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BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket No.

HYDROPOWER LICENSING STATUS : AD04-014-000

WORKSHOP 2004 :

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Commission Meeting Room
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C.
Thursday, December 9, 2004

The above-entitled matter came on for workshop,
pursuant to notice, at 10:05 a.m., Chairman Pat Wood III,
presiding.

APPEARANCES:

- COMMISSIONERS PRESENT:
- COMMISSIONER NORA MEAD BROWNELL
- COMMISSIONER JOSEPH T. KELLIHER
- COMMISSIONER SUEDEEN G. KELLY
- SECRETARY MAGALIE R. SALAS

1 APPEARANCES CONTINUED:
2 CONGRESSMAN MICHAEL McNULTY
3 ROB CUPINA
4 MARK ROBINSON
5 LON CROW
6 ANN MILES
7 JOHN KATZ
8 MONTE TERHAAR
9 TERI FLORES
10 GAIL MILLER
11 SUSAN O'BRIEN
12 STEFANIE DAMIANI
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1 P R O C E E D I N G S

2 (10:05 a.m.)

3 CHAIRMAN WOOD: Good morning. This open meeting
4 of the Federal Energy Regulatory Commission will come to
5 order to consider the matters which have been posted for
6 this time and place, the Hydro Licensing Workshop Fourth
7 Anniversary Edition.

8 Let's start our meeting with the pledge to the
9 flag.

10 (Pledge of Allegiance.)

11 CHAIRMAN WOOD: I would like to welcome everybody
12 to our fourth year of updates on the oldest hydroelectric
13 licensing at the Commission. This project was started four
14 years ago -- actually, I guess it would be in '01 as really
15 a following up on the commitment that I made during my
16 nomination process to some of the senators in typically
17 western states that were concerned about the length of time
18 that licenses were held here at the Commission. And so I
19 endeavored to look into that process and figured that the
20 best way to do that was to do it in the public manner that
21 allowed the licensees, the other interested parties, staff
22 from Congress and from our own staff to work collectively to
23 look at this a public manner and understand what it is, the
24 obstacles that are in place that are standing in the way of
25 these licenses being either issued. Or it's certainly

1 possible that a case could just be denied.

2 But, in many cases, we found that there were a
3 lot of players involved, particularly, state commissions who
4 have a statutory role, other federal agencies that have a
5 statutory role in signing off on a relicensing project. And
6 really the focus here on these has been relicenses.
7 Licenses that have been granted that are in the process now
8 of getting extended for another 30, 40, 50 years, which is a
9 big part of what we do because there are number of
10 hydroelectric projects in the country.

11 And I'm pleased to say that this year we're
12 substantially down. We focused our first screen for the
13 first three years. Let's look at cases that had been here
14 for five years or longer, which when you look at some of the
15 other items on our agenda -- well, oil's probably getting up
16 in that same region, but gas and electric tend to move in
17 weeks and months, not years. But the commissioners at the
18 time, and since then Joe and Suedeen have joined as well,
19 we've all focused on these issues and been pleased that the
20 first year we had 51 cases that were five years or longer
21 and this year we've got 13.

22 In fact, it got so good that I dropped the bar to
23 three years or longer last year and said let's look at the
24 ones that are three years or longer. And, still, that
25 collective number is about what it was last year for the

1 cases that were five years. So I just want to say, on
2 behalf of the agency to the members in the community and the
3 interested parties and the licensees, we appreciate you all
4 working with us to help streamline our administrative
5 process and try to do better government for the people. But
6 also to try to get some clarity and certainty on the
7 development of this very important resource that contributes
8 a lot of green power without pollution to the country.

9 And, in an attempt to balance all the interests
10 here, it's a difficult task and I don't often get the
11 opportunity to praise the hard work of our staff. But I
12 just want to thank you all, those of you sitting at the
13 table. And, of course, all those scores of people behind
14 you, not just behind you here but that work in the agency to
15 do the good work of the people looking at the environmental
16 issues, looking at the landowner issues, looking at the
17 tribal issues, looking at all of the state concerns and
18 water quality issues. Engineering and science come together
19 in public policy in these licenses like no other place in
20 our agency. So I'm very proud to work with you all

21 Before we discuss these 22 cases today, 13 of
22 which are five years or older and another 9 of which are
23 three to five years old, I do want to let the world know
24 that there are 100 other cases that are three years or less.
25 And, again, we try to endeavor to get these done in two

1 years. That is, we start filing, we start with a formal
2 filing at the Commission two years in advance of the
3 expiration date of the current license. And so it's our
4 endeavor to try to get that license reviewed or potentially
5 renewed within that two-year period. And a lot of people
6 across the country assist in that effort.

7 So, even though our focus today will be on those
8 that are going slow, and it's an attempt by us to figure out
9 if there's something on our side of the fence or something
10 with another agency, whether that's resources or a
11 substantial political or legal issue, that is obstructing
12 the review or if there is some issues with other interested
13 parties or just anything out there that we need to know
14 about.

15 It's not often that the commissioners, quite
16 frankly, focus on a lot of the licensing issues because they
17 do happen under a lot of delegated authority. The staff has
18 handled those well over the years and I think my
19 predecessors on the Commission have felt very comfortable
20 with that. But this is the one time of the year when we
21 really do pull in to high relief the issues of the
22 administrative process and really try to get down into the
23 details and understand if there's something we can do.

24 In the past year, for example, I wrote some of
25 the state agencies personally and asked them to move these

1 items up their to-do list so that we can get our items done.
2 I do know that from talking to different state officials
3 that they don't sometime understand their step is a piece on
4 the critical path in looking at these applications and how
5 important it is for us and all the other parties that have
6 spent a lot of money to look at these things. That an
7 action of a given agency, whether it's state or a sister
8 federal agency, is an important part of this.

9 It's my hope that really in five years from now,
10 as we do the ninth of these, that we really won't have any
11 to do. We've started a new process. We adopted a
12 rulemaking, Order 2002, which was probably the biggest hydro
13 change we've done in a decade to streamline into an
14 integrated licensing process the ILP, a new approach that
15 has been real successful in more of the pilot programs that
16 we've done under the ALP, Alternative Licensing Process, for
17 the past eight years, seven or eight years.

18 MR. ROBINSON: It's 2004. So it's been about
19 eight years or so now.

20 CHAIRMAN WOOD: Okay. So we've done the ALP. It
21 was a precursory to the ILP and we took the greatest hits of
22 all the different licensing processes that we've done and
23 then adopted it into a single process that is very
24 collaborative on the front in. We don't have a lot of the
25 legal barriers that drop and prevent people from working

1 together. And that process has actually spilled over into
2 the gas pipeline side and into the LNG side as well. And
3 I'm pleased with that whole mentality, which has been
4 something I know folks from the President on down have
5 really pushed trying to get out of litigation and into more
6 of a ADR-type mode. And this is really a great exemplary
7 process here. But almost one-third of the projects that
8 were eligible to use this process during the two-year
9 transition period have already volunteered to do so. And
10 then, at the end of the two-year transition period, which
11 will be sometime in '05, late '05, it will be mandatory that
12 the ILP be used. So that requires people to start farther
13 up front.

14 So it's my hope that as we focus today on these
15 22 and learn anything more, any items more that we need to
16 be doing to facilitate interagency work and work with other
17 interested parties with licensees that we can build on that
18 and roll that into our experience in the ILP process in
19 going forward.

20 So, again, I appreciate -- I know some parties
21 are here. And, as we've done each of the last three years,
22 we have patched in our regional offices which are in
23 Portland and Chicago and Atlanta and New York and San
24 Francisco to allow anybody to save the plane fare and to go
25 to those offices and patch in just as well with us.

1 But today's focus, I should say just in closing,
2 is really to focus on the procedural obstacles or procedural
3 outstanding issues that are in the way. We will have time
4 through our normal processes to debate the environmental
5 pros and cons of projects and to debate other issues that
6 have been raised. But really this is really an attempt from
7 us in running the ship on time to focus on where the
8 procedural obstacles are. And if they're in the
9 interagency or any licensee or other stakeholder or other
10 interested party issues that we need to be aware of and if
11 we need to file any -- I think we posted most of these cases
12 for the public record. So parties were put on proper
13 notice.

14 I just want to thank you all for being here. And
15 we do have a special guest. And so I'd like to start with
16 Congressman McNulty first. The Congressman is from the
17 central part of the State of New York and has asked to come
18 visit with us. And I just want to welcome you, Congressman,
19 to the Commission. We're glad to have you here.

20 CONGRESSMAN McNULTY: Thank you, Mr. Chairman.
21 And I thank Commission Kelliher and also the members of the
22 FERC staff for this opportunity to present my testimony.

23 VOICE: If the Congressman is speaking, we can't
24 hear him.

25 CHAIRMAN WOOD: We just turned him on.

1 CONGRESSMAN McNULTY: I want to thank Chairman
2 Wood and Commissioner Kelliher and all the members of the
3 FERC staff, too, for allowing me to testify today. Before I
4 begin that testimony, I want to thank the Chairman for the
5 attitude of openness which he has expressed because I
6 believe that there is a lot of new light to be shed on one
7 of these projects.

8 My name is Michael R. McNulty. I am a U.S.
9 representative from the 21st Congressional District for the
10 State of New York, the same district in which the School
11 Street Project is located. I'm making this appearance on
12 behalf of my constituents, who, in many ways are the
13 stakeholders most affected by what FERC licenses at the
14 Cohos Falls site.

15 I again ask FERC to take note of the very special
16 circumstances surrounding relicensing of the School Street
17 Project, which is FERC Project 2539. Specifically, I refer
18 to the opportunity for the community and the FERC to create
19 a record to establish what the public interest truly is in
20 the matter of the development of the hydroelectric potential
21 of the Mohawk River at Cohos Falls.

22 New York State, over 40 years ago, the Federal
23 Power Commission, FERC's predecessor, faced a situation in
24 which it failed to make a complete record on the issues that
25 were of great interest to the environmental community and

1 residents near Storm King Mountain where Con-Edision wanted
2 to build a pump storage project. A group known as the
3 Scenic Hudson Preservation Conference took the matter to
4 court when the FPC issued a license without addressing these
5 concerns.

6 On appeal, the 2nd Circuit Federal Court of
7 Appeals held that the Commission had to affirmatively
8 protect the public interest. It could not, like an empire,
9 blandly call balls and strikes. It seems to me that we
10 could be in a somewhat similar situation here. The record
11 in the School Street relicensing case is stale. Some of it
12 reflects the situation over 13 years ago in 1991 when the
13 previous licensee's relicensing application was filed. It
14 is difficult to improve this project to meet modern-day
15 standards for fishway proscriptions, recreation and
16 additional power generation.

17 As the years have rolled by the community seemed
18 to be doomed to accepting a substandard project that offered
19 few benefits to the community and would perpetuate the
20 disregard for the full benefits that the Cohos Falls site
21 could produce.

22 Today we know that it was wrong to reduce the
23 flow at the falls by constructing a project like School
24 Street. In today's world we are, and ought to be, more
25 sensitive to the value of the flowing Falls, to the welfare

1 of the Cohos Falls community and to the Iroquois Tribe.
2 Fortunately, some of those mistakes can be corrected and a
3 project truly in the public interest can be developed.

4 Recently, a proposal was made by a local
5 governmental group, the Green Island Power Authority, to
6 develop a new hydro project that will avoid the worse
7 problems at the School Street site and create new hope in
8 our community.

9 The Green Island Power Authority, or GIPA, has
10 filed a preliminary permit application at FERC to study such
11 a proposal. On November 1st, GIPA started the process to
12 prepare original and non-power license applications for the
13 Cohos Falls hydroelectric project.

14 I can report that the people in my community in
15 the area of the School Street Project are most enthusiastic
16 about the idea of a home-grown project. The fact that it is
17 GIPA that has proposed the new project is also reassuring.
18 GIPA has a proven track record of delivering low-cost public
19 power in our community. Low-cost GIPA power has been a
20 major catalyst for economic development in the Village of
21 Green Island where I have resided for 57 years.

22 In the past three years this power has helped to
23 create over 1000 new jobs and over \$50 million in
24 public/private investment, making Green Island the fastest
25 growing community in the capital region of the State of New

1 York. The GIPA, a New York State created public benefit
2 corporation, is asking for the opportunity to provide the
3 benefits of additional, low cost, renewable public power to
4 the greater capital region.

5 GIPA's proposal would replace the existing hydro
6 project with one that will produce more hydro power, restore
7 what the School Street Project took away, the visual beauty
8 of a continuously flowing waterfall, respect a local
9 cultural tradition of our Native American community, the
10 Legend of the Peacemaker, who is inextricably linked to the
11 Cohos Falls area, honor a site that played a part in
12 establishing the governance of our nation through the great
13 law of the Iroquois and give a real boost to the economic
14 health of the community.

15 In the view of the community the new project
16 represents what the public interest should be. And that
17 kind of choice is what I think the Federal Power Act is all
18 about. As the Court so long ago told FERC's predecessor, a
19 licensing agency like FERC is suppose to act affirmatively
20 to protect the public interest. With the School Street
21 Project, FERC should take the initiative to create a record
22 that will inform itself of the public interest before making
23 a decision. It should allow the fullest public
24 participation in the discussion of what the site can
25 provide, if developed, as a comprehensive part of the Mohawk

1 River Waterway.

2 Even as to the existing license application for
3 School Street the Commission lacks a proper record. And it
4 should reopen the record to give the agencies time to
5 comment on the modified fishway proscriptions submitted in
6 1998 and to consider the cultural significance of the Cohos
7 Falls to Native Americans who were never involved in
8 consultation on the project's programmatic agreement.

9 Senators Schumer and Clinton and Congressman
10 Sweeney and I have previously asked FERC to open up this
11 relicensing proceeding so the people most affected can
12 participate in the decision-making. We have not yet heard
13 back from FERC. So I am grateful to be here to again ask
14 for a public hearing of these new facts.

15 After a full record is made and the defects in
16 the present environmental assessment are corrected, FERC
17 should then decide whether it is in the public interest to
18 issue a new license to the School Street Project for another
19 30 to 50 years.

20 What should be avoided, Mr. Chairman and
21 Commissioners, are attempts to craft the terms and
22 conditions of a license behind closed doors, which would run
23 totally contrary to the Chairman's opening remarks, where
24 the public's voice cannot be heard. The FERC agenda for
25 this hydro power workshop states that just last week the

1 licensee told FERC's staff it had reached a conceptual
2 settlement in confidential negotiations.

3 Mr. Chairman and Mr. Commissioner, I have no idea
4 how many parties actually participated or what the
5 settlement provides because it was all done in secret. FERC
6 regulations and New York State regulations governing state
7 agencies like DEC require notice to the public. Any case, a
8 new 30 to 50 year right to exclusive use of these waters
9 should not be reduced to rubber stamping what a few
10 participants agreed to in secret.

11 The well-being of the communities of Cohos and
12 Green Island is too important to let a few individuals
13 decide, while blocking public input. By allowing a complete
14 and open record to be made, FERC can make the best decision,
15 not only for the capital region community and the Native
16 American interest not fully explored, but also for the
17 public in general.

18 I believe that the decision is clear. But,
19 ultimately, the Commission ought to do what the law tells it
20 to do, that is, pick the best hydro project that will
21 further the public interest over the long term. At the
22 heart of the public interest is the local interest.
23 Ownership of the School Street Project has changed several
24 times in the past decade since the renewal application has
25 been filed. The latest changes leave the project in the

1 hands of a foreign-based corporation and the community is no
2 longer assured that the project power will be sold here.
3 The City of Cohos, I would submit to you, will be here when
4 an absentee owner disappears or sells the project.

5 We want development of the project which best
6 serves the public interest. Nothing is gained, in my view,
7 by shutting out legitimate concepts and ideas, telling
8 agencies like Fish and Wildlife that it is too late to
9 address their concerns over the last minute changes by a new
10 owner licensee, failing to protect the cultural issues of
11 the Iroquois tradition and shutting out a new proposals to
12 produce more power and benefits for the community. That,
13 indeed, is not in the public interest.

14 Let's put all the facts on the table. When that
15 is done, it will be clear what is in the public interest. A
16 project that produces more power, creates more jobs, saves
17 more fish, enhances the natural beauty of this historic
18 Cohos Falls for Native Americans, and for all of us, and is
19 operated by a public benefit corporation based in the United
20 States rather than a private corporation based in a foreign
21 country.

22 Mr. Chairman, Commissioner, I urge FERC to do
23 what is clearly in the public interest. And I thank you for
24 this opportunity to express my views and the very strong
25 sentiments of the community I have served as an elected

1 public official for 35 years.

2 CHAIRMAN WOOD: Thank you, Congressman McNulty.
3 We appreciate your time today. We will be taking up this
4 case a little bit later on in the agenda just to hear from
5 the other side and appreciate you getting your thoughts on
6 the record here.

7 CONGRESSMAN McNULTY: Thank you.

8 CHAIRMAN WOOD: We'll put this transcript of the
9 Congressman's remarks in with the file part of the case just
10 to make sure that it's fully covered there and move forward
11 with our responsibilities under the Power Act in this
12 application recommended by your comments here today.

13 CONGRESSMAN McNULTY: Thank you. And I will be
14 here for the proceedings when you discuss the rest of the
15 case. I intend to stay.

16 CHAIRMAN WOOD: Super. Thank you.

17 I'd like to turn it over now, as I've done for
18 the past couple of years, to John Katz to shepherd us
19 through the day.

20 John?

21 MR. KATZ: Thank you very much, Mr. Chairman.

22 CHAIRMAN WOOD: Do we have people lined up from
23 New England first?

24 MR. KATZ: Yes, we do. I just wanted to check
25 whether Commissioner Kelliher had any opening remarks?

1 Don't feel obligated. I didn't want to leave you out.

2 COMMISSIONER KELLIHER: I think I could come up
3 with something.

4 CHAIRMAN WOOD: Good.

5 COMMISSIONER KELLIHER: I just wanted to commend
6 the Chairman for holding the workshop. I think these
7 workshops are a great idea and they're his invention. And
8 it's probably no surprise that the number of old cases has
9 declined 75 percent since he initiated the workshops. And,
10 as someone who likes hydro issues, I'm happy to spend a day,
11 or at least half a day, dedicated solely to hydro issues and
12 even wore my fish tie.

13 (Laughter.)

14 COMMISSIONER KELLIHER: They're very happy fish,
15 too. They're not troubled at all.

16 I can't even read my own handwriting. But, as
17 the Chairman noted, there are many reasons for delays
18 sometimes in these licensing proceedings. And that, in many
19 cases, maybe in most cases, it's the result of state
20 decisions under water quality certifications. But sometimes
21 delay results from settlement discussions. And I think
22 those delays aren't necessarily bad delays and they might
23 make our decision-making better and may result in a superior
24 decisions for communities, licensees and other stakeholders.
25 So I don't think delay is necessarily a bad thing sometimes.

1 It has happy result.

2 So I look forward to the workshop and thank you
3 very much.

4 CHAIRMAN WOOD: Thank you, Joe.

5 MR. KATZ: Thank you, Commissioner Kelliher.

6 Mr. Chairman, my name is John Katz. I'm with the
7 Office of the General Counsel and I will be moderating the
8 workshop today.

9 As the Chairman said, the purpose of these
10 workshops is to identify procedural barriers to the timely
11 completion of case. So we do our level best to stay out the
12 substantive matters, but rather to deal with specific
13 matters that we can try and cut through or where we can cut
14 through roadblocks.

15 And, Mr. Chairman, I will say, while it's not
16 always comfortable for the hydro-related staff to have a
17 bright light shone in our little portion of the FERC team, I
18 think it has had salutary results and we've seen major
19 concessions and major efforts, both inside and outside the
20 Commission, that have moved cases forward as a result of
21 your efforts and those of other commissioners and we do
22 appreciate that.

23 As a procedural matter, I need to make sure folks
24 understand how we're going to operate here. We've got two
25 folks from the Office of Energy Projects who are going to be

1 leading us through the cases. First the cases, more or
2 less, on the eastern part of the country and then the
3 western part of the country. Monte Terhaar is going to be
4 leading the discussion this morning.

5 We have a court reporter with us. And so that
6 she is able to identify all the speakers you will need to
7 both speak into a microphone. If you've got a microphone
8 handy in front of you, you'll need to make sure it's on. If
9 you're speaking from the audience, there are some folks who
10 can pass microphones to you. So, if you'll identify
11 yourselves and speak into mikes, your deathless words can be
12 recorded properly in our transcript.

13 As to the folks out in the regions, and who are
14 with us on telephone, after we finish discussion here of a
15 particular project, if anyone has anything to say, please be
16 sure to speak up. And, again, be sure to identify
17 yourselves. To the extent that you've got mikes on out
18 there, open mikes, if you're talking amongst yourselves or
19 making other noises that does sometimes show up here and
20 interferes with the court reporter's efforts to record the
21 proceedings. So, if you want to talk out there or clink
22 your coffee mugs or whatever you're doing, please put the
23 mikes on mute while you do that and then you can put them
24 back on when you're ready to speak.

25 The other thing I should say is it does not look

1 like we're going to finish early. We did tell the people on
2 the West Coast that we were going to start at a time certain
3 of 11:30 to give them a reasonable opportunity to get up in
4 the morning and get down to wherever it is they're paying
5 attention to these proceedings. So, should we finish early,
6 we will break until 11:30. As I said, it doesn't look like
7 we're going to do that.

8 At this point, I will turn the proceeding over to
9 Monte Terhaar who is going to take us through the cases,
10 more or less, on the eastern part of the country.

11 MR. TERHAAR: Yes, thank you, John.

12 My name is Monte Terhaar. I'm an environmental
13 engineer with OEP. Just to bring your attention to the
14 first slide here, Chairman Wood and the Commission initiated
15 a concept of the hydro licensing status workshop as a way
16 for agencies, applicants, stakeholders and FERC staff to
17 work together to resolve roadblocks to Commission action on
18 pending license applications. The goal of these workshops
19 has been to focus on some of the oldest cases, identifying
20 the roadblocks and finding ways to resolve obstacles.

21 For the first workshop in 2001, we had 51 license
22 applications that were five years and older. Each year
23 since we've had considerable success in reducing the number
24 of five-year cases with the result of having only 13
25 five-year cases today. This year we've added to our list

1 those pending applications which are three and four years
2 old. We have nine of these cases. In total, we will be
3 reviewing 22 cases.

4 The continued progress of reducing the number of
5 older cases is the result of cooperative action on the part
6 of many. Since the last workshop, issuance of five water
7 quality certificates, the filing of a settlement agreement
8 and the filing of a biological opinion has enabled the
9 Commission to move forward on many cases. That will begin
10 our presentation of this year's projects.

11 We will begin our presentation of this year's
12 projects presented by states. We're going to begin with the
13 eastern states followed by the western states. And we're
14 going to first talk this morning about the School Street
15 Project. For those of you who have these tabbed notebooks,
16 that would be tab 4 in your notebook.

17 In New York we have one project and that is the
18 School Street Project. School Street Project No. 2539 is a
19 38-megawatt project located on Mohawk River. This is a
20 relicense application which was filed in 1991. This project
21 was on last year's list. School Street is the last of a
22 series of nine Class of '93 projects in New York for which a
23 settlement agreement will be filed.

24 As for recent activity, in August, the Chairman
25 sent a letter to New York DEC encouraging timely issuance of

1 a water quality certificate. New York responded in October
2 indicating a tentative agreement was made on one issue with
3 others yet to be resolved.

4 In Erie Boulevard's December 1st progress report
5 they state that all outstanding issues have now been
6 resolved and a conceptual agreement among stakeholders has
7 been reached. A final settlement is scheduled for January
8 2005. New York DEC would then proceed with the steps
9 necessary to issue water quality certification. As for the
10 remaining actions in the School Street Project, we expect a
11 final settlement by January of 2005 and a water quality
12 certificate soon to follow.

13 And, with that, I, perhaps, have a question if
14 anyone here representing Erie Boulevard is present. If you
15 could tell us if you're on target with the final settlement
16 by the end of January.

17 MR. SEBATIS: Yes, Mr. Chairman. This is Jerry
18 Sebatis. I'm with Erie Boulevard Hydro Power. And, yes, we
19 are on target. We have our consultants and our staff
20 working very hard to meet our commitment to file a
21 settlement in January.

22 CHAIRMAN WOOD: Mr. Sebatis, who is the
23 settlement between and among?

24 MR. SEBATIS: It's among a number of the
25 intervening parties who intervened in the FERC licensing

1 process and the water quality certification proceeding.

2 CHAIRMAN WOOD: Can you give a sense of like who
3 that would be?

4 MR. SEBATIS: For one, the New York State
5 Department of Environmental Conservation, the United States
6 Fish and Wildlife Service, New York Rivers United, the
7 Adirondack Mountain Club, New York State Conservation
8 Council, National Park Service. I think there are others,
9 but that's who I recall first off.

10 CHAIRMAN WOOD: And those would be people who
11 have intervened in the case since 1991?

12 MR. SEBATIS: Yes.

13 CHAIRMAN WOOD: Monte, what has been the hold up
14 issue throughout the -- whenever, 13 years?

15 MR. TERHAAR: I think, perhaps, I'll refer that
16 question to the project coordinator here. Is the project
17 coordinator here?

18 (No response.)

19 MR. KATZ: I think, primarily, Mr. Chairman, it's
20 been a process in New York State where New York's DEC
21 decided that it had only limited resources and it was faced
22 with nine projects from the same licensee that all came in
23 as part of the Class of '93. And that stayed in to be made
24 a determination early on that it was going to deal with the
25 project, seriatim, one at a time, rather than issues a bunch

1 of water quality certifications. And so the process that
2 the state has required in doing its 401s has been to deal
3 with one project at a time, get a settlement there, get the
4 401 issued and then move on to the next one. So it's been a
5 process that the state designed.

6 MR. ROBINSON: Beyond the state agency, I think
7 it also involved the state court, who had been involved in
8 the review of these settlement agreements and setting the
9 schedule for settlement agreements. So it's been a
10 completely state-run operation as to how these projects
11 would progress through our process. And, as they've come
12 out, we've licensed them. School Street, I believe, is the
13 ninth of nine. It's the last one.

14 CHAIRMAN WOOD: On the map for New York?

15 MR. ROBINSON: Then it's got to be the ninth.

16 CHAIRMAN WOOD: Let me just ask you a question,
17 Mr. Sebatis, since you're here. From the comments we heard
18 from the Congressman earlier, what has been the involvement
19 of the GIPA entity in your proceeding?

20 MR. SEBATIS: They've had no involvement. They
21 were not an intervenor in the process.

22 CHAIRMAN WOOD: And has there been any
23 discussions, other than in the FERC process, between you and
24 them or anybody else about an alternate use of your project?

25 MR. SEBATIS: No, sir. There has not.

1 CHAIRMAN WOOD: And, in the water quality
2 certificate proceeding at New York, has there been any
3 discussions with them or with anybody else about different
4 ways that the project could be configured or used?

5 MR. SEBATIS: No, sir. There has not.

6 CHAIRMAN WOOD: When did you all first hear or
7 discuss this project with an outside applicant? Has there
8 been anybody else in these 13 years other than GIPA that has
9 been involved from the outside that has a potential
10 different use of the license?

11 MR. SEBATIS: No, not to my knowledge.

12 CHAIRMAN WOOD: And you met with them when? When
13 did you come into contact with GIPA here?

14 MR. SEBATIS: My only contact has been just
15 receipt of the various filings that GIPA has made with the
16 Commission. I have not had any direct contact.

17 CHAIRMAN WOOD: Okay. Thank you.

18 COMMISSIONER KELLIHER: Please, can you hold the
19 mike, please. I have one or two more questions for you.
20 What's his name?

21 CHAIRMAN WOOD: Mr. Sebatis.

22 COMMISSIONER KELLIHER: Mr. Sebatis, was the
23 community an intervenor in the licensing proceeding?

24 MR. SEBATIS: Yes. And beg my forgiveness for
25 that oversight. The City of Cohos where the project is

1 situated, and I failed to mention that in my earlier answer,
2 is an intervenor at the RC process and in the water quality
3 certification process.

4 COMMISSIONER KELLIHER: Were they invited to
5 participate in settlement discussion? Did they decline to
6 do so?

7 MR. SEBATIS: Yes.

8 COMMISSIONER KELLIHER: They were invited?

9 MR. SEBATIS: They are a participant.

10 COMMISSIONER KELLIHER: They are a participant?
11 Okay. Thank you.

12 MR. SEBATIS: And to clarify the earlier answer
13 that I think I failed to make was the contact that I have
14 has not been directly only through the filings that were
15 made with the Commission and that is very recent, as recent
16 as like I think September of this year.

17 COMMISSIONER KELLIHER: Thank you.

18 MR. KATZ: Thank you very much.

19 Monte, if you can take us back to the great state
20 of Maine.

21 MR. LITTLE: I hate to interrupt, but this is
22 Bill Little of the New York State Department of
23 Environmental Conservation. And I wondered if I could just
24 add a word here. Would that be appropriate?

25 MR. KATZ: Yes. Please, do, Bill. I'm sorry.

1 We forgot to ask if there were folks on the phone who wish
2 to speak.

3 MR. LITTLE: Thank you. I wanted to echo some of
4 the comments that Mr. Sebatis made. And, perhaps, offer
5 some clarification as to the state process that's going on.
6 As the Commission is aware, there is ongoing litigation.
7 It's actually administrative litigation before this agency.
8 It's not in the state courts and it commenced early in the
9 '90s and it covered more than a dozen projects, nine of
10 which were of the Class of '93. But we added others in from
11 Rochester Gas and Electric in Finch Wood Pond.

12 And so the schedule that we heard discussed
13 earlier was actually expanded beyond the nine and our effort
14 has taken more than 10 years to get through them. But we're
15 actually fairly proud of the fact that we were able to
16 complete -- successfully negotiate settlements with all of
17 these and are now close to concluding this one. And these
18 have all been identical in their manner of involving several
19 key environmental groups, lots of individuals and
20 municipalities, both state and federal agencies who were
21 thoroughly engaged throughout each of the negotiations and
22 that includes the School Street Project.

23 We also had the benefit of the environmental
24 assessment from September of 2001. And, for the record,
25 that has been part of our discussions in the settlement.

1 There was a concern raised by Congressman McNulty earlier
2 that -- a concern for the record and there has been every
3 effort to create a record for the application in this
4 situation for the School Street Project. And the record
5 will be given full public notice when this agency has a
6 draft water quality certificate. And that's common to the
7 way these previous settlements were handled.

8 So it's not a situation of handling things behind
9 closed doors. It's quite common in all states to deal with
10 settlement negotiations during litigation out of the public
11 eye. But, since we are a public agency, we fully understand
12 and will adhere to the need to have public vetting of the
13 result of those negotiations. And all the parties involved
14 in the negotiations understand that that will be the case.
15 So I think that you can look forward to that occurring in
16 the relatively near future if we stay on schedule with the
17 settlement. Thank you.

18 CHAIRMAN WOOD: Congressman McNulty, I see you
19 seeking recognition, sir. Could someone get him a mike,
20 please?

21 MR. KATZ: You can come on back up.

22 CONGRESSMAN McNULTY: Thank you very much.
23 Again, I want to thank you for the opportunity to
24 participate. And let me acknowledge, right off the bat,
25 that probably of all the people in the room I'm probably

1 least expert as far as the technical issues that you deal
2 with every day. But I did inherit from my grandfather some
3 common sense. And, as I look at the way this is proceeding,
4 I noted that John talked about your discussing procedure
5 here and procedural issues and not substantive issues.

6 Obviously, I am discussing substantive issues.
7 And I just want it stated clearly for the record, Mr.
8 Chairman and Commissioners and other staff members, that I
9 believe that in a case like this where this relicensing has
10 dragged on for 13 years and in the intervening time there is
11 another option out there. That that other option should be
12 looked at by FERC and by others. And I just want to state
13 for the record where I'm going from here because I have
14 presented to you a project which you should verify on your
15 own will do what I have stated, which is produce more power,
16 create more jobs, save more fish, enhance the beauty of the
17 falls and be run by a public benefit corporation based in
18 the United States of America rather than a private company
19 in a foreign country.

20 Now, to me, that is what my 10-year old
21 granddaughter would say is a non-brainer. And I just want
22 to say that if the end result of all of this, Mr. Chairman
23 and Commissioner, is that you approve a project which
24 produces less power, creates fewer jobs, kills more fish,
25 does not enhance the beauty of the falls and is owned by a

1 private corporation I am not going to let that stop at that
2 point.

3 I believe at that point the bureaucracy is broken
4 and something needs to be done about that. If a decision
5 like that is made, if the facts that I laid out are correct,
6 and you have the responsibility to find out whether they are
7 or not, but, if the facts I laid out are correct and you go
8 in that other direction, the bureaucracy is broken. That is
9 what would be the worst of bureaucracy in government and I
10 intend to take beyond this room to the floor of the United
11 States House of Representatives and I'm going to ask the
12 Energy Committee or another appropriate committee to
13 investigate this Commission and this case if it goes in that
14 direction because that just does not make common sense. And
15 it is clearly, clearly not in the public interest.

16 CHAIRMAN WOOD: Thank you.

17 Are we on the New York application?

18 MR. KATZ: Yes.

19 MR. FINKELSTEIN: Thank you, Commissioner. I'm
20 Bill Finkelstein. I'm counsel for Green Island Power
21 Authority. And I'd just like to address a few procedural
22 points that I think do connect somehow, connect with a way
23 to move this forward.

24 One is that Green Island Power Authority does
25 have pending a motion to intervene in the licensing

1 proceeding. It's opposed by Erie Boulevard. I think
2 Commission action, one way or the other, will give people a
3 better sense of how to go from there. Right now, because
4 the Power Authority is not a party, some are saying they can
5 be screened out of the process. If we have a ruling, then
6 it will clarify the ground some. So that is, I think, one
7 thing that is within the Commission's control.

8 Another point I would make is that under the
9 programmatic agreement, Erie Boulevard is to engage in
10 cultural resource consultations, acting as the analog of an
11 agency official under the advisory council. It's one of the
12 six regulations. Green Island Power Authority has written
13 to Erie Boulevard asking to participate in those cultural
14 resource consultation as a consulting party. We've received
15 no response.

16 At the DEC, Green Island Power Authority's
17 efforts to participate in the settlement discussions have
18 been rebuffed. The DEC is opposing the interventions of the
19 Village of Green Island and the Town of Green Island in the
20 401 certification. So we find ourselves -- the question is,
21 what should this process be?

22 On December 7th, Erie Boulevard filed its report
23 in response to the Commission's inquiry of what's been
24 happening over the last several years. It appears that
25 there have been a lot of meetings over these last several

1 years. And, under the Commission's relicensing regulations,
2 before any meeting between an applicant and a resource
3 agency there's suppose to be 15 days advance notice to the
4 Commission and other interested people with an agenda. This
5 Commission, in Rule 2002, last year amended the consultation
6 regulations to give interested members of the public the
7 same standing as resource agencies, and yet, the process has
8 been closed.

9 Addressing myself specifically to
10 Commissioner Kelliher's comment about the settlements are
11 often a good reason for delay and are often a good thing and
12 we agree. But, when you have a licensing process that under
13 the rules is designed to be open -- there is a Commission
14 rule that allows for confidential settlement discussions.
15 It's Rule 604. And there are specific criteria as to when
16 the Commission will authorize or not authorize confidential
17 discussion, depending upon the need for a public record,
18 depending upon whether there are non-parties who have
19 significant interest. And I am not aware that the
20 Commission has ever authorized secret negotiations for
21 School Street. And maybe it happened and I wasn't aware.

22 MR. KATZ: Mr. Finkelstein, let me interrupt
23 because I think we really are verging into the substance of
24 these cases. And what I will assure is two things. No 1,
25 the Commission will carefully consider all documents filed

1 with it in these proceedings and all arguments made by all
2 the parties.

3 Point 2, which I think you are well aware of is
4 that the Commission itself is bound by the governance and
5 the Sunshine Act, the Administer Procedures Act and its own
6 regulations with respect to the context it and its staff
7 members have with other parties. However, there is no law
8 or regulation which I am aware that prevents -- I'm looking
9 at Andrew, so I'll use him as a example.

10 If American Rivers wishes to sit down with a
11 license applicant and discuss issues of mutual interest,
12 there is nothing that the Commission can do to prevent them
13 from doing that or to require them to let other people in
14 the room that they do not feel appropriate in the room. The
15 actions of private parties are their own actions and are
16 beyond the control of the Commission.

17 What the Commission can control and does control
18 is that, to the extent the Commission makes a decision, that
19 decision is made on the public record. The Commission is
20 required to produce the basis for that decision and make
21 that available to all members of the public. And, to the
22 extent that Commission staff is involved in any settlement
23 discussions or other talks with parties to a proceeding,
24 they occur under some confidentiality exception as, for
25 example, with respect to Indian cultural resources, which

1 the Commission does not reveal generally to members of the
2 public. Those matter are all made public, are put in the
3 record and available for all parties to examine, debate,
4 dispute, agree with, supplement or react to as they see fit.

5 And, again, if you have further things you would
6 to make sure the Commission knows need to be resolved, I
7 think that would be appropriate. But I really don't want to
8 tie up the entire workshop in a discussion of the merits of
9 the proceedings, which is a difficult proceeding. And, to
10 which, as I said, I'm sure the Commission will give absolute
11 and full attention. But the purpose of this workshop is to
12 deal with all the various projects throughout the country
13 and not just this one hotly contested and important, though,
14 it certainly is.

15 MR. FINKELSTEIN: John, I tried to constrain my
16 remarks to procedure. And this has been an ongoing dialogue
17 between you and me in a wide spectrum of areas. Thank you.

18 MR. KATZ: I'm sorry. Let me just interrupt.
19 Folks out there, there are some things bleeding through
20 which sound like very cheerful matters, but do not have
21 anything to do with these proceedings. So, if folks again
22 can put their mikes on mute if there are discussions going
23 on out there in the regions or elsewhere on the telephone,
24 please do mute it so we are not made party to whatever is
25 going on if it's not the substance of this proceeding.

1 If we're completed with that matter, I would
2 again ask Monte to take us back to the east coast.

3 MR. TERHAAR: Once again, for those of you who
4 have the white notebooks with the tabs, we're going to be
5 with the State of Maine, which is tab 2 in your notebook.

6 There are four projects in the State of Maine.
7 The first project is Storage Project No. 2634. This project
8 is located out of Piscataquis River. There are no
9 generating facilities as this is strictly a storage project.
10 A relicense application was filed in 1998. This project was
11 on last year's list.

12 On this project, we're starting on a positive
13 note. Last August we received a settlement agreement for
14 the storage project. In addition, the Maine DEP issued a
15 water quality certificate just two weeks ago on November
16 30th.

17 As for remaining actions, with these two items
18 resolved, we have all the information we need to proceed and
19 staff is currently preparing a license order.

20 Does anyone have anything to add for the storage
21 project?

22 MR. KATZ: Just a slight procedural correction,
23 which we are preparing an order on the application.

24 MR. TERHAAR: As oppose to?

25 MR. KATZ: It's a technicality. As opposed to a

1 license and the Commission can take whatever action it
2 chooses to take on the application.

3 MR. TERHAAR: Okay.

4 MR. KATZ: We don't know what actions you folks
5 will choose yet to take.

6 MR. TERHAAR: Our next project in Maine is Gulf
7 Island-Deer Rips Project No. 2283. This project is located
8 on the Androscoggin River. It consists of three
9 developments with a total capacity of 31.1 megawatts. This
10 is a relicense application filed in 1991. This project was
11 on last year's list.

12 This is one of a series of cases in which the
13 Maine State legislature modified state water quality
14 standards related to DO and river empowerments. In this
15 case, substandard DO concentrations continued to occur in
16 the Gulf Island empowerment. As a result, a total maximum
17 daily load study, a TMDL study, is needed.

18 As for recent activity, in September of 2004, the
19 applicant refiled the request for a water quality
20 certificate. This is now due in September of 2005. This
21 fall the Maine DEP completed water quality monitoring needed
22 to develop their total maximum daily load. A TMDL report is
23 scheduled for mid-2005 and a decision on the water quality
24 certification expected afterwards. As for the remaining
25 action, we need a water quality certificate from Maine.

1 And, with that, if there's a representative from
2 the Maine DEP, we might like to ask if he can tell us if the
3 TMDL report is on target and your schedule for the water
4 quality certification.

5 MR. MERCH: Monte, this is Dana Merch with the
6 Maine Department of Environmental Protection.

7 MR. TERHAAR: Yes, Dana.

8 MR. MERCH: How are you?

9 MR. TERHAAR: Very well.

10 MR. MERCH: I can report that we are still on
11 track in our schedule. However, it's likely there will be
12 additional consideration by the Maine State legislature on
13 the oxygen standards that apply to Gulf Island Pond. It's
14 not yet clear what action the legislature will take. But,
15 assuming it does pass some new legislation, that legislation
16 will likely not be effective until September or October.
17 That may delay any final action by the DEP on the water
18 quality certification.

19 All of that presumes that, in fact, we can
20 determine the conditions for the Gulf Island Project and
21 several upstream water discharge licenses that will result
22 in water quality standards being met in the pond. If they
23 can't be feasibly met, then we may find ourselves doing a
24 use attainability analysis. But that decision hasn't yet
25 been made.

1 MR. TERHAAR: Thank you, Dana. So I guess I
2 heard that we probably shouldn't expect anything before
3 September or October at the earliest?

4 MR. MERCH: I think that's likely. Correct.

5 MR. TERHAAR: Thank you. If there are no other
6 questions, we'll move on to the next project.

7 The next project in Maine is Howland Project
8 No. 2721. This is 1.9 megawatt project located on the
9 Piscataquis River. This is a relicense application filed in
10 1998. This project was on last year's list. In addition to
11 that, we're working at Great Works Project No. 2312. This
12 is a 7.6 megawatt project on the Penobscot River. The
13 relicense application was filed in 2000 and Great Works is
14 new to this year's list.

15 In June of 2004, a settlement agreement was filed
16 which outlined a multi-year process to restore fish habitat
17 within the Penobscot River basin while retaining as much
18 electric generation as possible. The settlement requested
19 that the Commission suspend the relicensing project for five
20 years. That's until June of 2009. In October, the
21 Commission granted this request to suspend licensing.

22 As for remaining actions, the Commission is now
23 requiring six month progress reports and annual meetings on
24 the settlement. The first progress report would be do in
25 April of 2005.

1 Does anyone have anything they'd like to add for
2 Howland and Great Works Projects.

3 (No response.)

4 CHAIRMAN WOOD: I think we'll see this one again
5 next year, but for good cause. We thought through this long
6 and hard. We're looking at this settlement of all these
7 issues. I think it's a pretty balance approach, as I
8 recall. While I don't like them lingering on our books for
9 long, this one, in light of Joe's comment earlier, is one of
10 those that sometime -- items on this list are on here for a
11 good purpose.

12 It seems like this was kind of a win/win
13 potential settlement here that will work out over the next
14 couple of years. So let's just keep up with it on our six-
15 month basis and see if all the other conditions are getting
16 checked off the list. And, if it looks like they are, and I
17 guess we can do something -- well, I wouldn't say we're
18 going to do something before the five years are up. But I
19 think we want to keep everybody up to their commitments.
20 And those commitments again, can we do a reprise of those?
21 I think some are going to shut down. Some are going to be
22 improved.

23 MR. MERCH: This is Dana Merch for the Maine DEP
24 again. For the record, the settlement envisions that if
25 sufficient funds are raised the Great Works Project license

1 would be surrendered, the project decommissioned and the dam
2 removed.

3 At Howland, the project license would be
4 surrendered. The project decommissioned and a runaround
5 fishway built to maintain the existing impoundment.

6 CHAIRMAN WOOD: And Dana, weren't there some
7 other projects linked to this overall settlement other than
8 these two or was this it?

9 MR. MERCH: There are certainly other projects
10 linked to this, including the Bazee Dam, which has already
11 been through relicensing. But, for which, various appeals
12 were pending until the settlement was signed.

13 CHAIRMAN WOOD: Got it.

14 MS. MILES: Mr. Chairman, there are nine projects
15 in the Penobscot Basin that this involves. And there are
16 other activities going on with those other projects,
17 amendments on some of them. And is there anything else,
18 Vince, any other activities meanwhile? Those are the main
19 things.

20 CHAIRMAN WOOD: But these two on the docket today
21 were two of the nine and they are the two that are going to
22 be shut down ultimately.

23 MS. MILES: Yes, they are. They are. And,
24 during this timeframe, the five years was given so that
25 funds could be raised to buy these projects and subsequently

1 consider retirement.

2 CHAIRMAN WOOD: Okay. That sounds good. Dana,
3 thanks.

4 MR. TERHAAR: We'll move on to the next, State of
5 Vermont in which we have four projects.

6 The first project in Vermont is Carver Falls
7 Project No. 11475. It's a 1.85 megawatt project located on
8 the Poultney River on the border of New York and Vermont.
9 This is an unlicensed operating project. An application was
10 filed in 1994. This project was on last year's list.

11 As for recent activity, in April of 2004, Central
12 Vermont Public Service refiled their request for a water
13 quality certificate. It is now due in April of 2005.

14 At the 2003 workshop, Central Vermont Public
15 Service proposed to meet with the VANR to discuss the next
16 steps to obtaining a water quality certificate. This
17 meeting was completed in March 2004. Subsequently, the VANR
18 requested an evaluation of aesthetic flows in the bypass
19 reach. Central Vermont is now conducting those studies and
20 they should be completed by January 31, 2005.

21 As for remaining activities, these studies need
22 to be completed and we need the water quality certificate
23 from the VANR.

24 And, with that, I do have the obvious question
25 for Central Vermont Public Service. Can you tell us if you

1 are on target for completing the studies for Carver Falls by
2 the end of January?

3 MR. SCARZELLO: Yes. Mike Scarzello for CPBS.
4 Good morning.

5 It's been a wet summer. We've reached out to the
6 State of Vermont and this fall made several attempts to go
7 out, conduct the aesthetic flow evaluations. Unfortunately,
8 we've had an extremely dry September and October. Of late,
9 we've had winter weather conditions arrive. Flows have
10 picked back up to the point where we have heavy flows at the
11 dam, relatively unsafe and treacherous conditions to go out
12 and conduct and finish the necessary aesthetic evaluation
13 flows.

14 I've been in contact with the State of Vermont.
15 As of this week, we're going to keep an eye on the weather.
16 I'm not hopeful we'll be able to conduct by this fall. And,
17 if not, the state and CPBS are mutual in their attempt to
18 try and finish it early next summer.

19 MR. TERHAAR: So I guess what I'm hearing is
20 you're not confirmed for the end of January?

21 MR. SCARZELLO: That's right. If we cannot
22 finish the flow evaluations this fall because of untenable
23 field conditions, we will pick things back up early next
24 summer, wrap up the flow evaluation, get with the state, see
25 where they are with an open on their end, that is, dropping

1 flows between day and nighttime down to 18 and 1/2 cfs. And
2 attendant with that, finishing our economics as to how all
3 this works with a 401.

4 MR. TERHAAR: Thank you, Mike. I guess you can't
5 plan the weather. We'll hope for good weather and the study
6 gets complete.

7 I'd like to also pose the question to BANR. If
8 the studies are completed by the end of January, can we
9 reasonably expect the water quality certificate by April, at
10 which time their application expires?

11 MR. QUEDO: Yes. This is Jeff Quedo. And I
12 would concur with what Mike Scarzello just said. If we are
13 able to complete the studies, probably during the month of
14 December would be the absolute end of any possible chance of
15 completing these types of studies. We should be able to
16 process a 401, if we can reach agreement on the bypass flows
17 by Spring.

18 MR. KATZ: Jeff, this is John Katz. From our
19 angle, what it sounds like is if we get the studies done by
20 the end of December maybe we get a water certification in
21 April. But, if we don't, the studies won't be complete
22 until the summer, which would mean a water quality
23 certification would not be forthcoming probably until
24 sometime in the late fall, early winter. Can you possibly
25 give us an idea of what is involved in completing these

1 studies so we can get a sense of what the likelihood is that
2 that will happen this year? We would certainly hope that
3 could happen.

4 MR. SCARZELLO: This is actually a fairly simple
5 study. The follow-up negotiations may be a little bit more
6 difficult, but a full observation study had been done for
7 the original application. We want to consider some
8 intermediate flows that weren't observed. This relates to
9 aesthetics in the bypass reach. And so we're trying to kind
10 of modulate flows in between two flows we had observed
11 previously and just observe those flow conditions. So it's
12 probably a one-day field exercise if we can get the proper
13 conditions. And then we aren't talking about any lengthy
14 reports or anything. We can pretty much sit down and start
15 negotiating from that point.

16 MR. TERHAAR: Thank you.

17 MR. SCARZELLO: You're welcome.

18 MR. TERHAAR: If there are no other questions, we
19 can move on to the next project.

20 MR. KATZ: Can I interrupt again? We are hearing
21 somebody's child there on the other end of the phone. If
22 you can please mute so that is disturbing the court reporter
23 who's doing her level best to get our words down. Thanks.

24 MR. TERHAAR: The next project in Vermont is
25 Silver Lake Project No. 11478. It's a 2.2 megawatt project

1 located on Sucker Brook. This is an unlicensed operating
2 project. An application was filed in 1994. And this
3 project was on last year's list.

4 The circumstances for this project are
5 essentially the same as for Carver Falls. In April of 2004,
6 Central Vermont refiled their request for a water quality
7 certificate. It's now due April of 2005. Central Vermont
8 is conducting flow discharge studies which should be
9 completed by the end of December 2004.

10 As for remaining actions, these studies need to
11 be completed and we still need the water quality
12 certification from the VANR.

13 Once again, Mike Scarzello, if you're there, if
14 you can give us any information, if you're on target for
15 completing these studies at Silver Lake by the end of
16 December.

17 MR. SCARZELLO: Yes. Mike Scarzello again. I
18 did update the Commission in a report in October 15th,
19 stating what the intentions are to meet the target date of
20 the end of December. I am on track. I will be working with
21 an engineer on preliminary model results that go back and
22 consider the ANR's earlier proposal for operating the Sugar
23 Hill Reservoir, which provides storage to the Silver Lake
24 complex.

25 Also, because it's a different operating scheme

1 than that of the licensee, it has the opportunity have
2 discharges over the emergency overflow spillway at this
3 storage facility, which is of concern to us. That is also
4 being done supplemental to the modeling of the Sugar Hill
5 Reservoir proposal. I'm hopeful to have these wrapped up at
6 the end of the year. At that point, again, we'll likely
7 have a sit-down with the state early next year, see where
8 they are on their review of the CVPS flow proposal below,
9 another aspect of the complex, which is Diversion Dam and
10 also their review of a fish spawning program in the tail
11 race of the Silver Lake project.

12 MR. TERHAAR: Thank you, Mike. So I guess it
13 looks like we can reasonably assume that by the end of
14 December those studies will be done.

15 Once again, Jeff Quedo, if you're there if you
16 can tell us if we can reasonably expect the water quality
17 certification by April. I'm assuming this case is pretty
18 similar to Carver Falls in the processing of that
19 certificate.

20 MR. QUEDO: Yes. I would say it's probably
21 realistic. It depends on the extent of negotiations
22 involved in squaring away the final issues. But this is a
23 case where we had actually several years ago went on public
24 notice. So we have a draft water quality certification, a
25 base difference being how Sugar Hill Reservoir will be

1 managed. So we'd have to edit that portion and do some
2 other editing, but that could be fast tracked.

3 MR. KATZ: We're always in favor of that.

4 MR. TERHAAR: Okay. I guess if there's no other
5 questions or comments on Silver Lake, we can move on to the
6 next project.

7 (No response.)

8 MR. TERHAAR: The next project in Vermont is
9 Lamoille River Project No. 2205. It's located on the
10 Lamoille River. The project consists of four developments
11 totalling 16.9 megawatts. A relicense application was filed
12 in 1987. And this project was on last year's list.

13 Central Vermont refiled the request for a water
14 quality certificate in March of 2004. So it's now due in
15 March of 2005. In July of 2003, we received a settlement
16 agreement which requires the licensee to seek approval from
17 the Vermont Public Service Board to recover the cost of the
18 settlement from the ratepayers. In September 2004, the
19 Public Service Board held meetings on this issue. Written
20 briefs from these meetings are not expected until April of
21 2005. In October 2004, the Commission also issued a
22 supplemental EA.

23 As for remaining actions, we are waiting on a
24 water quality certificate from the VANR. VANR expects to
25 issue the water quality certification upon final approval of

1 the settlement, which requires final action by the Vermont
2 Public Service Board.

3 So, once again, Jeff, if you're there if you can
4 give us some idea how you anticipate it would take to issue
5 a water quality certificate after the Public Service Board
6 takes their final action?

7 MR. QUEDO: If the Public Service Board's action
8 is favorable, and we don't know if it will be favorable, and
9 we don't know how long it will take them to reach a
10 decision. But, if it is favorable, it would actually be a
11 fairly short process I would expect unless it's appealed.
12 The water quality certification actually -- before the start
13 of the Public Service Board process, we had drafted a water
14 quality certification and placed it on public notice. That
15 401 was consistent with the settlement agreement. So we
16 have received comments from the utility and other interested
17 parties on our earlier draft. So we're fairly far ahead of
18 the game. So, if we get a good decision from the Public
19 Service Board, the 401 certification should follow by two or
20 three months after the decision.

21 MS. MILES: Is anyone there from the Public
22 Service Board? Or, Jeff, do you have a sense of timing for
23 a final action from them?

24 MR. VICTIN: This is Ken Victin from Central
25 Vermont Public Service. I'm one of the attorneys for CV and

1 I do a lot of practice before the Board. Right now we have
2 final briefs scheduled to be filed by April 26th. I'm
3 sorry, April 28th, which is conditioned upon hearings
4 occurring the last week of February. The Board has not yet
5 actually scheduled those hearings. We've asked them for
6 their available times. So the schedule is contingent on
7 that. Normally, after briefs are filed, the Board issues a
8 decision within 30 to 45 days. There is no statutory time
9 requirement for them to issue a decision, but that's the
10 usual timeframe that they take.

11 The chairmanship of the Public Service Board is
12 up for renomination in February. And it is possible that
13 there may be a new chairman of the board, either one of the
14 existing board members or a new board member. And it's also
15 possible that the existing chairman may be reappointed or
16 may stay on for a period of time even after his term expires
17 in February. I bring that up just because the makeup of the
18 Board may change during the final stages of this hearing and
19 that could cause a further delay if a new board members
20 needs to get up to speed on the case. This is an important
21 case in Vermont because it deals with rate recovery of the
22 costs that are incurred in the settlement issue. So it's
23 not a small issue here. It's a relative important issue.

24 That being said, if the remaining schedule does
25 stay in effect, we could anticipate having an order by the

1 end of May, middle of June. And, if that order is
2 favorable, I would anticipate there would not be appeals
3 because the parties that would generally be involved in such
4 appeals are involved in this case. And, if it's a favorable
5 decision that all the parties are supporting, I think an
6 appeal is unlikely.

7 In Vermont, however, appeals of Public Service
8 Board decisions are unlikely by non-intervenors or non-
9 parties as opposed to an appeal of a water quality
10 certification, which a Vermont law allows anybody to appeal
11 whether they've been involved in the process or not.

12 So I think Mr. Quedo's assessment of water
13 quality certification perhaps two or three months after the
14 Board issues a favorable order is feasible. So that would
15 be late summer, early fall, if the schedule is maintained as
16 planned at this point.

17 MS. MILES: Thank you.

18 MR. TERHAAR: If there are no other comments or
19 questions on Lamoille, we'll move to the next project.

20 (No response.)

21 MR. TERHAAR: The last project in Vermont is
22 Waterbury Project No. 2090. It's a 5.5 megawatt project
23 located on Little River. This is relicense application
24 filed in 1999. And this project is new to the list.

25 As for recent activity, Green Mountain refiled

1 their request for a water quality certificate in November of
2 2004. It's now due November 2005. In August 2004, we
3 issued an environmental assessment. Extensive comments were
4 received on that environmental assessment. So we anticipate
5 that a final EA will be needed. The final EA is scheduled
6 for February of 2005. In addition, just last week we sent a
7 10(j) letter to the VANR and Interior. We anticipate that a
8 10(j) meeting will be scheduled with these agencies within
9 the next 30 days.

10 As for remaining activities, we are looking at a
11 final EA by February and a Vermont water quality
12 certificate, hopefully, before November.

13 Does anyone have anything to add for Waterbury
14 Project?

15 MR. SULLIVAN: This is Tom Sullivan from Gomez
16 and Sullivan Engineers on behalf of Green Mountain Power.

17 As you said, there were substantial comments on
18 the EA. Several of those comments went to operation of the
19 reservoir, which is --

20 MR. KATZ: Excuse me. Could you repeat your
21 comment since you were having trouble picking up?

22 MR. SULLIVAN: There were substantial comments
23 files on the EA. Several of those comments went to
24 operation of the reservoir, which is a dual purpose flood
25 control and hydroelectric facility. The reservoir was built

1 by the Corps of Engineers for flood control and it's
2 operated by the State of Vermont for them.

3 Given the comments on the EA relative to
4 reservoir operations, we proposing to modify those and the
5 potential impacts on flooding, both in the reservoir and
6 downstream. Green Mountain Power is going to be modifying
7 its proposal for the license. They're going to submit a
8 revised proposal to the Commission in January that probably
9 reflects something similar to what the existing reservoir
10 operation is.

11 They had originally proposed a change to that as
12 are result of some turbidity issues. And they're going to
13 be working with the Vermont agency and natural resources to
14 find other ways to resolve those turbidity issues.

15 MR. TERHAAR: Can you tell me, Tom, if you're
16 looking at January -- the beginning of January, the end of
17 January?

18 MR. SULLIVAN: My guess is it's going to be
19 closer to the end of January.

20 MR. TERHAAR: I guess maybe we'll have to get
21 with the project coordinator on that. Because when we hold
22 the 10(j) I don't know if there's some way we can coordinate
23 that coming in with our 10(j) meetings. I notice the date
24 for the 10(j) meetings hasn't been scheduled yet, but that's
25 something you probably need to consider.

1 MR. SULLIVAN: Okay.

2 There is also one other outstanding issue which
3 is also pertinent to 10(j). And, that is, what the
4 downstream flow regime will be at the project. The Green
5 Mountain Power, the applicant, has made a proposal. And I
6 think they've supplied all of the study information needed
7 for that and really haven't seen alternatives to that
8 proposal, other than the alternatives that were in the EA.
9 They haven't seen any alternatives from the State of
10 Vermont. So that's outstanding issue that still needs to be
11 resolved as well.

12 MR. KATZ: Jeff, can you let us know, does any of
13 this discussion or revision, in your view, change the time
14 when a certification might be expected. I note that this
15 activity is to take place in January or so and the deadline
16 for the state to act or waive certification is later in the
17 year. What's your sense of that?

18 MR. SULLIVAN: My sense is that November is
19 certainly within the possibility of attaining. I talked to
20 the project coordinator yesterday relative to the 10(j)
21 conference and indicated that we would probably ask FERC to
22 defer on the comments for now until after the EA is
23 finalized and we have an opportunity to look at that.

24 The state is very interested in ensuring that
25 there's an adequate analysis of the flood implication, it's

1 terms, conditions and recommendations where we said that we
2 would want an analysis, run-of-river operation. So the
3 implications of that recommendation have to be fully
4 understood before we consider, basically, revising our 10(j)
5 recommendations. But, given that we may be revising our
6 10(j) recommendations, it really doesn't make sense to have
7 a 10(j) conference at this point in time.

8 MR. TERHAAR: Thank you, Jeff.

9 MR. KATZ: Well, it looks like the State of
10 Vermont has a little bit of work to do if it's wants to get
11 the Chairman's gold star award for 2005, but we trust
12 they'll be in there trying.

13 MR. QUEDO: We work on it every year.

14 (Laughter.)

15 CHAIRMAN WOOD: And we look forward to visiting
16 with you every year.

17 (Laughter.)

18 CHAIRMAN WOOD: Thanks for doing your best.
19 Anything we can do to help, let us know.

20 MR. QUEDO: Thank you.

21 MR. KATZ: Before we move on to the next state,
22 let's let folks know if they've checked in from the West
23 Coast. They were running a little bit behind on our East
24 Coast work here. It shouldn't take too much longer before
25 we'll be ready to turn to the West Coast projects.

1 MR. TERHAAR: The next state we'll be looking at
2 is Wisconsin. We have two projects in Wisconsin. The first
3 being Grandmother Falls Project No. 2180. This is a
4 3 megawatt project located on the Wisconsin River. It's a
5 relicensing application filed in 2001. This project is new to
6 the list.

7 For Grandmother Falls, a decision was made to
8 process the project concurrently with two other projects,
9 the Alexander Project and Mosinee Project. This was done so
10 that a multi-project environmental assessment could be
11 prepared. The purpose of the multi-project environmental
12 assessment is to coordinate analysis of the projects which
13 are closely located. All three of these projects are
14 located within a 60-mile long reach of the Wisconsin River.

15 As for recent activity, the last project to be
16 filed was Mosinee, filed in December of 2002. Since then,
17 we've completed scoping on all three projects in March 2004.
18 And we issued a multi-project environmental assessment in
19 October 2004.

20 At this time, I'd just like everyone to take note
21 of a recent update to our slide. In our slide, under
22 remaining actions, we show that concurrence from Interior on
23 endangered species was due the end of November. We'd like
24 to report that endangered species consultation is now
25 complete. Just this week, Interior filed a letter of

1 concurrence on endangered species. Therefore, as for
2 remaining actions, we now have everything we need and staff
3 is currently preparing the order.

4 CHAIRMAN WOOD: Great.

5 MR. TERHAAR: If there's no questions on that, we
6 can move to the next project in Wisconsin.

7 (No response.)

8 MR. TERHAAR: Winter Project No. 2064. This is a
9 0.6 megawatt project located on the east fork of the
10 Chippewa River. Their relicense application was filed in
11 1999. This project is new to the list.

12 As for activity during the last year, Flambeau
13 Hydro refiled their request for a water quality certificate
14 in June of 2004. It's now due in June of 2005. We issued
15 an environmental assessment in August of 2004. We also
16 issued a final EA in November of 2004.

17 As for remaining actions, since the EA has been
18 issued last month we have a number of items we are waiting
19 for. This includes comments on the EA which are due in
20 December, a water quality certificate from the Wisconsin
21 DNR, which is not due until June 2005, the final 4(e)
22 conditions from the Forest Service, which are expected in
23 January 2005. We're looking for concurrence on endangered
24 species from the Fish and Wildlife Service. This is due in
25 December. And we also plan to schedule a 10(j) meeting with

1 Interior later this month.
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1 MR. MARTINEE: This is Bob Martinee from
2 Wisconsin Department of Natural Resources. The applicant in
3 this case filed several incomplete water quality
4 certification requests. That request is now complete. The
5 State of Wisconsin rules under Administrative Code require
6 that we file the water quality cert with 120 days.

7 That deadline is up on January 20. I've talked
8 to the staff that are working this water quality cert and
9 they see no reason why it will not be issued before January
10 20. It appears that there will be an appeal of that water
11 quality cert, but until it is issued, we don't know whether
12 or not the applicant asked for an appeal. He has 30 days to
13 appeal after January 20.

14 MR. TERHAAR: Thank you Bob. We'll take January
15 over June anytime. That will speed things up.

16 MR. KATZ: Okay Bob, this is John Katz. Can you
17 tell me, there is no provision in the Wisconsin statutes
18 that an appeal stays the water quality certification, is
19 that right?

20 MR. MARTINEE: The water quality is in force
21 until it's somehow changed or modified as a result of the
22 Administrative Law Judge ruling or eventually a circuit
23 court review of the Administrative Law Judge ruling.

24 So essentially, the 401 cert is considered
25 issued. It will be on January 20th in this case or before

1 that. But like I said, I don't know how long it's going to
2 take to get through the appeals process.

3 MR. KATZ: Right. Thank you very much. Just
4 Commissioner Kelliher and Mr. Chairman, just to make sure
5 that you are aware that the staff and the Commission's
6 policy has been that where there is an appeal or 401
7 certification, so long as it is not stayed, we are free to
8 go ahead with the license and what we do is we are reserving
9 the license to change the conditions as they might be
10 changed through the appeal of the water quality
11 certification.

12 MR. SCHMALL: This is Nick Schmall from the
13 eastern region of the United States Forest Service in
14 Milwaukee, and I wanted to let you know that our regional
15 forester will be filing comments on your final environmental
16 assessment on or before December 17th, followed by our final
17 4E terms and conditions and recommendations on or before
18 January 17th of next year.

19 MS. MILES: Great thank you.

20 MR. TERHAAR: If there is no other comments on
21 winter projects we can move to the next project. The next
22 two projects are located in Georgia and we will be looking
23 at two projects together.

24 The first being Enterprise Mill project 2935.
25 This is 1.2-megawatt project located on the Augusta Canal,

1 which is adjacent to the Savannah River in Georgia.

2 This is a re-license application filed in 2001.
3 We're also going to look at Sibley Mill project #5044. this
4 is a 2.5-megawatt project also located on the Augusta Canal.
5 The re-license application was filed in 2001.

6 Both Enterprise and Sibley are new to the list.
7 Enterprise and Sibley are part of a multi-project
8 environmental assessment and are being processed
9 concurrently with the August Canal project.

10 These projects are located in close proximity to
11 each other. They are operationally linked and flow studies
12 conducted by the City of Augusta are needed to evaluate
13 potential impacts to Enterprise and Sibley mill.

14 As for recent activity, the schedule for
15 Enterprise and Sibley is lined to August Canal. The
16 application for Augusta Canal was filed in January 2003.
17 There was a revision of that application made in June of
18 2003.

19 We have issued a multi-project ready for
20 environmental assessment notice in June 2004. A preliminary
21 section 18 fish way prescription from interior and agency
22 recommendations were filed in August 2004.

23 As for remaining actions, the next steps for
24 these two projects is for staff to prepare a draft
25 environmental assessment, and this is scheduled for the end

1 of this January.

2 If anyone has any questions or would like to add
3 anything for Enterprise and Sibley?

4 CHAIRMAN WOOD: So after the EA then Monte, what
5 is the next step?

6 MR. TERHAAR: We're going to issue the draft EA.
7 The next step is to wait for comments on that draft EA which
8 we expect to be 30 days after that date. We will address
9 those comments in a final EA we are preparing a final on
10 this project. And I believe the final EA is scheduled for
11 April 2005.

12 CHAIRMAN WOOD: If all goes well, this is its
13 only appearance.

14 MR. TERHAAR: Yes, for these two projects, this
15 should be its only appearance.

16 CHAIRMAN WOOD: Okay anything else on that one?

17 (No response.)

18 MR. KATZ: All right Mr. Chairman, Monte, thank
19 you very much. I believe that wraps up your portion of the
20 open. Mr. Chairman with your permission we will do seat
21 shuffling of the staff and move on to the West Coast.

22 Mr. Chairman Mr. Kelliher we're ready to move on
23 to the West Coast and Susan O'Brien, also OEP staff will
24 walk us through those cases. Susan.

25 MS. O'BRIEN: Chairman Wood, Commissioner

1 Kelliher regarding upgrade on California. There are four
2 California projects. The first one we're going to discuss
3 is the oldest case here, Escondido Project #176.

4 It's a 1.64-megawatt project on the San Luis Rey
5 River near San Diego, California. It was filed in 1971 and
6 amended in 1975. The Commission actually issued a license
7 for this project in 1979. However the supreme court vacated
8 the license due to outstanding water rights issues.

9 The licensee has filing semi-annual report since
10 2002. Per the workshop last year, we are expecting a
11 comprehensive agreement to be completed in 2006.

12 Last week, the City filed an update confirming
13 that progress has been made although no final agreements
14 have been reached. Due to the water rights legislation, the
15 Commission cannot issue licenses until that comprehensive
16 agreement is filed.

17 Is there someone here from the City of Escondido
18 that can provide us an update?

19 MR. OTTINGER: Yes thank you. I'm Greg Ottinger
20 from Duncan and Allen here on behalf of Escondido. That's
21 an accurate summary of where we are.

22 The parties are meeting for four days next week,
23 as they have been meeting on a regular basis to try and work
24 out the substantive issues.

25 I'd like to add one procedural note and that is

1 that Mr. Katz here has been designated non-decisional staff
2 so that he can assist the parties and offer the benefit of
3 his sage counsel without us running foul of ex parte rules.

4 That I think has been a very beneficial
5 development and we expect to exploit Mr. Katz even more in
6 the future.

7 CHAIRMAN WOOD: Just watch it okay.

8 (Laughter.)

9 There is no need apart from this -- there is no
10 need for legislative action and I'm reading the caption here
11 and I want to make sure I understand it. Project specific
12 legislation will be required from Congress or it's just a
13 settlement now from this point?

14 MR. OTTINGER: There is existing legislation
15 which says the Commission can't go forward until an
16 agreement is reached so that's the backdrop for this.

17 CHAIRMAN WOOD: Got it. So this agreement then -
18 - there is something that the parties work for, the
19 consensual agreement.

20 MR. OTTINGER: That is exactly right.

21 CHAIRMAN WOOD: Okay, you're going to go in the
22 record and give me a date when you're going to file
23 something here?

24 MR. OTTINGER: Well, the settlement, I won't get
25 too much into the details of the substance but there is new

1 water that's been created that will be delivered through the
2 lining of the Old American Canal and the Coachella Branch of
3 the Old American Canal.

4 Those tasks are scheduled to be -- well the
5 lining of the Coachella Branch begins this month, the
6 construction on that is scheduled to be completed on 2007.
7 So the parties are very hopeful that they can, and will
8 complete everything that they need to do before the water
9 actually starts flowing.

10 I'm afraid you may see me next year, in other
11 words.

12 (Laughter.)

13 MS. O'BRIEN: Thank you Greg. So our next action
14 is the completion of this comprehensive agreement that we
15 expect in 2006 and then we'll move forward with the re-
16 licensing process.

17 CHAIRMAN WOOD: How much has been expended on
18 this project for 1.6-megawatt dam in a period of time that
19 equals the life of Jesus Christ?

20 (Laughter.)

21 It is the season.

22 MR. OTTINGER: Well, a number of the parties who
23 were around in 1971 when this began are deceased or retired.

24 (Laughter.)

25 We are on about a third generation in some cases

1 for some of the parties.

2 CHAIRMAN WOOD: And the licensee is the City?

3 MR. OTTINGER: The licensee is the City of
4 Escondido, although the Commission, in an earlier order
5 required that the Vista Irrigation District be a co-
6 licensee. So they have been brought into the process as
7 well.

8 CHAIRMAN WOOD: I think I knew that. Oh there it
9 is, yes. So you are counsel for the City then, right, and
10 Vista both?

11 MR. OTTINGER: Pardon me?

12 CHAIRMAN WOOD: And Vista Both?

13 MR. OTTINGER: No, just the City of Escondido.

14 CHAIRMAN WOOD: Okay, thank you.

15 MR. OTTINGER: You're welcome.

16 MS. O'BRIEN: Our next project is a storage
17 reservoir and it's part of the Big Creek Hydro Power System.
18 Vermillion Valley project #2086 is a file for re-license
19 application in 2001.

20 The project is new to the list this year. In May
21 2004, we issued our final environmental assessment.
22 Southern California Edison withdrew and re-filed their
23 request for water quality certification in October of this
24 year, resetting the one-year timeframe for the state to
25 issue the 401 certification. Therefore it is now due

1 October 2005.

2 In August, Chairman Wood sent a letter to the
3 State Water Resources Control Board, urging action on three
4 California projects that are still in need of water quality
5 certifications. These project are all being discussed
6 today.

7 The Water Board timely responded to Chairman
8 Wood's letter, providing an update on certification process
9 for these three projects.

10 Specifically, for Vermillion Valley, the Board
11 responded that they are working with the licensee to resolve
12 a water quality and data collection issue in order to
13 proceed with the certification decision.

14 The other remaining action for this project is
15 the Pergamatic Agreement. We need the State historic
16 preservation officer's signature on the final PA, which was
17 due in August.

18 Is there anyone here today from the Water Board
19 or the licensee, Southern California Edison that can provide
20 us with an update regarding that water quality and data
21 collection issue and certification process?

22 MR. MOSCOLO: Neno Moscolo --

23 MS. O'BRIEN: I hear somebody but not too well.

24 MR. MOSCOLO: This is Neno Moscolo, I'm in-house
25 for Southern California Edison Company.

1 MS. O'BRIEN: Hi, Neno, can you provide us with
2 an update on your resolution of the water quality and data
3 collection issue with the Water Board?

4 MR. MOSCOLO: My understanding is that all the
5 water quality information has been provided to the State
6 Water Resources Control Board, they have requested, and now
7 it's pretty much in their hands to analyze that information
8 and prepare the water quality certificate.

9 MS. O'BRIEN: Okay. Have you heard from them if
10 they are still on target for October?

11 MR. MOSCOLO: Yes, they indicate that they are
12 but with budgetary and staff problems that they have, there
13 is no guarantee that they're going to meet that timeframe.

14 MS. O'BRIEN: But they do have everything they
15 need now?

16 MR. MOSCOLO: That's my understanding, yes. Our
17 technical people believe that they have everything -- that
18 the State Water Board has everything that they need to make
19 a decision.

20 MS. O'BRIEN: Okay, great. Is there anyone here
21 from the State Historic Preservation Officer's office in
22 California on the line?

23 (No response.)

24 Okay then, so to wrap up, we are still expecting
25 the water quality certification in October of 2005.

1 Our next project is on the South Form of the
2 American River. The El Dorado Project, FERC #184 is a 21-
3 megawatt project.

4 The re-license was filed in 2000. This project
5 is also new to the list. We issued our draft environmental
6 impact statement in March 2003. Then in April 2003, a
7 comprehensive settlement in support of all the parties was
8 filed and our final environmental impact statement was
9 issued in August 2003.

10 In April of this year, the licensee withdrew and
11 re-filed their request for 401 certification, resetting the
12 one-year time period so that certification is now in April
13 2005.

14 The Water Board's letter to the Chairman stated
15 that they were on schedule to issue the certification within
16 the pending one-year timeframe.

17 And I don't believe there is anyone on the line
18 from the Water Board, correct?

19 (No response.)

20 Is there anyone from the El Dorado Irrigation
21 District?

22 (No response.)

23 In the other remaining action, the signature of
24 the Pergamatic Agreement that is now complete. We received
25 the Shopo signature on December 4th.

1 CHAIRMAN WOOD: So just the water quality is left
2 there?

3 MS. O'BRIEN: Yes.

4 CHAIRMAN WOOD: And this is filed in 2000, is
5 this the first shot through the water quality process at the
6 state level or have we been there before?

7 MS. O'BRIEN: Yes it's been re-filed.

8 CHAIRMAN WOOD: Do you have any sense of what the
9 issues were that were holding it up before?

10 MS. O'BRIEN: They have to complete the state
11 process which goes a little bit more in depth than our NEPA
12 document. And they ask -- the licensee pays for that report
13 to be done. So there is a matter going on between the
14 licensee and the Water Board of paying and having that
15 document prepared and that is all completed now, but that
16 was part of the hold up.

17 CHAIRMAN WOOD: Okay.

18 MR. KATZ: Right -- let me interrupt. It's not
19 so much a matter of depth, Mr. Chairman, it's if the State
20 decides that there are certain studies that they feel should
21 be done that Commission staff perhaps felt were not
22 necessary for a full understanding, the State can then
23 require that before the 401 is issued.

24 CHAIRMAN WOOD: Now, the way you read the
25 response back to me, this fall was, they're going to do it

1 in a year or was that a little optimistic?

2 MS. O'BRIEN: No they demand to have their water
3 quality certification before this pending one-year expires.

4 CHAIRMAN WOOD: Okay so there won't be probably a
5 need to roll over.

6 MS. O'BRIEN: No we don't expect them.

7 CHAIRMAN WOOD: There is a hand there in the
8 back.

9 MS. MALLOY: This is Liz Malloy, I'm with FERC.
10 I was actually non-decisional staff on this El Dorado
11 project and I happen to know that one delay the State had
12 was, there were a number of interim projects the licensee
13 was undertaking that needed little water quality certs, so
14 they kept working on those to get those projects done.

15 They are now turning to it, I understand and they
16 hope to get it out.

17 CHAIRMAN WOOD: Okay. Thank you for that
18 information.

19 COMMISSIONER KELLIHER: Can you tell me what the
20 historic preservation issue is with this project. The State
21 historic preservation officer has to sign off. I'm just
22 curious what the historical preservation issue is.

23 MS. O'BRIEN: We've already signed off on that
24 Pergamatic Agreement.

25 MR. KATZ: As a general matter Commissioner,

1 there are Pergamatic Agreements that deal with what will
2 happen if culture resource artifacts are found. It's not
3 necessary a particular problem in every given case, it's
4 just procedures for what you would do if historic properties
5 were located.

6 COMMISSIONER KELLIHER: Thank you.

7 MR. KATZ: Is that true for the Vermillion
8 Project as well?

9 MS. O'BRIEN: Yes.

10 COMMISSIONER KELLIHER: Thank you.

11 MS. O'BRIEN: Thank you. Moving on. The last
12 project in California is Pit 345 project #233. This is a
13 325-megawatt re-licensing proceeding on the Pit River that
14 started in 2001. This project is new to the list. We
15 issued a draft environmental impact statement in March 2003.

16 A collaborative agreement signed by many parties
17 was filed in October 2003. Our final environmental impact
18 statement was then issued in June 2004. In September of
19 this year, the licensee withdrew and re-filed its request
20 for water quality certification, resetting the one-year
21 timeframe, so it's now due in September 2005.

22 The Water Board's letter to the Chairman stated
23 an environmental impact report under state environmental
24 requirements before they can issue the water quality
25 certification for this project and they expect to begin the

1 preparation of this report soon.

2 Another remaining action is that FERC staff still
3 needs to issue the final Pergamatic Agreement and intends to
4 do so this month.

5 Is there anyone here from PG&E that can provide
6 us with the status update of the environmental impact report
7 preparation?

8 MS. FARRELHIA: Yes, this is Annette Farreghia in
9 California for PG&E and Jim Holman who is the Project
10 Manager for Pit 3,4, and 5.

11 MR. KATZ: Annette, if you could speak up a
12 little bit, the court reporter is having trouble hearing
13 you.

14 MS. FARREGHIA: Okay, can you hear me now.

15 MS. O'BRIEN: We need your name again.

16 MS. FARREGHIA: Annette Farreghia from Pacific
17 Alps and Electric Company. I'm in-house counsel and I'm
18 here with Jim Holman who is the Project Manager for Pit 3,
19 4, and 5.

20 MS. O'BRIEN: Can you provide us with an update
21 on that environmental impact report preparation?

22 MS. FARREGHIA: Well what you described is
23 basically the current status. We reapplied for our water
24 quality certification and we understand that the staff is
25 working on it.

1 But because the Water Board has some staffing
2 constraints and budget problems that we understand, we don't
3 think the report will be ready by the 2005 date and there is
4 a good chance we will have to reapply.

5 MS. O'BRIEN: Yes, but the report -- in the
6 letter they responded to the Chairman, they mentioned the
7 report hasn't began preparation yet. Has that began? Have
8 you worked out any issues between PG&E and the Water Board,
9 and is there anything we can do to help?

10 MR. HOLMAN: Actually, PG&E and -- this is Jim
11 Holman speaking -- PG&E and the State Water Board have
12 entered into a Memorandum of Understanding for conducting
13 the proceeding and we have -- PG&E has retained a
14 consultant, Jones & Stokes Associates that will work for the
15 Water Board to actually prepare that EIR documents. So that
16 has begun.

17 MS. O'BRIEN: Great. But in wrapping up, it
18 looks like you may need to withdraw and re-file before the
19 September 2005 water quality cert is due.

20 MR. HOLMAN: Probably will need to, yes.

21 MS. O'BRIEN: You have any other comments? Thank
22 you very much.

23 MS. FARREGHIA: Thank you.

24 MS. O'BRIEN: Moving on to Oregon, we have two
25 projects. The Power DELs project FERC #2659 is a 6-megawatt

1 project on the Hood River, which is a tributary to the
2 Columbia River.

3 The re-license application was filed in 1998.
4 However a surrender application was filed in 2003. This
5 proceeding includes a comprehensive settlement for interim
6 operation and future decommissioning of the project.

7 The proposed decommissioning will commence in
8 2010 and be completed by 2012. Significant progress has
9 been made since last year's workshop. Formal consultation
10 with NOAA Fisheries and Fish and Wildlife Service was
11 initiated last December.

12 The Fish and Wildlife Service filed their
13 biological opinion in May of this year. The Oregon
14 Department of Environmental Quality issued their water
15 quality certification in June.

16 Then in August of this year, we sent NOAA
17 Fisheries a supplemental analysis to address the recently
18 proposed listing of the Lower Columbia River coho-salmon.

19 NOAA Fisheries issued their draft biological
20 opinion and this is on coho-salmon, steel head, in November
21 2004, and they also discussed the coho-salmon that's
22 proposed to be listed.

23 So the only remaining action is the final
24 biological opinion from NOAA Fisheries, and we expect that
25 in January.

1 Is there anyone here on the phone from NOAA
2 Fisheries that can verify if they are on target for January?

3 MR. JOSEPH: Brett Joseph with General Counsel
4 for NOAA Fisheries. Yes, we are on target. I can verify
5 that we're aiming at that January 2005 date for the final
6 with the addendum for the Lower Columbia Coho.

7 MS. O'BRIEN: Great. Thank you. So that would
8 be it for that project. Once we have that final biological
9 opinion we can move forward on final action on this project.

10 The other project in Oregon is new to the list.
11 Pelton-Round Butte Project #2030 is a 366.8-megawatt project
12 located on the Deschutes River, which is also a tributary to
13 the Columbia River.

14 The re-license application was filed in 2001.
15 Our final environmental impact statement was issued in June,
16 then a comprehensive settlement signed by all the parties
17 was filed in July

18 We are waiting for the biological opinion from
19 NOAA Fisheries regarding coho salmon and steel head trout,
20 which was due last month.

21 In November we completed consultation with Fish
22 and Wildlife Service on bull trout. However, I'd like to
23 point out that bull trout critical habitat was just listed
24 in October of this year and that has caused us to re-
25 initiate consultation on critical habitat for similar

1 projects.

2 Specifically for Pelton-Round Butte, we need
3 concurrence from Fish and Wildlife Services on bull trout
4 critical habitat, which is due in January.

5 And finally, the Tribal Historic Preservation
6 Officer has just signed the Pergamatic Agreement this week.
7 So that's now complete.

8 CHAIRMAN WOOD: So you need the further
9 concurrence on bull trout and the BO?

10 MS. O'BRIEN: Yes we need a biological opinion
11 from NOAA Fisheries and we're hoping you can provide us an
12 update on that project as well?

13 MR. JOSEPH: Thank you, Brett Joseph again. Our
14 schedule is to have the draft biological opinion out before
15 the end of the year.

16 MS. O'BRIEN: Okay great. And the final?

17 MR. JOSEPH: I anticipate the final -- I don't
18 have a specific date for you, but I anticipate a turnaround
19 probably March.

20 MS. O'BRIEN: March?

21 MR. JOSPEH: Yes. With the -- typically we
22 provide a 30-day timeline, so I'm looking at 30 days plus 30
23 days to turn around the file at the outer end. We may get
24 it in sooner.

25 MS. O'BRIEN: Okay great. So that would be the

1 biological opinion from NOAA Fisheries coming in by the end
2 of December, the draft coming in in December and allowing
3 for 30 day comment period and then a final biological
4 opinion coming in by March of next year.

5 Is there anyone here from Fish and Wildlife
6 Service that could speak regarding that concurrence letter,
7 if it's still on schedule to be filed in January?

8 MR. TANAKA: This is Kevin Tanaka in care of the
9 solicitor's office. To the best of my knowledge we are on
10 target.

11 MS. O'BRIEN: Great.

12 MR. TANAKA: I didn't have a chance to confirm
13 this with our biologist in the filed but I haven't been told
14 otherwise.

15 MS. O'BRIEN: Okay great. So we are still
16 expecting the concurrence from Fish and Wildlife Service in
17 January.

18 Three projects in Washington. Again, all of
19 which are tributaries to the Columbia River. The first one
20 we're going to discuss is the Condit Project, FERC #2342.

21 This is a 14.7-megawatt project on the White
22 Salmon River, this is located just 3 miles upstream in the
23 confines of the Columbia River.

24 The re-license application was filed in 1991.
25 However, settlement agreement for dam removal was filed

1 while the re-license application was still pending.

2 In a final supplemental environmental impact
3 statement for the settlement dan removal proposal was
4 completed by staff in 2002. We are still waiting for the
5 401 certification for the surrender application from the
6 Washington Department of Ecology. The licensee withdrew,
7 re-file their request for certification in May 2001 so it's
8 now due May of next year.

9 The biological opinion from NOAA Fisheries
10 regarding listed coho-salmon and steel head trout was due in
11 August 2002. Per the 2003 workshop, we expected it in March
12 of this year.

13 On December 1st, we requested a formal
14 consultation with the Fish and Wildlife Service on the newly
15 listed bull trout critical habitat.

16 The biological opinion from Fish and Wildlife
17 Service regarding this is due in April of 2005. However,
18 we've asked Fish and Wildlife Service to expedite their
19 response since they've already drawn a conclusion regarding
20 their critical habitat in their previously filed biological
21 opinion on the bull trout.

22 I'd first like to ask if someone from Washington
23 Department of Ecology is on the line or here that could
24 provide us with an update on the water quality
25 certification?

1 MR. TABB: Yes, good morning. My name is Tom
2 Tabb, I'm also here with our Deputy Director Pauline Zimm.

3 MS. O'BRIEN: Good morning.

4 MR. TABB: Good morning. Just wanted to briefly
5 update the Commission on our status. We have been working
6 with Pacific Corp and have made considerable progress in the
7 findings resolving many of the technical and regulatory
8 issues that have surfaced as a result of processing this
9 application.

10 The State is also engaged in conducting its own
11 supplemental environmental review under our State
12 Environmental Policy Act. So prior to making the final 401
13 certification, we will need to conclude that process. But
14 we have made, as I mentioned previously, considerable
15 progress in the technical and regulatory issues and are just
16 waiting for that additional environmental review process to
17 conclude.

18 MS. O'BRIEN: Are you still on target for May
19 2005?

20 MR. TABB: I don't think so, once we are given
21 the green light to move forward again with our supplemental
22 environmental review process, that will take anywhere from,
23 we're thinking 10 months, to conclude that process, which
24 will result in a withdrawal and reapply in May of this next
25 supper.

1 MS. O'BRIEN: I'm not sure I understand clearly.
2 You still have to --

3 MR. TABB: We have to conclude our state
4 environmental review because we found a few things that, in
5 the final supplemental EIS that we felt weren't adequately
6 addressed.

7 We have been working with Pacific Corp and others
8 to conclude that process but we are in the final stages of
9 that. And to conclude that, is going to take an additional
10 10 months to do that.

11 MS. O'BRIEN: Okay, you're finishing your review
12 and then still need to write your document?

13 MR. TABB: That is correct.

14 MS. O'BRIEN: Okay, so you need another 10 months
15 from now or from --

16 MS. ZIMM: This is Pauline Zimm and let me help
17 clarify. We have two timelines I think you are interested
18 in. One, to complete the environmental review process is
19 about 10 months. We are ready to start when Pacific Corp
20 gives us the green light on issuing the contract and I think
21 Pacific Corp would probably want to speak to that as well in
22 this session.

23 And then about 60 days after we complete that
24 environmental review process, we expect to have a 401
25 certification ready to issue, so we will be going past the

1 May 2005 timeline.

2 MS. O'BRIEN: Okay. So if you begin your process
3 now, it's possible to have it by the end of next year?

4 MS. ZIMM: Possibly, although I think we might be
5 back here next December, not quite finished.

6 MS. O'BRIEN: Okay. Is someone here from Pacific
7 Corp? I believe Teri Flores is here.

8 MS. FLORES: Good morning. I'm Teri Flores,
9 Hydro Licensing Director for Pacific Corp and I have with me
10 today Gail Miller who is the Project Manager for the Condit
11 Project.

12 And of course we want to start by thanking you
13 for the opportunity to come and provide some remarks to you
14 today and we do appreciate the time and attention you give
15 to hydro re-licensing.

16 We are here today to basically deliver in person.
17 We have some recent developments in the Condit proceeding
18 and it was an opportunity for us to come in person and
19 update you on what those developments are.

20 And those developments include actually amending
21 the settlement agreement that we reached in 1999. So gain
22 is going to provide a little more information about that.
23 But first, I thought it might be helpful to give a little
24 bit of background.

25 We did reach a settlement agreement with federal

1 and state agencies the Columbia River Intertribal Fish
2 Commission, Treaty Harvest Tribe, the Aqua Nation and many,
3 many, over a dozen environmental groups back in 1999.

4 That settlement agreement did call for the
5 decommissioning and removal of the 14-megawatt Condit Dam
6 Project.

7 And I still remember the moment that I had in
8 this room when Chairman Wood asked me how is it that we came
9 to that, how is it that we decided to remove a dam.

10 And I remember replying, well it certainly wasn't
11 our first choice, and it certainly where we had started out
12 in the licensing process, and it probably wasn't even our
13 second.

14 But, the fact of the matter was, and still is,
15 that it's the right choice because decommissioning this
16 project in this case remains in our customer's best interest
17 and we are a regulated utility and our job is to maintain
18 customer benefits.

19 The reason for that is Condit decommissioning and
20 dam removal, the settlement that we've reached with all the
21 parties is about half the cost of accepting the new license
22 that we saw as a result of the final EIS.

23 And that license would have included terms and
24 conditions that would have rendered the project uneconomic.
25 So we worked with all the parties collaboratively and came

1 to the settlement agreement in 1999.

2 And I think an important point there is, by doing
3 that, we avoided a potential scenario where we might have
4 been in the position of rejecting an uneconomic license and
5 engaging in litigation and so on and so forth.

6 So we really view the decommissioning as being in
7 our customers' best interest and the fastest and most
8 efficient way to resolve these licensing proceedings.

9 So there is also other parties in the room that
10 are parties to the settlement agreement and may want to
11 comment as well. But I'm going to turn it over to gain now
12 and she can speak a little more to the nature of the
13 amendment and some of the issues that we're running into
14 with respect to permitting the project.

15 MS. MILLER: Thank you Terri. Commissioners,
16 Chairman, staff. This project as Ms. Flores indicated began
17 with the settlement agreement in 1999. That said, the
18 process is taking much longer than we originally
19 anticipated, and as a result of that is costing more than we
20 originally expected, and more than what as envisioned in the
21 settlement agreement.

22 We reached a point where the cost were exceeding
23 the cost criteria in the settlement agreement and realize we
24 were in a position where we could have exited the agreement,
25 walked away from the agreement.

1 We turned to re-licensing, come back before the
2 Commission and played out that process with them. We are
3 ultimately in courts. However, I think the good news that I
4 have to report to day, is that the parties to the settlement
5 have collaboratively crafted an agreement, an amendment to
6 the settlement agreement that keeps this settlement
7 agreement in tact and moving forward.

8 The parties agree to amend it to provide two
9 additional years of operation and in that, allowed
10 additional generation of revenue that will help to cover the
11 additional cost of permitting that have become much more
12 complicated than originally envisioned.

13 And it allowed us to stay on this decommissioning
14 path. One important point of this amendment is that it
15 really does not change the substance of the settlement
16 agreement. It keeps all the terms and conditions in tact
17 except for basically two -- the two years of additional
18 generation.

19 So rather than removing the project in October
20 2006, we operate until October 2008, and it increases the
21 funding available for permitting. We expect to submit this
22 amendment to FERC in the very near future and in the
23 meantime, continue to acquire the permits that we think are
24 necessary in order to implement project renewal.

25

1 MS. MILLER: We think the implementation of the
2 settlement agreement is the most efficient way to bring
3 these proceedings for Condit to a conclusion and remove them
4 from your docket.

5 We also request that FERC continue to obey the
6 process of issuing a surrender order in this project until
7 we are able to acquire all the necessary permits for the
8 project. And this was indicated in our request for advance
9 that we had filed in 2002.

10 Pacificorp and the parties to the settlement will
11 continue to keep FERC informed about the processes and will
12 continue to file our six month updates with the Commission.
13 As well as one of our components of our request for abeyance
14 was to come back before FERC at the end of 2005 and inform
15 you whether or not we were successful in acquiring all the
16 permits and could proceed forward with dam removal.

17 Again, just let me reiterate that I really do
18 think that the settlement process in the amendment is the
19 best way for the project to proceed. It allows us to
20 preserve our customer benefits, it realizes environmental
21 and resource benefits, and resolves the issues in the most
22 efficient way possible to remove this project from your
23 docket.

24 MR. KATZ: We appreciate that update. Obviously
25 the Commission will look carefully on whatever is filed with

1 it and will consider the merits after the filing has been
2 made and opportunity has been given for public comment and
3 response.

4 MS. MILLER: Thank you.

5 COMMISSIONER KELLIHER: I have one question. Can
6 you tell us why the project became uneconomic? Was it
7 mandatory conditions? Was it 10(j) conditions? And if it
8 was mandatory was it state, water quality, federal resource
9 agencies? I'm just curious.

10 MS. FLORES: I can answer that. It is not --
11 it's a 14 megawatt project and so the expense of that was a
12 little much to bear. And I don't want to leave the
13 impression that was the only thing that was driving the
14 situation but I'd have to say that was probably the primary.

15 COMMISSIONER KELLIHER: Thank you.

16 CHAIRMAN WOOD: Welcome back, I think. It's nice
17 to see you all. Thank you for your efforts. I
18 know this cuts a lot of different ways but this is a part of
19 the country where you all have to live and work and I think
20 working things through in a collaborative format is
21 certainly the preferred route. So thank you for keeping
22 that in mind.

23 MS. FLORES: Thank you.

24 MS. O'BRIEN: We're going to ask NOAA Fisheries
25 next.

1 MR. JOSEPH: Brett Joseph, from NOAA Fisheries.

2 First of all let me just say that NOAA Fisheries
3 continues to support the Condit settlement agreement that we
4 are party to. The biological opinion is ready for
5 signature. It is virtually complete and should be out any
6 time now.

7 Similarly, I would express our concurrence with
8 the statement that was made that the amendment to the
9 settlement agreement is the most efficient way to bring this
10 proceeding to a timely resolution.

11 Thank you.

12 MS. O'BRIEN: Thank you.

13 Is there any -- yes?

14 MR. FOLLAND: Andrew Folland, with American
15 Rivers.

16 Mr. Chairman, Commissioner Kelliher, thanks again
17 for a wonderful December event. It seems like we're back
18 here year in and year out and your progress is obvious from
19 the chart at the beginning. On behalf of American Rivers and
20 the members of the Hydropower Reform Coalition, we'd just
21 like to say thank you for urging these proceedings along. I
22 think it's really important.

23 Obviously delays in relicensing are many times
24 not to the benefit of the environment. Although, as
25 Commissioner Kelliher pointed out, I think it is important

1 not to draw too firm a line in the sand on these kinds of
2 things. That circumstances, as we've learned through the
3 years, can be thorny and certainly warrant some
4 consideration for changes in the time.

5 I just want to say on behalf of American Rivers,
6 who is a signatory to the Condit settlement proposal, that
7 we are supportive of the amendment and that we continue to
8 be strongly supportive of the settlement agreement as
9 amended. We applaud Pacificorp for continuing to push
10 forward with that.

11 I do want to remind the commissioners that while
12 I agree in part with Teri's assessment that fish passage was
13 the last bill in the mailbox, so to speak, it is by no means
14 the only thing that makes a project uneconomic and it is the
15 collection of bills and revenues that make a project
16 uneconomic. So I just wanted to state that for the record.

17 MR. KATZ: We do appreciate the comments. And I
18 want to make sure people know that, again, the presumed
19 settlement amendment has not yet been filed with the
20 Commission. We make no prejudgments regarding it. We will
21 look at it and review the comments on it when we get it.

22 Again, as to the road that you got here to the
23 extent these materials are in the public record that's fine,
24 but we don't really want to get into too much detail as to
25 any substance regarding the proceeding that is not in the

1 public record.

2 MS. FLORES: Yes?

3 MS. FREZENO: Jennifer Frezeno, with the Columbia
4 River Intertribal Fish Commission.

5 Very briefly. John, recognizing the caveats you
6 just put on the table I want to just express on behalf of
7 both CRIFC and the Yakima Nation, our support for both the
8 settlement agreement and the proposed modification. I'm
9 happy that I can be here before you today as a member of
10 CRIFC in supporting a settlement agreement as a signatory to
11 that agreement. I just wanted to offer up on behalf of
12 CRIFC and the Yakima Nation any support that we might lend
13 as you move forward with your analysis.

14 MS. O'BRIEN: We're hoping that Fish and Wildlife
15 Service could provide us a response regarding their
16 biological opinion on the bull trout critical habitat and
17 our request to expedite that process.

18 MS. DAMIANI: Hello. Stephanie Damiani, with the
19 Fish and Wildlife Service. As far as I know everything is
20 on schedule.

21 MS. O'BRIEN: Okay. Are you aware that we've
22 asked you to expedite it, though? Is that possible?

23 MS. DAMIANI: As far as I know February is on
24 target.

25 MS. O'BRIEN: Okay. Great.

1 So to wrap up for this project we have a lot
2 going on still. The water quality certification will be the
3 longest -- the action with the longest time period here. It
4 may be a full year or more before we can see the water
5 quality certification. NOAA Fisheries has confirmed that
6 the filing of their biological opinion is imminent. And the
7 Fish and Wildlife Service has confirmed that the filing of
8 their biological opinion will be timely.

9 CHAIRMAN WOOD: Thank you. Is that all for that?

10 MS. O'BRIEN: Yes.

11 CHAIRMAN WOOD: Thank you all for the update on
12 that. It's been a frequent flyer here at the Commission
13 but, I don't know, there's some comfort in familiarity, I
14 suppose. There are not too many of them.

15 All right.

16 MS. O'BRIEN: Our next project is new to the
17 list: A 72 megawatt project on the Tondery River on the
18 Washington/Idaho border. Box Canyon. FERC Number 2042.
19 It's a relicensing proceeding. It was filed in 2000.
20 Again, it's another tributary to the Columbia River.

21 Since 2000 the applicant and interested parties
22 have engaged in settlement discussions. No settlement
23 agreement has been filed to date. We issued our final
24 environmental impact statement in October.

25 The remaining actions for this project include

1 the biological opinion regarding bull trout and bull trout
2 critical habitat from the Fish and Wildlife Service.
3 Because of the recently listed critical habitat the Fish and
4 Wildlife Service has indicated that they will provide their
5 biological opinion by February.

6 This morning we actually sent a letter to Fish
7 and Wildlife Service requesting that they provide a draft
8 biological opinion in January to allow participants time to
9 comment before the final BO is issued. That's more or less
10 standard practice but we wanted to clarify that we'd receive
11 a draft.

12 Also, the Forest Service final 4(e) conditions
13 are due in January. Again, that's a standard 90 day period
14 after the issuance of the final EIS.

15 And finally, we need signatures from the
16 Washington and Idaho State Historic Preservation Officers on
17 the PA, and they're due later this month.

18 Is someone here that can provide us with an
19 update on the settlement discussions? Yes?

20 MR. VASILE: Good afternoon. My name is Jim
21 Vasile. I'm with the law firm of Davis, Wright Tremaine,
22 and I'm licensing counsel to Ponderay Public Utility
23 District.

24 As far as the settlement discussions are
25 concerned, they have been terminated. There are no ongoing

1 discussions at this time.

2 MS. O'BRIEN: Okay. Thank you for clarifying
3 that.

4 MR. VASILE: I do have a few comments I would
5 like to make about procedural matters. If this is the
6 appropriate time I would like to do that.

7 CHAIRMAN WOOD: As long as they're procedural
8 we'd love to hear them.

9 MR. VASILE: Right. Okay.

10 First of all, I appreciate that news that we're
11 going to get an opportunity to comment on the draft
12 biological opinion per our request of November 19.

13 Second, I would just note for the record that the
14 licensee has filed in its comments to the final EIS a
15 request for a supplemental to the EIS on certain issues.

16 And then -- I don't want to give anybody any
17 surprise, but basically we believe that this case is one in
18 which an evidentiary hearing is appropriate and we will be
19 filing a request for an evidentiary hearing on an expedited
20 basis on certain limited issues probably tomorrow.

21 And then finally, we have a request pending with
22 EPA to vacate its 401 certification for the Calisbell Creek
23 pumps and that request has been pending for some time and
24 there has been no action taken.

25 MR. KATZ: Thank you very much for that update.

1 CHAIRMAN WOOD: Mr. Vasile, the evidence you're
2 hearing will be focused on a request to have hearing on what
3 issues exactly?

4 MR. VASILE: The central issue in the case
5 relates to whether the project caused a material impact on
6 the temperature and velocity of the water body such that a
7 cold water fishery was replaced by a warm water fishery.
8 That central issue is one that drives the very, very costly
9 mandatory conditions with respect to fish passage and bull
10 trout habitat restoration.

11 CHAIRMAN WOOD: Thank you.

12 MS. O'BRIEN: A question for the Fish and
13 Wildlife Service. We wanted to check with you to make sure
14 you can provide us a draft biological opinion, and if
15 January is feasible, like we've requested.

16 MR. TANAKA(?): This is Kevin from the Interior
17 Solicitor's office. To the best of my knowledge, the Fish
18 and Wildlife Service said that they should have it done by -
19 - I believe February 3rd, which is very close to the end of
20 January.

21 MS. O'BRIEN: I know you haven't seen our letter
22 that we just issued. Do you see any problems with providing
23 a draft first?

24 MR. TANAKA: No. The Service expressed to me
25 that they're okay with circulating a draft.

1 MS. O'BRIEN: Great.

2 Is there anyone here from the Forest Service?

3 MR. KING: This is Glen Koehn, with the Caville
4 National Forest.

5 (Laughter.)

6 MS. O'BRIEN: One here at FERC and one on the
7 phone.

8 We just want to know if you're still on track to
9 issue your 4(e)'s in January.

10 MR. KING: Yes. We're on schedule to file on or
11 before January 19th.

12 MS. O'BRIEN: Great.

13 So, in wrap up, the Fish and Wildlife Service is
14 on target to issue their biological opinion. The Forest
15 Service is on track. The settlement has been terminated.
16 And depending on what the licensee files we'd be able to
17 move forward with this project.

18 Oh, sorry. Another hand.

19 MR. WATSON: Chris Watson, with Department of
20 Interior Solicitor's Office, Division of Indian Affairs.

21 I just wanted to make one comment on the PA that
22 you noted was outstanding and that you're waiting for
23 signatures from I think the SHPO.

24 MS. O'BRIEN: Yes?

25 MR. WATSON: It's my understanding you'll be

1 receiving a letter from the BIA shortly with concerns about
2 the PA and expressing that the Commission would need the
3 Tribes' signature on that document as well.

4 MS. O'BRIEN: Okay.

5 CHAIRMAN WOOD: And the Tribe involved is the
6 Calispel?

7 MR. WATSON: Yes.

8 MS. O'BRIEN: Our last project today is the Yale
9 Project 2071. This is a 134 megawatt project located on the
10 North Fork of the Lewis River. Again, a tributary to the
11 Columbia River.

12 This is an interesting situation. We have
13 delayed this relicensing proceeding in order to process it
14 with three other projects located on the river in close
15 proximity. This multi-project analysis will allow us to
16 take a more comprehensive look at the river system.

17 The relicense application was filed in 1999 and
18 at that time Pacificorp requested the Commission to process
19 this application concurrently with the three other
20 projects--Merwin, Swift Number 1, and Swift Number 2--as
21 well as accelerate the expiration of Pacificorp's Merwin
22 project.

23 The applications for these three other projects
24 were just filed in April of this year. Last week, on
25 December 2nd, a comprehensive settlement agreement was

1 filed. In the settlement the parties requested a technical
2 conference with FERC staff and we will be contacting the
3 parties to set this up.

4 CHAIRMAN WOOD: Did they say what issues they
5 needed technical conference for?

6 MS. O'BRIEN: They just wanted to go over the
7 terms in the settlement.

8 CHAIRMAN WOOD: Great.

9 MS. O'BRIEN: Just this morning we issued our
10 acceptance and ready for environmental analysis notice. So
11 the terms and conditions are due in February, our draft NEPA
12 document will be issued in April, and our final NEPA will be
13 completed in July.

14 The licensee has to file its request for water
15 quality certification by February, therefore 401
16 certification will be due in February 2006.

17 Our draft programmatic agreement will be issued
18 in March, before the NEPA document goes out. And the final
19 programmatic agreement should be signed before we issue our
20 final NEPA document this summer.

21 There is the possibility of consultation under
22 Endangered Species Act on listed salmon, steelhead, bull
23 trout, spotted owl and bald eagle. We're not sure if that's
24 necessary and we'll determine this in the draft NEPA
25 document.

1 Okay. I'll turn it back over to John.

2 Does anyone want to make comments on the Lewis
3 River projects? Teri?

4 MS. FLORES: I actually think I can talk really
5 loud.

6 MS. O'BRIEN: You have to use the microphone
7 because of the court reporter.

8 MS. FLORES: It's Teri Flores, Pacificorp.

9 I just wanted to -- on the biological evaluations
10 I just wanted to update you a little bit there that we are a
11 third party designee and we're working with the agencies and
12 we do expect to be able to file biological evaluations in
13 January of this year. So that's going along real well as
14 well.

15 MS. O'BRIEN: Great.

16 Okay. I'll turn it back to John.

17 MR. KATZ: Thank you very much, Susan.

18 Mr. Chairman, Commissioner Kelliher, that wraps
19 up our list for today. We thank all the participants very
20 much for their time and trust we'll see at least as much
21 progress this year as we did in the past year.

22 CHAIRMAN WOOD: I appreciate from our brother and
23 sister agencies, both through the phone and in person, you
24 all being here too. Certainly the licensees and other
25 interested parties are always welcome. And folks in the

1 federal and state family, we always appreciate your presence
2 each year to help us really focus on timelines and what's
3 needed and who needs to be doing what so we don't have any
4 dropped balls here.

5 I think it's important to the public and to the
6 licensees and to the intervening parties that they know that
7 we're all working collaboratively on a given timetable to
8 address concerns. They may not be happy with how we
9 ultimately address them but we do get to them at the end. I
10 appreciate the hard work.

11 I did do an informal poll, and I'll see how good
12 we do in a year's time, but of these 22 I do have a pretty
13 good sense that based on the commitments today that nine
14 would be easy to get off the list and there might be another
15 three that with a push could get there by the late fall.

16 So I know we'll have a new influx of applications
17 from the three year standard -- it's not dropping to two.
18 Three is good enough.

19 (Laughter.)

20 CHAIRMAN WOOD: and I'm telling out of turn but
21 Ann came over -- please don't change this.

22 MR. KATZ: Easy may never be the right way to
23 describe getting out a hydro license order but do-able
24 sounds good.

25 CHAIRMAN WOOD: Do-able. The little martyrdom

1 points are granted to Mr. Katz.

2 (Laughter.)

3 CHAIRMAN WOOD: Well, thank you all. I
4 appreciate the interest from the folks in the audience. I'm
5 glad to have you all here and you're always welcome at FERC.
6 Have a good holiday.

7 (Whereupon, at 12:33 p.m., Thursday, December 9,
8 2004, the workshop was adjourned.)

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