.)

C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing
was taken down and reduced to typewriting under
my direction; that the foregoing pages 1
through 73 represent a true, complete,
and correct transcript of the proceedings,
and I further certify that I am not of kin or
council to the parties in the case; am not in
the regular employ for any of said parties;
nor am I in anywise interested in the result
of said matter.

This, the 28th day of October 2002.

KATHLEEN CILENTI, RPR, CCR NO. B-594

My commission expires on the

22nd day of March 2003