

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

Thursday, October 24, 2002

APPEARANCES

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Patti Leppert, FERC

Ann Miles, FERC

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

Joel Gardner, U. S. Forest Service

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Karen Hester Abrams, National Marine Fisheries
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Brad Clay, Alabama Rivers Alliance

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APPEARANCES (Continuing)

Mark Oakley, Duke Power

David Sligh, American Rivers

Joe Young, Lake Jordan HO&BO Association

Paul Leonard, Entrix Environmental Consulting

Steve layman, Geosync Consultants

George Martin, Georgia Power

Jim Crew, Alabama Power

Chuck Zimmerman

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MR. McKITRICK: It looks like we're going to have a relatively small group today, so maybe we could start finding our seats, settling in.

Good morning. My name is Ron McKitrick. I'm with the Federal Energy Regulatory Commission, and I'll be one of the folks helping to lead U.S. through this proceeding today.

I think, since we have a relatively small group here, maybe we can get to know each other a little bit better, and rather than have a show of hands of who's who and make some introductions, maybe we'll just go around let, everyone introduce themselves, maybe who you're representing, and if you have a specific interest in the forum, why you might be here. Again, my name is Ron McKitrick with staff of the Regulatory Energy Commission. I've been with FERC in the licensing field for over 20 years.

MR. JOHNS: My name is Ray Johns with the U.S. Forest Service, helping Ron co-facilitate. I've been with the Forest Service for about 24 years; about 12 of that has been in the hydro program.

MS. JANOPPAUL: Mona Janopaul with the Forest Service. I've been in hydrolicensing since about 1987 or '88.

MR. McKITRICK: This is going to be on the

record today, so if you have an unusual name, or difficult name, if you would like to spell it so that we get the correct spelling, I would appreciate it.

MS. JANOPAUL: Mona, M-O-N-A, Janopaul, J-A-N-O-P-A-U-L. Thanks.

MR. MOLM: My name is John Molm. I'm with the law firm of Troutman Sanders. I've been involved in hydroelectric matters, licensing compliance for over 25 years.

MS. ABRAMS: I'm Karen Abrams, with the National Marine Fisheries Service, Office of Habitat.

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

MR. DIAMOND: David Diamond, Department of Interior, Office of Policy Analysis, also in Washington, D.C.

MS. LEPPERT: My name is Patti Leppert. I'm with the Federal Energy Regulatory Commission.

MR. AKRIDGE: Mike Akridge, A-K-R-I-D-G-E. I'm with Southern Company in Birmingham, been involved in hydrolicensing matters for 25 years.

MR. HANCOCK: Jim Hancock. I'm a lawyer with Balch and Bingham, representing Southern Company.

MR. LUCAS: Phil Lucas, CP&L.

MR. OAKLEY: Mark Oakley, Duke Power.

MR. SLIGH: David Sligh, American Rivers,
S-L-I-G-H, and I represent not only American Rivers
but am on the steering committee of the Hyrdopower
Reform Coalition.

MS. MILES: Ann Miles.

MR. BERG: Mel Berg, B-E-R-G. I'm with
the Bureau of Land Management in the Division of
Resources and Planning in Washington, D. C.

MR. YOUNG: Joe Young, with the Lake
Jordan Homeowners' and Boatowners' Association, and
Lake Jordan is on the Coosa River in Alabama, in case
you don't know.

MR. LAYMAN: I'm Steve Layman, Geosyntec
Consultants here in Atlanta. I'm a fisheries
biologist.

MR. MARTIN: I'm George Martin with
Georgia Power.

MR. CREW: I'm Jim Crew with Alabama
Power. We have a nine-project relicensing effort
underway right now.

MS. WOODS: I'm Diana Woods with U.S. EPA
Region Four in Atlanta.

Ms. CIELINSKI: Sue Cielinski,
C-I-E-L-I-N-S-K-I. And I'm with Fish and Wildlife

Service in Atlanta.

MS. DAMIANI: Stefanie Damiani,

D-A-M-I-A-N-I, and I'm with the Fish and Wildlife

Service in Washington, D. C.

MR. LEONARD: Paul Leonard with Entrix

Environmental Consulting here in Atlanta.

MR. GARDNER: Joel Gardner with the Forest

Service here in Atlanta.

MR. ZIMMERMAN: Chuck Zimmerman.

MR. YATES: Randy Yates with FERC.

MR. McKITRICK: Thank you.

Before we get formally started in this,

just a couple of things. I would ask if you're going

to speak, because the court reporter is taking

everything down, if you would restate your name

before you speak it would be very helpful. You don't

have to spell it again but just restate your name.

We would appreciate that.

Another couple of quick things. A lot of

you are dealing with different types of projects,

either coming up or ongoing. Some of them are either

before administrative law judges, or in courts, or

that kind of thing. We like to stay away from any

type of project-specific discussion, and just keep it

general in nature. We just don't need to get into

that type of discussion.

The other thing as we go through today, and in addition to that specifically on your comments, we would appreciate it very much -- we need to recognize what the problem is that you're dealing with, but we don't want to get into a discussion about those problems. What we're interested in in this process is looking at solutions for any kind of issues that you may have.

So if you have an issue or problem, we would expect to hear some sort of solution to that that we could implement in some sort of regulation. And as you can help us do that, if there's specific language that you can actually recommend, either today or in your comments, that would be extraordinarily helpful.

In addition, when you are speaking, particularly if it's out here, we would request that you raise your hand. We have Ray back here with some microphones and we'd like you to speak through the mike so that we can hear and record it, and that would be helpful for us.

We are here today and we're looking at hydropower licensing regulations, in this public forum to hear your input and comments and to pencil

changes that you think would be helpful. This is a co-sponsored forum by the Federal Agency Regulatory Commission and three executive branch agencies from the Department of Agriculture, Department of Commerce, and the Department of the Interior. One of the reasons that we're all here co-sponsoring this meeting is the Federal Power Act. The Federal Power Act itself is a piece of legislation that gives us the authority to issue -- FERC -- the authority to issue licenses to nonfederal hydropower projects.

Within the Federal Power Act there's very specific language that sets up a relationship between the three agencies that we just talked about, Commerce, Interior, and Agriculture. They can set very specific recommendations and have comments on the licensing process. We have been working together as a group for a number of years now and, therefore, co-sponsoring this meeting today.

Just kind of a quick overview of the chronology. Outside there should have been a single handout that has a lot of details, and we'll go over that maybe towards the end of the day. But just briefly, we sent out a notice, a commission notice, about this potential change in regulations and these meetings. September 12th we set up the public

meetings, as well as the tribal meetings.

We had our first meeting last week in Milwaukee, and we got some very good input and it was extremely helpful. This is the second meeting that is, of course, here in Atlanta, to be followed by one in Washington D. C. That will be a little bit different format. Then we'll go to Bedford, New Hampshire, and then followed by Sacramento, California, and Tacoma, Washington.

Unless you're real interested in regulations, we don't expect to see you at every one of these, but it's certainly an opportunity, if you want.

Probably one of the most important things in all of this -- well, two things -- one, the meeting today and hearing your comments, but the comments dealing with this notice are due by December 6th. We would appreciate any type of early comments that you could send to us. We are on an aggressive schedule, as you will see, and the quicker that we can digest this and understand where people are coming from it would be helpful.

I remind you again, what we're looking for are solutions to your problems that we could put into regulation. We are not looking for administrative

changes, things that we can just do. We have done a lot of that. And we are not looking for changes in law. So keep this pencil changes in regulation. You have some guidance of two groups, from the Interagency Hydropower Committee as well as National Review Group, that started in giving people some guidance of some changes, so that would be helpful to make sure that you read through that. It will help put your comments in perspective.

We will then put all of this together, assuming that we will go ahead with the rulemaking change, and by February of 2003 our intent is to have a notice of proposed rulemaking, or NOPR, out. Following meetings in March and April of 2003, there will be regional meetings. The southeast regional meeting will be in Charlotte, and that will actually be an opportunity to sit down with the NOPR and go through that and help fine tune some of the language in that, in the NOPR itself.

Following, then, in July the intent is for the Commission to look at all the comments and have the final rule in place. But again we're moving at a fast rate, and you can help us with this, and we see these public meetings doing that, getting us started and giving a heads-up about what people are thinking

about.

That's just quickly an overview of our agenda today.

After we're through with this, Patti Leppert will be giving us kind of an overview of why we're all meeting here today. Then we'll have presentations from the IHC, the Interagency Hydropower Committee, with their proposal that was in the notice, followed by the National Review Group, that will give an overview of their proposal. Again, this should be taken as a guidance document. What we're looking for is input of either improving what you see there or new ideas and changes. What comes out of this probably won't look typically like either one of these things, so we're relying heavily on you.

Followed by those presentations we'll take a short break, review the number of speakers that we have, and for those that would like to come up and give a short on-the-record presentation as far as the types of problems you see and the types of solutions that you may have, you'll have an opportunity to come up here, give that presentation.

And my understanding is that won't take very long. After that we will have more of a discussion dealing, as you look over here, with the

suggested topics, and any other additional information that we get from the speakers. We would like to focus the rest of the day, or as long as it may take, trying to see where your concerns are, have an opportunity to speak to either one of the proposals, or any new ideas that you may have, and interact in a more informal fashion, although it will be on the record and you'll have microphones.

Depending upon how the day goes, obviously there will be lunch scheduled, there will be afternoon breaks, and we can be here until 4:00 o'clock.

Patti.

MS. LEPPERT: Good morning. Thank you for coming. I do appreciate it. I know we all do here, and I'm enjoying my stay in Atlanta. It's nice to be out of Washington D. C. for a little bit.

Since 1997 there have been efforts to improve the efficiency of the hydroelectric licensing process through administrative reforms. These efforts are the Interagency Task Force, or the ITF, which consisted of the Commission staff, the departments of the Interior, Commerce, and Agriculture, the Council on Environmental Quality, and the Environmental Protection Agency.

I would like to refer you to page 6 of the notice. In footnote 15, that does refer to the various reports that were issued by the ITF, and they are on the Commission's web site. The second was the EPRI NRG reports, and that consisted of a round-table that produced, as I understand, a best practices report. The third was the Hydroelectric Licensing Status Workshop in December 2001 that identified and focused on long-pending license applications out of the class of 1993. I understand that there were 51 of those that were targeted.

In November of this year, the Commission will be hosting another workshop, status workshop, for those of you that are interested.

Another one, reform, is the Resource Agency Administrative Reform that, from what I understand, is similar to the existing Forest Service for an appeals process. The Department of Commerce and the Department of Interior have developed a mandatory conditions review process that allows for public comment on Interior's and Commerce's section 18 fishway prescription.

Another reform effort was the regional workshops with the states and the Commission staff. These workshops were held from March through June

2002, and it helped to focus on ways to integrate the Commission's licensing process with the states' Clean Water Act and the Coastal Zone Management Act. This in particular, the ideas that came out of the regional workshops with the states, are similar to the IHC proposal and the NRG proposal.

MR. McKITRICK: I'll click it.

MS. LEPPERT: Thanks, Ron.

And it ties in nicely with what we did here with these regional state workshops. One of these --

MR. McKITRICK: Did I go too far?

MS. LEPPERT: No.

MR. McKITRICK: Did I miss one?

MS. LEPPERT: Yes.

MR. McKITRICK: Sorry.

MS. LEPPERT: There we go. We're moving along, aren't we?

MR. McKITRICK: Yes.

MS. LEPPERT: I'll speed up.

MR. McKITRICK: No.

MS. LEPPERT: What did we hear? As we look at the list, more complete license applications, early identification of issues through public scoping pursuant to the National Environmental Policy Act,

resolving study disputes, early establishment of licensing schedule, and the notice of intent and initial consultation package should be simultaneous.

Okay.

Now we go on to why are we here? We've found with these administrative reforms that it's a beginning. We're on this journey, as we like to call it, and we're looking for improvements to the current regulations to reduce the time and cost of licensing while continuing to provide for environmental protection, to fulfill state and federal statutory and Indian trust responsibilities, as well as to bring in the National Energy Policy, which I'd like to point out, one of those goals, as stated in the National Energy Policy, is to make the licensing process more clear and efficient, while preserving environmental goals.

I would also like to note that the Commission, federal agencies, the hydropower stakeholders, are engaged in many of these activities to achieve this goal.

Again, I'd like to point your attention to page 5 in the notice that does identify some of the Commission staff's ongoing efforts with the federal agencies.

Okay. The September 12th notice, as Ron stated, we're looking for solutions to these problems, these challenges, in hydroelectric licensing, and the September 12th notice provides opportunities for discussions through the public and tribal forums. The next forum, as Ron had mentioned, will be the Commission's-sponsored forum on November 7th in Washington, D. C. The other schedules, as Ron had mentioned, are outlined in the notice on page 10, for those of who you who are interested in any of these. Written comments and recommendations on the need for and structure of the new hydropower process, as Ron had mentioned, is due September 6th. We really want your comments.

Today you will hear two different proposals, and again these are just proposals. We're looking for your comments. The notice that we issued September 12th includes the Interagency Hydropower Committee proposal, or the IHC, which is Attachment A, and the National Review Group, or the NRG group, which is Attachment B of the notice. The notice also contains nine specific questions and those questions are on pages 7 and 8 of the notice.

The goal for today's forum is to listen to your ideas about the licensing process, what works,

what doesn't work, what can be improved, what can help us in this process to move these paces along, identify specific challenges, as I like to call them, not problems, but challenges, in the current regulations, discuss possible solutions to these challenges, and then translate the possible solutions into concepts for notice of proposed rulemaking.

Again, we need your comments. They will be very, very beneficial to us in helping us to draft this rulemaking.

Suggested discussion topics are tied to these nine questions that the notice has identified and put forth. Again, they're on pages 7 and 8. We have also put these discussion topics on the wall.

One, integrated licensing process, study development, study dispute resolution, settlements, time periods, coordinate state and federal agency, tribal and FERC processes, and relationship to existing licensing processes. These are not exclusive. There are other topics, I'm sure, that will come out of these public forums and tribal forums that we are very interested in listening to, and this just gives us a base line, if you will, of certain topics that we've heard so far. But if there are any others that are not on this list, please

bring that to our attention and today will give us an opportunity to hear other topics as well.

Again, the comments are due December 6th.

There will be other opportunities to participate in various forums around the country, and there will be other opportunities to comment, I believe even after December 6th. There will be other technical conferences as well.

So, to continue with the program, Ron.

MR. McKITRICK: Thank you, Patti.

One thing that I'd like to mention is folks that are sitting up at this table, there is fruit back here that's a little rotten, so you can -- only kidding. These are agency representatives and also representatives of the NRG. They're here not particularly representing their agency, but they're agency folks on the Interagency Hydropower Committee and representing this here to help us through that.

To start that discussion, David.

MONA JANOPAUL: Is that why the FERC part of the IHC isn't having a representative sit up here at the table with us?

MR. McKITRICK: I'm sorry? I'm sure you're right.

MR. DIAMOND: Well, good morning. My name

is David Diamond. I'm with the Department of Interior, but I'm not here today to talk to you as a representative of the Interior but as an interagency group, the Interagency Hydropower Committee, that has been working since July of 2001, and came up with the proposal that's been included in this notice that went out on September 12th, potential ideas for this rulemaking.

I'm going to first give you a little bit of background about the Interagency Hydropower Committee, then walk through what the objectives of the group were when we began our work, then go through in detail, and it is a detailed proposal, some of the things that are included in the proposal, and, finally, conclude with what benefits we hope to achieve with a new process.

The Interagency Hydropower Committee, as I mentioned, consists of staff from Federal Energy Regulatory Commission and the departments of Agriculture, Commerce and the Interior. We also work with EPA, the Council on Environmental Quality, and the Advisory Council on Historic Preservation.

The IHC effort grew out of early interagency reform efforts, most noticeably the Interagency Task Force. That effort began in 1998,

and included FACA, a charter, FACA Committee, with formal procedures for public input, and ended up with seven very useful reports on all aspects of the current licensing process.

But the reforms that were included in those reports were administrative in nature. And in July of 2001, senior managers from the four departments, FERC, Agriculture, Interior and Commerce, came together and formed a Principals' Group. They met and kind of set an agenda, and tasked staff to think about moving beyond administrative reform, how might we change the process.

So the objectives from the beginning as put forward by the principals, first of all, were to improve coordination amongst the federal actors, and, ultimately, a proposal that's before the public now. The way we're trying to improve that coordination was setting time frames for various actions, making sure that the places where discretionary authority is exercised are clear and coordinated.

Also charged in the beginning was eliminate duplication in the process. There was a lot of feeling that things happened multiple times and that there could be opportunities for economies

of scale. To that end, this proposal includes a big change which would be moving the NEPA scoping the Commission does, pre-filing of the application, during the period when the agencies do initial consultation.

Third, a goal was to reduce conflicts in the process. Conflicts can continue throughout a process and the idea was early consultation, early identification of issues, and early resolution of those issues. So that was where we began.

And ultimately the goal of all this was to expedite the licensing, expedite the implementation of the measures, and to reduce the overall time and cost of the licensing process, while ensuring environmental safeguards.

You have in the blue book here a copy of the notice, and on page 14 of the notice there's a detailed box and arrow diagram IHC proposal. It's in all of its complexity there. But one thing to note there is that each step was thought out very carefully. Each of those time periods on the arrows in between was thought out carefully. And as I go through the process here this morning, I'll try to point out what the federal folks were thinking in drawing that diagram the way that it's drawn.

There are four major parts that I'm going

to go through. First, the period from the advanced notice through scoping and completion of a final study plan. The major changes in this earlier portion of licensing include replacing the current initial consultation package with an applicant-prepared pre-scoping document, and again filing the pre-filing consultation with the Commission staffers' NEPA scoping. This period is contemplated by the IHC to take about nine months.

The second is kind of a mechanism that's contemplated in the proposal for study dispute resolution. The 60 days plus 30 days there, the period while those studies are conducted through the preparation of the draft application, and that would take about 28 months.

And, finally, the post-final period, the period in which we hope to achieve the greatest gains in time, contemplated here for 20 months, and hope to not have additional requests, hope to be able to move quickly once that application, with all the good preparation and coordination that has gone into its preparation, that can move once it gets filed.

Okay. So starting off, we have a box out there before the official process begins. That's a box zero, and that's just an advanced notice of

license expiration, just to get everybody who might be thinking about this project in the mindset that hey, coming up there's going to be a license expiration, the project's been operating a long time, time to start thinking about the process that's going to be coming up.

The first box, then, that begins the process is the filing of a pre-scoping document by the applicant, and this is different from the current initial consultation package. It would include information that the applicant has about the project and its operations, a record of any consultations that may have taken place, a summary of known project effects and issues that might be out there, and an initial list of stakeholders that would likely be involved as the proceeding moves forward.

Also important here is the official proceeding. The Commission would at this point initiate the licensing proceeding. And by initiating this formal proceeding early in the preapplication stage, we hope scoping would occur one time, and this is an effort to reduce potential duplication of effort.

Scoping, we now have the Commission as an actor prefinal, and so the pre-scoping document filed

by the applicant, then the Commission would review, there would be public comment on that, and the Commission would simultaneously issue their scoping document based on the applicant's document and meetings.

And, importantly, this process would lead to the development of a study plan, what was going to be done to prepare the application.

And again there is public comment opportunity on that.

Now, we hope that in most cases this early phase, which is where most of the changes in the IHC proposal occur, and bringing it in, all of these elements here, we hope to avoid study disputes over studies. But the thought was in cases where that might happen, that can really be a road block, so we needed to have a mechanism to resolve those disputes and will now present the mechanism that the IHC proposed.

First of all, what sort of dispute are we talking about? The two elements that would trigger this mechanism is if a requestor of a study felt that a study was necessary for development of recommendation, conditions, or license terms -- that can be the Commission or an agency or Indian tribe --

and/or whether a specific study methodology was necessary to obtain that information, the dispute would come before a panel of three persons -- a member of the requesting agency, a commission representative, and a neutral third party.

And the idea behind the panel is to give broad consideration to the issue, and then, importantly, that panel would be provided with a set of criteria.

What sort of studies are appropriate and what sort may not be?

The criteria proposed by the IHC include does the requested study provide a nexus between the project operations and resource effects; does the requested study cite management goals by the requesting agency; what's the connection of the study to the requesting agency's jurisdictional roles and responsibilities; is the study methodology proposed accepted scientific methodology; and cost and practicality, and avoiding unnecessary costs would also be a criteria.

The panel would issue a set of findings, basically taking the request and the criteria and matching them up. They would send that finding to the Commission staff, the Office of Energy Projects,

who would consider the findings of the panel, make the Commission's decision, and ultimately finalize the study plan and issue scoping document two.

Now, again this is a mechanism that we would hope not to evoke in most cases, but wherever there was an issue the advantage here is that this is now, then, the end of it and we move on with the rest of the license. So that was the thought on study dispute resolution.

The next phase is the longest phase in terms of time on the process, and that is to do those studies, compare that application that's going to be brought before the Commission. We left time for two full years of studies there at the pre-filing period.

I should mention -- I didn't mention it in the overview, but the total time for the IHC proposal that we've got before you is five years. That is less than our current averages out there, and we were trying to make sure that everything that needed to get done would get done and stay within that five-year time period. So that includes two seasons for studies.

As the studies are being conducted there's kind of an interactive check to make sure that yes, the information that we thought we were going to get

is coming in, making sure that the methodology that was selected is working, etc. And then once the information is available, the draft application could be prepared.

Now, the change here on the draft application is that the form of that document would be set up to mirror the form of the Commission's NEPA document. Again, we tried to move ahead and save time once that document goes into the Commission.

So the big moment, then, is when the application gets filed before the Commission, currently that would call for intervention, comments, recommendations and conditions. The process then contemplates two tracks to get to your final issuance of a license.

The first, Track A, you would have a draft NEPA document, so maybe where you had an EA or EIS, where you need to go down this path, we make sure that any conditions that might be issued by federal agency would be coordinated and ultimately issuance of a license. Track B would be in those cases where, with all the information already prepared, the environmental assessment comes out, and that's it, there is no draft required.

And, again, the total time of Track A is

five years, Track B is a little less.

Again, benefits that we think would be useful from this proposal, completion of one NEPA document that meets all stakeholder needs, early identification and involvement of stakeholders, early identification and resolution of disputes, clear time frames for all participants to keep things moving forward.

One of the charges we had was try to do things in parallel rather than in series, and to that end, concurrent filing of agency conditions and adequate information, we should be able to jump outside the process and go to settlement.

So that in a nutshell is the IHC proposal, and I'm looking forward to ideas, comments, all sorts of thoughts in talking to you today. Thank you very much.

MR. McKITRICK: Thank you, David.

Again, I appreciate you all holding your questions. We'll have an opportunity during a discussion period to flesh out some ideas about this. The folks on the IHC have worked very hard and are very knowledgeable about the proposal and I'm sure they will be happy to answer any kind of specific questions for clarification, and we'll look forward

to that.

John Molm will give the overview for the National Review Group proposal.

MR. MOLM: I'm here as having been a member of the NRG group and putting the NRG proposal together. First off, I'd like to say that the IHC proposal has merit. We have looked at it, and we think there are more similarities than differences when you compare the IHC and NRG proposal.

The NRG proposal looks a little different than the IHC proposal. It probably is a reflection of the members of the NRG. The NRG was comprised of NGOs, licensees, it had participation of environmental government agencies, and FERC. But the document came out looking differently because it had different membership makeup.

Before proceeding to the specifics, I want to say that, by and large, generally the industry position is that whatever proposal is adopted by FERC, it should be an additional proposal, it should be a proposal that anyone could feel free to use or not use, it should be an optional avenue for getting your licensing to be completed.

I'd like to go through generally the principals of the NRG proposal. There are four key

elements, four key reforms, if you will. First, it encouraged, as opposed to mandated, it encouraged early consultation by the licensee to identify issues that you gathered, information, that a consultation would be with not only agencies but known stakeholders.

Second, the NRG proposal developed a concept called -- I don't know what you would call it, but it established a procedure for the agencies to work together. First, the agencies in FERC would enter into a memorandum of understanding that would be a general document that would govern relationships among the agencies in the licensing proceedings, and/or each separate licensee proceeding.

There would be a memorandum of agreement that would be designed to address that specific project.

The MOU, that is, the first one, would define which agency is generally responsible for assembling information, and which agency would be responsible for substantive drafting of the part of the NEPA document, which I'll get to later.

The third reform was to give the license applicant greater certainty that if he undertook the studies that were set forth in the study plan, he

could have greater assurance than he does today that if he completed those studies with the methodologies set forth in the study plan, that that would be it; there would be no late requests or additional studies late in the process.

Forth, and this is a twist and a new feature, it would be that FERC and the cooperating agencies would develop a NEPA document that was informational and analytical. It would not set forth alternatives, preferred alternatives of agencies or the licensee. It would be strictly a document that could be used by each of the agencies for them to separately develop their preferred alternative.

The NRG submitted its proposal for public comment, and I'm just going to highlight a couple of the responses received by NRG.

First, the NRG recognized that although it's not expressly stated in its proposal, there's a clear intent to have substantial opportunities for all stakeholders to participate in the project, in the process. And that is a public involvement in the process.

Secondly, they noted with some emphasis that the licensee must have a very prominent role throughout the licensing process. It couldn't just

be a process devised by the cooperative agency and FERC, but you had to have substantial input from the licensee as you go along.

Some of the specifics, there is some representation, but not much. Again, it was provided in the document that the licensee is encouraged to meet with FERC and resource agencies prior to filing of the notice of intent, to identify issues, to review existing information, to develop preliminary study plans, to do a lot of the homework up-front before you file your notice of intent.

The NRG proposal stated that the licensee should file its initial consultation document no later than five years before the expiration of the license, no earlier than five and a half years before the expiration of the document.

The NRG proposal indicates that the licensee, when it filed its notice of intent, would file certain exhibits that are traditionally not filed until the license application is filed, and those would be exhibits A and B, and exhibits F and G, and then modified exhibits H, D, and E, and would kind of get out of the way those exhibits that we routinely file in a license application. It was thought that there was no reason that the licensee

could not develop those exhibits early on and get those presented to the public.

Also, the initial consultation document would reflect all consultations, issues that have been identified, and the licensee's proposed study plan, as well as a draft scoping document.

From that point, you would have your MOU and MOA being developed simultaneously. The MOA, again that's a second document related specifically to the project, it would establish procedures for cooperation, preparation of the NEPA document, to speed resolution, and so on.

Each cooperating agency would be responsible for collecting and compiling information in its possession that's relevant to the particular project needing a license, and it would be responsible for drafting that part of the NEPA document that is within its jurisdiction. So Mona would be drafting part of the NEPA document, Interior would be drafting part of the NEPA document. Again, FERC would maintain final control over the document that is published by FERC.

The NEPA document would be, as I indicated before, factual and analytical. It would include the project description, project alternatives, impacts,

and proposed alternatives and protection mitigation, enhancement measures. It would allow each cooperating agency to then issue its own record of decision, so that Forest Service could use the NEPA document that has been developed to propose its preferred alternative, and it would allow Interior and Commerce to do the same thing. The thought was that the NEPA document, if you could stay away from the decision making, it would provide better information and better analysis if we didn't get caught up in fighting about the preferred alternatives among the different agencies.

The agencies would be asked to be cooperating agencies. They can decline to be a cooperating agency, but it was the intent that everybody would cooperate. There is a specific provision in the NRG proposal that while a cooperating agency was participating in developing study plans and developing the NEPA document, they would be exempt from the current commission ex parte rules. The current rules would not allow a cooperating agency to participate as a cooperating agency and then later intervene in the proceeding.

As contemplated by the NRG proposal, the cooperating agencies could participate in the

development of the study plan and development of the NEPA document, and be exempt from ex parte regulations.

A cooperating agency can terminate its participation at any time if it met certain requirements.

The NRG proposal goes through certain timing considerations with respect to issuance of a scoping document. It provides that the study plan would be developed. First, you would have the license applicant, as I mentioned earlier, develop a preliminary study plan. FERC and the cooperating agencies would develop an advisory opinion that would deal with study topics, methodologies, the kind of analysis it expected, and what impacts on target resources should be addressed. This advisory opinion would have coupled with it a dispute resolution procedure, that if the agencies did not agree, then there would be a dispute resolution process. The licensee would have the opportunity to comment as we went through this process of developing the study plan. I'm not going to go through the study development.

The final thing I'd like to indicate is that it would not be until studies are completed and

the licensee has drafted what is called a preliminary draft environmental document, which would be issued three years before expiration, and if there is a need for additional studies they would be conducted. But at the end of a one-year period after that, then the application would be filed, and the NRG proposal would wait until that point until -- or agencies to submit their preliminary draft terms and conditions. And once FERC issued its notice that it's ready for environmental consideration, then you would get final terms and conditions and recommendations by the agencies.

I think that adequately covers it.

MR. McKITRICK: Thank you, John.

We're a little ahead of schedule, but if there are specific points of clarification in what was presented by either David or John in their slides or presentations that you would like to do now, we could probably do that.

An example of something that I don't want to get into now, that's more appropriate in the discussion, would be why doesn't the IHC include the licensee in a dispute resolution process? That's a discussion that a lot of people may be involved with. But if there is a specific thing that is just kind of

a point, that you didn't understand something in the slide or the way it was presented, so that you could understand it a little bit better, come back later to interact in a more productive discussion, that would be good.

David, did you have --

Be sure to state your name for the record.

MR. SLIGH: David Sligh, American Rivers.

I just wanted to mention something that, John, you said in describing the NRG proposal in the very beginning, that it is the industry position that whatever FERC does in this rulemaking as far as regulations, it should be, I believe, in addition to the existing systems. I was asked to make it clear by some of the folks from my organizations who had been part of NRG that that was not their understanding as part of NRG. And you didn't indicate otherwise. I just wanted to make that clear. That's all I have.

MR. McKITRICK: Thank you.

If there aren't any additional clarification points, my understanding is that we probably have room for speakers. If you have been moved by this discussion so far, and would like to come up to the microphone and give us your five

minutes on this, there will be an opportunity at the break to do that so that we know who would like to speak after the break. As that number grows and grows, Ray Johns will be facilitating that, and when he says your five minutes are up, I would appreciate you summarizing and sitting down.

As we then go on with the discussions for the rest of the day, or time that we want to take, if you will allow me or Ray the ability to focus y'all on what we're looking for, I would appreciate that. I'm not trying to shut anybody off. You could certainly give your comments to us. But we're really very interested in very specific types of things, so we'll try to guide you along that path as best we can.

MR. MOLM: Ron, I have one question for you. I just noticed you slipped in a word that's very southern called "y'all." How long have you lived in the south and where did that come from?

MR. McKITRICK: Well, actually, John, I lived in the south, went through high school, college, then I was ripped up to Washington D. C. for a number of years, and delighted to be back in Atlanta four almost four and a half years. So I may have lost it in D. C., but it comes back.

If we will, why don't we take a little extra break so people could sign up, can discuss things, and maybe get back around 10:30.

If anybody is leaving or anything, make sure that you get any copies of information that you don't have.

(Recess.)

MR. McKITRICK: If we can go ahead and get seated. Right now we only have one individual signed up to give a short statement, presentation, David Sligh from American Rivers.

Is there anybody else that I need to put on the list? Or, if you feel free after David's presentation, just go ahead and let me know.

MR. SLIGH: Maybe I can fire some of them up to do so.

Again, I'm David Sligh with American Rivers. The NRG proposal, American Rivers and some of our allies in the hydropower Reform Coalition were intricately involved in that process, and we think it was a good process. We were very happy that it came out with some things that we think moved towards a better, more efficient system, one that hopefully can head off some disputes down the road.

There are a lot of substantive things

about the system, a lot of issues that we feel that still need addressing, and we prefer not to get into those in detail here, because we don't think that's the purpose and we don't think that the rulemaking schedule can be kept if we get into those.

I will say that we believe that there have been some proposals out there, some public statements, that we think could be disruptive to this rulemaking process in that they tried to widen the scope, and we think that has to be resisted.

We're prepared to throw out all the things we want on the table, but we don't want to muddy this process, which seems to have some real promise.

As I stated previously when John Molm talked, it is the understanding of the members of our groups who are part of the NRG that that process did not intend to really say how many processes would end up at the end of this whole rulemaking, whether it would be one or two or three or more. So we, you know, want to always make that point, that what we believe we signed on to didn't go that direction.

At the same time, we do advocate simplification and frankly think that one process is probably going to be the best thing for everybody. I think that we believe that even the system we have

now, with two processes, is causing confusion because there is really not two processes. I think anybody knows who is involved in cases, there are 100 different kind of processes on a spectrum all the way between traditional and alternative. And it's very confusing sometimes. I'll tell you for certain that some of the alternative so-called processes I'm in are much less alternative, much less collaborative than traditional processes, and we think we would be better not to muddy those waters.

We think there should be plenty of flexibility to allow more collaboration in the one process that we end up with. That's one of our feelings.

Again, the issue of public participation is not strongly dealt with in the NRG proposal, but it does lead toward the conclusion that everybody wants that. We think that maybe there are some ways to promote that. I'll use this meeting here today as an example of public participation. I told Joe back there that, I may be wrong, but I think he's probably the only one here today who's not getting paid to be here. Again, I could be corrected on that. But everybody, including myself, are people who work on this stuff because, you know, we're expected to be

there.

But there are hundreds of people that I work with and Ron works with and others of us across this region right now working on FERC processes, and the fact is most of them, I couldn't twist their arm hard enough to get them here, because this is Atlanta, this is a workday, this is one more thing that regular citizens are not likely to show up for.

If we really want an open process, we have got to take that into account, both in going through this regulatory process and in general.

We believe that the goal of trying to get study requests and study scope resolved early in the process is absolutely necessary. We would, frankly, say that while I believe the NRG and IHC proposals address dispute resolution and ways to try to make that happen, I don't believe they specifically talk about even requests from anybody but the agencies. And, you know, we want to point out that the more of those things we can get taken care of, it should not matter what the credentials are of the person asking for the study. You don't have to have special credentials to get into this process and you shouldn't have to have special credentials to ask for reasonable sound studies. And if we could resolve as

many of those requests early on as possible, whether it was from NGOs or agencies or anybody else, that's what needs to happen.

I can tell you from personal experience that of the cases that I'm working on around the southeast -- and I'm not going to get into any specifics, Ron -- I'd say right now the majority of those cases I expect to be pushing for additional information requests, and that is not something that makes me happy. I don't think that's the way it should go.

We think that the NRG proposal also can help with the transparency of the process, the analyses. We, again, think that we're supposed to come out of this process with analysis documents that lay out the facts, and how we got there, and we think the NRG proposal on that score is a really good idea.

We have had some discussion, plenty of discussion of course, about the idea of having agencies be cooperating agencies, work on the NEPA documents, and then how they would or could then become parties to the process later if they feel they need to. Frankly, I have looked very closely at the kind of guidelines that were set forth in the NRG as to when that could happen, how it could happen. We

don't think it should happen willy-nilly, we don't think it should happen lightly, but we think it should be left open, especially because agencies often have mandates and their own public process which could lead them to conclusions toward the end that they didn't have early on.

So, as I believe you can tell, just about all my comments say we like the NRG process, we believe the IHC proposal is pretty consistent and complementary to it, and we think we're on the right track. I feel like I should say a lot more since I have got a captive audience, but I don't think I will.

Thank you.

MR. McKITRICK: Thank you, David.

Is there anybody else that would like to make a statement?

MS. JANOPAUL: Mona Janopaul. I'd like to ask if David would entertain some clarification questions of what he said?

MR. McKITRICK: Sure, Mona.

Is that all right?

MS. JANOPAUL: The first thing, David, you mentioned that it's difficult for members of the public to come to a particular town in the

whole southeast in the middle of the week, and I wanted to point out upcoming opportunities and also ask you what your suggestions were.

Just for the record, the schedule that Ron pointed to provides for stakeholder meetings, sit-down, face-to-face working meetings in D. C. after the written comment period, and they can submit written comments up until December 6th, and then there is that working session.

But these are kind of unusual meetings. These are pre-rulemaking meetings which are, I think, a tremendous opportunity for all of us. But there's still even regional workshops coming up after the notice comes out. The one for the east is going to be in Charlotte sometime in March or April.

Are you going to be making any suggestions like we should have evening meetings or weekend meetings, or is there something else we can do to facilitate input or exchange?

MR. SLIGH: I think that, first of all, I'm not ignoring the fact that there are a number of steps here, and not intending to beat up on this process unduly. I think that by talking frankly to some of us, both NGO, and companies, and others who work around this region, we're in big clots --

Birmingham or western North Carolina, or different places around the region at pretty regular periods -- and probably you would have gotten more input and you would have gotten more attendance at something like this if it had been scheduled at an evening and somewhere around when all those folks are getting together anyway.

Now, I know that it's a logistical nightmare, period, but that would be the way that you would get regular citizens there.

MS. JANOPPAUL: All right. Well, I encourage you to have folks put those in their comments.

I also wanted to point out for the record today, in the attachment for the IHC proposal, at the end of the proposal there's various agency representative names, phone numbers, and e-mails. If you decide you have a question and you want to direct it to any of us, or at least I'll volunteer myself -- I see David's name and number is down there -- please feel free to give us a call, or send us an e-mail.

Also, we're going to have a tight turnaround. The comment deadline is December 6th. It's still very difficult to get mail in D. C., very difficult. We usually get it about two months after

you send it. If you have comments that you want us to consider when we're going in to work on the NOPR in early December, it would be great if you would e-mail that to us as well. I would really appreciate that.

David, will you take another question?

MR. SLIGH: Sure.

MS. JANOPPAUL: You said something, that you expect in many of the current proceedings to be submitting additional information requests. Now, is that after the application comes in, is submitted to FERC?

MR. SLIGH: I anticipate in a number of cases after the application is filed, following additional information requests.

MS. JANOPPAUL: Could you say in a hypothetical or generic as to how the NRG or IHC proposal can avoid the situation, or what's wrong with it currently that it tends to lead to that? I mean that's something we're really interested in avoiding, is that additional information request situation.

THE WITNESS: Yes. I would tell you that in at least at couple of cases there are specific study requests that we made, and in some cases

agencies also made, federal and sometimes state early on, and frankly, those were either not addressed straightforward --

MR. McKITTRICK: David, if you don't mind, I understand the position, but if there is some proposal that either the NRG or the IHC could avoid that, as opposed to the problem, it would be helpful.

MR. SLIGH: I'll try not to discourse on that. I think that, again, as I said, the dispute resolution early on would be useful, and I think both proposals include something in that line.

I again would say just as a citizen and as someone who routinely comments on study scope and all those issues, that we'd like that to be triggered as easily as possible. And I know that, you know, there are certain reasons, statutory reasons, that agencies have different status than we do. We are not trying to forget that or ignore it. But, as I say, sometimes early on citizens come up with study ideas that the agencies haven't gotten to yet, and we just want to make sure we get as many of them out of the way as early as possible.

MS. GLORIA SMITH: You mentioned, David, that there were a number of important issues that needed an IHC or the energy proposal addressed but

you were afraid of throwing off the rulemaking schedule. If you were to raise those, I can't speak for FERC, but I don't know when FERC plans on doing another rulemaking after this one, so if you do have issues that are of concern, you know, within the bounds, I would encourage you to go ahead and raise those in your written comments.

MR. SLIGH: Well, I think you can safely believe that we will put in anything we think is within the bounds of this process.

What I was really getting at, frankly, was we think that it's unusual and great that some of the parties have been together so far, and we want to take advantage of that and push it through, and not derail it at this point.

MR. McKITRICK: Thanks, David.

MR. SLIGH: Thank you.

MR. McKITRICK: There wasn't anybody else? There's nobody else that wants to make a statement? Okay.

We're still ahead of schedule. We do have an agenda, so I want to bring this to the group here. I mean there are several options I think before us. To me what kind of makes sense is not to wait until lunch and come back after lunch and have public

discussion, but to start that now. We're scheduled for lunch at 12:45, so that gives us a little bit of time to enter into the discussion part of this, and that would be my personal recommendation, and then take a break for lunch at the scheduled time, and/or see where we are at that point in time, see if we have got another five minutes or more to go, and then either break at lunch, come back after lunch and continue the discussion.

Are there any other recommendations or anything that somebody else would like to do, or a better idea?

If not, I think we'd kind of like to proceed, then, into the discussion part.

Again, I would say that as we get into this, wait until you get a microphone to speak. Ken, back there, will be looking for hands, and be able to do that for you.

We had a short list of some topics that Dave brought up, talking about, you know, there should only be one process, indication about public participation, talking about study requests, dispute resolution, and agencies cooperating, agencies as corroborators, when and how.

Some of those fit very nicely into the

suggested topics dealing with integrated licensing process, study development, study dispute settlement, time periods, coordination of state and federal, tribal, as well as the relationship of the existing processes with other processes.

I would kind of like to get a feeling for what are the most important topics for the folks here so that we could start there, and then move through this list, and as time permits hopefully get through it; but if not, at least we'll get what people are really interested in. Maybe just a show of hands at this point. Maybe going through this list, I'll let you vote twice, once for -- not for the same topic, but one hand, kind of see where folks are.

We had discussion about the idea of integrated licensing process, and we have two examples of that. Is that really hot on anybody's agenda that they want to kind of get into a discussion about?

The idea of study development, study requests, is that something that -- okay. We've got a couple of hands for study requests.

Dispute resolution process is outlined in the NRG or IHC. We have a couple there, three.

Settlements, how they may interact in this

process, time periods that were put forward, I would assume primarily in the IHC as well as the NRG. Any comments specifically about those time lines, time frames?

Coordination of the different state and federal resource activities, FERC process, and, finally, the relationship of existing processes with others. Okay.

I think we'll probably start with, my general count, with kind of the settlement idea. And then it looks like it's pretty equal. Just start there, maybe the study developments. I didn't see anything for integrated licensing processes. Just start going through this.

So the concept of settlement, how they may fit in with a new integrated process, was this contemplated in either the IHC or NRG proposal?

Mona is shaking her head. Maybe just give a very short overview of the IHC, just to give you, again, an idea of how the contemplated settlement is working to maybe stimulate some of the discussion, David.

MR. DIAMOND: Well, I mean the proposal was focused on essentially a formal process, and so we hoped that it wouldn't interfere or hinder in any

way positive negotiations towards the settlement. So the question that was asked in the Federal Register Notice was how can this process best promote settlements, and we basically asked that question because it was not foremost in our minds.

MS. JANOPAUL: Mona Janopaul. I agree with David, it was not foremost on our minds, but we did think that settlement would be more likely than not if we removed uncertainty, we had less outstanding study information requests, if we had scoping and early identification of issues and stakeholders so that there weren't things coming in late, if the agencies were more coordinated so that there was not any agency issues. So we thought settlement might be more likely under this process than perhaps the traditional process.

I don't think we were thinking about the ALP that much. But we did want to make sure that there was adequate time in this process for settlements to develop, so we were definitely interested in hearing back from states, tribes, licensees and the public if they thought our proposal would encourage settlements or make them more difficult, and we were definitely looking for a reaction on this issue, because settlements are

something that we have all said we want to encourage and participate in.

MR. McKITRICK: It seems like they're certainly looking for input to help their process.

John, is there anything that NRG --

MR. MOLM: There was a considerable amount of discussion about settlement in the NRG meetings. I believe the consensus was that settlement needs to be encouraged and the maximum amount of flexibility ought to be given to the parties attempting to settle on issues or mitigation or enhancement measures. Many times people are able to settle without undertaking prolonged and expensive studies based upon what is known in the field, a biological question, for example, and we were able to arrive at a settlement that is fair and cost effective and is efficient, and, further, moves the licensing process along.

We don't think there should be a requirement that all settlement be based upon paper studies that should be undertaken when, in fact, sometimes settlement can be reached without prolonged studies.

MR. McKITRICK: Thank you. We will be very interested in your ideas about settlements in

this process, how they may fit in.

Please state your name and wait for the mike.

MR. HANCOCK: Jim Hancock. I have a question, I guess for David, but for any of the panelists. I think that everyone wants to encourage the opportunity for settlement. The IHC commission initiates licensing proceedings, and this is in the scoping or pre-scoping process, under FERC's regulations. I wonder, if that takes place at that point in time does that trigger ex parte and, if so, does that have a chilling effect on the parties' ability to negotiate with each other with FERC in the room or with the agencies? Just comments on that, please.

MR. DIAMOND: David Diamond, Department of Interior. The IHC process is a formal process. It's not -- it doesn't require collaborative set-up like the ALP. Settlement can, of course, occur in either, whether you're either. The IHC process is conceived as a formal on-the-record proceeding, not requiring the collaborative protocols of the ALP, and therefore it's somewhat similar to the traditional process, in which you might have -- settlements would be off to the side.

MR. McKITRICK: Ann Miles.

MS. MILES: Ann Miles, FERC. I actually can't quite remember, I think the idea was that the proceeding could begin without necessarily triggering ex parte, that it could be triggered at a later date. I think that's something that, you know, you all need to comment on, because if it is an official proceeding on the record then that definitely is an issue.

But other IHC folks, does that ring a bell with you? I believe that was the discussion that if we could begin a proceeding so that everything is on the record, but we do have the flexibility to have ex parte triggered at a later date.

MR. McKITRICK: Mona, is that the ex parte --

MS. JANOPPAUL: Our idea of starting a proceeding was to have early identification of stakeholders and issues, not necessarily a formal intervention situation that would bring about ex parte. We also wanted to have FERC staff acting earlier in the process. So my recollection of the discussions Ann mentioned -- and, again, we're open to this. This is for you to say to us what you want -- but our idea was to get FERC involved

earlier, get away from this issue of a mailing list or service list only after formal intervention, as a way to reach out to the states and tribes and get them involved.

The tribes yesterday informed us that they wanted to consult with FERC early in the process, so this seems to fit their point as well.

In some of the ALP processes, FERC staff does become involved early. I don't know what particularly triggers that. But I've been in ALPs where FERC staff was involved in the scoping meetings, and just as a resource in the licensing development and application period. And I think we envisioned something more like that. But we are wide open. This is a work in progress. If you see problems or if you have suggestions, we're wide open on this.

MR. McKITRICK: Thank you, Mona.

Again, this seems like something that we are really looking for your comments on either one of these proposals or any ideas independent of this. These are two ideas that we have. If you have got a better idea of how to do this, give it to us, be as specific as you can, and encourage language that will allow us to implement that.

David.

MR. SLIGH: David Sligh with American Rivers. As far as settlement, we believe, or I believe and I think the folks, the NGOs that I have talked to believe, that the proposals that have been put forward, I believe both NRG and IHC, would more than likely promote settlements.

I take a little bit different slant from John, which probably doesn't surprise him or anybody else, but we certainly believe that getting agreement on what studies are needed early on and getting those informational documents, if you can get as much of the facts out there before you start, I guess, trying to come to official conclusions, we think that would be very beneficial.

For us, we think the alternative process should be all about getting a body of evidence, and facts and knowledge that we can all trust. And, frankly, that's not always the way it is with ALP, because we have lingering disputes, lingering concerns that have to wait until way further in the process.

We, frankly, believe that there are some minimum things, some minimum types of studies that probably have to go on in every relicensing. And as

I say, I'm not sure to what extent we'll talk about those kind of specifics in our written comments, but we definitely don't see this as a way to make -- to making agreements without a really full record. We think it's obvious that under NEPA you've got to have a really full record and we want a really full record going into something that's going to effect resources for 30 or 50 years. But anyway, we believe settlement would be enhanced.

MR. McKITRICK: Anybody else have any kind of guidance of how to do this? I don't hear anybody saying discourage settlements. We're just looking at ways, if it's appropriate, how to build that into a regulatory framework, or does it just happen?

MR. CLAY: Brad Clay with Alabama River Alliance. I'm participating with TVA as they look at reservoir release improvement process, and it certainly is in some ways an inferior process to the relicensing process, but there are some good ideas that come out of it.

TVA has looked at various means of getting public input, not just meetings but polling and surveys. I work with a lot of local folks who live on rivers and streams who are concerned about fisheries, safety, boating safety, and safe

recreational use of the waters, who have a difficult time engaging in the process and understanding the process. And, as Dave mentioned, it's hard to get them to meetings.

If you had it in a different place at a different time, perhaps we would have more of them here, perhaps we still wouldn't have the kind of representation from those groups that are needed.

So one suggestion is to look at reaching out to them; instead of trying to get them to come to these meetings, to develop some kind of survey and to interview the volunteer people who are involved in these process and try to understand the need, challenges that they have in engaging this process, because there are a lot of volunteers who are struggling to understand the process and it is a long process and difficult to understand.

I don't know if that would identify solutions, but at least I think you would have a better idea of challenges faced by the volunteers that are engaged in the process, and are frustrated and often come to me with their frustrations, and I don't know that I have come up with solutions. I believe that licensees are genuinely trying to involve these folks and to understand their concerns,

but there are a lot of meetings, it's a long complicated process. And there may be alternative means of securing input and feedback from the volunteers who are engaged in relicensing that could help to guide the rulemaking.

MR. McKITRICK: Brad, as I understand it, associated with this, you think reaching out to the public in some form and bringing them into the process would aid the settlement process because they would be fully involved, dealing with what we're thinking about as specific settlements in this case?

And if that's the case, and it may very well be, what we'd be looking for is -- I think I understand the problem, but we're focused on how do we do that. We're looking at changing the regulations. So as you form ideas and your comments or thoughts, if there's things that we could put into a regulatory view as opposed to a concept or a problem, that would help everyone. I think that's very good.

David kind of alluded to the dispute resolution process may very well aid in the settlement process. Why don't we just kind of go from the settlements and back up one into the dispute resolution, maybe quickly, very quick overview --

well, we lost the NRG.

Let's see. Are there any ideas about the dispute resolutions or questions or how to change that, make it better? Should there be one? Should there not be one. I have two or three people that are marked down as to that being their issue.

Jim.

MR. CREW: I'm Jim Crew, Alabama Power.

Since it is a pretty well known fact that the most reasonable, understandable, and just great people involved in a relicensing are the licensees, I guess I'd like to hear a little bit of logic of why they're not involved in the dispute resolution process.

MR. McKITRICK: Sure, and that was specifically in the IHC proposal. Would anybody from the IHC like to address that?

MS. SMITH: Gloria Smith. I don't think that anybody views the licensee as not being part of any dispute. The whole study request process begins right from day one and the licensee and the agencies and all stakeholders are working together to agree on a study proposal. So if that falls apart and the licensee and the agencies can't agree on a study proposal, all the way to eight, at that point the dispute becomes between FERC and the resource agency.

MR. McKITRICK: Just for clarification, box eight is that big diagram in your handout there.

MS. SMITH: The board game.

So at that point the dispute is not involved between the licensee or the applicant and the agencies, it becomes for FERC to make a decision on whether or not those study requests are reasonable. And it may appear that it's unfair to not have a licensee as part of that panel, but that certainly isn't the goal, to sort of stack the deck against licensees.

The whole process is one that's supposed to be open, giving the appearance of openness and fairness, and that's why I adopted the study dispute resolution criteria, and each panel will be limited to looking at that criteria only.

The panel will be composed of a research agency person, but not the person who's involved in the licensing proceeding. And then the other third-party individual could come from another agency. We haven't even decided what that other third-party person would be. And then someone from FERC.

So it may appear to be a little bit unfair, and we would love to have a dialogue with you

so we can explain. It's actually supposed to be a very uniform process in order to, one, resolve the problem and, should we not resolve the problem, the record will be replete for anybody to seek higher relief.

Does that help at all?

MR. McKITRICK: Jim, is that --

MR. CREW: Yes, that helps.

MR. McKITRICK: Mona had maybe some additional information.

MONA JANOPPAUL: Mona. I just wanted to step back a little bit. On the Interagency Hydropower Committee we had the FERC and the agencies with mandatory conditional authority, and, you know, we have got our direction somewhat from the Interagency Task Force and the Federal Advisory Committee there. We had remaining issues that were not resolved through administration in form of practice or policy, so we had some goals established there. And the NRG had about the same goals. And just like the ITF agreement, we would speak for ourselves but we could not speak for others. So the IHC proposal is what we came up with as agencies. It is still a work in progress.

The largest difference that I see between

the IHC proposal and the NRG proposal is the NRG proposal appears more conceptual, while ours is more developed into specifics.

My personal opinion is that the study dispute resolution is still the most conceptual part of our proposal and is most open to your input. If you have some changes or suggestions on that, we are wide open on that. We're still even reviewing our own field comments on this part and we are wide open on that.

But just to support what Gloria was saying, the idea is that at that stage the Commission would have adopted what the licensee was proposing as the final study plan. And the agencies' issues would be with the Commission in going forward with the single NEPA document, where the question was whether we had sufficient information to develop conditions or not. And so yes, we were thinking of ourselves.

Now, this is open to the states, to tribes, to you, and this is still a work in progress, just to support what Gloria said.

Please, any suggestions here? This is not set in stone.

MR. McKITRICK: Thank you, Mona.

Diana.

MS. WOODS: Diana Woods with EPA.

I'm just wondering as a point of clarification, is there a separate dispute resolution process for studies requested by agencies with mandatory licensing authority versus any other stakeholders, because in the case of studies requested maybe by homeowners, by, you know, other stakeholders who don't have licensing authority, I'm just wondering, in that particular case, I would find it sort of strange for the licensee to not be at the table. I'm just wondering if you'd clarify that.

MS. SMITH: Gloria Smith. Because it was only federal agencies sitting at the table and IHC, we did contemplate only the statutory agencies being engaged in this process. By no means does it mean that that's going to be the ultimate end result. That is what we envisioned at the time. You're right, it's not clear, and I think we purposely left it unclear. But the statutory agencies are the ones that would at this point avail themselves to that process.

MR. DIAMOND: What we were looking towards was one NEPA document, so the whole focus there was getting information that would enable all the agencies that were making decisions to use one single

NEPA document.

MR. McKITRICK: Mona.

MS. JANOPAUL: Mona Janopaul. I just would suggest, just as we are not making any proposal to do away with the traditional licensing process, or the alternative licensing process, I'd like to point out that FERC regulations do provide an opportunity for dispute resolution prior to the application being filed, a decision made by Commission staff.

There are certainly many processes, the opportunities for informal dispute resolution either through the FERC, ADR office, or any other dispute resolution mechanism. So those are all informal. This is more adopted towards regulatory form than to deal with the situations that David and Gloria talked about where there's uncertainty in issues concerning a NEPA document after the application is filed. Right now this proposal would not do away with any of those current dispute resolution processes or opportunities; unless you want to propose something. Maybe you want those reformed as well.

Usually I carry the FERC regs around with me and read them at night, but I don't have the exact citation for the current dispute resolution process nor do I think there's anybody here from FERC ADR to

Speak, but please follow up on that.

Thank you.

MR. McKITRICK: Thank you, Mona.

George.

MR. MARTIN: George Martin, another kinder, gentler licensee. If I heard correctly from Mona, the dispute resolution would be after FERC had accepted the study proposal that the licensee had put forward.

And, Gloria, I believe you said that the representing agency representative would not be the agency representative that was intimately familiar with the proceeding and that study plan.

I think it's reasonable that the licensee would be allowed to have a representative of their company, be it at the table, who's not intimately familiar with the resource study dispute as well, just for the appearance of openness and fair participation. I think it's critical for the licensee to have a transparent view of the dispute resolution rather than after the fact "Well, what went on at that meeting that we were not allowed to be a part of it?"

MS. SMITH: I guess I don't think anybody envisioned that those federal entities would go off

into a private room with the door shut. I would certainly envision the licensee could actually be sitting there. We didn't talk about it.

Again, the point of this dispute resolution process is sort of the resource agencies have the burden of proof to show that the study that they're requesting furthers their resource management goals and objectives, to show that there has been a project impact. And there are certain resources under that agency's stewardship that they need to protect and they need to sort of fill in the whole circle, and it's their burden to do that.

So then I guess the concern was it would just become yeah, taking the argument that had been occurring, you know, in the diagram here, to FERC. Again, the envision is that it would be between the resource agency to show to FERC that they had actually met their resource management goals and objectives and shown all that.

I just have to say one quick thing about the study dispute resolution. It is definitely raising a lot of concern, and this is all to be focused on a lot, I think, when we sat down to iron out this whole process, that we were hoping that this thing would never even be triggered. The whole goal

is to have this process front-loaded enough and, you know, building trust, having a rapport here, that we don't actually get to that point.

MR. MARTIN: I fully appreciate that spirit, that the issues would not lead to a situation of dispute that needed to be resolved. Much like it is the charge of the resource agencies to assure that the resource studies support their comprehensive resource management goals and objectives, it is somewhat, if not more than somewhat, the responsibility of the licensee to assure that there's a direct nexus between the project operations and the resources that are studied that will meet the resource goals and objectives of the resource agency.

So I appreciate what you're saying as a first step, that at least the licensee would be in the room, which is not off in some secret hidden place in the bowels of the federal agencies. That's the first step. I think it's in the spirit of front-loading and resolving issues and never getting to the dispute arena that the licensee is involved throughout.

MR. McKITRICK: Mark.

MR. OAKLEY: Mark Oakley, Duke Power.

Somewhat in the same vein of what we've been talking

about, I think that really I wanted to underscore as a very positive observation, probably the most tangible and significant improvement or positive aspect of either proposal that I saw were the study criteria. I think that Duke commented back in 2000 that study criteria were needed, and that not only serves the dispute resolution process but having them in place certainly put that tool up front and in advance to help applicants and requestors, you know, look at that and apply it to their own deliberations.

That being said, you know, I do share, frankly, some of the other licensee concerns that the dispute resolution be done in a way that is an equitable representation of the record. If there is a panel that does not involve the licensee as a direct participant, then in some way to bring that discussion back to the licensee and have a chance to review that portion of the record that was established during that panel's discussion, or something like that.

It does appear to be a little bit of lack of closure, or maybe it's in the explanation, but it does need a little work. And I appreciate Mona's comment that this is still open for discussion.

MR. McKITRICK: Thank you.

David.

MR. DIAMOND: Very much appreciate these comments. We do have work to do on these.

I just have a question. The IHC and NRG dispute resolution procedures are somewhat similar and the panel that the NRG contemplated, I think also was. Could someone from the NRG talk about the discussion that you had about how this panel might work, and I guess I'm thinking that the licensee would have input to any panel and put information before that panel and, of course, be part of the decision. But I think there was some discussion about what the composition of the panel should actually be.

MR. McKITRICK: Good point. We haven't had a chance to hear the NRG position on this, and John was out just for a few moments.

The focus of the discussion has been as you read through the IHC proposal dealing with dispute resolution, there doesn't seem to be a mark in there for the licensee in this formal panel process. Did the NRG contemplate anything along those lines?

MR. MOLM: There were several instances when licensee participation was discussed. I think

by the fact that the NRG in its attachment to FERC, responding to comments it received when it distributed the NRG proposal, one of them was the licensee role and responsibility. Any process for relicensing must provide an appropriate role for the current licensee. As the party responsible for funding and executing the required studies and implementing any license conditions, the licensees must be intermittently involved in all phases of the proceeding.

That's as specific as NRG got in its -- it didn't go and say well, they have to sit there in the dispute resolution process or they have to sit there in the advisory opinion. But certainly it was discussed, I think in every substantive topic, that we need to have licensee participation, or this proposal would not be sellable to the licensees out there.

So I think there was an extra effort to make sure that the licensees received comfort and, by the same token, that power received comfort that they would have adequate opportunities to participate.

MR. McKITRICK: It seems like everybody is in agreement that dispute resolution may be a very important part of this integrated process. I think

we are, both the NRG as well as IHC, are really looking for some help. Here's a chance to review these and come up with better ideas in this type of forum. So the charge would be if you think the dispute resolution process is important, how it should be redesigned, where should it take place, and how should it be specifically implemented within regulations.

Obviously, if you've got the answer right on the tip of your tongue we'll wait for it; but if not, please include that in your comments. It seems that, as Gloria indicated, it was certainly one of the topics in the Milwaukee discussion, and I don't see any reason why it probably won't be in others. So you all get together and come up with some good ideas.

Dave.

MR. SLIGH: I don't have a good idea to solve it, but I want to give you a hypothetical to keep in mind when you're trying to solve it. One of the things is that we focus a lot on the federal agencies and their conditions. I think a lot about the state agencies and their conditions, and one of the things I keep pointing out is that early in the process, first of all, I don't always have the state

401 people there, unfortunately, even when I try to drag them to the room.

But, second, they don't always agree with me as to what they're going to need down the road in their process right off the bat. That's fine. They certainly have the right to make their own judgment. But there will be a public process at the end in the state that we will be involved with, and I can tell you that there may be times when I will be arguing that the state should have required something that it didn't require.

So I would just say that early in the process if you can hear those assertions from the NGOs, it would be better for the whole process. I don't intend to hold those until 401 starts, and then throw a wrench in the whole process, and I don't necessarily want to be -- I don't know how this dispute resolution should be structured. I don't know that I would even want to be at the table necessarily. But you have got to keep in mind that there may be issues that haven't come to blows yet, that we could help people know about.

MR. MOLM: David, let me ask you a question. I assume, if I don't already know, that certainly American Rivers and other NGO groups have

ongoing contacts with federal and state agencies. Do you suggest to those agencies study topics that should be undertaken, study methodologies that should be employed, and is it not often the case that the agency, if it's well-founded and well-supported, will pick up on and utilize your recommended study development and study methodology? Is that not the case?

MR. SLIGH: It is certainly not the case that that happens and that that's possible in every case. Again, though, there are very different levels of involvement from both federal and state agencies on different cases around this region. And furthermore, you know, we're always in a situation where we have revolving chairs. We have people going from one agency to another, and getting out of this process.

I guess all I'm saying is not that that's not an established part of it, and that I don't avail myself to it, but that there may be times when either they have not been there or I have not yet been able to convince them that they should see my side of it as far as what studies are required. And I'm just saying that I would feel more honest and more productive to try to also get some of those things

addressed early on instead of waiting until I have to fight with a state or federal agency later down the road.

MR. McKITRICK: We've kind of moved into a couple of different fields here, outside of the dispute, specific dispute resolution process, one of them being the draft study development, which probably should have been done before disputes, since that's probably what you're disputing. And the other is some sort of coordinated activity with the states.

If there's no other things associated specifically with disputes, my recommendation would be to move back to study.

I saw a hand. Ann Miles.

MS. MILES: Mark, you brought up the question, the criteria, and I wonder if anyone has any comments on the criteria at this point, if you have looked at it enough to say yes, it hit on the major topics that need to be hit on, or is there something in there that you don't like, or more that you'd like to see?

MARK OAKLEY: This is Mark Oakley. My first read is they get very close to the mark. But I think that we would like to see somewhat more definitive and possibly some other, what we view as

criteria introduced, but a very good start.

MR. McKITRICK: Again, I don't want to leave dispute resolution before we settled on that you all are going to work on this and give us some good ideas. I think that looking specifically at the criteria, I think it weighs heavily in the IHC proposal.

I would like to then back up. We've kind of talked about study development a little bit. There were a couple of folks that wanted to mention that. Maybe just again, is there a quick review, again from IHC, how they plan, how they see study development coming along in this process? How that's developing?

MS. GLORIA SMITH: Just a quick -- Gloria Smith. Just a quick overview observation. I think the point for the IHC proposal is to take the best element of the ALP and to have a corroborative agreement on study development. As John said, it's real important for the licensee to be involved. The licensee is absolutely essential. We can't do it without you and the rest of the stakeholders. If everybody is sitting down right off the bat in box one, working on how to develop a study proposal, we're going to get through this process really clean

and easy, so I think that was the whole point.

MR. McKITRICK: Karen.

MS. ABRAMS: Karen Abrams. Just to add to that, the idea was initially in box one, when the licensee submits that pre-scoping document, that some thought would already be put into what studies were required, so back and forth. I think also there was a lot of discussion about making sure that when you got to the point where a decision is made about what studies are done, that if you haven't been participating early on, you're going to need to have a really good reason to come in late in the game to ask for something that hadn't been brought up early, because the opportunities are certainly there. And there are situations where that may occur, but we tried to set up a process hopefully that would balance those needs. And it would be nice to hear from you if you think that achieves that objective.

MR. McKITRICK: John, just from the NRG perspective, is there anything --

MR. MOLM: Yes. From the NRG perspective, the study plan starts with the licensee to provide an opening study plan very early in the process. Then it goes to FERC and the cooperating agencies if the issue -- for an advisory opinion that discusses and

determines the study topics, to address the methodology to be used, the scope of the analysis, what impacts on what resources are to be analyzed, and then it comes back to the licensee, where the licensee and stakeholders have an opportunity to respond to that advisory opinion. So there is an interactive process as we go through it. It's not all sitting in one room, it's more formalized, but I think it does provide a modicum of input from the licensee, and I don't think there is any harm for more input.

MR. McKITRICK: Diana.

MS. WOODS: Diana Woods. Just in response to your comment about having good -- since there are no state people here, and we just had a meeting with the states on their 401 processes, and finding out that on average the region four states, or the southeastern states, have a maximum of three people that do their 401 certification, and they dedicate about 10 percent of their time to that effort, there are some good reasons why you don't have state people following for five years the FERC process. It's not that they're not interested; they basically just don't have the staff in their programs. At EPA we're hoping to try to do something about that. But in the

interim, you know, when people aren't involved there usually are good reasons, and in the case of the states it's a resource issue, just to dedicate somebody to those projects for five years.

MR. McKITRICK: That's appreciated, and I'm sorry we don't have anything about that from the states either. But particularly as you get back to the 401 people, if you could get them to kind of gloss down to the coordination with federal and state resource agencies, either with EPA's help or guidance, or back to the states, if they could focus on this, because it is certainly a problem.

MS. MILES: Yes, I know.

MR. McKITRICK: And we are looking for ways to work together to resolve this, so that would be good.

Ann.

MS. MILES: My comment is sort of similar to yours, Ron. Understandably, everybody is short-staffed and it's very hard. I mean the states do have a responsibility for 401 and we know they want to carry that out, so I guess what we're looking for is how can we have that happen at the beginning? If they only have a little bit of time to put in, the real key time is when the information is being -- the

studies are being decided on, so that the information that they need to do their 401 is being gathered at the same time it's being gathered for everything else. We have a lot of projects where everything is done, but the 401's hanging out there, so this is one of our most difficult issues to try to deal with.

And if you from EPA can give us any help in how we can work together to get the states to comment -- we really are trying to reach out to them -- and this in particular, you know, what they can give us about how we can do what's useful and get them involved early, given the resource constraints, that would be really a big help.

MS. WOODS: I think there are two things. Their concern that their process will start at the beginning, their review process, they have a one-year clock for making a decision, and so if they get involved early, in some cases that's been considered to be the starting of that clock, before the studies are done, and so they're in a position to having to even just drag things out or deny certification, you know, or something like that.

But I agree, I think they need to be involved at the beginning. You know, they need to be able to say up-front what do we need to do this

analysis.

And I believe John was saying the NRG proposal, they're advocating sort of a preapplication consultation with the agencies early on, so that you can say what kind of things are you going to need, are you going to need water quality monitoring, what are you going to need. But I don't think they're going to be involved for five years. It's going to be a rare instance where you're going to have somebody who's actually going to be involved in the process over the years.

MR. HANCOCK: Can I ask a clarifying question? Are you saying there are states that take the position that their 401 activity triggers the one year, even though the 401 application has not actually been filed, if they start thinking or talking 401 about a specific --

MS. WOODS: No. There have been some cases where a lot of the southeastern states have a joint process, 404 and 401, and because they have that joint process I think it actually works to their disadvantage, because that notice has been considered the notice, that notice that comes out by the federal agency has been considered the triggering point for their 401 process. I mean this isn't to blast the

FERC process or anything like that. It's largely having a lot to do with the fact we have some very rudimentary 401 programs in the southeast. And I think to some extent that makes it difficult on applicants who have to use that, and for other federal processes, because they're relying on joint notice from another federal agency. In fact, they don't have their own noticing procedures, for instance, that triggers that 401 clock. It isn't in all cases. We have the region four states, and it varies. But I know that there was one comment at a 401 meeting two weeks ago that they got into a position where they received that notice and that was perceived to have triggered their clock, and then they have to do something like try to either stop the clock, and get into this business of stopping the clock, or having to deny certification. It's really not that the project isn't certifiable, it's just that they don't have the information.

MR. MOLM: See, I would think that states would be advised that, really, their one-year clock does not start until the license applicant submits the application for certification. That does not prevent the state from participating early on during the study development, saying I would like you to

consider or I would recommend that this be undertaken, for my study to be undertaken for my purposes later on when I receive the request that that study be completed, so that I could utilize that study.

I think that the studies that are to be by and large undertaken by licensees now, pursuant to request by all the agencies, provide adequate information to the states, and we certainly, at least in the cases I'm involved in, we make certain that 401 officer gets those studies and he has all the studies he needs, but there's nothing to prevent him from coming in and saying well, I might need more.

MR. McKITRICK: I hope nobody's intent is to get the cart before the horse. I mean what we're looking for is a coordinated process that all this stuff kind of pops out at similar times or same times and somebody isn't either behind the curve or so far out in the front of the curve they can't participate in this. And particularly at some of the state processes where there's federal oversight, CZMA, or 401, that's really important. I think there needs to be an understanding, and I think there needs to be a look at how this coordination takes place without triggering things, or getting people involved, and it

would just be a challenge to find a way to do that.

I think that's an extremely important point.

We kind of moved from study development actually into state processes. I'll back up into study development one more time just to make sure that we don't miss somebody that would like either clarification on the proposal or have some good ideas of how the study should be developed in this process in some sort of coordinated fashion.

If not, we talked on coordination with state and federal agency and tribal with the FERC process, realizing we talked to the tribes yesterday and they will be getting back to us on some ideas.

In addition to that, there's been some input from EPA with the state. If there is any further discussion dealing with this coordination activity either here, or that took place with the NRG or IHC, particularly with the federal agency coordination, I would certainly like to hear any comment or guidance that you can give us that would move us along in this process.

I appreciate your comments, Diana, and anything we can do along those lines, or that you could help us with along those lines would be helpful.

We've talked a little bit about settlement, study disputes, study development, as well as relationship or the coordination of state, federal and FERC process.

I'd like to move into the time periods, schedules. I think there were some comments that people would like to make as far as maybe time lines, those type of things. Is there any specific? David, did you want to -- I thought you were bidding. You shouldn't flinch. Was there specific comments about time periods? We don't have to get out of here by lunch. We're looking for help here, folks.

MR. MOLM: John Molm. I'd like to say that licensees would prefer to get draft license terms and conditions, recommendations, much earlier in the process than they do now. The problem is that through consultation and through study development, through collaboration, you try to arrive at a product that balances, as required by the Federal Power Act, all of the issues that are in the Federal Power Act, plus any others. What happens if there are late-filed terms and conditions that introduce new concepts, you sort of unhinge what you thought was a good faith effort undertaken in consultation with agencies and in consultation with stakeholders.

And for that reason, I really am intrigued by the IHC proposal to get the terms and conditions submitted earlier, and I think that would be helpful to everyone. I think that you could resolve inconsistencies if they arose between not only the license application as it is being developed but also inconsistencies between agencies, and try to resolve that and reconcile it in a way that meets the requirements of the Federal Power Act. I think by having it come too late in the game it tends to upset the apple cart.

MR. McKITRICK: Thank you.

David.

MR. SLIGH: Dave Sligh. A couple things about timing. NGOs who have discussed this and I am especially concerned about having enough good study time, having a couple of study seasons, field seasons available, because we all could end up getting a lot of things scrunched into one or even less, which is really totally inappropriate for the kinds of systems we have to look at.

One of the things that might help us get there easier is to make sure that the initial consultation documents, or whatever that comes out of that, whatever we call the earliest interactions and

the earliest document that comes out, that they're real complete, and I guess that we have good criteria as to what they will include, because, frankly, some of them don't even lay out enough of what we already know.

One of the things you said, John, earlier is that, you know, maybe there are existing sources out there that we can make decisions based upon, and that sometimes is true, but sometimes we spend a lot of time digging those things up, in what should really be field seasons. So it would be important to us to make sure that those initial documents do a really good job of laying out what we already know.

MR. McKITRICK: Mona.

MS. JANOPPAUL: Just a clarification question. You were kind of, for me, getting into another discussion topic here and that is time periods. I seem to hear you say in passing that with the kind of time periods we're talking about by IHC proposal, perhaps the annual timing of those things is important to take advantage of study season timing, and I just wonder how that would work in the timing of the expiration of the license and maybe other things.

This is something we certainly talked

about. Our goal in IHC is to get by with one season.

But if you have any suggestions about how to time this better so as to hit that goal, to make it more efficient, we're really interested in that, and with the Federal Power Act requirements that John was talking about.

MR. SLIGH: I'm not prepared to give you a good plan at this point, but I'm sure we will be trying that in our written comments.

But, again, I would just say that the more we have up front, the better we know what we still need to get and can pack it into the time, whatever time is available. We think that the IHC schedule, or at least folks that I know who have looked at it more than I have on the NGO side, think there's some really good things about the IHC schedule, and so I don't want to go along without saying that. I haven't looked at it in as much detail as I had the NRG.

MR. McKITRICK: One of the things that came up, I think particularly in Milwaukee that I recall, was box zero of the IHC proposal, and that's the one with the dotted line around it, and a great importance put on that in trying to flesh that out. Particularly perhaps regulation or something of how

we could deal with that was a focus of discussion, as well as what David mentioned, the importance and the existing information, how to get that, and then an agreement that this existing information is where we can move forward from, or that it needs to be supplemented in some fashion.

So those may be some things that you may want to think about as you go through this. If there are any other comments, particularly about the first box in the IHC proposal, any thoughts that came out of any discussions that you might want to -- not really? That's fine.

Ann.

MS. MILES: I want to say something, because quite a few comments that would really fit into this first box came out of the workshops that we held with the state agencies, both the 401 and the CZMA agencies, and I think I'd like comments from people who are here, if you have got them. The comments that we have got is by putting in that box zero, you could be extending the length of time that you're actually doing the FERC process, and we're trying to make it shorter and more condensed.

But there seems to be two things that states wanted. One was they may not have a lot of

experience participating in the FERC process, so they wanted education up-front, you know, what is the process, how does it work. They also wanted to be able to sit down at the table with everyone there to identify what is each person's responsibility in this process, and what do they need in order to go through it.

So that their suggestion was before we even begin the process, can we have some sort of, you know, a day or a couple of days, where we do both education about the process itself, maybe the particular project itself, and what everybody's responsibility is?

So I guess the question that I might have to you all is, is that something that works in the box zero, or do we wait till box one to do something like that? I mean you all are out there doing this process, FERC isn't involved, unless it's an ALP. So I mean I'm kind of interested in what your experience is in that regard.

MR. MCKITRICK: Any specific comments dealing with that right now? Diana.

MS. WOODS: Diana Woods. You want to know where to put that?

MS. MILES: Or if it's a valuable thing.

MS. WOODS: It's definitely valuable. The projects that I've been involved in did that, sort of a let's-get-acquainted at some point in the early going, let everybody know who everybody was at the table and why they were there, or moved on to sort of what-is-your-interest-in-the-project sort of thing, so that you could kind of get a sense, which I think is immensely helpful to all the stakeholders, I think is more helpful, because you get the sense of the multiple interests that are involved pretty early on, which I think is very good.

Now where to put that exactly, I'd say definitely should be in the early part of the process, but you always get people, as you've heard, people turning over, coming in and going out, you get people who didn't know about it and show up, and there's still brand new people. But I still think it certainly does help to get an overview from FERC or, you know, the applicant's consultants on the FERC, the overall process, and then who the stakeholders are and what they're staking.

MR. McKITRICK: Thank you, Diana.

Absent anything else specifically with that, let's move to the last bullet. I have heard people believe there should be one process, some that

think there should be three. I want to see if anybody thinks there ought to be two. No.

Comments on how the existing traditional ALP as well as what's being proposed as the integrated process should relate to one another?

MR. AKRIDGE: Mike Akridge, Southern Company. I think the NRG and the IHC efforts have been aimed at improving the process, which by logical extension would lead to an improved end product. That is a licensee's hope we can all live with.

Having said that, I hope we don't lose sight of that goal as one of the things that we need to continue to focus on as we go through this rulemaking process.

I heard comments earlier about the need to have one process, confusion over multiple processes. I still think from a licensee standpoint that it's important that we maintain maximum flexibility to work with our stakeholders, to find a process that appears to offer the best opportunity for us to have a good product at the end of the process. And I don't see why having multiple processes creates confusion. You can only select one process and go through that at the time, so I have some reservation about saying that this will be the one and only

process.

If this does indeed prove to be the best process, then licensees will logically gravitate to that and the other processes will become obsolete.

MR. McKITTRICK: Actually, one thing that I didn't immediately pick up on, and it's probably in there, is that in the traditional process you can automatically go there. In the ALP process, there's a request and approvals, so to speak, that we can move forward from that. Is that contemplated in this integrated process, or would it be along the traditional lines, or had we thought about that?

John.

MR. MOLM: Ron, that was not discussed. We thought about. But I did want to address something Mike said and something you said.

When the ALP process was first developed, there was considerable reluctance among the licensee groups about what it meant. They were more comfortable with the traditional process. But as time went on, as licensee after licensee utilized the process, they felt there's something to be gained there.

And I think that's why the licensees believed that this should remain an option. It's not

that it will never be used, but they don't want to be forced into something they're very uncomfortable with, without seeing how it would work. I know that some licensees will gravitate to this immediately, and then I think they're should be a testing of it, see how it works out, and then you will see more licensees pick up and try that process. I honestly believe that. But I think if it's force-fed, you're going to find a lot of resistance.

MR. McKITRICK: The management approach.

David.

MR. SLIGH: Certainly we understand the issues that you're bringing up, and are not saying that as of February, or whatever, whenever date this thing is, that all of a sudden you would have one. We think there would have to be some kind of transition, and what that looks like I don't know.

The other thing is we do understand the value of flexibility to tailor the relicensing process to some degree, and we're just saying that within one broad framework we think that could be done, rather than maintaining the traditional, the ALP, and yet another.

MR. McKITRICK: Mona.

MS. JANOPPAUL: Mona. This morning we all

mentioned how long we have been in licensing. I was not in licensing when this new traditional licensing process was introduced. Perhaps those of you with experience from back then have recollections or history that would be useful for us to look back and see how this process came into effect -- I think it was off regulatory reform in the seventies -- and look at how that transition occurred.

Certainly the alternative process was more easily done because it was, as mentioned, voluntary, it was an alternative, it was an option.

I'll leave it up to some other panel member, but I don't recall that we talked about that this would require what Ron asked, which is some kind of hurdle to get over and all parties to agree. But if someone else on the panel recalls differently, I'm open to that.

MS. ABRAMS: I agree with you, Mona. I don't think we envisioned something like that or an off ramp to take on another process. I don't think we talked about that.

MS. SMITH: I think, just speaking as an IHC member, I have been involved since July of '01, and sometimes there were meetings that were more than once a week. We didn't think when we sat down and we

were hammering through all this stuff that we were creating a third way. We were hoping that we would take the best of the existing processes and come out with just one.

What we have been finding ourselves is these hybrid processes, and just kind of looked at that to see well, are these working? Apparently the traditional is not working, and maybe the ALP is not working, because everyone is picking out this. So we looked at all the different machinations, and I don't think we really envisioned a third way.

MR. MOLM: Let me make one observation. At least among the lawyers I have spoken to, as Ron mentioned, you have to apply to FERC to even be allowed to undertake the ALP process. And I know of instances where licensees have made such a proposal and it's been denied. Then where do you go?

And that is one of the primary reasons the traditional licensing process is there. There has to be some form of consensus before the Commission will approve a licensee undertaking an ALP. I think that the industry looks at the traditional licensing process as kind of the default process. If no longer the primary process, it certainly is one where people have seen that set of regulations for many years, and

even if they're not comfortable they know they have been there, and they have been precedent, set along the lines using the traditional licensing process.

And I just absolutely believe it has to be there because if the ALP process or even this process may break down, then where do you go?

MR. McKITRICK: Well, it seems like we have not entire agreement or understanding and we are certainly not going to settle that today. But we'll certainly look for your comments and explanations of how these processes should interrelate with one another, or if there should be one all-encompassing, or some machination of all that.

So please, when you see these things aren't real clear, you need to give guidance and help the folks putting together any proposed rulemaking. So we look forward to those comment specifically.

Any other comments about the relationship of the existing licensing processing with any new process?

Jim.

MR. CREW: Jim Crew again. In looking at the IHC block diagram here, which by the way, as an engineer, we love this thing. We'll be color-coding

and laminating it later.

But in looking at that, at this diagram, we're involved in a very large ALP, or at least a modified ALP right now, and it becomes apparent to me that we're, at least in my opinion, we're actually tracking a lot of these boxes right now, and we have been for the last year and a half.

And I guess I would be curious, without going into great detail, can someone just tell me the major differences between, for instance, this IHC and at least an ALP or a modified ALP?

MS. SMITH: Gloria Smith. I think one of the major differences is that we were at least foreseeing what's happening, official FERC involvement earlier. That's one of the major differences, calling up our FERC representative and saying, you know, what do we do about this. So having FERC at the table we envision as being helpful.

And then the second thing, I think it is different than the traditional, but going ahead and coming up with things, study proposal, as we do in ALP, but then finalizing it.

One of the big drawbacks I think we at least perceived in ALP was the fact that some of

these study disputes do drag on and on and on and that does not help anybody. We decided to put some finality on that.

So those are the two main differences that come to mind for me.

MS. ABRAMS: There are specific time frames for each of those boxes that would apply for every project, and so it wouldn't matter, like you said, ALP, then you said it's kind of modified ALP. It's kind of different for each one. So we were hoping with this that it would add some consistency to that little transparency issue so people would all know what to expect on a regular basis.

A PARTICIPANT: What Karen just said, this process would move forward on its own. The box and the arrow, just like traditional, things have to happen when they have to happen. There is not a requirement for the protocols and the collaborative formal trappings of the collaborative that you would find in ALP.

MR. McKITRICK: Mona.

MS. JANOPAUL: Mona Janopaul. Jim, the biggest thing from my point of view is that there could be one scoping, one NEPA process. So sometimes in an ALP, the licensee or the party, the ALP will do

it before they file the application and sometimes it will happen again after the application is filed.

In this circumstance, the other agencies, at least speaking for my agency, feel confident that this will result in a NEPA document that would satisfy our needs and, therefore, that's why we're committing to file our conditions earlier than we do in the current process. So I'd say that's the biggest difference from my point of view.

Looking down, looking at David's last slide, where he talks about anticipated benefits of the IHC proposal, many of them do result from an ALP, but I think that single scoping NEPA is going to be the biggest, and the fact that it will not only satisfy FERC's information need for issuing a license but the agencies, and we hope eventually the states' and/or the tribes' needs. We're definitely hoping for a coordination of processes here.

MR. McKITRICK: David.

MR. SLIGH: As an NGO who tries to scramble all around the southeast and keep track of a bunch of different projects, I want to emphasize how important the predictability of having deadlines set out throughout the process is to us. The first time you get to preliminary drafts in the same week and,

as an NGO, have to figure out how you're going to deal with it in the next 90 days, or whatever you're giving, we would have a lot better chance and the agencies would have a lot better chance, especially these state agencies who are not going to be there, the 401 people who are not going to be there for every link, but if we know when we've got to get them there, we'll put more emphasis on that.

The other thing, and I guess I have said this plenty, but I'll say it again, is that the other great advantage of either one of these proposals is let's get the study agreement figured out early.

And just quickly, to slide back into what we were talking about before, as far as whether one system or three systems or whatever, again, we believe in flexibility in the system. We believe in flexibility so that all the stakeholders have some chance to help decide which channel we're going to go down. Frankly, the traditional process, although it may have kind of been tried and true and field tested, to us has some very bad feel, especially for those timing issues, because we don't know when it's going to get dropped on us.

At least when we're in ALP, at this point, if we're at the table and we're continuing to be

there, we can gauge things to some degree, but we still don't have much control over it as stakeholder. But in traditional it's deadly.

And so the need to have something that you feel comfortable with, we hope could be worked out in something that's not quite the existing traditional, if it's even in that direction, for that reason especially.

MR. McKITRICK: Thank you, David.

Patti.

MS. LEPPERT: Yes. My name is Patti Leppert, and I just have a general overall question to anyone who wants to answer this. With regard to the issuance of the license order, how does one see the time frame being effected, whether or not that order is issued delegated or issued by the Commission? There's a difference in that time.

MR. MOLM: Before I try to answer that, maybe you could clarify for me -- this is John Molm. As I understand it, if there's substantial intervention in the licensing proceeding it's kicked up to the Commission to issue the order. If there's only a dull roar out there, the order can be issued pursuant to delegated authority. Is that roughly accurate?

MS. LEPPERT: Generally speaking, yes.

But it's also usually if there's a motion to intervene in a position, then that would be going to the Commission as well, issuance of the order.

But I'm just looking at this diagram, and it gives a time frame of 30 to 90 days in Track A, or Track B, 15 to 60 days, that the Commission would issue a license order. Again, I'm just throwing this out for the benefit of those in the audience. How is that time frame affected, if it is affected, if it does go to the Commission rather than delegated?

MR. McKITRICK: I don't know if that's contemplated or not. If anybody wants to formally comment on those kind of things or changing the way it is now, that's certainly open.

One of the other topics that we're dealing with is time frames. We've kind of been jumping around here toward the end. One of the things that did come up was extension of time. I mean these are pretty good deadlines and we're hoping everybody meets them. Is that something that needs to be contemplated or not with these time frames? I think we would like to hear comments on that. When the clock starts in 60 days, 80 days, 30 days, is there some way we look at extensions of time within this?

I just throw it out as something to think about.

The last topic that we didn't cover and I didn't see hands come up, was the integrated license process in general, about effectiveness, those types of things. I think we have talked about things that kind of fit into this, but it is one of the nine points.

If there are no comments now, I would ask you to go back and read those nine topics and answer them as you can with solutions and in specific language.

You have helped us cover, you know, our agenda here very well, I think, but there may be other things, other ideas, topics that we didn't particularly bring up for discussion here. We certainly want to hear from you if there's additional things that we had not thought about in this notice that you would like to see, to give us guidance to put into any potential rulemaking here. I don't want to foreclose that.

Ann Miles.

MS. MILES: I want to ask a question about something that's in the NRG, because I just don't understand it. The NRG proposal is for a NEPA document that analyzes the issues but doesn't make

recommendations, then it would go for the -- this is as I understand it -- that the agencies themselves would in their interventional rights or licenses would make their own calls.

My question in that is how did you foresee that pulling things together at the end? We could end up with things that don't drive, mandatory conditions from agencies that don't mesh with what's going on with the license.

And the other thing is that FERC has to do a 10J negotiation, an Endangered Species Act concentration, and things that require a preferred alternative. So I wonder if there was any discussion among the NRG participants for how we would do something that everyone is on board with, or somewhat consistent, and how we would deal with the other required FPA processes or other agency statutes without a preferred alternative.

MR. MOLM: Let me try. It was felt that if we stayed away from developing a NEPA document that contained -- one NEPA document, that is -- that contained each agencies' preferred alternative, plus the licensee's preferred alternative, that would substantially delay the issuance of the NEPA document. It was believed that if we confined -- and

that really is too strong a word -- but if we confined a NEPA document to information and analysis and left it, then, as a single document that could be used by each of the agencies, the federal agencies, to develop their record of decision and come up with their preferred alternative, yes, that might add to some of the complexity that I think I believe I mentioned earlier, but there was a trade-off.

The trade-off was to get a document, a NEPA document, out earlier, without delay, come back with -- the flip side of that is you might have contentious issues arise when each agency submits its preferred alternative. There were just trade-offs on that.

In terms of EA/EIS, I think that was discussed, that that would have to be coordinated, as it is now. I don't think there was any specific consideration given to any of the separate statutory requirements that we're required to meet.

MR. McKITRICK: Diana.

MS. WOODS: I'm not quite getting that also, because it seems to me under NEPA you're required to look at alternatives, and you're also supposed to look at cumulative impacts and all that sort of thing. I'm just wondering how are you going

to do that if you don't have a single preferred alternative in the document?

The other thing that was a little unclear to me about the agencies developing their own preferred alternatives, how are you going to get the agencies to do that? I mean in the case of, say, the water quality issue, where, you know, the state water quality certifying agency has authority, I'm just wondering how you're going to get them to do that. And where are the resources? It's more involvement, it's requiring more involvement in the overall process, I would think.

MR. MOLM: I think clearly the NRG document is designed to require more involvement by federal agencies from the get-go.

MS. WOODS: And the state agencies.

MR. MOLM: All agencies. I think, if I recall correctly, and I stand to be corrected, there would be an alternative analysis as developed by or through consultation, through recommendations, if you will; there would be a cumulative impact analysis. There just would not be the final decision. It would be factual in the sense that I think a cumulative impact analysis is factual and analytical both. It's just it would not state this is a preferred

alternative. It might have the licensee's preferred alternative in the document, but it would not have the agency' preferred alternative in the document.

MS. WOODS: I'm not sure that would meet the requirements for NEPA, but I'm not an expert. That's somebody else in EPA.

MR. McKITRICK: David, is that the way you recall development of this NEPA document?

MR. DIAMOND: I can't speak to the particulars of what NRG might be thinking about would have been in the NEPA document. But I was Interior Service and advisor to the NRG, and I was party to some of the discussions, and my recollection is that the whole concept there was, really, to address the ex parte issue. The NRG in their proposal has kind of off-ramped, and the idea was to address the Commission's concern. By being part of, corroborator, they might in some way influence the Commission's decision. So it was to create a clear separation, here is the facts and analysis, and then the Commission's decision comes separate. That was my recollection of that.

MR. McKITRICK: The other David.

MR. SLIGH: Dave Sligh. What I recall, John, from the discussions with folks who were in

your meetings is that we spent some time thrashing this back and forth. There's no question that there are particular NEPA requirements that have to be met.

I guess one of the things that was unclear in my mind was, you know, can you come out with this kind of overall analysis document? But I think we were all uncertain as to what you would call that, how would you call it. You know, I don't think you can call it a complete NEPA document, and I don't think anybody thinks that it is. I think partly what we're talking about here is, you know, a preamble or an appendix or something to the real FERC or real NEPA documents. But I know that folks thought a lot about those, how it meshes, and I don't think they felt comfortable knowing exactly how that would work either.

MR. McKITRICK: The NRG proposal, in that regard it seems like there is some question raised, so seeking clarity through the comment period would be helpful.

Mona.

MS. JANOPPAUL: Early today a few of you mentioned being in TVA processes or Army Corps processes. In your comments, if you have had experience in the development of alternatives in

those processes regarding hydropower or other NRG projects, and you think that would bring enlightenment or good suggestions to this process, I would encourage you to put those in the comments, particularly EPA, which has a lot of experience with that kind of work.

We are wide open on how to come up with the best NEPA document that will serve all parties. So if you have seen some good things over the TVA or the Army Corps process that you think might be useful here, I encourage you to submit those in your comments by December 6th.

Also some of you mentioned in those processes you had seen different ways to involve stakeholders through surveys or other items. I would encourage you in your comments to submit copies of those surveys or other ideas about which we're seeking, the IHC proposal, early identification, and involvement of all stakeholders.

And sort of as an aside on that, again, remember your comments for December 6th. If you have some suggestions about our technical meetings coming up following the NOPR, next spring, about timing, or teleconference opportunities, or that kind of thing, how to make those the best possible meetings, please

include those in your comments as well.

Thank you.

MR. McKITRICK: Opportunities for clarification, additional comments.

Brad.

MR. CLAY: Brad Clay. In regard to the NEPA document development, perhaps what you're talking about is a phased NEPA development, and if you call it a Phase I, or Phase II document, perhaps that would make it clear. It wasn't clear to me at first until I talked to David. If you call it a NEPA document and it lacks certain elements that are required by law, then it does raise red flags; whereas if you considered it a phase document, it seems to make a lot of sense, be a good process, and be less confusing, pre-NEPA or phase I.

MR. McKITRICK: Good. Again, I think there is a real charge before us here, that there is a schedule that we have, and we're looking for guidance from these documents, that you have two ideas before you to kind of work from, and from that your input and the other input from the others, the stakeholder groups as we go around the country, hopefully will help form this into a rule that can work for us all.

What I'd like to do before closing this is make sure that you have this rulemaking schedule before you. Looking at the time frames, get it in timely so that we can move forward and really analyze your comments. Looking at what's coming up after the additional forum, my understanding is that the stakeholder draft session in D. C. is an open session. That's scheduled for December 11th and 12th. You can participate as we start going through these comments and looking at putting together the NOPR. That may be an additional chance for you all in D. C. Then the schedule being put together with the FERC, preparing final NOPR, towards the end of February, that's when that will be out on the street, so you can actually see what all this work has culminated in, have a chance to review that.

And, as Mona indicated, we plan to hold some regional meetings in the months of March and April. Those schedules are still forthcoming. We'll go ahead and schedule these, realizing, then, that we'll then be working after these public forums towards our final rule, that the Commission would like to act upon this before the end of July of next year. So if the hard work can pay off and we can move this through, there can be something in place

that hopefully takes into account everyone's concerns and will be available in a fairly short period of time.

If there aren't any other comments or requests, explanation of the schedule, we really do appreciate you commenting on our concerns that we put forward in the notice. Further explanation of those, additional comments that you may have that are outside of this are certainly encouraged. Start working with other folks. There will be better ideas to come out of this.

Thank you very much, and I think we are in time for a late lunch. We appreciate your participation in this. Thank you very much. We're having several other meetings. The Milwaukee forum is like this. If somebody has comments how to make this better, get better comments, we're looking for better ways to do them.

(Meeting adjourned at 12:40 p.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 the questions and answers
thereto were reduced to typewriting under
my direction; that the foregoing pages 1
through 116 represent a true, complete,
and correct transcript of the meeting, and I
further certify that I am not of kin or council
to the parties in the matter; am not in the
regular employ of 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