

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  
Buxton Town Office  
185 Portland Road  
Buxton, Maine 04093  
Thursday, November 1, 2012

The public scoping meeting, pursuant to notice, convened  
at 7:32 p.m., before a Staff Panel:

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

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

2 MR. CREAMER: Welcome, everyone. We have a  
3 lively crowd this evening. My name is Allan Creamer, I'm  
4 with the Federal Energy Regulatory Commission, and I'm a  
5 fish biologist and I am a Project Coordinator for the West  
6 Buxton relicensing, which is what we're here for this  
7 evening to talk about; this project is coming up for  
8 relicense, and FPL Energy has indicated that they want to  
9 come in and get a new license.

10 So we are here to talk about what the issues are,  
11 kind of get a flavor for what's going on, and hear any  
12 issues that you all may have.

13 (Slide presentation)

14 The first thing I want to do this evening is talk  
15 a little bit about the meeting protocols. The registration  
16 form is on the back. I would appreciate it if everybody  
17 here has signed in, particularly if you plan to talk. We  
18 have a court reporter sitting over here to my right, and  
19 there are certain things that the court reporter has asked,  
20 as in defining acronyms that we might use. Speaking clearly  
21 and audibly, state your name and affiliation, speak one at a  
22 time -- which is probably not going to be much of an issue  
23 for tonight. Use the podium or microphone, but I think the  
24 acoustics in here are good enough that we don't really need  
25 to do that sort of thing. And I would encourage, throughout  
26

1 this, if you have any questions, feel free to interrupt; and  
2 I believe the same would be true for the presentation by the  
3 licensee as well.

4 Our agenda. Two main things I want to do this  
5 evening. First, I'm going to talk a little bit about the  
6 licensing process itself. This is the first time we've been  
7 up here using the Integrated Licensing Process in this  
8 particular arena, for this project; and I'm sure there are a  
9 few that may not be familiar with what this process is. So  
10 I want to talk a little bit about that. I'm also going to  
11 talk about FERC's jurisdiction, some of the important  
12 statutes that we operate under.

13 Our big mandate is balancing. Unlike resource  
14 agencies that have specific interests in what they do, our  
15 mandate is in balancing; we have to look at the whole.  
16 Again, the licensing process we'll talk about, and then  
17 we'll get into the specifics of the West Buxton scoping  
18 process. We'll go through a little bit of the scoping  
19 document. We have copies on the table in the back in terms  
20 of describing the project and its operation; the resources,  
21 the issues, some of the proposed studies that FPL is  
22 proposing to do.

23 And then at the very end we will talk a little  
24 bit about the project timeline, this schedule. I will go  
25 through that a little bit as a way to wrap up. Again, feel  
26

1 free to interrupt at any point if you'd like.

2 FERC jurisdiction. FERC licenses non-federal  
3 hydropower projects. We cannot do anything with federal  
4 dams, like Corps dams or Bureau of Rec dams; we simply deal  
5 with the non-federal hydropower.

6 There are four basic categories: If a project is  
7 located on a navigable waterway, if it occupies lands in the  
8 United States, if it affects interstate or foreign commerce.  
9 And the fourth is that if it utilizes surplus water from a  
10 federal dam. The big one in the East is Corps dams where we  
11 have hydro projects.

12 Those are the four criteria that will establish  
13 FERC jurisdiction over a project. In this particular case,  
14 what we're primarily concerned with is the fact that the  
15 Saco is a navigable body of water; so that establishes the  
16 jurisdiction for West Buxton.

17 Some of the important statutes that FERC operates  
18 with -- and this is by no means all of them; this is just  
19 some of the important ones. Obviously, at the top, the  
20 Federal Power Act. Secondmost important is National  
21 Environmental Policy Act, otherwise known as NEPA. The  
22 Clean Water Act, the Endangered Species Act tends to be  
23 important sometimes; the National Historic Preservation Act,  
24 and for projects where federal lands are involved, we get  
25 into the Federal Land Management Policy Act; and those are  
26

1 4(e) conditions and things like that. We wouldn't have to  
2 worry about those here. The Wilderness Act, which is not  
3 necessarily going to be an issue here as well.

4 Balancing. I mentioned this earlier. FERC's  
5 primary purpose in going through this process; at the end we  
6 are required to balance the resources. We need to look at  
7 fisheries, we need to look at water quality, we need to look  
8 at recreation, the developmental side; we have to balance  
9 everything to come to some conclusion and some decision in  
10 the licensing process.

11 Under Federal Power Act, those statutes; 4(e),  
12 which is the equal consideration; and Section 10(a), which  
13 is the best adapted to a comprehensive plan. Those are the  
14 two statutory sections that dictate our mandate.

15 Comprehensive plans. These are important. Under  
16 the Federal Power Act, Section 10(a)(2), Commission must  
17 evaluate consistency with applicable comprehensive plans.  
18 The plans must be a comprehensive study of one or more of  
19 the beneficial uses of waterway or waterways; they must  
20 specify the standards, the data and the methodology used and  
21 be filed with the Secretary of the Commission. The idea of  
22 filing, then, is actually for FERC approval as a  
23 comprehensive plan. If it's not filed as a comprehensive  
24 plan, we are not bound to consider them. We will, but we  
25 don't put as much weight with those plans as we do something  
26

1 that's actually filed with the Commission as an approved  
2 plan.

3 At the bottom here, this is the website, if you  
4 go on to FERC.gov, where our list of plans are located. One  
5 of the things that we want to do in this process -- and we  
6 include it in the scoping document -- a list of plans that  
7 we believe are relevant. It's important to go through those  
8 and make sure that we've got all the ones that we need to  
9 get. If something is in there that we don't need, you need  
10 to let us know. If there's something there that we should  
11 be considering and we don't have listed, you need to let us  
12 know. But it's also important to, if it's not there, it's  
13 probably because it wasn't actually filed with the  
14 Commission. So there's instructions in the scoping document  
15 for filing a comprehensive plan.

16 The licensing process. The Commission has three.  
17 We started off with traditional licensing process and that  
18 wasn't good enough; it didn't give enough flexibility, so we  
19 designed the alternative process which really has no real  
20 defined timeline; so the most recent, the Integrated  
21 Licensing Process which is now our default, and that is the  
22 one that FPL has chosen to use. So I'm going to briefly,  
23 and I mean briefly, go through this just to give you a  
24 flavor of what this process is about and what to expect,  
25 moving forward. It's a process that is going to require a  
26

1 lot of time up front, in the first eight to ten months, a  
2 lot of time.

3 The underlying principles of the Integrated  
4 Licensing Process or the ILP is early study plan  
5 development, better coordination with stake order processes;  
6 and it establishes defined timelines, which is something  
7 that has gotten us trouble in the past and was the impetus  
8 for this process being developed. In study plan  
9 development, parties couldn't agree on a study so it just  
10 drug on and then the study wouldn't have gotten done; and  
11 then at the time the application is filed then we're faced  
12 with: Well, we need the information, so you've got to go do  
13 it, and here's what you've got to do.

14 This way, we can get this out of the way up  
15 front, and we don't get into a situation later where we  
16 don't have the information we need.

17 The key elements of the ILP. The preliminary  
18 application document, this is the very beginning. This is  
19 what FPL filed with their Notice of Intent back in August, I  
20 believe it was. A process plan, that's the schedule that  
21 we're all going to operate under; defines the dates as to  
22 when things need to be done and the early scoping, which is  
23 what we're here for, and study plan development. The idea  
24 with that is to actually bring everything out up front so  
25 there's no surprises later.

26

1           The approved study plan and study plan dispute  
2 resolution. The idea with this is not to get to the end of  
3 the process in the pre-filing stage and have disagreements  
4 over the studies. This way, if there are disagreements, we  
5 address them up front and we move forward.

6           Feedback loop on studies. There is built into  
7 this process two years of study season. So at the end of  
8 the first year, if you see something and you think you might  
9 need to take a closer look at it, there is this opportunity  
10 for the second year to go back and look at those additional  
11 things that need to be looked at.

12           And then finally at the very end of it is the  
13 preliminary licensing proposal. That is where the Applicant  
14 will come in and basically give you an idea of what they're  
15 thinking and what they want to propose in their license  
16 application.

17           Alternatively to the preliminary licensing  
18 proposal is, they can file a draft license application which  
19 is the complete document that they would file with us as a  
20 final document. This is where I'm going to go through  
21 quickly.

22           This is a very simplified version of a flow chart  
23 that is really kind of unwieldy to understand; but this is a  
24 very simplified version of it. On the top you see the  
25 pre-filing, on the bottom is a post-filing. Everything from  
26

1 here up, that occurs, that is the licensee's responsibility  
2 for making sure that those things happen. At this point it  
3 becomes, the license application is filed with the  
4 Commission and it becomes our process at that point in  
5 finishing things up.

6 So I'm going to quickly go through each of these  
7 eight boxes. The initial steps are the NOI and PAD, as I  
8 said. This is where the Applicant identifies and contacts  
9 potential stakeholders, gathers available information, and  
10 they prepare their Pre Application Document or their PAD and  
11 the Notice of Intent. This is where FPL has been; they  
12 filed their NOI and PAD back in August. They had gone  
13 through and identified, to talk about the resources, what  
14 they've done in terms of studies and some of the  
15 information, the data that they have. That will be used in  
16 terms of looking at what they may need to be going for  
17 future studies to fill in data gaps.

18 The scoping and the process plan; that's where we  
19 are today. Commission Staff prepares a scoping document and  
20 conducts scoping meetings to identify issues of concern. As  
21 I said, there's copies of Scoping Document 1 on the back  
22 table, and in that it has a list of what we view the issues  
23 to be at this point in the process.

24 The Applicant and other parties further define  
25 the process plan schedule, because it's an opportunity for  
26

1 us as a group to look at the process plan that we have  
2 developed and decide if it's going to work. You know, from  
3 a timing standpoint, maybe we need to get out in the field  
4 early for a certain study; maybe something needs to be done  
5 a little early. So here's an opportunity for us to talk  
6 about that schedule.

7 And then the parties will submit comments and  
8 study requests. That will come a little bit later; I  
9 believe that's in December when those comments are due.

10 Study request criteria. Any stakeholder can  
11 request studies, and it's important that when they do, there  
12 are seven criteria that are outlined in Commission  
13 regulation that must be addressed. There are copies of the  
14 criteria on the back table, but the seven criteria in effect  
15 basically require you to describe the goals and objectives  
16 of study, explain the relevant resource management goals,  
17 explain your relevant public interest considerations,  
18 basically is why is this study important? What's the  
19 existing information? And need for more? What do you know  
20 about the resource and why is it that that information isn't  
21 good enough and you need something more?

22 This next one: Explain nexus to project  
23 operation and effects and how study results would inform  
24 license requirements. This is a huge thing. We often get  
25 into, and many of the arguments on studies pertain to the  
26

1 fact that one party believes it's relevant and has a nexus  
2 to the project, another party does not. So it is important  
3 that if you're requesting a study that you explain why you  
4 believe the outcome has a nexus to the project, and the  
5 operation of the project, the effects of the project.

6 If that's not adequately done, a lot of times  
7 what you'll see in the past, that is one of the big things  
8 that study requests from any party -- not just agencies but  
9 anybody -- will get thrown out because they don't adequately  
10 describe what that nexus is. So it's a big thing.

11 Describe methodology and how it's consistent with  
12 accepted practice. In other words, how do you plan on doing  
13 your study? What kind of study you are going to do.

14 And then finally: Describe consideration of  
15 level of effort and the cost of the study, and why  
16 alternative studies are needed. This one is important  
17 simply from the standpoint that we get into a question of a  
18 \$300,000 study for what could be a \$50,000 fix at the end.  
19 So the idea is to look at really what you're trying to get  
20 at and what you're trying to address and look at the type of  
21 study that may be needed to get to the end.

22 Study plan development. That's the next stage in  
23 this process. The Applicant will prepare a proposed study  
24 plan; stakeholders will have an opportunity to comment on  
25 that study plan; we will have another meeting, study plan

26

1 meeting.

2           The Applicant then takes that information,  
3 revises their study plan, and will then file that final  
4 study plan with the Commission. And then there's another  
5 opportunity for stakeholders to comment on that filing.  
6 Once that's all done, FERC Staff -- in this case, it's the  
7 Office of Energy Projects Director -- will issue the Study  
8 Plan Determination.

9           Once that is done, that's the direction for the  
10 licensee to go in terms of the studies they're doing and how  
11 they're going to do it. At that point it becomes a little  
12 more difficult, after Year One and after Year Two, to  
13 request new studies or even to make modifications. There  
14 are certain things you have to meet in order to do that  
15 after Year One and Two.

16           Conducting studies and preparing the application.  
17 That is the longest period of time in that pre-filing stage;  
18 you'll see the first part of this, we go through the PAD,  
19 scoping and study plan development basically within the  
20 first ten months. After that, you've got two years of  
21 potential studies, a year or two years.

22           The Applicant conducts the studies, they will  
23 file a study report, and parties will have an opportunity to  
24 review those study reports. Built into the process is a,  
25 after the first year there's an initial study report, an  
26

1 initial study report meeting. Stakeholders have a chance to  
2 at that point comment on what the studies show.

3 And then once you get through those iterations  
4 and you get through two, Year Two, there is what they call  
5 an updated study report, Updated Study Report meaning --  
6 it's basically the same thing that you did for the first  
7 year study. Once you get through that, the applicant  
8 prepared a Preliminary Licensing Proposal, and that's where  
9 they take everything, all the information that they have in  
10 the PAD, all the information gathered from studies and  
11 anything else available, and they put a document together  
12 that looks a lot like an environmental document or NEPA  
13 document; and they tell you at that point, "This is what  
14 we're thinking, what we want to propose in terms of a new  
15 license."

16 The Preliminary Licensing Proposal. This is the  
17 one thing that is not keyed off of any other date previous.  
18 This is actually a document that is filed 150 days before  
19 they file their license application.

20 Contents. It describes existing and proposed  
21 facilities, operations and environmental measures. It  
22 includes draft environmental analyses. I said before, draft  
23 license application is optional. That's basically the  
24 preliminary licensing proposal plus all the other exhibits  
25 that go along with a license application; like the drawings,  
26

1 the project boundary maps, the facilities drawings and all  
2 that stuff.

3 We also, if it's relevant, a draft by logical  
4 assessment for an endangered species. If it's relevant.  
5 The Essential Fish Habitat Assessment. Again, that's  
6 something that if it's relevant to the case.

7 Historic Properties Management Plan. All of  
8 those are things that we ask to be developed in draft form  
9 prior to the license application being filed. It just makes  
10 everybody's job easier if we've got a plan -- at least a  
11 draft plan to be looking at. And again, the draft  
12 Biological Assessment. That helps us in terms of  
13 understanding -- it helps really all the parties, because  
14 typically what happens is the licensee will, and the  
15 applicant will work with the federal agency to put this  
16 together so we know it's something that has already passed a  
17 little bit of muster; and it may not take a lot of  
18 additional work to complete.

19 Comments and additional studies due within 90  
20 days. So once they file this preliminary licensing  
21 proposal, the stakeholders have 90 days to file comments on  
22 that.

23 At that point the licensee is, I'm not going to  
24 say done, but their hard work is done, and no later than two  
25 years before the expiration date of the current license is  
26

1 when they file an application. And as part of the  
2 application, we would expect the licensee to -- and as  
3 required under the regs -- that the applicant address any  
4 outstanding study requests that somebody might have come in  
5 with at the end. Because we have to look at that within 30  
6 days, we are supposed to decide whether those additional  
7 study requests have any merit, and we need that information.  
8 So they need to, a licensee is required to address those in  
9 their application.

10 Now we're into the post-filing. This is now the  
11 Commission's process, and this is a very quick timeline  
12 which basically shows application; we issue a tendering  
13 notice within two weeks basically explaining to the world  
14 the application has been filed and we invite at that point  
15 any comments on the license application.

16 If the process is done successfully, we'll issue  
17 an acceptance notice and a Ready for Environmental Analysis  
18 Notice within 60 days of the application filing. That  
19 obviously is a -- when I said successful, that means there's  
20 no additional information or no additional study needs, we  
21 can do that.

22 Once we issue the Ready for Environmental  
23 Analysis Notice, 60 days later are the comments, conditions  
24 and interventions. And that is also the last time that the  
25 applicant files their request for water quality  
26

1 certification with the state certification agency. They can  
2 file that anytime; but that's the last opportunity for doing  
3 it.

4 And then the next thing in the process is our  
5 environmental document; it's either an environmental  
6 assessment or if we deem it necessary, an environmental  
7 impact statement. We'll issue that. There will be 30 to 60  
8 days comments on that document. There's a process that we  
9 call a 10(j) process if we have disagreements with a state  
10 resource agency or a federal resource agency over a Fish &  
11 Wildlife condition. We will try to resolve those issues  
12 with them within this process, what we call a Section 10(j)  
13 process.

14 There's also an opportunity for an agency -- once  
15 we issue the environmental document and get comments back,  
16 there's an opportunity for an agency to modify their  
17 original recommendations, prescriptions or conditions.

18 And then at the bottom finally, we get to the  
19 final NEPA document. Then at that point once we issue that,  
20 it's ready for license, an order. In the process, I  
21 designed this basically for what would be a draft and final  
22 environmental document.

23 In this particular case, and if you look at the  
24 scoping document, I think we made the assumption that we  
25 were going to go with a single NEPA document, unless  
26

1        somewhere along the way we determined that a subsequent or a  
2        revised environmental document is necessary.

3                So this process here has a draft and final. It  
4        shows you kind of how things are laid out; but our thinking  
5        right now is that we think that this relicensing we can do  
6        with a single NEPA document and then address comments that  
7        we get on that document within a license order.

8                The licensing decision within the Commission can  
9        be done in two ways: Most decisions are delegated to the  
10       Office Director. If a case is contested, then it goes  
11       directly before the Commission, the five member Commission  
12       that's appointed by the president. In this particular  
13       instance, it's hard to say right now, but hopefully our goal  
14       is to end up right here with a delegated order.

15               Okay, at this point in time, I basically have  
16       gone through this thing really quickly. There's a lot with  
17       this Integrated Licensing Process. The next two or three  
18       slides have website addresses. We have an Ideas for  
19       Implementing and Practicing in the Integrated Licensing  
20       Process. That basically is a guidance document that has  
21       come out of the effectiveness study that we've done that  
22       kind of helps stakeholders understand in particular roles  
23       whether they're an applicant, a nongovernmental body, an  
24       environmental group, a state agency, federal agency. It  
25       looks at it from all perspectives in terms of, 'These are  
26

1       some tips that will help get through the process and make  
2       the process effective.'

3               Another one of the guidance documents that we  
4       have is understanding study criteria. There is a handout in  
5       the back that lists the seven criteria; we actually have a  
6       guidance document that goes through each of those criteria,  
7       explaining what they are and how to address those criteria.  
8       So that's another useful link.

9               Then finally, for more information -- this gets  
10       into a little more general -- the Integrated Licensing  
11       Process final rule can be found on the Commission's website.  
12       The Section 5 regulations for the integrated licensing  
13       process can also be -- actually this is on GPO's, the  
14       Government Printing Office's website; but you can also find  
15       it on FERC's website.

16              And then the flow chart. This used to be a flow  
17       chart that was a single document. It's now broken into two.  
18       It's a little bit easier to follow. But this is the flow  
19       chart that basically for pre-filing and post-filing kind of  
20       gives you perspective; you can follow through where you're  
21       at in the process.

22              At this point I have gone through, really kind of  
23       explaining who the Commission is, the licensing process, and  
24       what my goal was, was to kind of dispel the myth of FERC --  
25       and it's been this way for as long as I've been there -- is  
26

1 that we're some black box somewhere in D.C., and really  
2 people don't understand who we are and what we do. And one  
3 of my goals was to kind of dispel that myth and give you  
4 some understanding of who we are, and our role in hydropower  
5 regulation.

6 Licensing hydropower. In this particular  
7 process, it can be very complex and it can be in the first  
8 year, extremely fast. It goes quick and there are deadlines  
9 that have to be met. If you miss a deadline, oh well. So  
10 it's important to try to understand -- at this stage, it's  
11 important to understand where you're at, understand when the  
12 deadlines are and what needs to be done at these deadlines.

13 At this point I'm going to break. That's the end  
14 of the first part of the talk. So if there are any  
15 questions --

16 (No response.)

17 MR. CREAMER: No questions?

18 Okay. You look a little inquisitive, like you're  
19 thinking about something, Fred?

20 MR. FARNHAM: Who is the applicant at this point?

21 MR. CREAMER: That would be FPL Energy Maine.  
22 They are the Applicant.

23 MS. VERVILLE: Probably a good segue.

24 MR. CREAMER: Good segue, moving in to the next  
25 part of this. And I have asked for this for a particular  
26

1 discussion of the project, operations, description and  
2 resources. I've asked Frank Dunlap with FPL to kind of run  
3 through that stuff.

4 MR. DUNLAP: Good evening, my name is Frank  
5 Dunlap, I'm with NextEra Energy. I'm Project Manager for  
6 the relicensing of the West Buxton project; a Senior  
7 Environmental Specialist with NextEra Energy. NextEra is  
8 the parent company of FPL Energy Maine Hydro LLC.

9 FPL Energy is the licensee, is the owner for the  
10 project. FPL Energy has 22 FERC-licensed hydro projects  
11 across the State of Maine. Nine on the Kennebec River; six  
12 on the Androscoggin; one on the Presumpscot and six on the  
13 Saco, including of course, West Buxton.

14 As background reference, we often run into the  
15 question of who NextEra is. NextEra Energy, Inc. is the  
16 parent company of two major companies; one is Florida Power  
17 & Light, which is a regulated utility in Florida. That's a  
18 separate company from who we are, but under the same  
19 umbrella, who we are which is NextEra Energy Resources.

20 NextEra Energy Resources is an independent power  
21 producer with power plants across the nation. We happen to  
22 be the largest generator of wind power in the nation, and  
23 nearly the largest generator of solar power in the nation;  
24 and then we have our fleet of hydro here in Maine.

25 Again, my name is Frank Dunlap. We have us this  
26

1 evening Matt LeBlanc, an environmental specialist who  
2 focuses on the Saco River, focuses on fishery management  
3 here. Sara Verville, Senior Consultant with TRC Consultants  
4 is here this evening. Not here, but also on the licensing  
5 team is Kleinschmidt Associates up in Pittsfield, Maine, a  
6 co-manager, if you will. There is Andy Qua.

7 This is a picture of the Saco watershed with all  
8 the hydroelectric projects on it. The West Buxton project  
9 is down here, in the Lower Saco Basin. That includes a  
10 detailed photo and we'll see a better photo of the  
11 facilities in just a moment.

12 The project consists basically of a concrete  
13 gravity dam, across river, with a gate section on one side  
14 and a pair of powerhouses on the easterly side. The upper  
15 powerhouse was built in 1906, contains five units. The  
16 lower powerhouse was built in 1926, has a single unit,  
17 vertical Kaplan unit.

18 The pond, the impoundment for the project is  
19 fairly small; it's about a mile and a third long and about -  
20 - and I don't see it on here -- but about 131 acres, if I  
21 recall properly.

22 The project was built in the early part of the  
23 last century. It was licensed in the early Sixties, 1960s;  
24 relicensed in 1988. So this will be the second relicensing  
25 for this project. FERC, as was mentioned earlier, can issue  
26

1 licenses on the order of 30 to 50 years. This last license  
2 was issued for 30 years. That expires in December of 2017.  
3 So based on the regulations, we will be submitting our  
4 application for new license in 2015.

5 Here's a photo again of the project facilities,  
6 an aerial photo. Again, on the left is the gates for the  
7 project with the flood channel just below that; the main  
8 portion of the dam, which now has a rubber bladder on it,  
9 which provides better control of flood waters; and the two  
10 powerhouses. This project extends to just below the area  
11 covered by this photo and is bordered by the downstream Bar  
12 Mills Project, and upstream by the Bonny Eagle Project.

13 The operation of the project is guided by the  
14 FERC license that was issued in '88, and that incorporates,  
15 has been amended to include the 1997 Instream Flow Agreement  
16 that was reached among FPL Energy, the agencies, and  
17 nongovernmental organizations. That establishes a flow  
18 regime to the river and establishes the pond levels at each  
19 of the projects to the river.

20 In this case, the DEP has established a water  
21 quality certification, a flow requirement of 768 cfs --  
22 cubic feet per second -- or inflow; whichever is less. And  
23 a pond level that is basically near full all the time during  
24 normal operations. Of course that carries flood control and  
25 so on, where that varies.

26

1           Layered on top of that requirement, which was  
2           incorporated into the FERC license, are the requirements of  
3           the 1997 Instream Flow Agreement. And that establishes  
4           again, close to the river, and basically ties the flows of  
5           the West Buxton Project to the outflows of the Bonny Eagle  
6           Project above it. There are four seasonal minimum flows  
7           established in that agreement to guide the operation of the  
8           West Buxton Project. They range seasonally from a minimum  
9           flow of 250 cfs to a minimum flow of 600 cfs, or inflow out  
10          of this project.

11           As part of the information that's contained in  
12          the PAD, the pre application document, we tried to describe  
13          our standing knowledge on a variety of resources including  
14          water quality. This forms the backbone of what we will all  
15          consider in developing study plans. And based on study  
16          needs for additional information.

17           We have a fair amount of information on the West  
18          Buxton Project because it was relicensed earlier, and  
19          because we have recently relicensed the projects both  
20          upstream and downstream. So we have a good baseline set of  
21          documents and information.

22           Regarding water quality, typically both FERC and  
23          the DEP need to look at the cleanliness, if you will, the  
24          ability of the river to meet the water quality standards,  
25          and there are a number of parameters that we look at.

26

1 There's a fair amount of information including that of the  
2 Saco River Corridor Commission; and it basically shows that  
3 as we know, the Saco was a cleaner -- included in the  
4 project area.

5 We also look, when considering water quality --  
6 DEP in particular looks at macroinvertebrates, to see if  
7 there's an indication of species that are more or less  
8 tolerant to pollution loads and environmental stresses.

9 Again, we have studied macroinvertebrates  
10 upstream and downstream. The latest set of data shows that  
11 the project water, waters in the project area, are meeting  
12 standards.

13 Another item of interest, certainly on the Saco,  
14 was restoration of anadromous fisheries, those sea run fish  
15 that spend time in fresh water, also. During relicensing of  
16 other projects in the 1990s we reached a comprehensive fish  
17 passage agreement among the agencies, the licensee and other  
18 interested parties. That guided a lot of the work that  
19 Matt, for instance, does on the Saco with our fish passages  
20 up and down the river.

21 That was amended and supplemented in 2007 with  
22 the Saco River Fisheries Assessment Agreement. We had,  
23 based on the earlier agreement, continued to do annual  
24 assessments of the status of the restoration. And we came  
25 to a point here in relicensing the Bar Mills project where  
26

1 it was time to reset the gauge, if you will, and consider  
2 where we were in the restoration and where we wanted to get.

3 So the amendment, if you will, to the agreement  
4 set dates for future fish passage and other measures that we  
5 would take up and down the basin. Specific to West Buxton,  
6 the measures include, in the fish passage agreement, include  
7 the construction of upstream passage, facilities or measures  
8 for the American eel, and just four short years from now,  
9 2016.

10 The installation of upstream passage for  
11 anadromous species, migratory species if you will, in 2019.

12 Assume that there's enough fish there to justify that.  
13 And the construction of downstream passage for the American  
14 eel in 2028.

15 We had, as I mentioned, expended considerable  
16 effort in providing fish passage on the Saco, and briefly  
17 here in 1993 we constructed upstream fish passage facilities  
18 and fish lift at Cataract. At the next set of dams we  
19 constructed fish locks and lifts in 1997. In 2001, and we  
20 visited this earlier this afternoon, we constructed a fish  
21 lift at the Skelton Project. And we've also provided  
22 downstream passage facilities, interim facilities at Bonny  
23 Eagle, West Buxton and Bar Mills because, based on the  
24 operation of the fish lifts that we have constructed, we've  
25 stopped going upstream of the project and therefore by

26

1 downstream passage, down through.

2 Again as you saw this afternoon, the downstream  
3 fish passage at West Buxton in particular consists of a  
4 curtain wall, flow induction devices, a headgate and sluice,  
5 to pass downstream migrating fish.

6 The agreement calls for additional measures that  
7 I won't detail right now; but that includes support of  
8 salmon enhancement measures, funding for the Saco River  
9 Salmon Club, funding of public information efforts and  
10 meeting annually with the state and federal fisheries  
11 agencies for near term management decisions on fish passage.

12 The agreement again includes additional studies  
13 up and down the river; so these are already cast in the  
14 plan, including the salmon kelt study, which is the adult  
15 salmon post-spawning, coming downstream. A two year study  
16 of effectiveness for passage of clupeids, alewife at the  
17 various dams. A study of downstream eel migration timing  
18 and routes, and electro-fishing studies for bass in several  
19 of the impoundments in the watershed. Those last studies  
20 have already been conducted.

21 The focus on the Saco has been on restoration of  
22 anadromous species. We've also, however, taken a look fresh  
23 water fishes in the area, those that are not migrating to  
24 the sea, that include the bass studies that I mentioned in  
25 the last slide. And the Maine Department of Inland

26

1 Fisheries and Wildlife is the management agency for that;  
2 they consider the Lower Saco River as a high value fishery,  
3 and manage it as such. They stock trout, and again we have  
4 studied some of the fish assemblies in the impoundments  
5 where the various relicensing is; and additionally, Midwest  
6 Biodiversity Institute has conducted surveys up and down the  
7 entire Saco, which characterize the fisheries throughout the  
8 entire watershed.

9 We also include in the PAD information that we  
10 currently have and know about the wildlife and botanical and  
11 wetland resources. Fairly typical for the Southern Maine  
12 area.

13 We also, through all the re-licensings, have  
14 looked for rare, threatened and endangered species or  
15 special species. Be they dragonflies, plants, eagles and so  
16 on, so we have a fairly good set of data on existing special  
17 species, if you will. There are not a lot in the project  
18 area; there are records in the state records of a species of  
19 special concern, a dragonfly species. Downstream there is  
20 some interest in plant species not listed as rare or  
21 endangered, but of special interest. Those are outside of  
22 the project area.

23 We will look at recreational use on the  
24 impoundment. That will come in the form of a survey that is  
25 actually conducted every six years through the FERC process  
26

1 where we assess both use and the use of the facilities in  
2 the area, and whether they are being used to capacity or  
3 not; which gives you an idea of whether you need to do  
4 additional work.

5 We've made our initial suggestions for studies in  
6 the PAD, as licensees. As Allan stated, interested parties,  
7 agencies, nongovernmental organizations, individuals will  
8 have the opportunity now following this series of meetings  
9 to suggest study plans; and those study plans again must  
10 carry a robust set of information for them to qualify. I  
11 think Allan will go through these a little bit more, so I'll  
12 pass on this slide. Allan will also be going through the  
13 process; there's a summary here. Next step again is  
14 submittal of comments on the scoping document and the PAD.

15 If you have further questions, you can ask either  
16 Sara or I as well as FERC Staff.

17 Do you have any questions right now?

18 (No response.)

19 Hearing none, thank you for your attention.

20 MR. CREAMER: Thank you, Frank.

21 At this point, I think we're going to focus our  
22 attention now a little bit in terms of content of the  
23 scoping document. I kind of wanted to go through a little  
24 bit of an overview of resource issues as we see them after  
25 having reviewed the PAD and other information that's in the  
26

1 record; and then I kind of wanted to touch upon the proposed  
2 studies that the licensee has included in their PAD. And  
3 then there is an opportunity to talk a little bit about  
4 those studies if anybody wants to talk about and get a  
5 little more information about what the licensee is thinking  
6 in terms of the type of study and new information.

7           So in the scoping document, and this is boiled  
8 down considerably for purposes of the talk, but from an  
9 aquatics perspective, there really were three main areas  
10 that we are looking at right now in terms of where we see  
11 potential effects: Water quality being one, fish passage  
12 and movement being the second one, and the operational  
13 regime on aquatic habitat, both in the impoundment and  
14 downstream.

15           Now I say that, qualified understanding that  
16 there is a flow agreement and there is a fish passage  
17 agreement. I understand that entirely, but I also think  
18 that from the perspective of looking at this in terms of  
19 NEPA analysis, there will be a little bit -- at least I  
20 think it's important to have a little bit of analysis of  
21 what the effects of the project are and then what is being  
22 proposed prior to the settlement agreements that will  
23 address those.

24           From a terrestrial standpoint, looking at the  
25 effects of project operation on riparian, littoral -- which  
26

1 is shallow water habitat, and wetland habitat, and the  
2 associated wildlife. There wasn't too much in the way of --  
3 a little bit of information in the PAD, but I think that  
4 there are areas that we're going to want to take a look at a  
5 little bit closer.

6 Recreation; the effects of project operations on  
7 recreation opportunities and public access, and the adequacy  
8 of existing recreation facilities and public access to meet  
9 current and future recreational demand. Those are typical  
10 issues -- they're fairly common issues, whether it's hydro  
11 in Maine or hydro in the South, or hydro out West; those are  
12 typical issues that we run across, things that we need to  
13 look at.

14 The next bullet here: Effects of project  
15 operations on historic properties and archaeological and  
16 tribal resources.

17 We talked a little bit today during the site  
18 review in terms of what potentially may need to be done in  
19 terms of looking at West Buxton from the standpoint of  
20 whether it's eligible for listing on the National Register.

21 The cultural resource aspect of this, there are  
22 certain things we will need to look at. And then the last  
23 is obviously, the effects of relicensing on the project  
24 economics. That's the developmental part of this.

25 Everything else is in the non-developmental part. The  
26

1 developmental aspect is the, we take a look at the economics  
2 of the project in terms of what we're doing. The  
3 information that comes in, the license application, any of  
4 the measures that are being proposed or recommended for a  
5 new license, we look at all of that in terms of how it will  
6 affect the project economics going forward.

7 Now having said that, the licensee in a sense --  
8 and Frank talked about, he had a slide up there -- there are  
9 certain studies that they have proposed to do to kind of  
10 fill what they perceive as data gaps or as a way of looking  
11 at the water quality perspective kind of verifying something  
12 they did ten years ago or five years ago during sampling.

13 So we have a set of, I think there's a set of six  
14 studies. The water quality aspects, they're going to do  
15 sampling for dissolved oxygen, water temperature,  
16 Chlorophyll a, and the macroinvertebrates. The idea is to  
17 look at: is the water quality now -- says it's clean, are  
18 we meeting state water quality standards?

19 The reconnaissance surveys for wildlife,  
20 vegetation, rare, threatened and endangered species and  
21 unique habitats. Those kind of surveys will give us an  
22 indication of what is out there, habit, unique habitats, the  
23 type of vegetation, types of weapons that are out there.

24 The assessment of project lands for -- and then I  
25 have behind that, for recreation. The idea of this

26

1 assessment -- and Frank, you correct me if I'm wrong -- is  
2 basically look at in terms of project lands, is there any  
3 potential for additional development of recreation access  
4 and different types of access.

5 Frank mentioned this earlier in terms of survey  
6 of recreation use. Every six years the licensee is required  
7 to do what is called a FERC Form 80 survey. And basically  
8 it gives us an idea, every six years, what's happening  
9 recreationally at a project. And if we see that facilities  
10 are at or exceeding capacity at certain times of the year,  
11 we might go back to the licensee and say we need to take a  
12 look at this in terms of new access. That's what those Form  
13 80 reports are for.

14 Phase 0/1 Archaeological Resource Survey, and  
15 then a Historic Structures Survey. Those will help us in  
16 terms of completing our Section 106 consultation under the  
17 National Historic Preservation Act.

18 Okay, before we go any further, this is like the  
19 last part of this, the overview of the process plan, does  
20 anybody have any questions about the issues that we've  
21 identified and studies that the licensee, the Applicant is  
22 proposing going forward in this pre-filing process?

23 (No response.)

24 Well, seeing none, okay.

25 We're going to wrap this up with an overview of  
26

1 the process plan. I think there are four slides here.  
2 Basically, this is going back to the first part of the talk  
3 where I just generally talked about the licensing process in  
4 terms of timelines. We're going to put this now in terms of  
5 specifically West Buxton, and where we are and where we're  
6 going at certain periods of time.

7 So we started off down here, NOI and PAD back in  
8 August. Scoping, PAD, the NOI notice, we issued that in  
9 October. We are currently in the November time frame,  
10 November 1 and 2 with our scoping meetings. That brings us  
11 to where we are now.

12 Moving forward, the next important timeline for  
13 stakeholders is this date of December 8th, 2012. That's  
14 when comments on Scoping Document 1, the Preliminary  
15 Application Document or the PAD and study requests are due.  
16 So if anybody has comments on the scoping document, if  
17 anybody has any study requests; the PAD that was filed, if  
18 there's information in there of things that need to be  
19 added, if somebody has some information they think is  
20 relevant to describing the resource that wasn't already  
21 included, your deadline for filing those type of things is  
22 December 8th of this year.

23 Okay, and after that the proposed study plan,  
24 that is due January 22nd of next year, 2013. That's where  
25 the applicant, the licensee in this particular instance,  
26

1 they will look at everything that's been generated thus far  
2 in the process and put together what they believe is their  
3 proposed study, what they think is relevant; considering  
4 study requests filed by any of the other stakeholders.

5           Within that proposed study plan, if they disagree  
6 with a proposed study, they should tell us why they disagree  
7 with that proposed study. In other words, that study plan  
8 lists out what they're going to do, and there should also be  
9 a section telling us why -- if there's a study they don't  
10 agree with, they need to explain why they disagree with that  
11 and why they think they can get information in a better way.

12           The preliminary study plan meeting -- I mentioned  
13 this earlier -- that's the next time we're going to be back  
14 up here; that is in February, February 21st, 2013. That's  
15 going to be the opportunity for, when this proposed study  
16 plan comes out, that's an opportunity to sit down face-to-  
17 face and talk about if there are disagreements, and talk  
18 about what those disagreements are and come to some  
19 resolution.

20           This part of the process right here, in terms of  
21 the proposed -- putting together a proposed study plan, the  
22 whole goal here is to informally resolve any differences  
23 that stakeholders have with the studies. That's why this  
24 meeting is important; it's not the only meeting, it's the  
25 only meeting that's required by the regulations. I have  
26

1       been involved in other processes where many other meetings  
2       go on in between these meetings; you know, the filing of  
3       this plan -- this meeting -- and then moving forward,  
4       there's a lot of other meetings that could occur on how  
5       stakeholders want to do this process. But this is the only  
6       one required by the regulations.

7               The comments on the proposed study plan then are  
8       due what amounts to 30 days later; and that is on April 22nd  
9       of 2013. And then by June, 60 days after that, that's when  
10       we will be approving that study plan, and that will be the  
11       study plan that the Applicant will move forward with in  
12       terms of doing their studies. But that's out there in June  
13       of next year.

14              Now the one thing I didn't mention before, it is  
15       here if it's necessary; we don't like to use it unless it's  
16       absolutely necessary -- down here there's a formal dispute  
17       resolution process. If, once the study plan determination  
18       comes out, if there's a mandatory -- and this is an  
19       important aspect of this. If there is a mandatory  
20       conditioned agency, for instance, the state water quality  
21       certifying agency, DEP, Fish & Wildlife Service because they  
22       have mandatory Section 18 fish passage authority, National  
23       Marine Fisheries Service also has Section 18 mandatory  
24       fishway authority.

25              Those three entities, if they disagree, that they  
26

1 didn't get a study they wanted, they have an opportunity to  
2 request formal dispute resolution. That process is a very  
3 quick process; it's a very time-consuming -- it's not a  
4 process we really want to use. It's been used a few times,  
5 and basically for 60 to 90 days it takes anybody working on  
6 it out of anything else, their full time is devoted to that  
7 process.

8           There is a three member panel, it's Commission  
9 Staff; there's a member from the Agency who brought the  
10 dispute forward, and there's a third member that the two  
11 individuals select off of the list. They get information,  
12 they meet and they try to come up with something that the  
13 parties can agree with. But it is a very time-consuming  
14 process, it's a very compressed schedule. So it's something  
15 we want to avoid, if at all possible.

16           Okay. Get down here to the final study plan  
17 determination. At that point the licensee moves forward  
18 with doing their studies. The final study report -- I said  
19 that there were two study seasons. The final study report  
20 would be due, according to regulation, two years later from  
21 the time the determination came out -- which is June 21,  
22 2015. Now, it doesn't mean that it has to be then; it could  
23 be earlier. That's just a regulation date, a deadline  
24 based on the regulations.

25           Again, you may find after one year you have all  
26

1 the information you need, and then you can move forward  
2 potentially with developing a preliminary licensing  
3 proposal. You may not need to go into a second year.

4           Anyway, this is your deadline for having all the  
5 studies done, and the final report: June 21, 2015. The  
6 preliminary licensing proposal is due by August 3rd of 2015.  
7 That's basically five months before they filed their final  
8 license application, which is out here.

9           And then we get to the application which has been  
10 filed in December 2015. This is that same slide I showed  
11 you before, but now I have date specific to West Bux. This  
12 is all post-filing activity. You have the application being  
13 filed by December 2015. Our tendering notice will be in  
14 January of 2016. The acceptance notice and Ready for  
15 Environmental Analysis Notice, if all goes well, would be in  
16 February 2016. Sixty days later, the comments and  
17 conditions and interventions in April. And then our  
18 environmental document would be in August 2016. Comments in  
19 September, final document would be February 2017. At that  
20 point, it's ready for Commission action.

21           The whole intent of the Integrated Licensing  
22 Process is to get through, to put as much effort in up front  
23 to, when you get to the point of filing your application, it  
24 will go through fairly quickly. So our goal is, if we went  
25 back to my original slide, I think it was 12 to 17 months to  
26

1 get through the post-filing process. So if you look at  
2 these dates here, I think these dates probably come out  
3 pretty close to your 17 months.

4 So that's well in advance of a license  
5 expiration, which would be in December, the 17th. So that  
6 is our goal, is to get something out in advance of a license  
7 application expiration date.

8 All right. I just have to do this. I mentioned  
9 that we have a flow chart of the licensing process. It has  
10 been changed; it's no longer this single document. This is  
11 when we first developed this process, that was the flow  
12 chart that was developed. Everything in blue here is pre-  
13 filing; everything down here in your chartreuse, green or  
14 yellow, that's the post-filing. These things, that's in  
15 pink. That has to do with Section 241 of the Energy Policy  
16 Act of 2005.

17 Basically if the Fish & Wildlife Service or the  
18 National Marine and Fisheries Service files a Section 18  
19 prescription or something like that and the licensee doesn't  
20 like it, they have an opportunity to challenge that with  
21 that agency. And they have this whole process with a trial  
22 five hearing and everything. So we integrated that into  
23 this process time-wise and how it would all fit; and that's  
24 these pink boxes.

25 So I debated, but I just threw it in here because  
26

1       this is what we started with, that that is the process that  
2       people saw when we first started implementing the Integrated  
3       Licensing Process, we handed this piece of paper out -- and  
4       you follow that.

5                So we tried to simplify it as much as we can; and  
6       certainly if there are any questions moving forward from  
7       anyone, I am available. You can certainly call me and I  
8       will answer any questions. Tonight if you have questions,  
9       or going forward. I am available.

10               I failed to mention, we have three other staff in  
11       the Commission working on the project; Rose MacNamara, our  
12       rec planner -- she's available, certainly you can call her.  
13       Sara Florentino is our terrestrial person, and our engineer  
14       -- Monti Terhart {ph} is our engineer. I am the Project  
15       Manager, I am the fisheries person.

16               If you get into this thing and you need --  
17       questions come up, feel free to call me. It's not a process  
18       that you want to get behind, because if you get behind  
19       you're going to miss the train, or you're going to have a  
20       hard time catching up to the train, put it that way.

21               With that said, does anybody have any final  
22       questions or --? Okay.

23               I thank you for coming out this evening, and I  
24       know it's a time commitment, and I trust we were able to  
25       give you some useful information, something that you can go  
26

1       chew on a little bit, and digest. Just enough that you have  
2       questions later. Because otherwise I could spend three  
3       hours here.

4                    Thank you all for coming out.

5                    (Whereupon, at 8:40 p.m., the scoping meeting  
6       concluded.)

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25