

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Hydropower Licensing
- - - - -x
FPL Energy Maine Hydro LLC : Project No. 2531-067
- - - - -x
West Buxton Hydroelectric Project
NextEra Energy Resources, LLC
28 Katherine Drive
Hallowell, Maine 04347
Friday, November 2, 2012

The public scoping meeting, pursuant to notice, convened
at 9:20 a.m., before a Staff Panel:

ALLAN CREAMER, Project Coordinator, FERC
with:
FRANK H. DUNLAP, Senior Environmental Specialist,
NextEra Energy Resources, Inc.

1 ATTENDANCE

2 NextEra:

3 Frank H. Dunlap

4 Matthew LeBlanc

5 Jason Clere

6 TRC Consultants:

7 Jessica Murray

8 Sara A. Verville

9 Maine DEP:

10 Kathy Howatt

11 NMFS:

12 Bill McDavitt

13 U.S. Fish & Wildlife Service:

14 Steve Shepard

15 FERC:

16 Allan Creamer

17 Rachel MacNamara

18

19

20

21

22

23

24

25

26

1 P R O C E E D I N G S

2 MR. CREAMER: Good morning, everyone. Second
3 installment of our scoping meetings for the West Buxton
4 project; we had meetings last night in Buxton, so this is
5 our second day meeting.

6 My name is Allan Creamer, I am with the Federal
7 Energy Regulatory Commission out of Washington, D.C. I am
8 the Project Coordinator and a fisheries person for this
9 project, moving forward. I have with me Rachel MacNamara;
10 she's our recreation person. She'll also be dealing with
11 cultural resources; and two other folks that are not here;
12 Sara Florentino is our terrestrial person, and Monti Terharr
13 {ph} is our engineer on the project.

14 I'd like to thank everybody for coming out this
15 morning. Hopefully this will not take too much time out of
16 your day; we'll get through this fairly quickly. If anybody
17 has any questions along the way, feel free to stop me. The
18 presentation is going to be broken up into two parts; one
19 will be a presentation on the licensing process itself, and
20 the second part of it will be the scoping part for West
21 Buxton specifically.

22 A couple protocols to start with. We have
23 registration forms; we'd like to know who attends the
24 meetings just so we can kind of keep track of who we have,
25 the stakeholders involved. I believe we passed those around
26

1 earlier, so if you would please fill those out and leave
2 those with Rachel.

3 MR. DUNLAP: Bill McDavitt from NOAA-NMFS is on
4 line at this time, also.

5 (On speakerphone)

6 MR. CREAMER: Bill, are you there?

7 MR. McDAVITT: Yes, I'm here.

8 MR. CREAMER: Okay, we have one individual on the
9 phone; Bill McDavitt with NOAA, National Marine and
10 Fisheries Service. I believe he's the only one we have on
11 the line, correct?

12 Okay. If you've got any questions or if you have
13 problems hearing any discussion, let us know.

14 Second thing here is we have a court reporter.
15 These scoping meetings are always recorded. A few things to
16 help him out along the way are: As we talk, if we use an
17 acronym, I would appreciate if we spell out the acronym.
18 Speak clearly and audibly so that he can get the correct
19 words that are said. Name and affiliation is important, so
20 we can attribute any comments that are made to specific
21 individuals, organizations.

22 I don't think we'll have too much of an issue
23 with this; but speak one at a time so that he can keep track
24 of who is talking. The podium microphone, I think the
25 acoustics in here are such that I don't think we really need
26

1 to worry about that. So I'm not going to use it; I don't
2 expect anybody else to as well. And I certainly, as we go
3 through this, please feel free to interrupt and ask
4 questions. You don't need to hold your question until the
5 end.

6 The agenda, I talked briefly earlier; it's broken
7 into two pieces.

8 (Slide presentation)

9 I'm first going to talk a little bit about, for
10 the purposes of explaining who we are and the licensing
11 process, I'm going to talk about FERC's jurisdiction, why
12 we're involved, then talk about the statutes that govern
13 what we do. The balancing of resources, which is what our
14 mandate is, and then the licensing process itself, we'll get
15 into a very brief discussion of that process so you can have
16 a framework and understanding of what you're getting into in
17 the next couple years, two - three years; and then we're
18 going to switch course and we're going to bring this home to
19 West Buxton itself in terms of the scoping process, the
20 issues, the resources affected, proposed studies that FPL
21 Energy is proposing; and then we're going to wrap up with a
22 discussion of our process plan, the schedule, timeline.

23 FERC's jurisdiction. Why are we here? I think
24 many of you probably know that FERC is responsible for
25 regulating all non-federal hydropower projects in the United
26

1 States and Territories. There are four criteria that FERC
2 uses to establish that jurisdiction. If the project is
3 located on a navigable waterway, it occupies lands in the
4 United States, affects interstate or foreign commerce, or
5 utilizes surplus water from a federal dam. In this
6 particular instance with West Buxton, we are talking about a
7 project located on a navigable waterway.

8 The important statutes, and to give you a
9 perspective on what kind of governs how we do our job. The
10 Federal Power Act is basically the basis for what we do, and
11 it establishes how we go about our job. So the Federal
12 Power Act is very important; there are certain pieces of it,
13 Section 18 which is fish passage, Section 10(j) which is the
14 fish & wildlife coordination part of it where we get
15 recommendations from fish and wildlife agencies. There's
16 other pieces of it that establish our balancing
17 requirements; so it's a very important Act. It's also the
18 Act that created the original Federal Power Commission.

19 The National Environmental Policy Act or NEPA,
20 that basically is the environmental component, requires us
21 to do the environmental analysis of the actions that we
22 take, and establishes a protocol for it. The Clean Water
23 Act, that is important from the standpoint that conditions
24 from the state water quality certifying agency, they have
25 the opportunity basically to tell us what they think is
26

1 necessary, and those conditions are mandatory.

2 The Endangered Species Act, that's the act that
3 basically outlines the protocols for consultation for
4 threatened and endangered species. Usually with Fish &
5 Wildlife Service or National Marine Fisheries Service, are
6 the two agencies that we work with.

7 The National Historic Preservation Act, that is
8 the act that governs our Section 106 consultation, cultural
9 resources and historic properties.

10 The Federal Land Management Policy Act. This is
11 one that won't be too relevant for this particular project;
12 that's one that comes into play if we are dealing with
13 federal lands.

14 And then the Wilderness Act, that I don't think
15 will necessarily be all that important in this particular
16 licensing, either.

17 But this list is not the only -- this isn't all
18 of them; this is just the major ones that govern what we do.

19 I mentioned before the balancing. All of us have
20 different interests in the process; federal agencies, state
21 agencies -- they have particular interests in terms of
22 protecting resources, environment. The power company;
23 obviously their interest is in power generation. FERC is
24 the mediator in all of this, in the sense that our mandate
25 is in balancing all of the competing resources that are
26

1 involved, whether they be fisheries -- there could be a
2 conflict between fisheries and recreation in terms of flows.
3 We have to take a look at all of that, the impact that a
4 flow release might have on the economics of the project.
5 Fish passage and all the measures that go into fish passage
6 in terms of structures, the economics of that.

7 All of that comes into play in terms of our
8 balancing at the very end. Section 4(e) of the Federal
9 Power Act is the equal consideration provision, and Section
10 10(a) of the Federal Power Act is the section that is the
11 best adaptive part to a comprehensive plan.

12 So those two pieces represent our balancing
13 mandate.

14 Comprehensive plans. Under Section 10(a)(2) of
15 the Federal Power Act, we are required to evaluate
16 consistency with comprehensive plans. Commission-approved
17 comprehensive plans. I make that distinction simply because
18 there can be a comprehensive plan but if it's not filed with
19 the Secretary of the Commission and not approved as a
20 comprehensive plan, we are not required to look at that plan
21 and evaluate consistency with it. A lot of times we do, but
22 it's not required.

23 For a plan to be an approved comprehensive plan
24 with the Commission, there must be a comprehensive study of
25 one or more of the beneficial uses of the waterway or
26

1 waterways; it must specify the standards, data and ethnology
2 used in putting the plan together; and it must be filed with
3 the Secretary of the Commission and be approved by the
4 Secretary of the Commission.

5 The scoping document, of which there are copies
6 on the table, lists out those comprehensive plans that we
7 believe are relevant to the licensing of the West Buxton
8 project. I would certainly encourage everyone, particularly
9 the Agencies, to look through those lists and if there's
10 something that's not there that needs to be there, there are
11 instructions on filing a plan for approval with the
12 Secretary. That would need to be done, or we would consider
13 it as an approved plan or in our NEPA analysis.

14 One thing that's not on this slide is typically,
15 conference plans are filed by a state or federal agency.
16 There could be other plans, local plans, county plans, that
17 type of thing; that may or may not be relevant, but they
18 cannot file them as an approved plan. But we would still,
19 if it was relevant to the licensing process, we could take a
20 look at those plans and decide whether or not, how the
21 licensing process fits with those plans, to scope those
22 plans. But those wouldn't be considered as approved
23 comprehensive plans.

24 Our list of comprehensive plans is on FERC's
25 website. Go to FERC's website, there's a tab for
26

1 industries, you get on hydropower and there's a link within
2 the hydropower general info where you will find that list of
3 comprehensive plans.

4 Okay, I'm going to switch gears here a little
5 bit. The licensing process itself: The Commission has
6 three processes. I'm going to talk today about the
7 Integrated Licensing Process merely because that is the one
8 that FPL Energy has chosen to use to license the West Buxton
9 project.

10 The underlying principles of the ILP. When we
11 developed this process in the mid-2000s, we heard from a lot
12 of stakeholders about the fact the Commission Staff was not
13 involved in the process early; created problems; they
14 thought guidance from Commission Staff earlier would be
15 helpful.

16 This process is designed to kind of address some
17 of those issues. Early study plan development. We have
18 experienced, when an application is filed, a lot of times
19 there are disagreements on the studies that were done; they
20 were never really agreed to, so we would have to resolve
21 those things once the application was filed, and then
22 there's a delay in processing the application if we would
23 determine that study was necessary.

24 In this particular process we try to avoid that,
25 now, with the early study plan development so that once this
26

1 study plan is put together, this is the studies that need to
2 be done and theoretically once the application is filed,
3 there is no need for any more studies; we have all the
4 information, everything that was done, needed to be done,
5 and you have a process where everybody gets together and
6 resolves the issues up front so there are no disagreements
7 later, or we minimize those disagreements.

8 Better coordination with other stakeholder
9 processes. I mentioned before some of these other statutes
10 that affect what we do and how we do it, like the Endangered
11 Species Act, the Clean Water Act. The agencies' roles when
12 it comes to Section 18 prescriptions. All of those have to
13 fit into the context of our process in terms of timing.
14 This process kind of helps better integrate all of those
15 things together in terms of when things get done, and
16 getting it done in a timely manner.

17 And then the last big piece to the ILP is the
18 fact that it has established time frames. Just about every
19 step of the way in this process, including for Commission
20 both pre-filing and post-filing, we have time frames that we
21 have to meet. So when this process starts, if you're not on
22 the train you're probably going to miss it and you're going
23 to have a hard time catching up. Because it does move fast
24 and it kind of keeps the process moving; you can't really
25 get bogged down at any point in time.

26

1 The key elements of the ILP, just to kind of give
2 you a perspective. The preliminary application document,
3 that's what we affectionately call the PAD. The process
4 plan, that is the schedule that will be used as we go
5 through the process. Early scoping and study plan
6 development. That's kind of the process where we're at now,
7 the beginning of that process with the scoping. Study plan
8 development follows right after; and I'll talk about that a
9 little bit later.

10 The approved study plan and study plan dispute
11 resolution process. This component is important simply
12 because it's the study plan that the licensee uses that the
13 Commission approves; and then if there are continued
14 disputes, they're resolved up front, early.

15 Feedback loop on studies. This process is
16 designed with two years of studies, if necessary, and
17 there's opportunities along the way to revisit study results
18 and determine whether anything else needs to be done to
19 address additional questions, or you may find after the
20 first year of studies that there's something that wasn't
21 considered at all, and we need to go back and have a second
22 year of a study.

23 And then the preliminary licensing proposal which
24 comes at the very end. That is the document where the
25 licensee or applicant will -- it's almost kind of a mini-

26

1 environmental analysis; basically describes the project,
2 describes the resources. It basically -- and what it will
3 do is present to the world what the applicant is thinking in
4 terms of what they want to propose for a new license.

5 This is a graphic, to just give you a perspective
6 of the steps in the process. Above the line is the pre-
7 filing; below the line is the post-filing. And you can see
8 time-wise that for the pre-filing you're basically looking
9 at two to three years; and then post-filing, a year and a
10 half. That is kind of the way we, that's what we target,
11 this process is accomplished to do, and in a time frame like
12 that.

13 What I will do is, we'll step through each of
14 these boxes separately, give you a perspective on what is
15 involved in each of those boxes.

16 The NOI and PAD, basically it's the first step in
17 the process; FPL early on, they went out and they looked at
18 what data was available and they put that together in the
19 PAD. This is where they identify and contact potential
20 stakeholders. The idea here is to get everybody on board up
21 front so that nobody comes out of the woodwork later. They
22 gathered the available information. It's important to make
23 the distinction here that we're talking about available
24 information. There's no expectation that any study be done
25 to gather information to go into the PAD. And then the
26

1 applicant prepares and files the PAD and Notice of Intent.

2 Scoping and the process plan. The stage we're in
3 now. Once the PAD is filed, we prepare the scoping document
4 and it's issued 60 days after the filing of the PAD.

5 Conducting meetings, and this is the point where we
6 identify, along with the stakeholders' input, identify the
7 issues that need to be considered.

8 This is also the time where we will talk about
9 and define the process plan and schedule. If there are any
10 concerns with the process plan as we played it out, this is
11 the time where we can talk about it. And then the parties
12 submit the comments and study requests at this stage. I
13 think December -- we'll get into this a little bit later;
14 but December will be the deadline for filing comments on the
15 scoping document, comments on the PAD, or any study requests
16 that agencies have, or anyone has.

17 The study request criteria. If there are any
18 studies that a stakeholder requests, that the applicant is
19 not proposing already to do, if they want to request another
20 study or a separate study, let's say for example there's a
21 minimum flow study. The applicant wants to do it one way,
22 the agency may want to do it another way.

23 As an example, the agency comes in with their
24 study. At any point there are seven criteria that have to
25 be addressed for that to be a valid study request.

26

1 Essentially what you're doing is you need to describe both
2 objectives, explain the relevant resource management goals,
3 any relevant public interest considerations.

4 Those three bullets basically are defining why is
5 a study important? Why is it needed?

6 Need to describe existing information and need
7 for more information. So in other words, what do we already
8 know and why isn't that information sufficient?

9 Explain the nexus to project operation and
10 effects, and how study results would inform license
11 requirements. This is a big deal. A lot of times the study
12 request, at least since we've begun implementing the ILP,
13 most study requests -- a good portion of them that we do not
14 recommend are thrown out on the basis of the nexus question.
15 So if there's a study that somebody needs to be done, there
16 needs to be an adequate explanation as to why is it relevant
17 to the licensing of that project and how will it inform the
18 licensing decision, or any future requirement for a license?

19 Describe methodology and how it's consistent with
20 accepted practice. That goes without saying that we need to
21 kind of explain -- example again, the flow study. The
22 applicant wants to do a demonstration flow study, they're
23 going to explain how they're going to do that. The agency
24 might want the IFYN; they need to explain why the IFYN is
25 relevant and why it's necessary in this particular instance.

26

1 And then the last one is: Describe consideration
2 of level of effort and cost of study, and why alternative
3 study is not needed. This criteria is important for helping
4 us understand, you know if we're looking at a \$300,000 study
5 to address an issue that might have a \$50,000 fix, in terms
6 of addressing that issue, it helps understanding the dynamic
7 of that situation.

8 It's not to say that we wouldn't require that
9 study be done, but it just helps us understand the
10 importance of it.

11 Study plan development, the next stage that once
12 we finish with the scoping we enter into. This is the place
13 where basically the applicant prepares a proposed study
14 plan, stakeholders have an opportunity to comment on that
15 proposed study plan, including Commission Staff. The
16 applicant then will revise that study plan and file it with
17 the Commission. There's an opportunity for stakeholders
18 then again to comment on that revised study plan; and then
19 at the end of that process is where FERC staff will issue
20 the study plan determination. In this particular instance,
21 it will be the Office of Energy Projects director. He's the
22 individual that issues those documents, those approvals.

23 Once we get through that part of basically the
24 first year, eight - ten months or so, this moves very
25 quickly; we get into basically the phase where the applicant
26

1 is conducting those studies, and that can go one to two
2 years depending upon the studies and what the studies show.
3 And throughout that process there is, the feedback loops I
4 mentioned earlier. They file the study report, and parties
5 have an opportunity to review each year. Also involved is
6 meetings. There is requirement under the regulations that
7 when they file the study report, whether it's the initial
8 study report or the updated study report, there is a meeting
9 associated with those reports where all stakeholders get
10 together and they talk about what the reports show and what
11 else may or may not need to be done in terms of further
12 study.

13 At the very end of the process, the applicant
14 will prepare their preliminary licensing proposal, which
15 basically is that mini-NEPA document where it describes the
16 project, the resources, and it will -- based on information
17 in the record, there will be some review or analysis of the
18 issues. And then they also are required to provide at that
19 point any proposal, any proposed measures that they are
20 going to come in with in their license application.
21 Basically gives the stakeholders an opportunity to see and
22 comment on what they may be coming in with when they file
23 their application.

24 In lieu of the preliminary licensing proposal
25 they can file a draft license application. The difference
26

1 between these two documents is that if an applicant decides
2 to file the draft license application, they must file a
3 complete application as draft. That includes all the
4 exhibits that go along with it, which like Exhibit F, which
5 is project drawings, the project boundary maps; all of the
6 exhibits would be required if they elect to do a draft
7 license application.

8 Otherwise, the preliminary licensing proposal is
9 in effect what would be Exhibit E, which is the
10 environmental report.

11 The Preliminary Licensing Proposal. This is the
12 only part of this process, it's the only document that's
13 required in this process that is not keyed off of a previous
14 date. This filing of this document is keyed off of the
15 license application filing date. So basically, five months
16 prior to when the application is due to be filed, they would
17 be required to file this preliminary licensing proposal.

18 The Contents. I briefly talked about this
19 earlier; describing existing proposed facilities, operations
20 and environmental measures. And it includes a draft
21 environmental report/analysis. The draft license
22 application again is optional. There are certain other
23 things that we like to get in draft form at this point. If
24 we have threatened, endangered species involved, we would
25 like to see at this point a draft biological assessment.

26

1 Again, this is part of the processes that are
2 involved. If we get these types of things done up front, at
3 least in draft form, it improves the post-licensing phase of
4 this where granted, the draft assessment a licensee can do.
5 Ultimately, it's the same way with the Section 106
6 consultation for historic properties.

7 We are ultimately responsible for the
8 consultation; but we can designate an applicant/licensee as
9 our nonfederal representative for purposes of developing the
10 draft documents; whether it be a draft biological
11 assessment, it could be a draft essential fish habitat
12 assessment, which is under NOAA Fisheries purview.

13 Historic Properties Management Plan. We like to
14 get those in draft form so that we know where everything is
15 headed before we get to the phase of -- we like to have
16 those plans before we get to a programmatic agreement,
17 because we used to do the programmatic agreements in the
18 requirement of a programmatic agreement, for cultural
19 resources, was the development of this plan.

20 It's been a long time since we've actually done
21 one without an attached Historic Properties Management
22 Plan. The better we know and the more we know up front, the
23 better analysis we can do in the environmental document. So
24 these draft things are important; and if they're relevant to
25 a licensing process, we'd like to see them when the
26

1 application is filed.

2 Stakeholders. Once the preliminary licensing
3 proposal is issued, stakeholders have an opportunity to
4 comment on that document and request additional studies if
5 they think something more is needed. Those are due within
6 90 days of the filing of the licensing proposal.

7 And at this point basically we are at the end of
8 the pre-filing, and the applicant will file their license
9 application. It's due no later than two years before the
10 expiration of the existing license.

11 One of the things that's required when they file
12 this, if there were additional studies requested, and
13 comments on the preliminary licensing proposal, there is a
14 requirement that the applicant address those additional
15 study requests. And part of the reason why is within 30
16 days of the filing of the application, we are required to
17 decide on the merits of those study requests.

18 So it's important that, and it's required by the
19 regs, that those study requests, if there are any, be
20 addressed by an applicant in their application.

21 This just gives you a perspective, very quickly,
22 on the post-filing activities. I know this is way out
23 there, but kind of gives you an idea of how we'll go through
24 this.

25 Basically, post-filing. We shoot for 12 to 17
26

1 months. So that's anywhere from a year, approximately a
2 year and a half. Once the application is filed, we'll issue
3 a tendering notice, basically announcing to the world that
4 an applicant has filed an application and it will seek
5 comments on that application.

6 If the process went along the way it was supposed
7 to have, there's no or little additional information needed
8 and no further studies needed, we'll issue an acceptance
9 notice and a Ready for Environmental Analysis Notice within
10 60 days of the application filing.

11 Sixty days later, comments, conditions and
12 interventions are due. This is also the point, the last
13 point in the process where an applicant can request or
14 submit their application for water quality certification to
15 the state certifying agency. That can be done at any point
16 in the process if parties are comfortable with the
17 information that's been generated and they have enough to
18 do, to go through their process; can be done at any point,
19 but this is the last opportunity and the regulations dictate
20 it's supposed to be done within that 60-day window, the last
21 time, the point in process.

22 The next thing in the environmental analysis or,
23 if we deem it necessary, environmental impact statement.
24 There will be comments, there will be a comment period on
25 that where stakeholders can take a look at what we did and
26

1 what that document says and what our proposals are for
2 inclusion in terms of recommendations for conditions to be
3 included in the license. They will be in the document.

4 In an ILP, one of the requirements is that we
5 actually include as an appendix, not only our
6 recommendations for measures to be included in the license;
7 it also requires that we define in the appendix a draft of
8 the articles themselves. So it gives the parties an
9 opportunity to kind of see not only the recommendation but
10 how are we translating that recommendation into a license
11 requirement.

12 For agencies, this is also the stage that if we
13 have any disagreements with Fish & Wildlife's
14 recommendations we go through what we call the 10(j)
15 process. It can go up to 75, I believe 75 days if we have
16 those type of inconsistencies or differences.

17 Agencies also have an opportunity to file
18 modified conditions or prescriptions after the draft
19 document is done; and comments are filed. If there's more
20 information that comes out in those comments, they can
21 consider that and revise their terms and conditions and
22 prescriptions.

23 And then we get down to the final environmental
24 assessment or EIS, and once that is done, we have completed
25 our process and it's now ready for a licensing decision.

26

1 The licensing decision, basically can be in two
2 forms. One is delegated to the Office Director or if there's
3 a contested project it goes directly before the Commission.
4 In either case, there's a 30-day window if you disagree with
5 something in there to file a rehearing. This is just --
6 contested cases are cases where somebody comes in and
7 proposes the licensing action. In other words they
8 basically -- if they disagree with a measure that's being
9 recommended, that isn't necessarily considered a contested
10 proceeding; but if they come in and they file an
11 intervention in opposition to the project, that is a
12 contested proceeding. And that will kick it into basically
13 the Commission's five member panel, five member commission
14 that is appointed by the president. They will consider it
15 from the very beginning.

16 A few slides here, we're basically at the end of
17 the discussion. The last few slides in this sequence
18 basically are, in implementing the ILP we have a few
19 guidance documents that kind of help explain the process;
20 helps to understand it and helps the stakeholders kind of
21 get through the process.

22 The Ideas for Implementing and Participating in
23 the Integrated Licensing Process. This is a document that
24 has come out of our effectiveness studies that we have
25 undertaken to look at just how the ILP is working. This is
26

1 a document, and unfortunately I don't have copies on the
2 back table, but this is a very useful document to kind of
3 get a perspective on the last seven years of implementing
4 the ILP and what we've learned, and what we have seen as
5 effective. And more importantly, the things that don't
6 work. That's what this document is. Again, it can be found
7 on FERC's website under the hydropower link in general info,
8 under the licensing tab. It is there, and it's a very
9 useful document.

10 Understanding study criteria. There are copies
11 on the back of the actual criteria, the seven criteria.
12 You're free to take a copy with you. This document
13 basically explains those criteria and what it takes to
14 address each of the criteria. It actually includes examples
15 of a study request; I think one of the examples they use is
16 for a flow study. It steps you through the process for each
17 of the criteria in terms of what needs to be in that
18 discussion.

19 Then finally, for more information for more
20 information on the process or even just the Commission and
21 the licensing process in general, the final rule for the
22 Integrated Licensing Process is on the Commission's website.
23 The regulations are on GPO's website, the Government
24 Printing Office's website; but we also have them on FERC's
25 website as well.

26

1 And then finally, if you're more kind of a
2 graphics person, understanding things graphically as opposed
3 to text, we have our flow chart of the process on the
4 website. It used to be that this flow chart was a single
5 page; it has now been broken into both the pre-filing and
6 post-filing, so it's a little bit easier to follow and to
7 understand. But the flow charts are there, and it kind of
8 helps you go through and understand what box you're in at
9 any point in the process.

10 So we've kind of reached the end of this part of
11 the presentation. We've often been -- as long as I've been
12 there, we've been kind of thought of as a black box; things
13 arrive on our doorstep and then you never hear from us until
14 an environmental document is issued or something. But we've
15 been trying to change that with this process, getting out
16 earlier and being more available and more accessible to the
17 stakeholders.

18 But what I've tried to do today is explain who we
19 are and what we do, why we do it, why we are involved in
20 this particular activity. And then the second part was the
21 licensing process itself. Going through this, it's
22 important to understand that this is by no means a simple,
23 quick process. It can be complex -- it can be as simple or
24 complex as you want to make it. It nonetheless simply is a
25 process that takes time to get through and can be complex

26

1 depending upon the project.

2 The other part of this is the fact that yes, it
3 is fast-paced; and I mentioned earlier, had the analogy of a
4 train, the locomotive. Once it leaves the station, you need
5 to be on it because it's hard to get on it when it's moving.
6 And this train doesn't stop pretty much for anything; it
7 moves at different speeds, but it nonetheless keeps moving.

8 At this point we've reached the end of this part,
9 so are there any questions about process? The licensing
10 process itself.

11 MR. SHEPARD: Steve Shepard, U.S. Fish & Wildlife
12 Service.

13 Allan, you'll be the point of contact primarily
14 on this procedure?

15 MR. CREAMER: Yes. I will be, as project
16 manager, I will be the point of contact. If that for some
17 reason changes at any point in the process, we will let the
18 parties know. But yes, that is my role, as Project
19 Manager.

20 Unfortunately, I didn't bring cards, but I can
21 certainly provide you the contact information.

22 Any other comments?

23 Seeing none, I will leave it as no comments now,
24 but feel free if you have any comments along the way. Feel
25 free to pick up the phone, to call me, send me an e-mail,

26

1 and I'll try to answer the questions the best we can as we
2 go through this.

3 At this point we're going to switch gears and
4 we're going to talk more specifically West Buxton and the
5 scoping document itself; and I've asked Frank Dunlap with
6 NextEra Energy to talk a little bit about the project
7 itself, the resources affected and where they see things at
8 this stage of the game.

9 MR. DUNLAP: Good morning, I'm Frank Dunlap, with
10 NextEra Energy, Project Manager for the relicensing of the
11 West Buxton project. Here also is Matt LeBlanc, an
12 environmental specialist, particle to the Saco River.
13 That's the man in the field that knows the fisheries and the
14 fish passage items and issues that we'll deal with for the
15 relicensing. Also part of the relicensing team is TRC,
16 environmental consultants. Sara Verville is here, Jessie is
17 here also. They'll take a variety of components as the lead
18 consultant on this project, including project management and
19 many of the land-based resources. Also part of the project
20 team is Kleinschmidt Associates, the team leader there is
21 Andy Qua. They work on the civil engineering, drawings, et
22 cetera; geology and soils and much of the water, fish and
23 aquatic resources.

24 For reference, who we are. We are FPL Energy
25 Maine Hydro as the licensee and owner of the projects. FPL
26

1 Energy owns 22 licensed hydro projects, some with multiple
2 components, multiple dams, multiple powerhouses. We have
3 nine FERC-licensed project facilities on the Kennebec; six
4 on the Androscoggin; one on the Presumpscot and six on the
5 Saco River.

6 NextEra is the parent company of FPL Energy
7 Resources. Again, FPL Energy Resources is the licensee for
8 these projects. NextEra Energy Resources, Inc. is the parent
9 company of two large companies. One is Florida Power &
10 Light, a regulated utility in Florida, and the other is
11 NextEra Energy Resources, who we work for.

12 NextEra Energy Resources is an independent power
13 producer with a large portfolio of wind and solar resources
14 throughout the country; and the Maine resources are only
15 hydro assets.

16 Included in the slide presentation are several
17 graphics; we have copies up here, large copies that you can
18 look at during the day. They include first the watershed,
19 the Saco River shares the New Hampshire-Maine border,
20 originating in the White Mountains of New Hampshire, flows
21 down through the Uplands of Maine and to the Lower Basin
22 where the West Buxton project is located, down here, lower
23 right.

24 The project description that is contained in the
25 PAD, the West Buxton project consists of a concrete gravity
26

1 dam with a rubber bladder on the top of that, which acts as
2 the old flashboards. Two powerhouses, one constructed in
3 1906 and one in 1926, yet the powerhouse has five horizontal
4 shaft Francis units. The lower powerhouse has one vertical
5 shaft propeller unit. The impoundment is about 131 acres
6 and about a mile and a third long, extends up to the Bonny
7 Eagle project, which was licensed a decade or so ago. And
8 downstream to the Bar Mills project, which was relicensed
9 within the last decade.

10 The FERC license for the West Buxton project
11 itself was originally issued in the 1960s, I believe. It
12 was relicensed in 1988, so this is the second relicensing.
13 The current license expires in December of 2017, and so we
14 will be filing our license application with FERC in December
15 of 2015, two years ahead of the license expiration.

16 A graphic of the facilities. River flowing from
17 top to bottom on this slide with the floodgates on the left
18 or the maintenance facility which we visited yesterday,
19 which is actually not part of the license project; it's a
20 separate facility. It serves the entirety of the Saco
21 River.

22 So the flood gates, the dam in the center, the
23 upper and lower powerhouses on the right hand side.

24 The project operates in accordance primarily with
25 the FERC license that was issued 30 years ago. The license

26

1 includes the requirements of the water quality certification
2 issued by the Maine DEP, and there's been an amendment to
3 incorporate the terms of the 1997 Instream Flow Agreement
4 that covers the basin as a whole and has some specific
5 requirements to the West Buxton. The West Buxton project
6 operates with a minimum flow that was established using the
7 U.S. Fish & Wildlife Service aquatic base flow policy of
8 1982, I believe that was. Which is .5 cfs, which is half a
9 cubic foot a second per square mile of drainage.

10 That is further restricted by and controlled by
11 the minimum flow agreement which establishes minimum flows
12 for the Bonny Eagle project immediately upstream; and those
13 flows vary seasonally from 250 cfs or inflow, whichever the
14 less, up to 600 cfs, whichever is less. Obviously --

15 MR. McDAVITT: Frank, this is Bill from NMFS.

16 MR. DUNLAP: Yes, Bill.

17 MR. McDAVITT: I was just wondering what, do you
18 know what the drainage area is for either Bonny Eagle or
19 West Buxton?

20 MR. DUNLAP: Two times 768. So 14-, 15000 square
21 miles or so; 1538 comes to mind, but I'm not sure if that's
22 the right number, but that's approximate, Bill.

23 MR. McDAVITT: Thank you.

24 MR. DUNLAP: Good question.

25 The minimum flows for the West Buxton project are
26

1 in essence mimicking the minimum outflows of the Bonny Eagle
2 project. The pond level -- is a run-of-river project, so
3 the pond level is very stable at or near full pond, except
4 of course during the operating periods, the high water
5 flows, et cetera, where we need to vary from that.

6 The PAD, as we mentioned last evening, includes
7 summaries of all the data that we have readily available for
8 the West Buxton project and the immediate vicinity. We
9 summarize that here in several slides for you. The sum of
10 these slides is we have a fairly robust dataset from which
11 to start, for the relicensing of the West Buxton. And that
12 will form the basis for our study plans and for the study
13 plans that the agencies may propose, and that we will try to
14 fill any gaps that there are; but again we have a good set
15 of data for West Buxton and the vicinity.

16 One of the standard issues, topics to address in
17 the relicensing is water quality. The State has water
18 quality standards including dissolved oxygen, temperature,
19 et cetera, that has been studied and sampled on the Saco
20 fairly intensively, and again, the short version is that the
21 Saco is a fairly clean river and meets standards.

22 Another component of the water quality standards
23 is aquatic life standards, narrative standards within the
24 Maine statutes, and this requires that the macroinvertebrate
25 community -- back up. We use the macroinvertebrate
26

1 community in the river to demonstrate compliance with
2 aquatic life standards. We have sampled those variously;
3 DEP has sampled them in 2000, 2001. We, as licensee, have
4 sampled at or below the project. The most current, recent
5 sampling was for the Bar Mills project immediately
6 downstream, where we had macroinvertebrate baskets in the
7 upper Bar Mills impoundment, essentially the outflow from
8 West Buxton, and those were showing up in that, Class A
9 standards.

10 Another topic of interest, rightfully so, is
11 fisheries on the Saco. There is an ongoing restoration
12 project there for anadromous species that is framed by the
13 1994 and 2007 fish passage agreements for the Saco. These
14 are comprehensive agreements that cover all of the projects
15 on the main stem of the Saco River.

16 The requirements specific to the West Buxton
17 project were developed during the updated agreement, which
18 was in 2007. The requirements include construction of
19 upstream fish passage for eels, juvenile eels, in 2016, four
20 years from now. The installation of anadromous upstream
21 passage in 2019 and the construction of downstream passage
22 for American eel in 2028.

23 Existing facilities on the Saco are summarized in
24 this slide. We have a fish lift at the Cataract Dam, two
25 lock-and-lift systems at the Springs and Bradbury Dam which
26

1 are part of the Cataract project. A fish lift at the
2 Skelton project. We can transport any of the species
3 captured from either the Cataract or Skelton projects to
4 upstream tributaries responding. At this point we primarily
5 transport salmon up above the West Buxton and Bonny Eagle
6 projects. The alewives and shad are allowed to pass through
7 the system, through the fish lifts.

8 Downstream passage facilities have been
9 established at Bonny Eagle Project, West Buxton and Bar
10 Mills. Those three projects do not have site-specific
11 upstream facilities, so after we transport salmon up past
12 those, we provide downstream passage.

13 Downstream passage at West Buxton consists, as we
14 saw yesterday, of the curtain wall, flow induction devices
15 to assist the down-coming fish and finding the log sluice
16 and downstream passage facility, which is consisted of
17 flume.

18 The agreements call for a number of other
19 fisheries management activities that FPL is responsible for;
20 including support of the Atlantic salmon restoration
21 measures, support of the Saco River Salmon Club, support of
22 the Department of Inland Fisheries and Wildlife and their
23 management activities for resident species, a public
24 education program and routine contact, and meetings with the
25 agencies regarding the annual management activities.

26

1 The agreement also includes requirements for
2 fishery studies that will further develop our data and
3 background information for the relicensing as well as for
4 the overall restoration. That includes studies of
5 downstream kelt salmon, post-spawning, salmon kelts. The
6 eventual study of the downstream passage of clupeids, after
7 they have been moved above the projects. An ongoing eel
8 migration study, and creates electro-fishing efforts on,
9 relates in the basin for smallmouth and largemouth bass.

10 Further to the electro-fishing studies for bass,
11 F&W has an interest in bass in the basin; that's what
12 instigated those studies. They also manage self-sustaining
13 warm water for the warm water fisheries and for stocking of
14 brook trout and brown trout.

15 The extensive data that we have on the Saco is
16 supplemented by some studies conducted by the Midwest
17 Biodiversity Institute where they electro-shock at set
18 transects throughout the basin and provides a good baseline
19 set of data for the entire river.

20 Wildlife botanical wetland resources. We have a
21 fair amount of data from the upstream and downstream
22 projects. Not a lot specific to West Buxton, but again it
23 is a fairly small impoundment, fairly small project, and
24 it's fairly represented by the data that we have from
25 upstream and downstream, and the pond is about 131 acres.

26

1 We will take a look at, a constant study to document whether
2 there are particularly sensitive plant and wildlife for
3 wetland communities; this includes some of the information
4 that's in the PAD on communities that are nearby.

5 Again, we'll take a look at the West Buxton
6 project in particular for any particular rare, threatened or
7 endangered species that are on state or federal lists, just
8 to verify their presence or absence.

9 Recreation. The recreational on the impoundment,
10 in any vicinity is primarily focused on local use. We do
11 have a canoe portage there. There are several small,
12 private docks on the impoundment, mostly used for small
13 power boats or canoeing and kayaking. We will take a look
14 at that and the potential or need for improving or enhancing
15 recreational facilities through the FERC Form 80 process,
16 probably a little later in the discussions.

17 Here's a quick list of the studies that we have
18 composed in the PAD; reconnaissance level studies on water
19 quality, the land-based communities, wildlife, botanical
20 communities, recreation and archaeological resources.

21 Again, we feel that there's a fairly robust
22 dataset on the fisheries that we can rely on. Next step
23 will be covered by Allan in just a moment; most important
24 next step is December 8th, when comments are due from all
25 parties on the PAD, on the scoping document, for potential
26

1 study grants.

2 Again, you're free to contact folks within our
3 team; myself, the Project Manager; Sara certainly, anytime
4 you need to. Do you have any questions on the summary we
5 have here?

6 Very good, thank you. Oh, yes, Steve?

7 MR. SHEPARD: Steve Shepard, U.S. Fish & Wildlife
8 Service. I haven't visited the site, so I'm unfamiliar with
9 the facilities operation. Can you point out where the
10 rubber dam is and how the gates are operated?

11 MR. DUNLAP: Yes. Looking at the aerial slide of
12 the photo of the facilities, again the flood gates, spill
13 gates are on the left, Steve. There is included a lift gate
14 -- remind me, Matt -- and some stanchion sections on that,
15 that use the term 'high close.'

16 The spillway section, Steve, is in the center
17 here, on the concrete. We replaced the wooden flashboards
18 along the entire length with three sections of rubber
19 bladder that are inflatable, low pressure bladders. They
20 are set to drop during high water, either manual or remote
21 control.

22 The fish passage facility, downstream fish
23 passage facility, sluice adjacent to the powerhouse. This
24 is the curtain wall he was referring to, with the flow
25 induction units along that wall; and they discharge into the
26

1 tailrace of the upper powerhouse.

2 MR. SHEPARD: What's the sequence of operation in
3 spillage?

4 MR. DUNLAP: I'd have to get back to you on the
5 details of that, but the rubber dam is first, yes.

6 The lift gate is readily available also; tripping
7 stanchions is more of an effort.

8 MR. SHEPARD: Yes.

9 You're allowed a foot of pond level fluctuation
10 and the operation is generally a sequence to what's
11 happening at Bonny Eagle? Do you use that foot, or is it
12 simply run-of-river?

13 MR. DUNLAP: It is sequenced to Bonny Eagle
14 Project. And falls closely since there's such a short
15 distance between the two; and the capacity of Bonny is
16 slightly higher, hydraulic capacity slightly higher.

17 The West Buxton pond level fluctuates very
18 little. The Saco River Instream Flow Agreement deals with a
19 definition of run-of-river that being with a foot of full.
20 The FERC license currently for West Buxton, actually the DEP
21 certification, is more restrictive, actually. It's where we
22 are basically held to full pond during normal operations.
23 That is actually one item that we've identified in the PAD
24 where we would seek to mask the definition of run-of-river
25 as a flow. I'd say a fluctuation; that's not as a draw-down
26

1 capability as such, but an operating range specifically for
2 West Buxton.

3 MR. SHEPARD: I presume the license still has
4 something about a draw-down for maintenance activities, now
5 depressed or something like that?

6 MR. DUNLAP: Yes, particularly -- yes.

7 Normal operating procedures are accommodated in
8 most licenses, including the operation of the bladders for
9 high flows so we don't get into a compliance issue with
10 that, as such. So those can fluctuate, high water
11 conditions are also accommodated as standard operating
12 procedures.

13 We do have a notification requirement during
14 normal operations if we vary from that. Which includes both
15 a notification if circumstances force that during our
16 control, or if we anticipate a particular maintenance draw-
17 down. Then we will notify the agencies scheduled to the
18 extent of that.

19 So we would anticipate that in the same thing.

20 MR. SHEPARD: Since the operation of Bonny Eagle
21 Project affects the flow regime through West Buxton and even
22 down to Bar Mills, is there information in your PAD about
23 the operation of Bonny Eagle?

24 MR. DUNLAP: The minimum flow agreement is
25 included as part of the PAD. We don't go into a detailed
26

1 description of Bonny Eagle; that would be available in the
2 prior documents for that relicensing, and we can get those
3 to you.

4 Bonny Eagle -- in brief, the Saco does not have a
5 large storage capacity as perhaps you might recall, in the
6 Kennebec or Androscoggin where we have storage facilities
7 that manage the inflows. Saco does not have that, so it's a
8 much more responsive river. There is some ability to manage
9 flows at Hiram, further upstream. If I recall, Matt, is
10 that a four foot variability at Hiram?

11 MR. LeBLANC: Oh, depends on time of year.

12 MR. DUNLAP: Is there some ability to manage
13 daily flows there; there's a little bit of ability to manage
14 daily flows at Bonny Eagle.

15 MR. LeBLANC: They're dealing with capacity in
16 Skelton and Bonny, which is down below.

17 MR. DUNLAP: Down below. So I can manage very
18 short-term flows to you, but -- and that's why, with no
19 storage capacity at West Buxton to speak of, we don't
20 fluctuate that pond; but we will bring those units up maybe
21 a few minutes earlier than Bonny Eagle, and run them a
22 little longer than
23 Bonny Eagle.

24 MR. SHEPARD: I guess another question related to
25 another project, but Bar Mills, the upstream fish passage is
26

1 also specified in the same settlement agreement. Can you
2 remind me of the date for that?

3 AUDIENCE: Operation 16.

4 MR. DUNLAP: We put three years between the
5 operation of the upcoming facilities to allow time for
6 ironing out initial start-up and for design and
7 construction. So fundamentally, West Buxton will follow
8 three years after Bar Mills and Bonny would follow the years
9 after West Buxton.

10 MR. DUNLAP: What else? Now's your chance.

11 MR. SHEPARD: Well, just to elaborate on the
12 upstream passage, certainly given that date for
13 implementation, it's something we'll be dealing with in the
14 relicensing process. There are no specific studies
15 identified in SD-1, but clearly that's something we'll
16 address in the relicensing; these concepts of design --.

17 MR. DUNLAP: In parallel, too. The current
18 license has a requirement in it in accordance with the
19 settlement agreement, so that can run parallel to this
20 during the same time frame. So we will be preparing the
21 preliminary designs, final designs for approval and so on
22 during this period, regardless; to comply with the firm
23 license and terms of the agreement. That's why we haven't
24 tried to duplicate an effort, or time series or sequence
25 through relicensing, but that run parallel while fully

26

1 recognizing, in the licensing activities.

2 MR. SHEPARD: So do I understand you to mean that
3 it would be dealt with completely outside the relicensing
4 and wholly within the existing --

5 MR. DUNLAP: I think that would run parallel and
6 together. Not entirely separated, but in essence the
7 process is established now, and so that can continue to run.

8 MS. VERVILLE: If there were no relicensing, they
9 would be addressing fish passage.

10 MR. SHEPARD: Sure. But given the relicensing,
11 there may be revised license articles or something may
12 change slightly as a result.

13 MR. CREAMER: Allan Creamer with FERC.

14 One thing that I had mentioned to Frank this
15 morning, under the existing license, there are these
16 requirements that are based on the settlement. So
17 regardless of what happens relicensing, those will continue.
18 The issue is, and you'll see when I talk about the issues;
19 Frank is asking me why am I identifying certain issues.

20 The expiration of the existing license, I
21 believe, correct me if I'm wrong, will occur prior to
22 development of the -- the actual development of the
23 facilities, right?

24 MR. DUNLAP: Go back to our schedule, Sara.

25 MR. SHEPARD: By a year or so, I think you're
26

1 correct.

2 MR. DUNLAP: I'm going to hold you up for a
3 moment.

4 MR. CREAMER: You're filing your application in
5 December 2015, that means the expiration date is in 2017,
6 December of 2007.

7 MR. DUNLAP: Correct, but the facilities will be
8 operational, and --.

9 AUDIENCE: 2019.

10 MR. CREAMER: 2019, okay. So you've got a couple
11 years. What I was explaining to Frank earlier this morning
12 was, the requirements of the existing license cease to exist
13 when that license expires. So if there are any --

14 MR. DUNLAP: Can I interrupt? Modify? They
15 continue with an annual license.

16 MR. CREAMER: Well, they will continue --

17 MR. DUNLAP: After expiration.

18 MR. CREAMER: -- an annual -- they will continue
19 with an annual license, but moving forward past the annual
20 license, and theoretically if this process works the way
21 it's supposed to, there will be no annual license. We'll
22 issue a license or licensing decision prior to the
23 expiration, if it works the way it's supposed to.

24 So if we take, hypothetically take the annual
25 license off the table, anything that's in the current
26

1 license then goes away. So if there is something in the
2 current license that needs to carry through into the new
3 license, say the requirements of the settlement agreement,
4 the PAD talks about -- and they did this probably not
5 realizing, but it's important that they propose those things
6 as part of the license because they go away when the
7 existing license expires.

8 So part of the reason why you'll see when I talk
9 about the issues identified, I talk about fish passage, I
10 talk about the flows in the river, simply for that reason,
11 because they're part of the proposal moving forward for a
12 new license, so we can't ignore them. So we'll talk about
13 them in our environmental document but to the extent that we
14 know that they're part of the settlement agreement, they
15 were approved by FERC and they will move on in terms of what
16 our recommendations are.

17 So that's an important distinction, and part of
18 the reason why your comments are -- that was very astute.

19 MR. DUNLAP: And we would, you know from a big
20 picture standpoint, we would expect the relicensing to go
21 relatively smoothly because there is a settlement in place
22 addressing many of the issues, and may not warrant study in
23 the case of those issues, and would result in a new license
24 that adopts the same requirements as in the settlement
25 agreement.

26

1 So.

2 MR. CREAMER: And that's a good summary
3 statement, the proposals of the terms, if you will,
4 conditions of the settlement agreement, the current license
5 will be proposed as continuing. But we didn't propose
6 additional studies because we had such a good baseline.

7 MR. DUNLAP: The one thing that will be
8 important, especially the fish passage, is as plans are
9 developed under the existing license, which they will be,
10 because it will be towards the end; but the plan is for the
11 facilities to be developed under the existing license. It
12 will be important that as they're developed, that
13 information is also part of the devices in record because
14 that will carry into the new license.

15 So they're not completely separate; even though
16 they're being developed on separate tracks, they're not
17 completely separate because we need to have that information
18 moving forward in the relicensing.

19 MR. SHEPARD: And I assume you'll have to address
20 these issues in the NEPA now, so the same information has to
21 carry forward.

22 MR. CREAMER: To the extent that the designs are
23 there and they're being developed. We're certainly not
24 going to hold up licensing if we get to a point where we're
25 ready to issue an environmental document; and we'll use
26

1 whatever plans have been developed at that stage. We're not
2 going to wait until something is finalized, because we know
3 that those will occur down the road potentially post-
4 license.

5 MR. SHEPARD: I ask some of these questions just
6 because I'm trying to think of scheduling of all of this,
7 and it gets a little hinky if they're not part of the
8 licensing proceeding but are dealt with outside of it on a
9 dual track. It gets a little weird because things need to
10 be in the license --

11 MR. CREAMER: They'll need to be brought in even
12 though they're developed outside of the -- ultimately, that
13 information is relevant to a licensing process and will need
14 to be brought into it, even though they're developed,
15 separate track outside of your licensing process.

16 Does that make sense?

17 MR. DUNLAP: It does. I agree with you.

18 Good questions. Good discussion.

19 Anything further, Steve?

20 MR. SHEPARD: I'm sure, but not right now.

21 MR. DUNLAP: Kathy?

22 Okay. Thank you very much for your time.

23 Allan?

24 MR. CREAMER: Okay, so the next part of this is
25 going to go real quick, I think, because it kind of -- we're
26

1 alluding to -- we just had a discussion that alludes to some
2 of this.

3 What I'm going to do now is, from our perspective
4 in reviewing the PAD, where are we at in terms of the
5 resource issues and the proposed studies that FPL included
6 in the PAD. The scoping document includes the entire list,
7 more detailed list of what we see as the issues and the
8 proposal to address potential data gaps. Certainly it's
9 open for dialogue, and this is the time to be talking about
10 anything that's proposed or if we're missing something, what
11 needs to be added.

12 So we'll real quickly go through these. From a
13 resource issue perspective -- and this is what I was saying
14 to Steve earlier, in a very overviewed type of look, we're
15 looking at the effects of the project on water quality, fish
16 passage movement and aquatic habitat.

17 Now we fully recognize that there are settlement
18 agreements that govern the flows in the Saco River, and we
19 fully recognize that there's a settlement agreement that
20 governs the fish passage that will occur at the project.
21 But because of the timing of all of this, there is proposal
22 to include this stuff in the relicense moving forward, it's
23 still an issue that we put on the table that we'll talk
24 about in our environmental document; and if there's
25 recommendations, we need to tweak things -- you know, there
26

1 are opportunities if parties wanted to do it, recognizing
2 the settlement agreement.

3 I'm not sitting here saying right now that we're
4 going to deviate from what the settlement agreement is. But
5 it's been approved by FERC already. There's no reason and
6 no expectation right now that we will deviate from it, but
7 we'll still address it and come to a conclusion in terms of
8 a recommendation moving forward.

9 The water quality is another thing; we know
10 there's a lot of information out there. These are projects
11 that have gone through relicensing since the environmental
12 statutes come into play. We know that there's been a lot of
13 environmental work done in terms of monitoring. But it's
14 been ten years since Bar Mills, so it's an issue; are we
15 still where we were in terms of the water quality?

16 As far as the terrestrial resources go, we're
17 looking at effects on riparian, littoral -- which is shallow
18 water habitat -- wetland habitat, and associated wildlife.
19 And these are standard type of issues that we look at during
20 relicensings for projects. So there's nothing, like I say,
21 there's really nothing unique, but still there are issues
22 that we look at.

23 The effects on recreation opportunities and
24 public assets. Again, that's a standard issue that we look
25 at what's going on at a project recreationally, and how does
26

1 the project affect recreation use?

2 The adequacy of existing recreation facilities
3 and public access meet current and future demand. That's a
4 standard issue that we address at all projects, pretty much.
5 There are very projects I've seen where we have not looked
6 at the use demand and how are existing facilities meeting
7 that demand?

8 Effects of project operations on historic
9 properties and archaeological and tribal resources. This is
10 an issue that we've identified merely because we have the
11 requirements under the National Historic Preservation Act to
12 undertake Section 106 consultation.

13 So these are issues that need to be addressed so
14 that we can undertake our obligations under Section 106
15 consultation. And then finally everything else we've talked
16 about, our environmental resources, they're the non-
17 developmental aspects of a project. The other side of the
18 coin obviously is the developmental side; what is all of
19 this? What are the effects of all of this, all these
20 measures on the economics of the project? We have to take
21 that into account as well.

22 Having said that, Frank mentioned earlier he had
23 his list of the proposed studies up there. Not really much
24 different here; he talked about water quality sampling,
25 dissolved oxygen, water temperature, Chlorophyll a, and

26

1 macroinvertebrates. Basically it's confirming -- the survey
2 as I see it, confirming kind of what they already know in
3 terms of, or what prior studies have shown the water quality
4 is.

5 Reconnaissance surveys for wildlife, vegetation,
6 rare, threatened and endangered species and unique habitats.
7 These are again, Frank mentioned that not much specific is
8 known about West Buxton even though work has been done at
9 the Bonny Eagle and Bar Mills. This basically is an effort
10 to identify specific to West Buxton what may exist within
11 the project boundary there.

12 The assessment of project lands. This is one
13 that gets at the issue of the recreation demand, and are
14 existing facilities meeting demand? The idea here, I
15 believe, as I understand it from reading the PAD is to look
16 at any existing project plans and what may or may not be
17 appropriate in terms of future development sites for
18 recreation, whether it be new portage, whether it be a boat
19 ramp, who knows. But they're going to undertake an
20 assessment to determine if any other project lands are
21 suitable for potential future access development.

22 FERC Form 80 survey of recreation use. Every six
23 years the licensee is required to undertake this survey and
24 then file the results with the Commission. Basically what
25 that is is it tells us what is going on every six years at a
26

1 project in terms of recreation, and we can kind of gauge
2 whether existing facilities are meeting the demand or not.

3 So one of the things that they're proposing to do
4 in conjunction with their next Form 80 is that type of
5 survey effort, to look at the recreation use and are the
6 existing facilities meeting the demand?

7 The Phase 0/1 Archaeological Resource Survey, and
8 Historic Structures Survey. Those are two efforts that are
9 being proposed for the purpose of addressing issues in the
10 archaeological and cultural resource side of things so that
11 we can do our Section 106 consultation.

12 Before we move into the process plan, is there
13 any other further discussion we're going to have with
14 proposed studies or the issues that we've identified? I
15 encourage dialogue now; written comments are great, but I
16 would encourage dialogue while we're all in the same room.

17 MR. SHEPARD: Steve, Shepard, Fish & Wildlife
18 Service again. Just to follow up on questions about flows
19 discharged from the spillway gates, is there any min flow in
20 the beach below the gates or any min flow provided from the
21 dam at all in the current license?

22 MR. DUNLAP: There is minimum flow, from the
23 facility. It's the project facility; it's not specific to a
24 particular reach.

25 MR. SHEPARD: So in previous licensing and/or
26

1 settlement agreement, that small area below the gates was
2 not addressed as a bypass reach, per se?

3 MR. DUNLAP: Not been identified as a bypass
4 reach, correct. Basically it's described as a flood
5 channel. You'll see, the rest of the slides that are the
6 aerials have a -- and are in the PAD, that pretty well
7 backwater to -- is backwater to the total dam. And so only
8 the flood channel, which again is a constructed channel, is
9 not addressed as a specific minimum flow reach.

10 MR. SHEPARD: In that photo, the lift gate
11 appears to be open, but I guess your current operation with
12 the rubber dam is first option for spillage; there normally
13 wouldn't be any flow over there unless you had a higher
14 level of spillage.

15 MR. DUNLAP: Correct.

16 MR. SHEPARD: Okay. Just wanted to clarify that.

17 MR. DUNLAP: Certainly.

18 MR. CREAMER: Any other questions before we move
19 forward? Yes, Matt.

20 MR. LeBLANC: Matt LeBlanc, NextEra. They don't
21 typically run the rubber dams the first time.

22 MR. SHEPARD: Okay, so reverse what was
23 indicated, is that the gates are first, is that what you're
24 saying?

25 MR. LeBLANC: Gates first.

26

1 MR. SHEPARD: There's one mechanically-operated
2 lift gate, and then the others are stanchion sections?

3 MR. CLERE: There's six or eight. I think
4 there's eight. We were trying to find records of when they
5 had been tripped, and -- either way back or maybe never.

6 Jason Clere with NextEra.

7 If you're up there during normal flows, you'll
8 see that lift gate used fairly regularly to moderate,
9 because we don't have a lot of pond level fluctuation
10 allowance. So that gate really is -- we can fine-tune that.
11 They monitor head pond and --

12 MR. SHEPARD: I'm sorry to keep harping on this
13 operation unless you were Bonny Eagle, but does Bonny Eagle
14 regularly result in exceeding the hydraulic capacity of West
15 Buxton? In other words, are you spilling on a regular basis
16 using these gates, because Bonny Eagle is always pushing
17 water
18 downstream?

19 It really isn't an element of cycling through the
20 entire system.

21 MR. CLERE: No.

22 MR. SHEPARD: Hydraulic capacity is more a matter
23 of a river flow generally exceeding the capacity, then
24 you're spilling. It's not related to operational issues?

25 MR. DUNLAP: I'm going to jump in on that also.

26

1 Bonny Eagle will peak to a degree. So it's not
2 purely -- again, as I indicated earlier, there's some
3 capacity within the daily flow range or daily pond range.

4 MR. SHEPARD: That's what I'm trying to
5 understand.

6 MR. DUNLAP: To cycle Bonny Eagle, to a degree.
7 It's not large; again, it's not a Kennebec peaking
8 situation. Bonny Eagle will cycle some to match peak flows.
9 And then the units at Bonny and at West Buxton are
10 essentially matched, if you will, for simplicity. So take
11 advantage of that through both stations.

12 MR. McDAVITT: This is Bill with NMFS.

13 To what degree or to what extent do any data
14 exist? Do you have pond data that you can share, or tail
15 water elevations you can share, or are those data not
16 available?

17 MR. DUNLAP: They're available as part of our
18 FERC compliance record. They're not in a readily available
19 form as far as presentation form. We can work towards
20 getting a further explanation of the operation as relates to
21 Bonny Eagle for you. But again, the head pond for West
22 Buxton is not siphoned; we would maintain that relatively
23 even, and adjust the units to match the flow to that pond
24 level.

25 MR. CREAMER: Thanks, Frank.

26

1 MR. McDAVITT: You're welcome.

2 MR. CREAMER: I just had an observation. We were
3 talking about the bladder dam earlier. We were on the site
4 yesterday; there are three sections to the bladder dam.
5 There are two on the main dam here and then there's a small
6 one that comes off to the point here that actually spills
7 into that channel.

8 So operationally, I don't know how they would
9 normally -- how they normally operate this section. This
10 little piece here, I know yesterday I believe it was down in
11 the spilling from that little section. There are three
12 sections to the bladder dam itself, and then you've the
13 gates, the stanchion gates here.

14 Okay, any other further discussion before we move
15 in to the process plan?

16 Okay. Let's move on. And this, basically we're
17 close to wrapping up here. I believe there are four slides.

18 First part of the presentation I kind of stepped
19 through the process, generally speaking as the licensing
20 process. What I've got here is, I kind of brought that home
21 specific to West Buxton in terms of time frames. And then
22 when certain things occur and when stakeholders need to
23 provide comments, and the applicant needs to file something.

24 So the next set of slides kind of does that;
25 gives you a perspective of what happens and when. We'll
26

1 start here, down here at the NOI and PAD; that was filed in
2 August, August 10th, I believe it was.

3 The scoping PAD NOI notice was issued in October.
4 That was the date I also believe that the scoping document
5 was issued, at the same time. And then a month later we had
6 the scoping meeting, much as where we're at today.

7 So basically this is where, the box that we're in
8 right now is in scoping meeting. The next thing Frank
9 mentioned earlier, the next thing, the date that people need
10 to be aware of is out here on December 8th of this year;
11 that's when all the stakeholders including Commission Staff
12 provide their comments on the scoping document 1, the PAD,
13 and if there are any studies that anybody wants to request,
14 this is the deadline for filing those study requests,
15 December 8th.

16 Once you get to that point, the applicant,
17 proposed study plan; they're going to take all this
18 information, comments that are provided, and they're going
19 to develop their study plan. That study plan is due January
20 22nd, 2013.

21 Under regulations, under the Part V regulations
22 for the Integrated Licensing Process, there is a proposed
23 study plan meeting that is required. That is an applicant's
24 meeting; that is not our meeting. That is required to occur
25 by February 21st of next year.

26

1 This part of the process that we're talking
2 about, and then comments on the proposed study plan are due
3 on April 2nd of 2013. This part of the process, the
4 proposed study plan, the meeting, comments on the study
5 plan, the revised study plan that's filed -- that part of
6 the process is what we call informal dispute resolution.
7 Basically, that's the stage where we try to resolve any
8 differences that exist with studies. We try to resolve
9 these things informally through both written comments, and
10 more importantly at that proposed study plan meeting.

11 That's the part of the process where it becomes
12 informal in terms of trying to resolve any differences that
13 exist with studies.

14 Out here in June, June 21st, is when the
15 Commission will approve the study plan, by June 21. And at
16 that point, that's when the year studies start. Once that
17 determination is issued, the study termination.

18 Now, down here I have something that's 'if
19 needed.' Formal dispute resolution. There is in the
20 regulation for the ILP, there is an opportunity and a
21 process for mandatory conditioning agencies. In this case
22 the name, DEP, Fish & Wildlife Service, or the National
23 Marine Fisheries Service. There is an opportunity for those
24 entities to file, if they disagree with what our study plan
25 determination is, didn't include something they thought is

26

1 necessary in terms of a study, there's an opportunity for a
2 formal dispute resolution process.

3 I have yet to go through one of these myself; I
4 believe it's a 90-day process, and it's a very quick -- I
5 wouldn't be involved. All the staff involved have to be
6 separate from the process. There would be Commission staff;
7 we would select somebody who is unrelated to this process.
8 The agency involved would have to have a person from their
9 agency that's not involved in the process, and then the two
10 of them, they will select a third member for a panel that we
11 maintain a list of people that are available to be panel
12 members for this dispute resolution process.

13 So there's a three member panel that gathers
14 information; they meet and they put together a report that
15 the Director will then look at and determine whether or not
16 any modifications need to be made to the, or revisions need
17 to be made to the study plan itself.

18 It's a process that, it's been used a few times
19 so far, since we've implemented the ILP. It is a process
20 that we'd like to avoid if we can. I have no reason to
21 believe that this process will even come into play here, but
22 it is there. It's also important to recognize that it's
23 only available the minute for conditioning agencies, and it
24 is only relevant for studies related to their jurisdiction.

25 So for like the Fish & Wildlife Service and
26

1 National Marine Fisheries Service, let's use for example
2 Section 18, fishway prescriptions. That's really their one
3 mandate in the process; and the study that they may dispute
4 has to be related to that mandate; it can't be -- if they
5 disagree with the study on recreation, that's probably
6 something that will get thrown out because it's not related
7 to the mandate of Section 18, implementation of Section 18
8 prescription.

9 A little bit different on the side of, say for
10 the state agency, the Maine DEP, because there's a little
11 bit broader mandate in terms of water quality certification,
12 but it still has to relate to that mandate of implementing
13 the Clean Water Act, the certification itself. It can't be
14 something that's completely out there unrelated. Because I
15 have seen them get tossed on those grounds, simply for that
16 reason.

17 I'm going to kind of skip forward in, we get the
18 final study plan down here; one to two years of studies. I
19 didn't separate those out, but basically there's an initial
20 study report after year one; there's an initial study report
21 meeting that will occur, under regulations. And then
22 there's kind of a similar process in terms of if there's
23 disagreements we go through a dispute resolution process,
24 trying to resolve whatever differences there are, or may be.
25 Both for the initial study report and a final study report.

26

1 Same process exists. It becomes the standard for
2 modification of the study or a new study. The standards for
3 making those happen become more difficult once you get past
4 here. You have to meet, and I think -- can't exactly
5 remember what they are, but one of them is you have to show
6 good cause, I think after the initial study report, and you
7 have to show extraordinary cause or something; and those
8 terms are defined in the ILP rule.

9 So it becomes more -- the bottom line is, as you
10 move through this study phase, the initial study report into
11 the final study report, it becomes more and more difficult
12 to make changes to the study plan. Changes can be made if
13 there's a reason to make them, but we're not going to make
14 changes to the study plan just to make changes.

15 Anyway, final study report will jump out here,
16 that's all the way out here in June 21 of 2015.

17 The next thing on the schedule then is the
18 preliminary licensing proposal. Again that is not hinged
19 upon the completion of this at all. That date is hinged
20 upon the filing of the application. So that PLP is due by
21 August 3rd, 2015. And then the end of December of 2015 is
22 when they would file their license application, final
23 license application.

24 Once the application is filed, again if anybody
25 wants the graphics, I can make sure they have these graphics

26

1 -- somewhat easier to follow, but there is a schedule on the
2 table in the back that has these same time frames in them,
3 but basically it's an Excel spreadsheet with the time
4 frames.

5 So we move into the post-licensing phase. We'll
6 have the application filed in December, we issue a tendering
7 notice two weeks later, and that will be in January 2016.
8 If all goes according to plan, 60 days after the filing
9 we'll issue our acceptance notice and Ready for
10 Environmental Analysis notice; so that will be in February
11 2016.

12 Sixty days later is the deadline for filing
13 comments, conditions, interventions, and the last
14 opportunity to request or to submit their application for
15 401 certification to the Maine DEP. That will be in April
16 2016. We currently are targeting August of 2016 for an
17 environmental document. And I believe, as the scoping
18 document indicates right now, we are currently anticipating
19 an environmental assessment.

20 Comments then, 30 days later are due in September
21 2016. Agencies should remember I said agencies have an
22 opportunity to file a modified conditions or recommendations
23 based on the NEPA document and comments filed on that
24 document. Those will be due if there is a need to, if an
25 agency wants to modify anything, those will be due in
26

1 November 2016. And then a final EA, environmental
2 assessment, would be in February 2017.

3 If you remember the previous graphic that looked
4 like this, but just had general time frames in; I said 12 to
5 17 months is what our target is for post-filing. This comes
6 out to right around 17 months.

7 Now, as I talk about this time frame right here,
8 the scoping document I believe anticipates a single
9 environmental document, not a draft and final. We would do
10 a draft and final if necessary, and that would be these time
11 frames here. Right now we're thinking that a single
12 document where we would address any comments that we get on
13 that within a licensing order.

14 If that were the case, that would change some of
15 these time frames a little bit to where -- a licensing order
16 here would no longer be -- you wouldn't have this down here
17 in February. This would probably be moved up to where we
18 could do a licensing decision at the end of 2016 instead of
19 out there in February of 2017. But that's the time frame
20 assuming, if we were looking at a draft and final, to
21 understand what that time frame is, but as this process
22 plays out, our hope is that we can do this with a single
23 environmental document addressing any comments, then, and a
24 licensing decision.

25 That's basically the end of the presentation. I
26

1 threw this up here, I couldn't help myself. When we first
2 implemented the ILP in 2005 or thereabouts, we came up with
3 this wonderful way of kind of graphically depicting this
4 process. I mean, it's a complicated process, it's a long
5 process, there's a lot going on. This was the flow chart we
6 came up with; it has both -- on the top is the pre-filing
7 part of it. On the bottom is a post-filing part of it. And
8 it really is always a source of humor at least for me,
9 anyway, when I look at this thing, because this was supposed
10 to be a process that was easy. It really hasn't panned out
11 that way; and when you look at this, you're like "you've got
12 to be kidding me." This is why I said it's a process that
13 is complex, and when you look at the time frames, you're
14 like -- especially early on in the prefiling, it's like
15 "Holy Cow" there's a lot happening in the first ten months.

16 And then on top of that, the Energy Policy Act of
17 2005 established a process where if an applicant disagreed
18 with the Section 18 prescription, say, there's a process
19 laid out where they can challenge that and they can present
20 their own -- something, an alternative for meeting some
21 requirement.

22 Well, this is integrating all of the statutory
23 and the agency responsibilities together; that's the pink
24 boxes. So that throws into the process there, that's the
25 agency process for resolving differences or disputes with
26

1 Section 18 prescriptions. Or it could be 4(e) conditions,
2 that type of thing.

3 So when you're looking at that, it is definitely
4 a complex project, process to be negotiated.

5 With that, if there are any -- certainly open to
6 discuss the process plan. I know some of these studies,
7 especially water quality, you may want to go down into the
8 field earlier than say June; I don't know, but we can
9 certainly discuss modifications to that; we can't make
10 serious modifications to that time frame, but all of those
11 time frames talk about something up to 30 days.

12 So it doesn't mean that something can't happen a
13 little quicker as long as all parties agree to it. I'm not
14 going to do something and shortchange anybody in terms of
15 comment period; but if all stakeholders agree to it, it's
16 something that we'll consider.

17 If we want to talk about it now, we can. It can
18 be proposed by the applicant and everybody can respond to it
19 in writing. Or we can leave the schedule the way it is.
20 It's really what the stakeholders want to do.

21 AUDIENCE: Schedule works for us.

22 MR. CREAMER: Okay. I'm just throwing it out
23 here, if we needed to modify it we can talk about it.

24 Are there any comments or questions generally
25 now, now that we're at the end?

26

1 MR. SHEPARD: Yes. Steve Shepard, U.S. Fish &
2 Wildlife Service.

3 I think generally, among the agencies, I'm
4 speaking for -- on behalf of Bill and Kathy, I suppose both
5 -- that we would try and coordinate our study requests and
6 be of a like mind so that you get letters that reflect
7 similar item study request. We'll be filing a written --
8 each agency will be filing a written request for studies,
9 and they should reflect similar items.

10 MR. CREAMER: Well, it's good to know that you're
11 going to try to be of a like mind, because it makes it a lot
12 easier.

13 MR. DUNLAP: It does, and we appreciate that. If
14 there are any questions or thoughts that you want to call us
15 about, that's fine, too, to get any further perspective on
16 thoughts.

17 MR. McDAVITT: One slight wrinkle in the whole
18 process, there are two outstanding endangered species
19 listings. Presumably alewife or river herring, we'll get a
20 decision perhaps in January, but don't quote me on that.
21 National Marine Fisheries Service has to wait on river
22 herring and the river herring listing, and Fish & Wildlife
23 Service has the lead on eel; but my understanding there is
24 that there's multiple species being considered, and the time
25 frame for any decision on that is further out.

26

1 But those are two species in the river that are -
2 - always being petitioned, and under that review process
3 right now. So as we go forward with relicensing, is it
4 possible that either one of these species could become
5 federally listed during the relicensing process?

6 MR. CREAMER: Well, I appreciate you telling me
7 that. I believe one of the things, one of the requests that
8 we got in the notice that we issued was granting FPL Energy
9 as our non-federal representative for purpose of ESA
10 consultation at this stage.

11 So if there's a listing that occurs, and at this
12 stage with the proposal anyway, I would encourage all the
13 stakeholders to kind of have that in the back of their mind
14 when they're going through anyway, simply because if it does
15 occur, then you don't have to go back and revisit something.

16 But the applicant here has the ability to consult
17 from, as our non-federal rep for purposes of ESA
18 consultation. If there is a listing, I would expect, as I
19 mentioned before, we would like to see a graphed biological
20 assessment come in with the application; and I would think
21 that that would be developed with all the stakeholders in
22 mind anyway, with Fish & Wildlife Service and National
23 Marine Fisheries Service, as well as the State, relevant
24 State agency of probably marine resources, I would think.

25 So it's good to keep that in the back of the
26

1 mind, and hopefully it won't create too many wrinkles that
2 we can't resolve moving forward. If we have that right in
3 our mind right now, then we can kind of plan for it.

4 MR. DUNLAP: Good note, always important to keep
5 in mind. One of the sections of the 2007 fishery assessment
6 agreement contemplates that potential for the then-current
7 listing, and fundamentally we all pledge good faith
8 cooperation to work through the issues.

9 MR. McDAVITT: Agreed. That's good.

10 MR. CREAMER: Are there any other questions,
11 comments at this point?

12 Well, seeing none, I thank everybody for coming
13 this morning, and we certainly look forward continued
14 dialogue as we move through the process. And as I said, if
15 anybody has any questions as we go through and go along,
16 certainly feel free to give me a call or drop me an e-mail,
17 and I'll probably answer the questions as best I can. That
18 goes for any stakeholder.

19 You know, the Commission Staff, we play multiple
20 roles in this. We're a stakeholder just like everybody
21 else; we get to the comment on the PAD, we get to file study
22 requests if we want to. We have that hat; we're the
23 advisory folks as well, so we have to present -- we need to
24 be unbiased in the process. So that's part of it, and then
25 of course there's the regulatory side of it.

26

1 So there are multiple hats that we wear, and
2 certainly at the various points we'll exercise those roles,
3 and we're always available for phone calls, e-mails,
4 questions.

5 With that, if there is nothing further, I would
6 say we are done. Thank you for coming this morning.

7 (Whereupon, at 11:18 a.m., the scoping meeting
8 concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25